



Whatcom Transportation Authority

**INVITATION TO BID
FOR
ADA BUS STOP IMPROVEMENTS**

ITB –2022 - 025

**PROPOSAL RELEASE DATE:
FRIDAY, NOVEMBER 18, 2022**

**BIDS DUE TO CONTRACTING PORTAL
Wednesday, December 28,
NO LATER THAN 10:00 AM PST**

**PUBLIC BID OPENING:
Wednesday, December 28 at 11:00 AM PST**

**Whatcom Transportation Authority
4011 Bakerview Spur Road
Bellingham, WA 98226
Phone (360) 788-9332 Fax (360) 788-9532**



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DIVISION 00 PROCUREMENT REQUIREMENTS

00 11 13 ADVERTISEMENT FOR BID

Whatcom Transportation Authority (WTA) provides fixed route, paratransit, and vanpool service throughout Whatcom County. WTA is a municipal corporation formed in 1983. The transit revenue fleet consists of 57 fixed route buses, 37 paratransit vehicles, and 39 vanpools. WTA employs 220 employees.

WTA's mission is to enhance our community by:

- Delivering safe, reliable, efficient and friendly service
- Offering environmentally sound transportation choices
- Providing leadership in creating innovative transportation solutions
- Partnering with our community to improve transportation systems

Additional information about WTA can be found at www.ridewta.com.

Whatcom Transportation Authority (WTA) is requesting bids for the Bus Stop ADA Access Improvement Project # 2022-025.

This Contract provides for the improvement of nineteen (19) bus stops and pads located at various sites throughout the City of Bellingham, City of Lynden, Lummi Reservation, City of Sumas, and Whatcom County. The project consists of, but is not limited to, excavation, disposal and removal of items; installation of curb, gutter, sidewalk, concrete bus stop pads, and traffic control; erosion control measures; construction survey work; and all other work described in Plans and Specifications (Work).

The preliminary independent estimate for the proposed Work is \$125,000 to \$157,000 and is jointly funded by City of Bellingham and WTA.

The Contractor shall provide project management to maintain the desired schedule concerning logistics and sequencing of the Work which will all occur in busy traffic areas with limited staging; coordinate securement of all necessary permits; manage and be the custodian of any government furnished equipment; and assure adherence to all laws and regulations pertaining to the municipalities where work will be executed.

This Contract will be subject to Washington State Prevailing Wage and retainage rules, and the Public Works provisions, RCW Chapter 39.04. Federal Davis Bacon wage rates will not apply. Separate payment and performance bonds¹ will be required.

The Contract will be awarded to the lowest priced responsive and responsible Bidder.

Work is anticipated to start after the Notice to Proceed is issued.

¹ RCW 60.28.011(1)(b)



A bid bond will be required.

Proposers are advised that they will be required to adhere to the terms and conditions of this bid request. WTA will not negotiate any aspect of the required service or contract once the Intent to Award is issued. WTA will not make any concessions for Bidders who are not completely familiar with the scope or contract requirements.

This project is not funded using Federal money.

00 01 15 LIST OF BID DOCUMENTS AND DRAWING SHEETS

There are a total of six (6) pad detail drawings and nineteen (19) corresponding sites. Bidding Documents including drawings, photos with pad dimensions, and any issued addenda can be downloaded from <http://www.ridewta.com/business/doing-business/procurement> and selecting Open Procurements.

It is the Bidder's responsibility to ensure they have all drawings, addenda and required forms ("Bidding Documents"). Complete sets of Bidding Documents shall be used in preparing bids; WTA does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

WTA makes copies of the Bidding Documents available only for the purpose of obtaining bids. The documents' availability does not confer a license or grant for any other use.

WTA reserves the right to determine which bid is, in WTA's judgment, the lowest responsive and responsible bid of a bidder or group of Bidders.

The following are the locations where the Work will be performed (Locations):

Site ID	Location	City	Pad Type
3449	Maplewood Ave. at Cottonwood Ave	Bellingham	Type 2
2532	York St. at Franklin St.	Bellingham	Type 4
3107	Lake Whatcom Blvd. at Marigold Dr. Gate 2	Sudden Valley	Type 3
3189	21 st St. at Harris Ave.	Bellingham	Type 2
3174	Hawthorn Rd. at Bayside Rd.	Bellingham	Type 2
3027	Electric Ave. at Fraser St.	Bellingham	Type 3
3446	Fraser St. at Puget St. Eastbound	Bellingham	Type 6
1027	Puget St. at Fraser St. Northbound	Bellingham	Type 5
7132	Pole Rd. at Everson Goshen Rd.	Whatcom County	Type 3
3111	Lake Whatcom Blvd at Strawberry Pt.	Bellingham	Type 4
3318	Haxton Way at Smokehouse Rd.	Lummi Reservation	Type 5
2542	Kwina Rd. at Lummi Health Svcs.	Lummi Reservation	Type 5
2543	Kwina Rd. at Lummi Tribal Center	Lummi Reservation	Type 6



2525	Vista Dr. at Vista Middle School	Ferndale	Type 2
7165	Sumas Ave. at Columbia St.	Sumas	Type 1
3430	Bellis Fair Pkwy at Value Village	Bellingham	Type 2
8911	Meridian at Birch Bay Lynden Rd.	Lynden	Type 5
3122	Lakeway Blvd at Kenoyer Dr. Westbound	Bellingham	Type 6
3105	Lakeway Blvd at Kenoyer Dr. Eastbound	Bellingham	Type 2

00 21 13 INSTRUCTIONS TO BIDDERS

1.01 MINIMUM BIDDER REQUIREMENTS

A bidder must meet the following minimum qualifications AT THE TIME OF BID SUBMITTAL²

- Possess a current certificate of registration that is in compliance with RCW Chapter 18.27;
- Provide Whatcom Transportation Authority a current unified business identifier (UBI) number;
- Furnish all required municipality endorsements on the UBI or proof that they are applied for;
- Have industrial insurance coverage for the proposer's employees working in Washington as required in RCW Title 51; an employment security department number as required in RCW Title 50; and a state excise tax registration number as required in RCW Title 82.
- Not be disqualified from bidding on any contract under RCW 39.06.010 or 39.12.065 (3).
- Have received training on the requirements related to public works and prevailing wage under RCW 39.04.350 and RCW 39.12
- Within the last three (3) years immediately prior to this bid request, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated prevailing wage and minimum wage statutes, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
- Provide proof that all personnel are licensed where applicable, according to Washington State RCW 19.28.161.

WTA will not award to the Contract to any bidder who does not meet these requirements at the time of bid submission.

² RCW 39.04.350

1.02 BIDDER'S ACKNOWLEDGEMENT

- A. Bid submittal is evidence that the Bidder has examined the ITB and understands all performance requirements.
- B. The Bidder further acknowledges by submitting a Bid that he/she/it has:
 - 1. Meets all Minimum Bidder Requirements under 00 21 13 part 1.01.
 - 2. Read and understands the requirements of the contract as well as scope of Work.
 - 3. Investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:
 - a) Conditions bearing upon acquisition, transportation, disposal, handling, and storage of materials.
 - b) The availability of labor, materials, water, electric power, and roads.
 - c) Uncertainties of weather, river stages, tides, or other physical conditions at the site.
 - d) The conformation and condition of the ground.
 - e) The character of equipment and facilities needed before and during Work performance.
 - f) Biological hazards and associated physical hazards of the site.
 - g) The nature, extent and character of WTA's use of the Work area, including the operation of buses.
 - h) Fully understands the requirements for obtainment of insurance and/or bonds, and the associated costs of obtaining and maintaining insurance and/or bonding.
 - 4. Satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work site (including material sites), as well as, from the Bid Documents and other information made a part of this Contract.
 - 5. Satisfied itself as to the adequacy of time allowed for the completion of the physical Work on the Contract.

Failure to take the actions described and acknowledged in this part shall not relieve the Bidder from responsibility for properly estimating the difficulty and cost of successfully performing the Work, or from proceeding to successfully perform the Work without additional expense to WTA. The Bidder agrees that the WTA shall not be liable on any claim for additional payment or additional time or any claim whatsoever if the claim directly or indirectly results from the Bidder's failure to investigate and familiarize itself sufficiently with the conditions under which the Contract is to be performed.

1.03 INSPECTION OF SITE

Bidders are encouraged to inspect the Work site to satisfy themselves of the location of the proposed Work, and of the actual conditions of and at each Work site.

The information provided by WTA is not intended to be a substitute for, or a supplement to the independent verification by the Bidder to the extent such independent investigation of site conditions is deemed necessary or desirable by the bidder. Bidder acknowledges that he has not relied upon WTA furnished information regarding site conditions in preparing and submitting a bid.

1.04 CONTACT WITH WTA

Until the Contract is awarded, all inquiries or contact of any kind must be directed to:

Magan Waltari, Procurement & Contracts Manager
4011 Bakerview Spur
Bellingham, WA 98226
360.788.9332
procurement@ridewta.com

Communications with any other WTA employee or agent before the Contract is awarded is prohibited. Doing so will be cause for disqualification by WTA.

1.06 MODIFICATION OR WITHDRAWAL OF BID

- A. Any bid may be withdrawn at any time prior to the time set for public opening. Bids may not be revised once the opening date has passed, unless specifically requested by WTA.
- B. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

1.07 BID SUBMISSION GUIDELINES

A. GENERAL

- 1. Bidders will have reviewed the ITB and all associated documents, drawings, and pictures prior to submitting a bid. Submission of a bid is acknowledgment that, if awarded the Contract, the Bidder is relying on his own examination of (1) the site of the Work, (2) access to the site, and (3) all other data and matters required to fulfill the Work and on his own knowledge of existing facilities on and in the vicinity of the Work site.

2. The Bidder certifies that he is knowledgeable of the unusual and peculiar hazards associated with the general class and type of work required to construct the specified project within the terms given in the project manual. Bidder is competent and skilled in the protective measures necessary for the safe performance of the construction work with respect to such unusual and peculiar hazards
3. Bids must be clear and concise and provide complete information. It is the submitter's responsibility to verify that WTA has received the document. Late Bids will not be considered.
4. Bids will be submitted as a single PDF file with the bid and all completed forms.
5. Bids become the property of the WTA. Pages of the bid will be numbered, and sections clearly outlined. Any confidential or proprietary information must be submitted separately and clearly marked as "Proprietary" or "Confidential." THE SCOPE AND EXTENT OF PROTECTION THAT WTA CAN PROVIDE TO INFORMATION DESIGNATED AS PROPRIETARY AND CONFIDENTIAL IS LIMITED. ALL PROPOSERS SHOULD REVIEW Section 1.39 Entitled PUBLIC DISCLOSURE LAW FOR A FULL EXPLANATION.
6. Bids received will not be available for review by the public until after bid opening.
7. Submission of a bid grants WTA the right to enforce the parties' agreement without the need for a signed Contract, based upon the existence of an enforceable agreement between the parties, whose terms and conditions shall comprise the ITB and bid.
8. WTA does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of bidding documents.
9. Refer to 01 23 00 Clarifications, Approved Equals, and Substitutions for the process to request alternate contract terms, clarify scope of Work, or replace one work method for another.

B. WTA BID PORTAL

Sealed bids from bidders will be received only through WTA's contract portal:

<https://wta.cobblestone.software/gateway/SolicitationPublicSearch.aspx>.

Bids are due 60 minutes before the virtual bid opening to allow for resolution of any technical issues. WTA's Procurement Manager may open the file to ensure complete file transmission, but the bid will not be counted until the virtual bid opening.

Bids will be opened via Microsoft Teams at 12:00 PM PST to allow for safe social distancing. Interested attendees may

Contact Procurement (Contact info in 1.04 above) and request a meeting invite

Join via web link:

<https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting?rtc=1>

MEETING ID: 296 713 061 00

PASSCODE: 3fj3e9

C. BID RESERVATIONS

1. WTA reserves the right to:
 - Accept or reject any or all bids and their Bidders
 - Reject any or all bids until a Contract is signed
 - Reject this solicitation and issue a new one for any reason
 - Waive deviations from the requirements
 - Waive any informality or minor irregularity in bids received
 - Issue changes in the form of a written addenda
 - Request additional information to fully evaluate a bid or Bidder
2. A bid will be rejected when:
 - It is not received by the deadline stated above
 - The bid is not in the format as required
 - The bid is submitted via email, hard copy mail, USB or any other method not approved by this request
 - The Bidder fails to meet the minimum requirements listed
 - The bid is not signed or is conditioned in any way not pre-approved by WTA
 - The bid is incomplete: prices are omitted, forms are not signed or completed, etc.
 - Any issued Addenda are not acknowledged on Bid Confirmation & Cover Sheet
 - Vendor information or references are incomplete
 - Any other reason determined to be in the best interest of the WTA
 - The bid does not meet required terms and conditions
 - If WTA has reason to believe that collusion exists among Bidders and/or WTA staff

D. BID FORMS

1. All completed forms must be included in each bid. Altering or omitting the provided forms will render the bid non-responsive.
 - a. Bid Price Form
 - b. Bid Bond

- c. Bid Confirmation & Cover Sheet
 - d. Bidder Information & References
 - e. Debarment, Compliance, Conflict of Interest
 - f. Prevailing Wage Certification
2. All bids must be signed by the person(s) legally authorized to bind the Bidder to a contract. Bids submitted by an agent will have an accompanying power of attorney certifying the agency's authority to bind the Bidder. A bid by a corporation shall further give the state of incorporation and have the corporate seal affixed.

E. BID PRICES

- 1. Bid pricing shall be valid for a period of ninety (90) days from proposal.
- 2. WTA is tax exempt for this Work under WA State Department of Revenue WAC 458-20-171. A copy of the official ruling is available upon request.
- 3. All prices shall be in legible figures (not words) written or typed and expressed in U.S. currency. Award will be to the lowest priced responsive and responsible lump sum Bidder.
- 4. The Bidder agrees that the WTA shall not be liable on any claim whatsoever if the claim results from the Bidder's failure to investigate and familiarize itself with the conditions under which the Contract and Scope are to be performed.
- 5. Bid prices shall reflect what the Bidder anticipates the total cost of completing the Work to be, including but not limited to methods, materials, labor, equipment, taxes, overhead, permits, insurance, and bonding. Except as the Contract may provide, the Bidder shall receive no payment for any costs that exceed those in the Bid prices.
- 6. After opening Bids, if two or more lowest responsive Bid totals are exactly equal, then the tie-breaker will be determined by drawing as described in this Section. Two or more slips of paper will be marked with the tied Bidders' names. The slips will be folded to make the marking unseen. The slips will be placed inside a box in full view of the camera. One non-procurement representative of WTA shall draw a slip from the box. The slips shall be unfolded and the first firm drawn will be determined to be the successful Bidder and eligible for Award of the Contract. Only those Bidders who submitted a Bid total that is exactly equal to the lowest responsive Bid are eligible to draw.

F. BID BOND

The bid shall be accompanied by a Bid Guarantee in an amount of at least 5% of the total bid (total of Base Bid plus WSST). Refer to 00 43 13 for more information about the Bid Bond.

1.08 SUBCONTRACTS

The Contractor shall perform no less than 75% of the Work with its/his/her own organization without the previous written consent of WTA.

As a condition of Contract execution, copies of all subcontract agreements must be sent to WTA's Contract Manager.

All subcontractors must be pre-approved by WTA. WTA reserves the right to investigate sub-contractor responsibility. WTA will not approve change orders to the bid price for replacing rejected contractors.

Either at time of bid, or before project start, sub-contractors will:

1. Provide the same insurance requirements listed in this ITB or be included as part of the Prime Contractors insurance.
2. Meet the minimum requirements listed in 1.01 above.
3. File Intent to Pay Prevailing Wage, Affidavit of Wages Paid with WA State Labor & Industries. Certified payrolls will be provided on their portion of the project upon request of WTA.
4. Provide proof that all individuals are properly licensed, certified, and/or bonded to perform the contracted scope.

Contractor will be jointly and severally, and vicariously liable to WTA and responsible for the Work of, including, but not limited to the adequacy, timeliness, efficiency, and sufficiency, its subcontractors. All subcontractors shall be jointly and severally liable to WTA and responsible for their Work.

1.10 MINORITY BUSINESS CONTRACTING

- A. WTA encourages contractors to utilize Disadvantaged, Small, Veteran, Minority, and Women Owned Business as often as possible and make good faith efforts to subcontract or purchase goods and equipment from them.
- B. A complete list of certified businesses can be found at omwbe.wa.gov. Contractors are also encouraged to receive Federal DBE certification where applicable.

1.11 VETERANS PREFERENCE

As provided in RCW Chapter 73.16.110, to the extent practicable, WTA requires that each of its Contractors:

1. Will give a hiring preference to Veterans, as defined in RCW Chapter 41.04.005, RCW Chapter 41.004.007, and 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project; and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

1.12 BID PROTEST PROCEDURES

Filing a Protest Any party with an interest in the award of the solicitation may file a protest that WTA staff did not follow its own policies and procedures regarding a procurement action as defined below. A protest may not be filed challenging WTA's recommendation of a potentially successful low Bidder, unless there is verifiable evidence of collusion or a violation of the minimum bidder requirements. The protest must be submitted in writing to WTA's Procurement department, and include the following information:

- a) Name, address, email address, and telephone number of the protester
- b) Signature of the protester or their representative
- c) Identification of the solicitation
- d) Detailed statement of the legal and factual grounds of the protest
- e) Copies of all relevant documents
- f) The form of relief requested

Procurement Action: meaning specific procurement steps, such as setting the calendar of events, producing the proposal/bid document, advertising the proposal or bid in legal paper of record, maintaining a list of proposal/bid holders, conducting a pre-proposal meeting, responding to all approved equals/clarifications received by the appropriate time and date, addenda issued straightforwardly to all proposal/bid holders, enforcing closing time and date, providing proctoring services to the project manager and evaluation committee, setting criteria weights, conducting interview process with top-scoring Proposers and evaluation committee, creating notes to file regarding the proposal/bid process, issuing award/non-award letters, and maintaining a written record of the procurement.

Issues and facts not stated in the Notice of Protest will not be considered.

All communications with involved parties shall be in writing and open for public inspection.

Time for Filing a Protest. A protest based on alleged improprieties or ambiguities in a **solicitation** must be filed at least seven (7) days before the due date of the bid or proposal. A protest based upon alleged improprieties in an **award** of a contract or a **proposed award** of a contract must be filed within three (3) days after the Notice of Intent to Award has been issued.

Notice of Protest. Procurement shall immediately give notice of a protest to the vendor if a contract has been awarded. If no award has been made, notice will be provided to all solicitation holders.

Stay of Award. If a protest is filed, the award may be made unless the Finance Director determines in writing that:

- a) Reasonable probability exists that the protest will be sustained.
- b) Stay of the award is not contrary to the best interests of WTA.

Review of Protests

Review: The Finance Director, or Designee shall review and investigate properly filed protests and issue a written decision to the protestor:

- a. A meeting(s) will be called within five (5) working days from receipt of the protest that will include representatives from the WTA and the protester to discuss the issue(s) related to the protest. The meeting may be conducted by telephone conference if convenient for both parties.
- b. A decision of the protest will be made by the Finance Director within three (3) working days of the final meeting and at the time the protester shall be notified of the decision in writing by the Director by email or regular mail.
- c. The Finance Director may, at his/her sole discretion, extend the limits of time outlined above.
- d. The decision of the Finance Director shall be final, unless appealed as provided herein.
- e. A request for reconsideration may be allowed if data becomes available that was not previously known, or there has been an error of law or regulation.

Appeal: A Protestor may appeal the Finance Director's formal decision to WTA's General Manager. The written appeal must be received by WTA within two (2) business days after receipt of the written decision by the Protestor, or the appeal will not be considered. Properly filed appeals of the decisions of the Finance Director shall be reviewed and investigated by the General Manager who shall issue WTA's final decision no later than 21 days after receipt.

1.13 AWARD OF CONTRACT

A. LOW BID



WTA intends to award a Firm Fixed Price Contract to the responsive responsible Bidders who's lump sum bid meets all ITB requirements and is determined to be the lowest bid as determined by WTA.

WTA does not represent or guarantee any minimum purchase outside of what is provided for in this request. This request does not obligate WTA to contract for the goods and/or services specified herein. WTA reserves the right to add, remove, or otherwise modify requirements to meet the operational and strategic directives of the agency.

B. NOTICE OF INTENT TO AWARD

Upon selection of the successful bidder and confirmation of their responsibility as outlined in the Minimum Bidder Requirements, WTA will issue a Notice of Intent to Award to all known plan holders. The Notice of Intent in no way constitutes a promise to award, rather it is the agency's first step in recommending a contract to its Board of Directors. WTA reserves the right to reconsider a contract recommendation after the issuance of a Notice of Intent but before board approval.

Bidders are permitted to request a debriefing from the Procurement Office after the bid opening.

C. WTA CONTRACTING REPRESENTATIVES

Contract compliance, including Prevailing Wage monitoring, bond review, issuing Notice to Proceed, Change Orders, and Purchase Orders is the responsibility of the Procurement & Contracts Manager: Magan Waltari, 360.788.9332, maganw@ridewta.com

The Service Section Supervisor shall be the Project Manager ("Project Manager") and will be responsible for oversight of Contractor and day-to-day project Work. Service Section Supervisor: Cindy Campen, 360-739-0290.

D. EXECUTION OF CONTRACT

Within fifteen (15) calendar days after the Board confirmed award date or other mutually agreed upon date, the successful Bidder shall return the signed WTA-prepared Contract, an insurance certification, detailed schedule of values, and satisfactory payment and performance bonds as required by law. Failure to provide these items within the allotted time will result in a forfeiture of the bid bond. WTA has the right to terminate selection of the Bidder or terminate any agreement entered and award to the next lowest priced responsive and responsible Bidder or reject all bids and re-procure.

If the second lowest responsible Bidder fails to return the required documents as stated above within the time provided after Award, the Contract may then be awarded

successively to the remaining lowest responsible Bidders until the above requirements are met or the remaining Bids are rejected.

Until WTA's Procurement & Contracts Manager executes a Contract or sends a Notice to Proceed, no Bid shall bind the parties, nor shall any Work begin within the project limits or within WTA-furnished sites. The Contractor shall bear all risks including costs for any Work begun outside such areas and for any materials ordered before the Contract is fully executed.

If the Bidder experiences circumstances beyond their control that prevents return of the Contract documents within fifteen (15) calendar days after the Award date, WTA may grant additional calendar days for return of the documents, provided WTA deems the circumstances warrant it.

E. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The Contract consists of the documents listed below. In case of any conflict among these documents, the order of precedence shall be:

1. Form of Contract
2. Division 01 – General Requirements
3. Drawings and photos found in Excel File "Bus Stop Details Final 11-4-2022.xls"
4. Contractor's Price
5. Any issued addenda
6. Purchase Orders
7. Change Orders

A modification or change to any Contract Document shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

1.14 PREVAILING WAGES

- A. RCW Chapter 39.12 requires Prevailing Wage to be paid to all workers on this Contract. The described Work may include more positions or less, depending on the final negotiated scope of Work. Complete job descriptions can be found in Chapter 296-127 WAC. Contractor is responsible for correct applicability and reporting of Job Descriptions.
- B. The Contractor awarded the Contract will be required to meet Washington State Prevailing wage rates in effect at the time of ITB due date, unless exempt under WAC 297-127-430.
- C. The Contractor and all subcontractors are required to file the Intent to Pay Prevailing Wage with the State of Washington before invoices are paid. An Affidavit of Wages Paid must be filed at project completion. Certified payrolls will be on file with Labor and Industries. Contractor agrees to pay the Department of

Labor and Industries the required fee with each Statement of Intent to Pay Prevailing Wages and each Affidavit of Wages Paid submitted, and those costs may be included in the Base Bid.

D. Contractor, each subcontractor, and other person required to pay the prevailing rate of wage shall post in a location(s) readily visible to workers at the job site: (1) a copy of the statement of intent to pay prevailing wages approved Department of Labor and Industries under RCW 39.12.040; and (2) the address and telephone number of the Department of Labor and Industries where a complaint or inquiry concerning prevailing rates may be made.

E. Federal Davis Bacon wage rules do not apply to this contract.

1.15 STATE, LOCAL & FEDERAL LAWS

The Contractor shall comply with all local, municipal, State and Federal laws and county and local regulations as they pertain to this project, including, but not limited to, the following Chapters in the Washington State Revised Code of Washington:

Retainage	RCW 60.28	Handicapped Provisions	RCW 70.92
WA State Public Works Act	RCW 39.12	Resident Employees	RCW 39.16
Nondiscrimination	RCW 49.60	Public Works	RCW 39.04
Hours of Labor	RCW 49.28	L&I Wage Rates	See 1.14 above
CONTRACTOR'S Bond	RCW 39.08	Bid Offenses	RCW 9.18
CONTRACTOR'S Reg	RCW 18.27		

1.15 PROJECT FUNDING

This project is 100% locally funded.

1.16 BONDS

The successful Bidder shall provide executed Payment and Performance Bonds for the full Contract amount that fully satisfies all requirements of RCW 39.08. Both Bonds shall:

1. Be on the WTA-furnished form
2. Be signed by an approved Surety (or Sureties) that meet the requirements outlined in Division 01 part 1.32 #2.
3. Be conditioned upon the faithful performance of the Contract by the Contractor within the prescribed time
4. Guarantee that the Surety shall hold harmless, indemnify, defend, and protect WTA against any claim of direct or indirect loss resulting from:
 - a) The failure of the Contractor (or any of the employees, Subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform the Contract

- b) The failure of the Contractor (or the Subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, Subcontractors, lower tier subcontractors, material, person, or any other person who provides supplies or provisions for carrying out the Work.
- c) Any claims, demands, suit, judgment or actions arising out of Contractor's acts or performance of this Contract, or the acts of any Subcontractor of Contractor.
- d) For any liens that may be asserted arising out of or relating to the Contract.

WTA may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever the Contracting Agency deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Contractor to furnish additional Surety to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

A bid bond will also be required for this project. Refer to Section 00 43 13 BID BOND.

00 25 13 PREBID CONFERENCE

No pre-bid will be held. Refer to Section 1.03 Inspection of Site above.

00 31 13 BID SCHEDULE

Activity	Date: 2022 - 2023
Procurement Request Released	November 18
Questions, Clarifications, Approved Equals & Substitutions	December 9
Bids Due to Contracting Portal*	December 28 no later than 10:00 AM PST
Public Bid Opening	December 28 at 11:00 AM PST
Estimated Award Date**	January 12, 2023
Estimated Project Start Date	Q1 2023

*WTA will not open bids received after this date.

**WTA reserves the right to award a contract(s) no more than sixty (60) days after this date.

WTA reserves the right to modify the Procurement Schedule through written addenda. Addenda are emailed to known plan holders and posted in WTA's procurement portal.

Public bid opening will be held virtually via Teams. Bids can be submitted to the Portal any time up to the public bid opening, but no later.

Bids received will not be available for review by the public until after award confirmation.

00 31 43 PERMITS

Contractor is responsible for securing and paying for all permits and governmental fees, licenses and inspections related to the individual municipalities work is located in. Copies of all documents obtained by the contractor must be submitted as a condition of payment. WTA will not reimburse the contractor for time lost due to incomplete or incorrect permits, work needed to be redone due to lack of necessary permits, or the need to resubmit applications due to the fault of the contractor.

Contractors are cautioned to be aware of the Locations throughout Whatcom County where work will occur. Multiple permits may be required depending on the municipality where work is being performed. Contractor must comply with all conditions of each permit, including providing traffic control plans to permit authorities having jurisdiction if required, and providing notifications to the local authorities as instructed on each permit.

Some, but not necessarily all, of the anticipated permits that must be secured, include the following:

- **City of Lynden** requires a Street Obstruction/Excavation permit for the location in Lynden.
- **City of Bellingham** requires one (1) Public Works permit for work in the Right-Of-Way. The one (1) permit will be for all ten (10) of the bus stop locations within City of Bellingham.
- **City of Sumas** requires a Right-Of-Way permit for the location in Sumas.
- **City of Ferndale** requires an Encroachment Permit, for the location in Ferndale.
- **Whatcom County Public Works Department** requires six (6) separate Revocable Encroachment Permits for each individual location where the work will take place.

00 41 13 BID PRICE

THIS SECTION MUST ACCOMPANY BID (Can also be found in separate file included "2022-025 ITB Fillable Bid Forms.doc")

WTA is tax exempt for this Work under WA State Department of Revenue WAC 458-20-171. A copy of the official ruling is available upon request.

Each bid must include a separate cost that will be charged for each location subject to the Work:

Site ID	Location	Unit Price
3449	Maplewood Ave. at Cottonwood Ave	
2532	York St. at Franklin St.	



3107	Lake Whatcom Blvd. at Marigold Dr. Gate 2	
3189	21 st St. at Harris Ave.	
3174	Hawthorn Rd. at Bayside Rd.	
3027	Electric Ave. at Fraser St.	
3446	Fraser St. at Puget St. Eastbound	
1027	Puget St. at Fraser St. Northbound	
7132	Pole Rd. at Everson Goshen Rd.	
3111	Lake Whatcom Blvd at Strawberry Pt.	
3318	Haxton Way at Smokehouse Rd.	
2542	Kwina Rd. at Lummi Health Svcs	
2543	Kwina Rd. at Lummi Tribal Center	
2525	Vista Dr. at Vista Middle School	
7165	Sumas Ave. at Columbia St.	
3430	Bellis Fair Pkwy at Value Village	
8911	Meridian at Birch Bay Lynden Rd.	
3122	Lakeway Blvd at Kenoyer Dr. Westbound	
3105	Lakeway Blvd at Kenoyer Dr. Eastbound	
	Total Lump Sum Bid	

Award will be given to the lowest cost Total Lump Sum Bid.

By submitting a bid, Contractor is assuring that they have reviewed the scope and Contract requirements in its entirety and has made themselves familiar with both. WTA will not approve change orders for items requested in the scope, but not included in the bid price.

The total bid price will reflect all costs associated with this Contract including but not limited to site prep, clearing, grubbing, excavation, disposal, placement of pad and curbs and retaining walls and cleanup of work labor, materials, equipment rentals, overhead, profit, insurance, bonding, permitting, and inspections. WTA will not waive any of its requirements due to additional costs that may be incurred by the Contractor. For example, the cost to obtain additional insurance if what is required in this Contract is over and above what the Contractor currently holds.

As part of executing a Contract, a detailed schedule of values will be required the schedule of values will show the value assigned to each activity of the Work, including separate allowances for profit and overhead, performance bond, and certificate of insurance.

WTA may request a breakout of costs on invoices.

WTA will not reimburse the Contractor for time lost due to incomplete or incorrect permits, Work needed to be redone due to lack of necessary permits, or the need to resubmit applications due to the fault of the Contractor.

Contractor agrees that the WTA shall not be liable on any claim for additional payment or additional time or any claim whatsoever if the claim directly or indirectly results from the Bidder's failure to investigate and familiarize itself sufficiently with the conditions under which the Contract is to be performed.

00 43 13 BID BOND

(Can be found in separate file included "2022-025 ITB Fillable Bid Forms.doc")

- A. All bids must be accompanied by a Bid Bond in an amount equivalent to 5% of the total Bid Price and made only on the form provided in this request.
- B. The Bid Bond shall be in one of the following forms and made payable to Whatcom Transportation Authority.
 - 1. A Bid Bond, issued by a surety meeting the requirements of Division 1 Section 1.32 and does not limit the Contractor to an amount less than 5%, a U.S. postal money order, or a certified check or cashier's check drawn upon a banking institution.
 - a. Bidder shall submit a PDF copy of the Bid Bond, in any form listed above, through CobbleStone as part of the bid submission.
 - b. The Bidder shall provide WTA the original bid bond upon request.
 - c. Attorneys in Fact who sign the Bid Guarantee bonds must file with each bond a certified and effectively dated copy of their Power of Attorney
 - 2. If the Bidder fails to provide a bid bond with their bid, WTA will reject the Bid.
- C. If the awarded Bidder withdraws any or all of its Bid within (sixty) 60 days after Bid Opening without the written consent of WTA; refuses or is unable to enter into a Contract within (fifteen) 15 days from the date of award notification; refuses or is unable to furnish adequate and acceptable Payment and Performance Bonds; or at any time refuses or is unable to furnish adequate and acceptable insurance; the Bidder shall forfeit its bid security. WTA will proceed with award to the next lowest responsive and responsible Bidder.
- D. To the extent the defaulting of the Bidder's Bid Bond shall prove inadequate to fully reimburse WTA for the damages, attorneys' fees and costs occasioned by default, then the Bidder agrees to indemnify WTA and pay WTA the difference between the Bid Bond and WTA's total damages, so as to make WTA whole.
- E. Bid Bonds of all other bidders will be returned as soon as practical after a Contract is fully executed. Bid Bonds submitted via physical check and received at WTA's offices will be deposited by WTA and re-issued on a WTA check to provide sufficient audit documentation.

00 43 93 BID SUBMITTAL CHECKLIST

By submitting a Bid in response to this solicitation, Bidders agree to be bound by all legal requirements and contract terms and conditions contained in this solicitation, issued addenda, and supporting documentations and drawings.

Bidders are advised that they will be required to adhere to the terms and conditions of this request. WTA will not negotiate any aspect of the required service or contract once the Intent to Award is issued. WTA will not make any concessions for proposers who are not completely familiar with the scope or contract requirements.

The following information, forms and documents contained in this solicitation shall be completed and submitted as the first section of the original bid document. Failure to include any of requested information and properly completed forms and may be cause for immediate rejection of the bid. The below list does not relieve the Bidder from the responsibility of becoming familiar with all aspects of the bid documents and proper completion and submission of the bid.

Can be found in separate file included "2022-025 ITB Fillable Bid Forms.doc"

- ☐ Bid Confirmation & Cover Sheet
- ☐ Bidder Information & References
- ☐ Debarment, Compliance, Conflict of Interest
- ☐ Bid Form – Stipulated Sum
- ☐ Prevailing Wage Certification
- ☐ Bid Bond

Bidders are advised that the following will be incorporated into the final contract:

- Form of Contract
- Division 01 – General Requirements
- Drawings and photos found in Excel File "Bus Stop Details Final 11-4-2022.xls"
- Contractor's Price
- Any issued addenda
- Purchase Orders
- Change Orders

Submission of a bid acknowledges that WTA will not enter into a Contract that contradicts any of the parts included in the ITB packet.

00 60 00 BID FORMS



WTA has included, as a separate file found on the Bid Portal, all required Bid Forms as WORD documents for completion by Bidders a file called "2022-025 ITB Fillable Bid Forms.doc". Bidders are required to use these forms.

0 91 13 ADDENDA

- A. Addenda will be issued to known plan holders should questions or clarifications be deemed significant enough to affect received bids. It is the Bidders' responsibility to ensure that has all issued addenda prior to the submission deadline. Addenda must be acknowledged on Bid Confirmation & Coversheet.
- B. Addenda is uploaded to WTA's eProcurement Portal and sent to known plan holders who have registered as an interested Bidder. WTA will not be responsible for Bidders who fail to acknowledge all addenda.
- C. Bids not acknowledging addenda will be considered not responsive and not reviewed.

DIVISION 01 GENERAL REQUIREMENTS

PART 1 GENERAL CONDITIONS

These general conditions will be incorporated into the final contract through reference and may only be amended by consent of WTA and the Contractor in writing. When WTA specifications are silent, Contractor will refer to the most current copy of WA State Department of Transportation Standard Specifications for Division 01
<https://wsdot.wa.gov/publications/manuals/fulltext/M41-10/Division1.pdf>

If there is a conflict between WTA's General Conditions and WSDOT's General Conditions, the most restrictive will apply.

1.01 CONTRACT DETAILS

- A. Total Contract length will be six (6) months, and WTA expects that all Bidders can complete the Work in that time frame (Contract Time).
- B. This will be a Firm Fixed Price Contract with Net thirty (30) day term. WTA will consider shorter payment terms if accompanied by a discount. Contractor may invoice WTA upon completion of each site. WTA will not pre-pay for any Work.
- C. If Contractor refuses to execute the Contract, furnish performance specific bond, or provide proof of insurance within fifteen (15) days of contract award, the WTA General Manager may withdraw the award, and award the Contract to the next lowest responsive and responsible Bidder or resubmit for bidding.

1.02 PROJECT LOCATION

The Work shall be performed at the Locations within Whatcom County.

1.03 PROJECT SCHEDULE

Time shall be of the essence of the Contract. The Contractor may start working upon receipt of the Notice to Proceed.

During periods when weather or other conditions are unfavorable for performing work, the Contractor shall perform work not impacted. No portions of the Work where quality or efficiency will be negatively impacted may be performed.

1.04 WORK HOURS

- A. Contractor shall notify WTA designated representative five (5) days in advance regarding schedule of Work to be performed at bus stops.

- B. Work shall be performed Monday through Friday 8:00 AM to 5:00 PM unless otherwise mutually agreed with Contractor by WTA Project Manager.
- C. Contractor will submit a project schedule to be reviewed at the preconstruction meeting. All area of Work including subcontractors, time sensitive material deliveries, critical path and key contractor milestones to completion must be included. Contract Time extensions shall be incorporated into updated schedules, reflecting their effect at the time of occurrence.

1.05 LEINS

Contractor shall not permit any lien or claim to be filed or prosecuted against WTA, its property, any of the Locations or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien is filed, Contractor shall satisfy, discharge and extinguish or cause such lien to be satisfied, discharged and extinguished immediately, including, at WTA's option, obtaining a court order extinguishing the lien as a condition of final payment.

1.06 CONSTRUCTION PROGRESS

- A. The Contractor shall furnish such manpower, materials, facilities and equipment necessary to insure project completion within the approved schedule. If any Work falls ten (10) working days or more behind the accepted schedule, the Contractor will return the project to the accepted schedule:
 - 1. Increase manpower in quantities and crafts.
 - 2. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination thereof.
 - 3. Reschedule activities.
- B. WTA's Project Manager's monitoring, reviewing, and reporting project status and progress does not relieve the Contractors responsibility for planning and managing construction work according to the original construction schedule.
- C. When requested, the Contractor shall provide a revised schedule reflecting its plan to insure completion of the Work within the Contract Time. The proposed revision shall be submitted to WTA's Project Manager for approval. All costs to return the project to the accepted schedule are at the Contractor's expense.
- D. The Contractor shall pay any costs incurred by WTA resulting from the Contractor's action to return the project to its accepted schedule. Contractor agrees WTA shall deduct such charges from payments due the Contractor.

1.07 DELAYS

- A. Whenever possible, the Contractor shall prevent the occurrence or continuance of any delay.
- B. When the Contractor foresees a delay and, immediately upon the occurrence of an unavoidable delay, the Contractor must notify WTA's Project Manager in writing. Contractor will advise the extent of the delay, its possible cause, and a mitigation or recovery plan.
- C. WTA will confirm whether the delay is considered avoidable or unavoidable and notify the Contractor. The Contractor agrees that no claim shall be made for delays which are not called to the attention of WTA within 48 hours of the occurrence, or which were reasonably foreseeable at the time of presentation of the bid.
- D. AVOIDABLE DELAYS: Avoidable delays include delays which could have been avoided by the Contractor or subcontractor exercise of care, prudence, foresight and diligence, or were foreseeable at the time of bid. Avoidable delays include but are not limited to:
 - 1. Delays which may be unavoidable but affect only a portion of the Work and do not necessarily prevent or delay other parts of the Work nor the completion of the project within the Contract Time.
 - 2. Time associated with the reasonable interference of other contractors employed by the WTA which do not necessarily prevent the completion of the project within the Contract Time.
- E. Contractor shall pay for all costs incurred by WTA to evaluate any request for an extension of the Contract Time and any added expenses incurred for any granted extension of the Contract Time, including, but not limited to, costs of engineering, inspection, general supervision and overhead expenses which are directly chargeable to the Work, and which accrue during the period of such extension.
- F. UNAVOIDABLE DELAYS: Unavoidable delays result from causes beyond the control of the Contractor and could not have been avoided through exercising care, prudence, foresight, and diligence on the part of the Contractor or his subcontractors. Delays in completion of the Work of other contractors directly employed by WTA will be considered unavoidable delays only when they interfere with the Contractor's completion of the Work.

Delays due to weather conditions which are not "abnormal" as defined in Section 1.09 below, shall not be regarded as unavoidable as the Contractor agrees to plan his Work with prudent allowances for interference by normal weather conditions. Force Majeure delays shall be considered as unavoidable only if as

they prevent the Contractor from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force for at least five (5) hours per day toward completion of the current controlling item on the accepted critical path schedule.

- G. Should abnormal conditions prevent the Work from beginning at the usual starting time or prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least five (5) hours per day, and the crew is dismissed as a result, they will not be charged for a working day.

1.08 DELAY'S CAUSED BY LABOR OR OTHER DISPUTES

- A. The Contractor shall take all reasonable steps to prevent all disputes arising from the performance of Work by the Contractor and any of its subcontractors or suppliers from:
- Disrupting the Work under this Contract.
 - Interfering with access to WTA's property by WTA, including its agents, representatives, employees, officials, and the general public.
 - Interfering with access and work by any other WTA.
- B. If such a dispute disrupts the Work under this Contract or interferes in any way with access to WTA property or a work site, the Contractor shall promptly take all reasonable actions to eliminate or minimize such disruption or interference, including but not limited to:
- Utilizing all reasonable means to prevent all unlawful conduct or picketing.
 - Restricting all lawful picketing or other activities to a single entrance to the property or site of the Work.
 - Posting notices or signs which advise interested persons and labor organizations that a particular entrance to the property or Work site is for the employees of "primary" or "neutral" employers.
 - Policing entrances to ensure that only authorized personnel use them.
 - Notifying all interested labor organizations of the "primary" or "neutral" status of particular entrances.
 - Upon request of WTA, altering or rerouting the access to any of the Locations.
 - In the event any picketing or activity is unlawful or has a secondary impact upon the employees of neutral employers, Contractor will promptly seek recourse through the appropriate governmental agency or state or federal courts.
- C. WTA shall have the right, without providing additional compensation to the Contractor, to modify any of the foregoing actions taken, plans to take, or to overrule such actions, to designate the entrances to be used as "primary" or

"neutral" entrances, and to take appropriate legal action to protect WTA property and interests. Neither the failure of WTA to request a specific action be taken, nor the exercise by WTA of its rights shall modify or constitute a defense to or waiver of the obligations imposed upon the Contractor in this paragraph. Failure by the Contractor to take the actions described in B above or to comply with the directives of WTA are considered a material breach of this Contract and WTA shall have all rights provided by law and in this Contract for such breach.

- D. The term "dispute" includes labor-related and non-labor-related disputes, whether or not the person or other entities involved in the dispute have an employment relationship with either the Contractor or WTA. Examples of such disputes include, but are not limited to, informational or other picketing, and all other forms of concerted or non-concerted activity.

1.09 ABNORMAL WEATHER CONDITIONS

- A. Precipitation as rain, hail, or snow, low temperature, a windstorm, ice, snow, and other weather conditions that could reasonably have been anticipated from the National Weather Service historical records of the general locality of the Work shall not be construed as abnormal or be classified as Force Majeure events.
- B. Ice, snow, and other weather conditions may be considered as abnormal at the sole discretion of WTA upon written request by the Contractor. The request shall describe in detail the weather condition, identify the specific work impacts resulting from the weather condition, provide a mitigation or recovery plan, and be submitted to the Project Manager within five (5) days of the onset of the weather condition.
- C. For neutral measurement, the parties agree that weather data at the Work site will be the same as that measured at the Bellingham International Airport by the Environmental Data and Information Service of the National Oceanic and Atmospheric Administration ("NOAA") of the U.S. Department of Commerce.
- D. For the purposes of this section, a "month" shall mean a calendar month and a "week" shall mean a calendar week of Sunday through Saturday.

1.10 FORCE MAJEURE

- a. **No Liability.** Neither party will be liable for performance delays nor for non-performance due to causes that were not reasonably foreseeable, unavoidable and (a "Force Majeure") beyond its/his/her reasonable control, except for payment obligations for services or goods previously received by WTA.
- b. **Best Efforts to Cure.** In the event of a threatened default or default caused by a Force Majeure the defaulting party shall nonetheless exercise its/his/her best efforts to avoid and cure such default.

- c. **Right to Terminate.** In the event that a Force Majeure prevents performance thereunder for a period in excess of ninety (90) calendar days, then the non-defaulting party may elect to terminate this Contract and/or cancel or suspend any Purchase Orders thereunder by a written notice to the defaulting party.

For purposes of this Agreement, a Force Majeure shall be an event that prevents the Contractor from proceeding with at least seventy-five percent (75%) of its/his/her normal labor and equipment force for at least five (5) hours per day toward completion of any current controlling item on an accepted critical path schedule, and such was outside the control of the Contractor. Such causes include, but are not limited to, war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, a labor dispute, plague, pandemic, epidemic, or apocalypse.

1.11 EXTENSION OF TIME

- A. AVOIDABLE DELAYS: An extension may not be granted for avoidable delays.
- B. WTA may grant an extension of time if an extension is in the Agency's best interest. A condition for granting any such extension shall be Contractor's payment of WTA's actual costs, damages and fees incurred because of the delay and/or extension, including, but not limited to, charges for engineering, inspection, general supervision, and overhead incurred during the extension.
- C. UNAVOIDABLE DELAYS: In addition to providing notice within forty-eight (48) hours of the occurrence, the Contractor shall submit detailed information demonstrating the cause and effect of the delay on the construction schedule. The submission shall be made within thirty (30) calendar days of the occurrence, which is claimed to be responsible, and the providing of such timely notice shall be a condition of any adjustment in the contract timing. WTA's Project Manager shall review the submission and determine the number of days of unavoidable delay and their effect on controlling operations of the Work. WTA agrees to grant an extension of time to the extent that unavoidable delays affect controlling operations in the construction schedule. During such extension of time, neither extra compensation or engineering inspection and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and WTA that extensions due to unavoidable delays will be granted only for delays involving controlling operations preventing project completion within the specified Contract Time. Except for WTA caused delays, the Contractor's only remedy for unavoidable delays shall be an extension of time.

1.12 LAWS AND REGULATIONS

- A. The Contractor shall give the notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the Work.

- B. The Contractor shall be liable for violations of the law in connection with work they provide. If the Contractor observes that the drawings, specifications or other portions of the project manual differ from any laws, ordinances, rules or regulations, WTA must be notified promptly in writing. WTA shall promptly review the matter and, if necessary, issue a change order or take any other action necessary to bring about compliance with the law, ordinance, rule or regulation in question. Contractor agrees not to perform work known to be contrary to any laws, ordinances, rules or regulations.
- C. Contractor shall comply with all Federal, State, county, and local statutes, ordinances, and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect or are affected by the Project.

1.13 WTA OWNERSHIP AND USE OF INSTRUMENTS OF SERVICE

The Drawings, Specifications, and other documents, including those in electronic form, are Instruments of Service through which the Work to be performed is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Instruments of Service, and unless otherwise indicated, WTA shall be deemed the authors and retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of the Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to WTA, on request, or upon completion of the Work. The Instruments of Service and any copies furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of WTA. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce applicable portions of the Instruments of service appropriate to and for use in the execution of Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in deviation of WTA's copyrights or other reserved rights.

1.14 WTA-CONTRACTOR RELATIONS

A. INDEPENDENT CONTRACTOR

An independent contractor relationship will be created by this Contract. The Parties will be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another in performance of this Contract. Contractor shall not make any claim of right, privilege or benefit as would an employee of WTA under any statute or otherwise, including, but not limited to, RCW

Chapter 41.06 or RCW Title 51. Contractor shall indemnify and hold harmless WTA from and against any and all costs (including attorneys' fees) or liabilities (including payroll taxes, penalties or interest) arising out of any assertion that the Contractor is not an independent contractor.

B. AUTHORITY OF WTA, THE GENERAL MANAGER AND DESIGNATED PERSONNEL

WTA's Project Manager or other designated WTA personnel, acting through the WTA General Manager (GM) shall be the sole judge of the work and materials with respect to both quantity and quality as set forth in the Contract. It is expressly stipulated that the Drawings, Specifications and other Contract Documents set forth the requirements as to the nature of the completed Work and do not intend to control the means or method of performing work except where the nature of the completed work is dependent on the method of performance.

1. GENERAL. The GM or the GM's designated personnel shall authorize change orders, including extensions in time, progress payments, contract interpretation and administrative decisions, acceptability of the Contractor's work, early possession, assessment of damages and all other matters related to administration of this Contract.
2. PROGRESS PAYMENTS. The WTA Project Manager and the Procurement & Contracts Manager shall accept or reject requests for progress payments which have been submitted by the Contractor.
3. CONSTRUCTION RELATED DECISIONS. Should the Contractor disagree with the Project Manager's decision in construction-related matters, the Contractor may request that the GM review as directed below in Section 1.21 "Claims".
4. ACCEPTABILITY OF WORK. The Project Manager shall make determinations of the acceptability of the Work and accept or reject retention of defective Work.
5. WTA'S RIGHT TO STOP THE WORK. If the Contractor fails to immediately correct Work not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, WTA may issue a written order to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
6. EARLY POSSESSION. The Project Manager shall determine whether to take early possession.
7. ASSESSMENT OF DAMAGES. The GM shall determine amounts to be assessed as damages.

C. USE OF CONTRACTORS PLANT & EQUIPMENT

WTA shall have the right to make use of the Contractor's plant and equipment for the performance of Work at the site only as necessary to protect or preserve the work from damage threatened or caused by acts of Nature or Contractor breach. WTA agrees that such use of plant and equipment will be considered as extra work and paid for accordingly.

D. AUTHORITY & RESPONSIBILITY OF CONTRACTOR

1. CONTRACTOR'S REPRESENTATIVE: By the pre-construction meeting, the Contractor shall provide the name of the Contractor's Representative and a designated alternate. The designated alternate will have the authority to act in matters relating to this Contract when the Contractor's Representative is unavailable. The Contractor's Representative shall supervise the Work to ensure that the Contractor carries out the provisions of the Contract and provides all necessary supplies, services, materials, equipment, tools and labor without delay. The Contractor's Representative shall have the authority to act for the Contractor in all matters relating to this Contract unless WTA is advised in writing of limitations on said authority. The Contractor shall provide full-time supervision whenever its employees, subcontractors or suppliers are performing Work under this Contract.
2. CONSTRUCTION PROCEDURES: The Contractor shall actively supervise and direct the Work at all times. The Contractor shall determine the means, methods, techniques, sequences, and procedures of construction, except where the Contract Documents define the quality or sequencing of an item of Work, or specify a means, method, technique, sequence or procedure for construction of that item of Work.
3. SUBCONTRACTORS, MANUFACTURERS AND SUPPLIERS: The Contractor shall be jointly and severally, and vicariously liable and responsible for the adequacy, timeliness, efficiency and sufficiency of work performed by its subcontractors, manufacturers, suppliers and their employees. References in the Contract, if any, to actions required of subcontractors, manufacturers, suppliers, or any person other than the Contractor or WTA, shall be interpreted as requiring the Contractor to perform the specified action.
4. CONTRACTOR'S EMPLOYEES: The Contractor shall be jointly and severally, and vicariously liable and responsible for the adequacy, timeliness, efficiency and sufficiency of its employees. Workers shall have sufficient knowledge, skill and experience to perform properly the Work assigned to them. The Contractor's and its subcontractor's employees shall be properly licensed, registered or certified, as applicable, to perform their assigned

Work. Upon request the Contractor shall provide copies of licenses, registrations or certifications held by its employees. In addition, any such employee determined by WTA not to be sufficiently qualified to perform assigned Work or does not cooperate with WTA shall be removed by the Contractor from all Work under this Contract.

5. PAYMENT FOR LABOR AND MATERIALS: The Contractor shall pay and require its subcontractors to pay any and all accounts for labor including workers compensation premiums, state unemployment and federal social security payments and other wage and salary deductions required by law no later than thirty (30) calendar days after receiving payment from WTA.

The Contractor shall pay and cause its subcontractors to pay any and all accounts for services, equipment, and materials used by it and its subcontractors during the performance of Work under this Contract no less than ten (10) days after receipt of payment from WTA³. Copies of all invoices and payment stubs paid under this Contract may be requested by WTA as a condition of payment.

6. ATTENTION TO WORK: The Contractor shall give personal attention to and shall manage the Work so that it shall be performed faithfully and completed in accordance with all requirements of the Contract. When the Contractor's Representative is not personally present at the site, its designated alternate shall be available and shall have the authority to act in matters relating to this Contract.
7. DAMAGE REMEDY: The Contractor shall promptly remedy damage wrongfully caused by the Contractor, Subcontractors, or sub-subcontractors to completed or partially completed construction or to property of WTA, and/or to property of county or city having jurisdiction.
8. EMPLOYEE OR OPERATOR SAFETY: The Contractor is solely and completely responsible for conditions of the Work site, including safety of all persons and property, during performance of the Work. Contractor shall be responsible for compliance with all pertinent safety regulations established by law, including, but not limited to the Occupational Safety and Health Act of 1970, including all revisions, amendments and regulations issued thereunder ("OSHA"), and the provisions of the Washington Industrial Safety Act of 1973, including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries ("WISHA"), and any procedures and protocol recognized within the industry. The Contractor shall maintain the Work site and perform the Work in a manner which meets and complies with statutory, regulatory, and common law requirements for the provision of a safe place to work and does not pose any safety risks to

³ RCW 39.04.250(1)

operators of the plant, the general public, or other employees of WTA. This obligation shall apply continuously and not be limited to normal working hours. When WTA conducts a review of the Contractor's performance, it does not and shall not be intended to include review of the adequacy of the Contractor's safety measures in, on or near the site of the Work. The Contractor shall comply with the safety standards and provisions of applicable laws, building and construction codes, and the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" published by the Washington State Department of Labor and Industries.

- a) The Contractor shall maintain at the Work site office or other well-known place at the Work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employee's procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to work on the site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care. If the Contractor's and/or any subcontractors work crew consists of five or more employees, the Contractor shall ensure that at least one of such employees has a valid, effective first aid card.
- b) In order to protect the lives and health of employees performing work under this Contract, the Contractor shall comply with OSHA, and the provisions of WISHA. The WISHA regulations shall apply (without limitation) to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply.
- c) The Contractor shall have a written Safety Program demonstrating the methods by which all applicable safety requirements will be met. The Contractor shall ensure its subcontractors have a written Safety Program or formally adopt the Contractor's Safety Program. The Contractor shall designate a Safety Officer who shall be responsible for proper implementation of the Safety Program. The Contractor shall submit a copy of its "Safety Program" to WTA upon request. The WTA Project Manager's review of such Program shall not be deemed to constitute approval or acceptance.
- d) The Contractor shall conduct a monthly safety meeting with all subcontractors and others on the site performing work hereunder to discuss general and specific safety matters. The Contractor shall provide written notice of each meeting to WTA's Project Manager. The Contractor shall provide a record of each meeting, including a sheet on which each attendee signed in and a list of the matters discussed.

- e) The Contractor, at its discretion, shall conduct weekly safety meetings ("toolbox talk") with employees of the Contractor and subcontractors. The Contractor shall provide written notice of each meeting to WTA's Project Manager. The Contractor shall provide a copy of the sheet on which each attendee signed in and a description of the safety topics discussed at the meeting.
 - f) There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA, or other safety requirements applicable to the Work shall be considered a breach of this Contract.
9. **PUBLIC SAFETY AND CONVENIENCE:** The Contractor shall conduct its work ensuring the least possible obstruction to vehicular traffic on the WTA property or public right of way. Contractor will limit the inconvenience to the general public and the residents in the vicinity of the work and to ensure the protection of persons, property and natural resources. No access point, road or street shall be closed to the public except with the permission of WTA, and the proper governmental authority. Fire hydrants on or adjacent to the work shall be accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the safe use of sidewalks, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.
10. **SANITATION:** The Contractor shall comply with WAC 296-155-140 establishing sanitation standards in the construction industry.
11. **RECYCLED MATERIALS:** Pursuant to RCW 43.19A.120 and RCW 43.19A.140, the Contractor is required to use compost and biochar materials whenever possible in the execution of this Work.

Pursuant to RCW 43.19A.080, WTA gives preference to materials made from recycled and recyclable content. A copy of WTA's Environmental Policy 160-04 if available upon request.

The Contractor will make their best effort to utilize recycled materials in the execution of the project.

Prior to physical completion, the Contractor shall report on DOT form 350-075 "Recycled Materials Reporting", the quantity of recycled materials that were utilized in the construction of the project. The report may include hot mix asphalt, recycled concrete aggregate, recycled glass, steel furnace slag and any other recycled materials.

12. HAZARDOUS WASTE AND MATERIALS: The Contractor shall comply with all pertinent federal hazardous waste laws and Washington State Dangerous Waste regulations governing hazardous waste generation, storage, transportation, treatment and disposal. Contractor shall not allow the release of any hazardous substance onto any real property, including, but not limited to, WTA's property, as that term is defined under the Washington State Model Toxic's Control Act ("MTCA") and/or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

The Contractor shall conduct its work to meet the requirements set forth in this ITB and any applicable laws or regulations related to hazardous materials encountered during performance of the Work. Hazardous materials include asbestos, PCBs, radioactive materials, explosives and other materials deemed as such by regulatory agencies. If the material proves positive as containing asbestos, such material shall be handled in compliance with WAC 296-62-077 through 296-62-07753. The Contractor shall give immediate verbal notice, and written notice within three days, to the Project Manager upon the discovery of any such hazardous materials and proceed thereafter only as directed by the Project Manager or as set forth in the Specifications. In case of any conflict between any such requirements, the more stringent requirement shall apply.

13. ENVIRONMENTAL STANDARDS: The Contractor shall adhere to WTA's environmental standards with regards to this project. The Contractor shall comply with all applicable statutes, regulations, laws, ordinances and requirements dealing with the prevention of environmental pollution and the preservation of public natural resources, including, but not limited to all portions of the following statutes, ordinances and regulations and such other statutory or regulatory measures as may be subsequently identified by WTA or other public agencies as applicable to the work.

- Federal. Natural Environmental Policy Act of 1969, 42 USC 4321 et Seq.; Executive Order 11514; Clean Water Act, 33 USC 1251 et seq.; CERCLA.
- State. Water Pollution Control Act, RCW Chapter 90.48; State Environmental Policy Act of 1971, RCW Chapters 43.19A and 43.21C and WAC Chapter 197-10; Noise Control Act of 1974, RCW Chapter 70.107; Washington Clean Air Act, RCW Chapter 70.94 and WAC Chapter 1; Shoreline Management Act of 1971, RCW Chapter 90.58; MTCA.
- Regional. Any applicable Air Pollution Control District regulations.
- Whatcom County. Any applicable County ordinances and regulations.
- Local. Any applicable City of Bellingham, City of Ferndale, City of Lynden and City of Sumas ordinances and regulations pertaining to individual site locations.

1.15 TRAFFIC CONTROL

The Contractor is responsible for traffic control on the project. Traffic control will follow all requirements under **WSDOT Division 1-10.3 TRAFFIC CONTROL LABOR, PROCEDURES, AND DEVICES**. Copies of all required Traffic Control Plan(s) shall be submitted to WTA's Project Manager and local jurisdictions for review and approval at the pre-construction meeting. The Traffic Control Plan(s) will identify lane restriping, closures, and pedestrian traffic control that is planned throughout the construction of the project. The Traffic Control Plan(s) will be updated by the Contractor as appropriate or required by WTA for the duration of the contract. The Traffic Control Plan(s) shall designate the responsible person for the traffic control and furnish all contact information.

1.16 SERVICE OF NOTICE

All Contract notices, orders, directions, requests, waivers, and other communication must be in writing. Verbal notices will not be accepted. Notice is considered received within five (5) business days after postmark or electronic date sent. Notice may be given via fax, email, posted at the Work site or mailed to the other party at the addresses provided in the Contract.

1.17 SUGGESTIONS TO CONTRACTOR

Any plan or method of work suggested by either party, but not specified or required in writing under the Contract or confirmed through written change order, will be performed at the risk and responsibility of the Contractor. WTA assumes no liability for work performed without a written change order and will not be held liable for any defects in the work resulting from or caused by use of undocumented plans or methods of work.

1.18 COOPERATION OF OTHERS

The Contractor agrees to permit entry to the site of the Work by the Project Manager, other employees or agents of WTA, representatives of federal, state or local agencies, or other contractors performing work on behalf of WTA. The Contractor shall cooperate with WTA, other contractors and their employees and shall arrange its work and dispose of its materials in such a manner as not to interfere with the activities of WTA, or of others upon the site of the Work. The Contractor shall promptly remedy any Contractor-caused injury or damage that may be sustained by other contractors or employees of WTA and other agencies. The Contractor shall coordinate its work with that of others and perform its work in proper sequence in relation to that of others.

1.19 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional

compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Division 01 26 00 below.

1.20 DIFFERING SITE CONDITIONS & DISCREPANCIES

- A. Reference is made to the Specifications for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by WTA in preparation of the Contract Documents. The Contractor may rely upon the accuracy of the technical data at the specific times and specific locations of the investigations, but may not rely upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for the Contractor's purposes. Except as indicated in this paragraph, the Contractor shall have full responsibility with respect to surface and subsurface conditions at the site.
- B. If the Contractor believes that any technical data on which the Contractor relied as provided in this paragraph is inaccurate, or any physical condition uncovered or revealed at the site differs materially from that indicated in the Contract Documents, then the Contractor must, promptly after becoming aware of the condition and before performing any work in connection with the Contract, notify WTA's Project and Contract Managers in writing about the inaccuracy or difference. THIS NOTICE SHALL BE MADE WITHIN TEN (10) DAYS OF DISCOVERY OF SUCH CONDITION. NO CLAIMS OF THE CONTRACTOR UNDER THIS PARAGRAPH WILL BE ALLOWED UNLESS THE CONTRACTOR HAS PROVIDED THE REQUIRED NOTICE.
- C. If WTA concurs that an inaccuracy or material difference exists and that such inaccuracy or material difference will cause an increase or decrease in the Contractor's cost of or time required for performance of the Work, a change order will be submitted for review (Refer to 01 26 00).
- D. If the Project Manager finds there is no such inaccuracy or material difference, or if no decision is made in writing within ten (10) days of the written notice by the Contractor (which 10th day shall be deemed the date on which the WTA denied the claim), the Contractor must submit a claim to the Project Manager.
- A. ERRORS AND OMISSIONS: If the Contractor, in the course of the Work, becomes aware of any errors or omissions in the Contract Documents or in WTA's field work, the Project Manager shall immediately be informed in writing. The Project Manager shall promptly review the matter. If an error or omission has been made, corrective actions shall be determined, and the Contractor advised accordingly. If the corrective work associated with an error or omission increases or decreases the amount of work called for in the contract, WTA shall issue an appropriate change order. After discovery of an error or omission by the Contractor, related work performed by the Contractor shall be done at Contractor's risk unless a change order has been signed. In the event the

Contractor disagrees with the determination of the WTA under this provision, an appeal in accordance with 1.23 "Claims" may be filed.

- B. CONFLICTING PROVISIONS: In cases of conflict between the specifications and drawings, the most restrictive shall govern. Figure dimensions on drawings shall govern over scale dimensions and detail drawings shall govern over general drawings. In the event an item of Work is described differently in two or more locations on the drawings and in the specifications, the Contractor shall, upon request of WTA, submit in writing the description upon which the Contractor relied on in preparing the bid or work lay out. If WTA directs the Contractor to perform work in a manner other than that contemplated in preparing a bid or laying out the work, WTA will initiate a change order. In this event, the Contractor shall submit to WTA such supporting information, including bidding or layout documents, as may reasonably be necessary for WTA to determine whether the amount due and owing under the Contract to Contractor, including suppliers and subcontractors ("Contract Sum") is increased, decreased or unchanged by the change order.

C. SUBMITTALS:

Where required by the specifications, the Contractor shall submit specified information which will enable WTA to determine whether the Contractor's proposed materials, equipment or methods of work are in general conformance to the design concept and in compliance with the drawings and specifications.

- D. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES: Shop Drawings are drawings, diagrams, schedules and other data specially prepared by the Contractor, subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
1. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment used in the project.
 2. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards to evaluate scope compliance.
 3. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the scope of Work. Submittals will be reviewed only for the limited purpose of checking for conformance with the scope of Work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor.

4. The Contractor shall submit to the WTA Project Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of WTA or of separate contractors. Submittals which are not marked as reviewed for compliance and approved by the Contractor may be returned without action.
5. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that they have determined and verified materials, field measurements and field construction criteria. Contractor also confirms the submittal information has been checked and coordinated requirements of the Work and of the Contract Documents.
6. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by WTA.

1.21 CLAIMS & DISPUTE RESOLUTION

Contractor must recognize the following procedures in terms of any dispute relating to the interpretation, enforcement or alleged breach of the Contract by WTA:

- A. DETERMINATION BY PROJECT MANAGER: Questions or claims regarding the meaning and intent of the Contract or arising from this Contract shall be referred by the Contractor in writing to WTA's Project Manager and Contract Manager for review within five (5) days of the date in which the Contractor knows or should know of the question or claim. The Project Manager or the Contract Manager will respond to the Contractor in writing with a decision within ten (10) working days of receipt of notice. Absent such written response the question or claim shall be deemed denied upon the eleventh (11th) day following receipt.
- B. WTA ADMINISTRATIVE REVIEW. Contractor must first submit a request for administrative review of the dispute to the WTA Project Manager, who shall determine whether the request is within his/her authority, and if so, whether to grant Contractor's relief. If Contractor is not satisfied with the Project Manager's decision, then it/he/she shall submit a request for administrative review of the dispute to the WTA Procurement within ten (10) business days following the Project Manager's decision. Procurement shall determine whether the request is within his/her authority, and if so, whether to grant Contractor's relief.
- C. If Contractor is not satisfied with Procurement's decision, then it/he/she may submit a request for administrative review of the dispute to the Finance Director or Designee within ten (10) business days after receipt of Procurement's decision. The request to the Finance Director may be made via certified mail, facsimile, or email and will be considered received within three (3) business days

of the post mark or send date. Such notice shall include a detailed account of the legal and factual grounds of the protest, all relevant documents, and the Contractor's desired outcome. The Finance Director will provide a written determination within sixty (60) business days of notification unless a resolution is time sensitive in which case a decision will be made within ten (10) business days. If a written decision is not provided within sixty (60) business days or a period agreed upon by the parties, then the Contractor's claim shall be deemed denied by WTA. If Contractor is dissatisfied with the Finance Director's decision, then Contractor shall file an appeal to WTA's General Manager within ten (10) business days of receipt of the Finance Director's decision. The General Manager will make a written determination to the Contractor that shall be final and conclusive within thirty (30) business days. If a written decision is not provided within thirty (30) business days or a period agreed upon by the parties, then the Contractor's claim shall be deemed denied by WTA's General Manager. The General Manager's decision will be considered the final decision of the Administrative Review.

- D. MANDATORY MEDIATION. If Contractor is dissatisfied with the General Manager's decision, then it/he/she may submit a Notice of Intent to Mediate to WTA within thirty (30) calendar days following receipt of the General Manager's decision. The parties shall mutually agree upon a mediator and conduct a good faith mediation to occur in Bellingham, Washington. If the parties cannot agree on a mediator, then Contractor shall commence an action within the Superior Court of the State of Washington to seek appointment of a mediator. Such action shall be at Contractor's expense. Such mediation shall occur on a date mutually agreeable to the parties, but no later than sixty (60) days following receipt of Contractor's Notice of Intent to Mediate.
- E. ARBITRATION. Any action to interpret, enforce or for an alleged breach of the Contract shall be subject to binding arbitration to occur in Bellingham, Washington, pursuant to the American Arbitration Association's ("AAA") Construction Industry Arbitration Rules if the Contract is for construction services, or AAA's Commercial Arbitration Rules in all other cases. Either party may institute such proceeding by providing a Notice of Intent to Arbitrate, or pursuant to RCW Chapter 7.04A. Any arbitration ruling shall be final and may be memorialized as a judgment or challenged under the procedures of RCW Chapter 7.04A. The parties shall equally split the cost of the arbitration, including the arbitrator's fees. The arbitrator shall have the authority to award the prevailing party its/his/her portion of arbitration costs and fees as part of any final ruling.
- F. Contractor's Conditions to Commence Arbitration and Limitation of Action. Any arbitration by Contractor against WTA shall be conditioned upon its/his/her presentment and participation in a WTA administrative review process, and mediation. Contractor shall commence any arbitration proceeding within the applicable statute of limitations. Notwithstanding the above, WTA agrees that any

applicable period of limitations within which the arbitration must be commenced shall be delayed during any administrative procedure process and for ten (10) business days following any mediation, so long as Contractor submits a request for administrative review to the Project Manager of the dispute prior to expiration of the applicable statute of limitations and timely submits a Notice of Intent to Mediate.

- G. **JURISDICTION AND VENUE:** If any claim or dispute is not resolved in accordance with steps A-F above first, then either party may commence litigation. Jurisdiction and venue shall be in the Superior Court for the State of Washington, Whatcom County. Contractor hereby waives any right to challenge the jurisdiction of this Court. In addition to all other remedies, the substantially prevailing party shall be awarded its costs including, but not limited to reasonable attorneys' fees, and reasonable expert witness fees. The Whatcom County Superior Court Judge presiding over such litigation shall determine which party is the substantially prevailing party for purposes of awarding costs, reasonable attorneys' fees, and expert witness fees. In the event that any claim(s) submitted to appeal are not resolved in the appeal process, and in the further event that litigation is not commenced to seek relief for such claim(s) within ninety (90) calendar days of the termination of mediation, then the claim(s) shall be deemed fully and forever waived unless the parties shall mutually agree to an extension of the ninety (90) day period.
- H. **NO CONSEQUENTIAL DAMAGES:** No claim for equitable adjustment, extra work, or any other claim arising from this Contract will be made by the Contractor or the recovery of consequential damages, including (without limitation), lost profits, lost opportunities or the like.
- I. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Project Manager. Failure to comply precisely with the time deadlines under this paragraph as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to WTA.
- J. The procedures set out under this Section shall not apply to any claim that WTA may have regarding the meaning and intent of the Contract or arising from this Contract. WTA may, in its discretion, submit any such claim to the procedures under this Section or may commence an action against Contractor, which shall be commenced the Superior Court for the State of Washington, Whatcom County. The substantially prevailing party shall be awarded its costs including, but not limited to reasonable attorneys' fees, and reasonable expert witness fees. The Whatcom County Superior Court Judge presiding over such litigation shall determine which party is the substantially prevailing party for purposes of awarding costs, reasonable attorneys' fees, and expert witness fees.

1.22 INTERPRETATION OF SPECIFICATIONS AND DRAWINGS

- A. GENERAL: The specifications and drawings are intended to be explanatory of each other. Work specified on the drawings and not in the specifications, or vice versa, shall be executed as if specified in both.
- B. Upon receipt of notice to proceed, and prior to ordering materials, the contractor shall provide a complete set of submittals including manufacturers documenting the proposed materials and shop drawings of the proposed installation, for approval by the WTA.
- C. REQUEST FOR INFORMATION (RFI): In the event the Work or matters relative to the Work are not sufficiently detailed or explained in the Contract Documents, the Contractor shall request further explanation and follow provided directions remaining consistent with the terms of the contract. In the event of doubt or question arising respecting the true meaning of the specifications or drawings, reference shall be made to WTAs Project Manager.
- D. In cases of conflict between the specifications and drawings, the most restrictive shall govern. Figure dimensions on drawings shall govern over scale dimensions and detail drawings shall govern over general drawings. In the event an item of Work is described differently in two or more locations on the drawings and in the specifications, the Contractor shall, upon request of the Project Manager, submit in writing to the Project Manager the description upon which the Contractor relied in preparing his bid or laying out the Work. If WTA directs the Contractor to perform work in a manner other than that contemplated by the Contractor in preparing his bid or laying out the Work, the Project Manager will initiate a change order. In this event, the Contractor shall submit to the Project Manager such supporting information, including bidding or layout documents, as may reasonably be necessary for the Project Manager to determine whether the Contract Sum is increased, decreased or unchanged by the change order.

1.23 DIVISION OF SPECIFICATIONS AND DRAWINGS

Specifications and drawings are divided into groups for convenience. These divisions are not for the purpose of apportioning work or responsibility for work among subcontractors, suppliers and manufacturers. The Contractor is responsible for all Work shown or described, regardless of location(s) in the Contract.

1.24 CORRECTION OF DEFECTIVE WORK

When, and as often as the Project Manager determines through inspection procedures, material, equipment, or workmanship do not meet Contract requirements, the Project Manager shall give Contractor written notice of noncompliance. Within five (5) days from the receipt of notice, the Contractor shall correct the deficiencies at its cost to comply with the Contract.

If the Contractor disagrees with the Project Manager's determination the Contractor will follow the appeals process outlined in Part 1.23 Claims (above). If the GM determines that the corrective work is required to comply with the Contract, the Contractor shall proceed with such work. Should the Contractor's require additional compensation, time extension, or both to complete the corrective work, the Contractor shall, within five (5) calendar days after receipt of WTA's Project Manager's determination, notify WTA's Project Manager in writing.

The Contractor shall document the cost information associated with the corrective work with daily records for submittal to the Project Manager and shall not be interpreted to be an acceptance of the corrective work, or an authorization for a change order to cover the corrective work.

1.25 RETENTION OF DEFECTIVE WORK

Prior to project acceptance, WTA may retain non-compliant or work if the defect will not be of sufficient magnitude or importance to make the work dangerous, undesirable or removal is impractical or will create conditions which are dangerous or undesirable. Reasonable value for such defective work shall be judged by WTA and appropriate deductions shall be made in the payments due to the Contractor. Final acceptance shall not waive WTA's right to recover from the Contractor an amount representing the deduction for retention of defective work.

1.26 POSSESSION AND USE OF COMPLETED PORTIONS OF THE WORK

WTA shall have the right to take possession of and use completed or partially completed portions of the Work prior to project completion. Operations and maintenance costs of these portions will be borne by the WTA. Taking possession and use shall not be deemed as final acceptance of the project. If possession or use increases the cost of the Work, the Contractor shall be entitled to request extra compensation within five (5) days of each occurrence. The amount of extra compensation, if any, will be determined as provided in Division 01 29 00. The Contractor shall not claim extra compensation for possession by the WTA of portions of the Work specifically required in the Contract Documents to be placed into use and operation before completion of the entirety of the Work.

1.27 POSSESSION OF INCOMPLETE PORTIONS OF THE PROJECT

Should the Contractor fail to meet any date specified for substantial completion or any portion of the Work requiring early possession and use by WTA, WTA may, after a ten (10) day written notice to the Contractor, take over such portion or all of the Work that is behind schedule. In such case, the Project Manager will prepare a punch list of incomplete work. WTA may allow the Contractor reasonable access to the Work at such times that the operation of the project will not be affected. The Contractor may complete the Work after giving WTA notice of the intention to do so. The cost of WTA's

work will be deducted from amounts due to the Contractor. The substantial completion date will be established as the date when WTA actually begins using the project or portion of the project for its intended purpose. Division of responsibilities between WTA and Contractor, beginning of warranties, and any other issues relating to substantial completion described in Division 01 29 00.

1.28 WARRANTY

Contractor guarantees that goods and services will meet all specification requirements. Goods and services provided by Contractor will be warranted for a minimum of (1) year after final acceptance of the Work or the date of possession unless agreed upon otherwise. Contractor warrants and guarantees to WTA that all work for this project shall be in accordance with the Contract Documents and will not be defective. The warranty shall survive the termination of this Contract. Conducting tests and inspections, review of specifications or plans, payment of goods or services, or acceptance by WTA does not constitute a waiver, modification or exclusion of any express or implied warranty or any right under this contract or law.

WTA will give prompt written notice of all defects to the Contractor for correction. The Contractor shall, at its sole cost and expense, remedy any defects in the Work performed under the Contract. Contractor shall guarantee against failure due to defective materials or workmanship for a period of one (1) year from the date of Final Acceptance of the Work completed for this project unless a longer period is agreed upon. The Contractor shall defend, hold harmless and identify WTA for any claims made as well as claims paid pertaining to the defects in workmanship and material.

1.29 WARRANTY OF TITLE

No material, supplies, equipment, or items shall be purchased subject to any chattel mortgage, conditional sale, or other agreement by which an interest or in any part is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, equipment and items installed or incorporated in the Work. Upon completion Contractor shall deliver the same together with all improvements and accessories constructed or placed to the Project Manager free from any claims, liens, or charges. Nothing, however, shall prevent persons furnishing materials or labor to recover funds under any bond given by the Contractor for their protection or any rights under any law permitting recovery against an issued bond. The provisions of this paragraph shall be made a part of all subcontracts and material contracts including goods or services when no formal contract is entered into.

1.30 ASSIGNMENT OF CONTRACT

The Contract shall not be assigned in whole or in part without the written consent of WTA. In the event of an unauthorized assignment by Contractor, WTA may terminate the Contract for convenience as outlined herein. Involuntary assignment of the Contract for the benefit of Contractor's creditors due to bankruptcy or appointment of a receiver

on account of Contractor's insolvency shall be considered breach of the contract and subject to termination.

The grants, covenants, conditions and claims, rights, powers, privileges and liabilities obtained in the Contract Documents will transfer from the Contractor and WTA to their respective heirs, executors, administrators, successors and assigns.

1.31 WAIVER OF RIGHTS

Except as provided, no action or intention on the part of the Contractor or WTA at any time with respect to the exercise of any right or remedies awarded them under this Contract shall be deemed to be a waiver of any of their rights or remedies. No waiver shall be effective except in writing by the party to be charged. No waiver of one right or remedy shall act as a waiver of any other right or remedy or as a subsequent waiver of the same right or remedy.

1.32 LIABILITY AND INSURANCE REQUIREMENTS

Contractors are cautioned that any attempt to provide coverage other than what is agreed on will render the final contract in breach. The Contract will be terminated, and the next lowest bidder will be awarded.

In any event, to the maximum extent permitted by law, the Contractor shall be liable for and shall defend, indemnify, save and hold harmless WTA and its agents, representatives, employees and officials from:

- All claims, suits, or actions brought against WTA by any third party (including, but not limited to, contractors, licensees, the general public, and invitees of WTA), including the costs of the same and attorneys' and consultant's fees, which claims, suits, actions, damages or costs are caused in whole or in part by any dispute which disrupts the contracted Work or otherwise interferes with access to WTA property.
- All damages sustained by WTA including but not limited to the costs incurred by WTA in relocating or rerouting access to WTA property and for taking other actions required to maintain the uninterrupted progress of Work under this Contract or other contracts and the uninterrupted operations of WTA buses and facilities.
- All extra costs incurred by WTA in administering this Contract, including attorneys' and consultant's fees, arising from such disruptions or interference.

WTA shall be entitled to recover from the Contractor all costs including attorneys' fees in establishing or enforcing WTA's right to indemnity.

1. LIABILITY OF CONTRACTOR

The Contractor shall be liable for any and all losses, claims for injuries to persons or damages to property that may arise out of or in connection with the performance of the

Contractor's work including the work of the Contractor's agents, representatives, employees, or sub-Contractors at any tier. The Contractor shall not be liable for losses or damages caused solely by the act of WTA. The Contractor's liability shall not be dependent upon whether or not such damage or injury is caused by Contractor negligence, or negligence on the part of the Contractor's agents, representatives, employees, or sub-Contractors at any tier and whether or not such damage or injury be caused by the inherent nature of the work as specified.

The Contractor shall defend, indemnify, and hold harmless the WTA its officers, employees, and agents from any and every claim and risk and all losses, damages, demands, suits, judgments, and attorneys' fees, and other expenses of any kind, on account of injury to or death of any and all persons(s) and on account of all property damages of any kind, whether tangible or intangible, real and/or personal including loss of use resulting in connection with work performed by the Contractor or its agents, representatives, employees, or sub-Contractors at any tier, or caused in whole or in part by the Contractor or agents, representatives, employees, or sub-Contractors at any tier, or their property, employees, or agents, upon or in proximity to the property, or any other property upon which the Contractor or its agents, representatives, employees, or sub-Contractors at any tier is performing any work in connection with this Contract, except only for those losses resulting solely from the negligence of WTA its officers, employees, and agents. It is further specifically and expressly understood that the indemnification provided constitutes Contractor's waiver of immunity under industrial insurance, RCW Title 51, solely for the purpose of the indemnification. This waiver has been mutually negotiated by the parties.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.25.115, then in the event of liability for damages arising out of bodily injury to persons or damages to real and/or personal property caused by or resulting from the concurrent negligence of the Contractor and the WTA, its members, officers, employees, and agents, the Contractor's liability shall be only to the extent of the Contractor's negligence.

If a lawsuit in respect to this indemnity, duty to defend and hold harmless provision ensues, the Contractor shall appear and defend that lawsuit at its own cost and expense, and if judgement is rendered or settlement made requiring payment of damages by the WTA, its officers, agents, employees, and volunteers, the Contractor shall pay the same.

If legal proceedings are brought against WTA, the Project Manager, or their officers, principals, agents, subcontractors, or employees, on account of loss or damage sustained by person(s) or property as a result of the performance of the Work, the Contractor agrees to defend, hold harmless, indemnify, and pay the expenses connected, and the judgments that may be obtained against the WTA, the Project Manager, or their officers, principals, agents, subcontractors, or employees, in such proceedings.

In the event a lien is placed against the property of the WTA, Project Manager, or their officers, principals, agents, subcontractors, or employees, as a result of such suits, the Contractor agrees to remedy the lien by paying such lien in full, giving a bond in an amount satisfactory to the owner of the property subject to the lien, or otherwise as accepted by the owner of the property subject to the lien. The Contractor's agreement to defend and to pay the related expenses shall exist whether or not injuries or damage are due Contractor negligence, and whether or not such injuries or damage be caused by the inherent nature of the work. Contractor shall defend, hold harmless and indemnify WTA from and against any lien that may be asserted, recorded, filed or alleged by any supplier, subcontract or other person arising out of the Work.

The mention of specific duties or liabilities imposed on the Contractor shall not be construed as a limitation or restriction of general duties or liabilities imposed by the contract. Reference to specific duties or liabilities is made for the purpose of explanation.

2. INSURANCE

Contractor and subcontractors will not begin Work until Contractor provides evidence, in the form of Certificates of Insurance, Declarations Page, and Endorsements, of the following insurance coverage and limits (at a minimum). Contractor and subcontractor must maintain insurance during the course of the contract and for six (6) years thereafter.

Insurers must be licensed to conduct business in the State of Washington (or issued as a surplus line by a Washington Surplus lines broker) and approved by the State Insurance Commissioner. Insurers must have a minimum rating of A- and a financial rating of Class VII or higher in the most recently published edition of the A.M. Best's Key Rating Guide.

WTA must be listed as additional insured.

WTA reserve the right to approve the security of the insurance coverages provided by the Insurance Company(ies), terms, conditions, and the Certificate of Insurance. Failure of the Contractor to fully comply with these requirements during the term of the Contract will be considered a material breach of contract and will be cause for immediate termination at the option of WTA.

3. MINIMUM INSURANCE COVERAGES AND REQUIREMENTS

The Contractor shall maintain the minimum insurance against claims for injuries to persons or damages to property that may arise out of or in connection with the performance of the Contractor's work including the work of the Contractor's agents, representatives, employees, or sub-Contractors at any tier.

If the Contractor maintains higher limits or broader coverage than the minimums shown below, WTA shall be entitled to the full coverage and limits maintained by or available to the Contractor: The Insurance obligations under this agreement shall be: 1—all the Insurance coverage and limits carried by or available to the Contractor; or 2—the minimum Insurance requirements shown in this agreement, whichever is greater.

By requiring minimum insurance, WTA shall not responsible for assessing the risk applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

1. **Commercial general and umbrella liability.** Contractor shall maintain commercial general liability (at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01) and, if necessary to obtain sufficient limits, commercial umbrella or excess insurance with a **total limit of not less than \$2,000,000**. Coverage shall include, but is not limited to,
 - a) Premise/operations;
 - b) Contractual liability;
 - c) Products and completed operations;
 - d) Independent contractors;
 - e) Property damage; and
 - f) Personal injury/advertising injury

Products and completed operations coverage will remain in force for a period of three (3) years after the completion of the project including the additional insured provisions in Section D.

The Contractor's commercial general liability policy and any umbrella or excess policy shall **not** contain an exclusion or restriction of coverage of the following:

- a) Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that claimant is an insured, and there would be otherwise be coverage for the claim,
- b) Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a subcontractor,
- c) Claims for bodily injury other than to employees of the insured,
- d) Claims for indemnity arising out of injury to the employees of the insured,
- e) Claims or loss excluded under a prior work endorsement or other similar exclusionary language including modification of the "occurrence" definition,
- f) Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language,
- g) Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on a such a project,
- h) Claims related to roofing if the work involves roofing,

- i) Claims related to exterior insulation finish system (EIFS), synthetic stucco or similar exterior coatings or surfaces if the Work involves such coatings or surfaces,
- j) Claims related to earth subsidence or movement, where the Work involves such hazards, and
- k) Claims related to explosion, collapse, and underground hazards, where the Work involves such hazards.

If a general aggregate is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

WTA shall be named as an additional insured on the contractor's commercial general liability/umbrella liability for both Ongoing Operations and Completed Operations liability.

- a) Acceptable Additional Insured Endorsements for Ongoing Operations liability are coverage forms at least as broad as the ISO CG 2010 or CG 2026 specifically naming WTA on the endorsement; or the CG 2033 or CG 2038 "Automatic" forms.
 - b) Acceptable Additional Insured Endorsements for Completed Operations liability are coverage forms at least as broad as the ISO CG 2037 specifically naming WTA on the endorsement; or the CG 2039 or CG 2040 "Automatic" forms.
 - c) "Automatic" coverage forms CG 2033 for Ongoing Operations and CG 2039 for Completed Operations are not allowed from any subcontractors of the Contractor that do not have a written Contract or Agreement with WTA.
2. **Excess/Umbrella Liability Insurance** – If any excess or umbrella liability policies are used to meet the limits of liability required by this agreement, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured and primary insurance requirements stated therein. No insurance policies maintained by the additional insureds, whether primary or excess and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary, excess and umbrella policies are exhausted.
3. **Business auto liability** for any auto no less than a **\$1,000,000 each accident** limit. Coverage should be at least as broad as ISO's commercial auto form (CA 00 01, CA 00 05, CA 00 12, CA 00 20). Contractor may use Business Auto, Umbrella and/or Excess Liability policies combined to meet this requirement. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

4. **Worker's compensation** in accordance with the provisions of the State of Washington and **Employer's liability** no less than **\$1,000,000 each accident, \$1,000,000 each employee, and \$2,000,000 policy limit.**
5. **Builders risk**, on a replacement cost basis, on the entire Work, at no less than the completed value and in an amount equal to the initial contract sum. This property insurance shall cover at a minimum the perils insured under the ISO special cause of loss form (CP 10 30) and shall be endorsed to provide full coverage for loss or damage from collapse, including collapse resulting from design error. The insurance shall cover reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the Work located away from the site but intended for use at the site and shall also cover portions of the Work in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by any law, ordinance, or regulation. WTA shall be named as a loss payee on the policy.

The builders risk policy shall be maintained in effect, unless otherwise provided for in the contract documents, until the earliest of the following dates: (a) the date on which all persons and organizations who are insureds on the policy agree it shall be terminated; (b) the date on which final payment has been made; (c) the date on which the insurable interests in the property of all insureds other than WTA have ceased.

6. **Contractor's pollution legal liability** – and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate**, if the work involves the transport, dissemination, use or release of pollutants.
7. **Insurance for the Use or Operation of Manned or UnManned Aircraft** – If the Work requires such activities, with policy limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate.
8. **Electronic Data Liability Insurance.** Contractor shall maintain electronic data liability insurance and/or Technology Errors and Omissions coverage applicable to the Project and insuring against liability arising out of the loss, loss of use, damage to, corruption or, inability to access, or inability to manipulate electronic data. This coverage shall be maintained with **a limit of liability of not less than \$1,000,000.**

The Contractor is responsible for declaring/disclosing all self-insurance retentions (SIRs) or deductibles maintained or required by any of the Contractor's insurance and any such SIRs must be approved by the Agency. If WTA is required to contribute to the deductible or self-insured retention under any of the Contractor's insurance policies, the

Contractor shall reimburse WTA the full amount of the deductible or self-insured retention. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or WTA.

WTA shall be named as an additional insured on the contractor's commercial general liability/umbrella liability and business auto liability policies and shall contain, or be endorsed to contain, that WTA, its officers, officials, employees and volunteers, are to be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor, and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including material, parts or equipment furnished in connection with such work or operations for both ongoing and completed operations on a primary and non-contributory basis. WTA shall be endorsed as a loss payee on the Contractor's builders risk policies.

The additional insured endorsement(s) shall be included with evidence of insurance in the form of a Certificate of Insurance with copies of all required Additional Insured policy endorsements for coverage necessary as stated above (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of listing all policy endorsements to WTA. WTA reserves the right to receive a certified and complete copy of all the Contractor's insurance policies. If a copy of the Contractor's insurance policy or policies is requested, the Contractor shall furnish the copy or copies within two (2) weeks of the request.

It is the intent of this contract for the Contractor's insurance to be considered primary in the event of any loss, damage, or suit. WTA's own comprehensive general liability policy shall be considered excess coverage to all Contractor's insurance or available coverage including any umbrella or excess insurance in respect to WTA, WTA's officers, officials, employees, and volunteers, and shall not contribute to the Contractor. Additionally, the Contractor's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation of insureds clause.

The Contractor shall request from his insurer modification of the ACORD certificates to include language that written notification will be given to WTA for any cancellation, suspension, or material change in the Contractor's coverages at least thirty (30) days in advance of such cancellation, suspension, or material change except for non-payment of premium and then ten (10) days.

The Contactor shall require and verify that all subcontractors at all tiers maintain insurance meeting all the requirements stated herein and provide proof of such upon request to WTA.

The Contractor understands that the acceptance of Certificates of Insurance, policies, and any other documents by WTA in no way releases the Contractor from the requirements set forth in this Agreement. The Contractor understands and agrees that any performance bond or insurance protection required by this contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep, and save harmless and defend WTA. If WTA is damaged by the failure of the Contractor to maintain insurance as required in this Agreement, then the Contractor shall bear all reasonable costs properly attributable to that failure.

The Contractor hereby grants to WTA a waiver of any right to subrogation which any insurer of the Contractor may acquire against WTA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether WTA has received a waiver of subrogation endorsement from the insurer.

9. LITIGATION EXPENSES

In any legal action arising from the Contractor's obligations under this section or asserting claims that the Contractor has not met the requirements of the Contract Documents, the prevailing party shall recover its reasonable attorneys' fees and litigation costs.

1.33 PUBLIC DISCLOSURE LAW

WTA complies with Washington's Public Records Act, RCW Chapter 42.56 and considers the release of data prior to an award of a bid containing protocol and specifics of a proposed item, including the cost to WTA, as "valuable formulae, designs, drawings, computer code or object code, and research data" whose disclosure would produce private gain and public loss, and therefore may be asserted as exempt by WTA from public disclosure.

As a public contract, all records prepared, generated or used by Contractor or its agents, employees and subcontractors relating to the contract and associated work are subject to being a "Public Record" under RCW Chapter 42.56. Contractor shall maintain and retain all such records in a manner that is accessible and WTA shall have the right to review and inspect such records upon request, for a term of three (3) years following completion of the contract Work. All records subject to a PDR will be provided to a requester. WTA may only refrain from disclosing any record based upon an exemption that is applicable to WTA and will not refrain from disclosing any record under an

exemption that may be personal to Contractor. Contractor will need to seek judicial approval to prevent such disclosure, at its expense. Contractor shall insert this provision in all contracts with subcontractors or agents providing services relating to the contract.

WTA will not execute non-disclosure agreements⁴.

Bids Marked Confidential:

When a PDR is submitted after award for a bid with portions labeled “Confidential,”⁵ WTA will release the non-confidential portions of the proposal and notify the proposer of the PDR. WTA will continue to withhold the confidential label portions if the proposer initiates legal action prohibiting release within fourteen (14) days of WTA’s notification. WTA will comply with legal actions ordered by the court. If WTA does not receive notification of legal action within the fourteen (14) day period, the Confidential labeled documents will be released to the requester.

The proposer assumes all costs of any legal actions, including reimbursing WTA for administrative, expert and attorneys’ fees and costs it incurs for this legal action. Submission of a bid indicates agreement with this section.

1.34 SUSPENSION, TERMINATION, LIQUIDATED DAMAGES

A. SUSPENSION PROCEDURES

WTA may at any time and without cause, suspend all or any part of the Work by notice in writing to the Contractor. The Work shall be resumed by the Contractor within five (5) days after receiving written notice from the WTA to do so. The Contractor will be allowed an increase in the Contract Sum or an extension of Contract Time, or both, directly attributable to any suspension if he makes a claim as provided in section 1.22 above. However, the Contractor shall not be entitled to any increase if the cause of the suspension is based on or due to fault on the part of the Contractor. If WTA does not give notice in writing to the Contractor to resume work at a date within ninety (90) days of the date of the notice to suspend, then the Contract shall be assumed to be terminated and the Contractor shall be entitled to compensation.

B. TERMINATION PROCEDURES

1. TERMINATION BY WTA FOR BREACH.

- a) The WTA may terminate the Contract if the Contractor:
 - i. Refuses to supply enough properly skilled workers or proper materials.

⁴ RCW Chapter 42.56

⁵ Similar labels would include Trade Secret, Propriety, or other indication of confidentiality.

- ii. Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and subcontractors.
- iii. Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction.
- iv. Otherwise is guilty of material breach of a provision of the Contract Documents.

Opportunity to Cure: Where Contractor has breached this contract, WTA may, in its sole discretion, allow Contractor up to thirty (30) calendar days to cure the breach. In such case, WTA will detail in writing what Contractor must do to remedy the breach. If Contractor does not satisfactorily remedy the breach, WTA may terminate the contract without any further obligation to Contractor.

- b) When any of the above reasons exist WTA may without prejudice to any other rights or remedies and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate the Contract and may, subject to any prior rights of the surety:
 - i. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor.
 - ii. Accept assignment of subcontracts.
 - iii. Contract with another firm or utilize its own staff to finish the Work by whatever reasonable method WTA may deem expedient. In such case, WTA shall furnish a detailed accounting of the costs incurred and either
 - a. Deduct the cost of the work from any amounts owing the contractor
 - b. Invoice the Contractor. Contractor will have thirty (30) days to pay invoice in full.
 - iv. Seek to have the Surety complete the Work under the provisions of the Performance Bond.

Under iii and iv above, WTA will assess Liquidated Damages against the Contractor for each working day that passes between the time of notice and the time Work commences with a new Contractor or WTA's own forces.

2. TERMINATION BY WTA FOR CONVENIENCE:

- a) WTA may, at its option, terminate the entire Contract portions of the Work not performed by written notice to the Contractor, whether or not the Contractor is in breach or default. Upon receipt of any Notice of Termination, the Contractor shall, unless otherwise directed by WTA:
 - i. Discontinue performance of the Work on the date and to the extent specified in the Notice of Termination.
 - ii. Place or enter into no further agreements with any subcontractor for material, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated.

- iii. In the manner and at the times and to the extent directed by WTA, either terminate or assign to WTA the Contractor's right, title, and interest under the agreements with any subcontractors to the extent relating to Work terminated by the Notice of Termination.
 - iv. Transfer title and deliver to WTA in the manner, at the times and to the extent, if any, directed by WTA:
 - 1) The materials, equipment, work in progress and completed Work, and other items produced as part of, or acquired in connection with, the performance of the Work terminated by the Notice of Termination.
 - 2) The completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to WTA.
 - v. Settle, subject to the prior written approval of WTA, all outstanding liabilities and all claims arising out of any termination directed by WTA of agreements with subcontractors.
 - vi. Use best efforts to minimize costs and expenses due to such termination.
 - vii. Use best efforts to sell, to the extent and at the prices subject to the prior written approval of WTA, any materials, equipment, Work in progress, and other items produced as a part of, or acquired in connection with the Work terminated and not delivered to WTA pursuant to item (iv) above, provided, that the proceeds of any such sale or payment to be made by the Contractor to WTA or paid by the Contractor to WTA in such manner as WTA may direct.
 - viii. Complete timely performance of such part of the Work as has not been terminated by the Notice of Termination.
 - ix. Take such actions as may be necessary, or as WTA may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor (whether or not at the Project site) and in which WTA has or may acquire an interest.
- b) Within thirty (30) days of receipt of Notice of Termination, the Contractor shall submit its final invoice for the portions of the Work performed up to the Notice of Termination. If the Contractor fails to submit its final invoice within this period, WTA may, at its sole option, refuse any payment request submitted after this date.
- c) Upon any termination pursuant to this section, the Contractor waives any and all claims for additional compensation or damages (including any claim for loss of anticipated profits) on account thereof and the sole remedy of the Contractor shall be to receive payment or credit as provided.
- d) If at the date of such termination the Contractor has properly prepared or fabricated off the Project Site any goods for subsequent incorporation at the Project Site, and if the Contractor delivers such goods to the Project Site, or to such other place as WTA shall direct, the Contractor shall be paid as specified

elsewhere in the Contract (less the cost of completion for incomplete goods) for such goods.

- e) In no event shall the Contractor be entitled under this section, to be paid or credited an amount in excess of the Contractor's actual reasonable costs occasioned by such termination plus the total Contract Sum payable under the Contract (a) reduced by the aggregate amounts of all payment made to the Contractor under the Contract and (b) further reduced by the portion of the total Contract Sum under the Contract which is allocable to work with regard to which the Contract is not so terminated.
- f) In arriving at the amount due the Contractor under this section, there shall be deducted (a) all unliquidated advances or other payments on account made to the Contractor, applicable to the terminated portion of the Contract, (b) any claim which WTA may have against the Contractor in connection with the Work or the Contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to this section, and not otherwise recovered by or credited to WTA.
- g) In the event of any termination pursuant to this section of all or any portion of the Work, WTA may take over the Work as to which the Contract is terminated and complete it by Contract or otherwise.
- h) Unless otherwise provided for in the Contract, the Contractor, from the effective date of termination and for a period of three (3) years after final settlement under the Contract, shall preserve and make available to WTA for examination, copying and auditing, at all reasonable times at the office of the Contractor and without charge all its books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work as to which the Contract is so terminated.
- i) In the event that funding from State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, WTA may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that WTA deems that the continuation of the programs covered by this Agreement is no longer in the best interest of WTA, WTA may summarily terminate this Agreement in whole notwithstanding any other termination of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein.

3. TERMINATION BY CONTRACTOR:

- a) The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or

subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- i. Issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped.
 - ii. An act of government, such as a declaration of national emergency which requires all Work to be stopped.
 - iii. Because WTA has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification, or because the WTA has not made payment on a Certificate for Payment within the time stated in the Contract documents.
- b) The Contractor may terminate the Contract if, through no act or fault of the Contractor or subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contact with the Contractor, repeated suspensions, delays or interruptions of the entire Work by WTA constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty five (365)-day period, whichever is less.
- c) If one of the reasons described exists, the Contractor may, upon fifteen (15) days' written notice to WTA, terminate the Contract. The Contractor shall satisfy and comply with those applicable provisions and be paid upon termination.

C. WTA OWNERSHIP SHIP OF MATERIALS UPON TERMINATION:

As of the date of termination, whether effected by WTA or the Contractor, all the Contractor's right, title, and interest in and to materials ordered by the Contractor prior to the termination, whether or not they have been delivered to the site of the work, shall be vested in WTA, and the Contractor shall, upon demand of WTA, execute and deliver to WTA all requisite bills of sale, assignments, and other documents of transfer that may be necessary to give effect to the intention of the termination procedure set forth above.

10. LIQUIDATED DAMAGES

Contractor agrees to pay WTA, as liquidated damages in accordance with Section 1-08.9 of the WSDOT Standard Specifications, as amended, for each working day in excess of the number of working days stipulated in the Contract Documents. WTA shall have the right to deduct and retain the amount of such liquidated damages from any monies due the Contractor or seek damages from Contractor's surety.

1.35 UTILITY LOCATES

Contractor is responsible to obtain utilities locates prior to commencing Work. Contractor shall be responsible for the restoration of any underground utilities damaged in connection with the Work, including irrigation systems. Contact WTA if any utilities impact the installation of project Work.

1.36 VEGETATION PROTECTION AND RESTORATION

In conjunction with WSDOT General Specification Division 1, section 1.07.16(2), Contractor shall protect all trees and vegetation that are not to be removed. Contractor shall take care not to damage existing sidewalks, curbs and road surfaces outside of the project limits. All damage or undermining shall be the contractor's responsibility to immediately repair to the standards of the jurisdiction having authority.

01 23 00 CLARIFICATIONS, APPROVED EQUALS, & SUBSTITUTIONS

- A. If the Bidder finds any discrepancy in, or omission from the bid documents, specifications or plans, or if there is any doubt as to their meaning, including alternative or exceptions to any contract terms the Bidder shall notify WTA's Procurement Office in writing. Written requests may be submitted via WTA's Bid Portal

WTA will not review or respond to any verbal, emailed or faxed requests for clarification, substitution or approved equal.
- B. All bids shall be in strict compliance with the requirements and Technical Provisions of this Request for Bids; including the provisions regarding "clarification," "approved equals," and "substitutions." **Where a feature, component, and/or item is specified by brand name in these provisions, the words "or approved equal" will apply.** The Contractor may offer material or equipment of equal or better quality and performance in substitution for those specified.
- C. Where the approval of the WTA is specifically required by these provisions in connection with a bid containing "approved equals" or "substitutions" from specific requirements of these provisions, or alternate contracting terms, the Bidder shall submit written requests by the date provided in the bid schedule above (00 31 13). Requests must be submitted by WTA's Bid Portal and include sufficient data to assess the acceptability of the material or equipment for the particular application and requirements. The bidder must provide a detailed cost comparison between what is requested in this ITB and what is being proposed as

an alternate solution. This request must also include demonstrate adequate and equivalent performance and durability of what is specified.

- D. Bids shall be submitted containing any approved equals, or deviations approved in writing by WTA. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a bid may be cause for the bid's rejection as non-responsive. The burden of proof of the merit of the proposed substitute is upon the bidder. WTA's decision of approval or disapproval of a proposed substitution shall be final.
- E. If the offered substitution necessitates changes to or coordination with other portions of the Work, the data submitted shall include drawings and details showing such changes. Contractor agrees to perform these changes as part of the substitution of material or equipment at no additional cost to the WTA. Within thirty (30) calendar days after receipt of the offer of substitution, WTA will review the material submitted by the Contractor and advise the Contractor of any objections, request further information, or approve the substitution in writing. Upon notification by WTA's Procurement officer, the Contractor shall either provide material or equipment which complies with project specifications or furnish requested additional information.
- F. While WTA might not take any objections to the proposed substitution, such action shall not relieve the Contractor from responsibility for the efficiency, sufficiency, quality, and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified by name. Any proposed cost differential associated with a substitution shall be reflected in the offer and, if the substitution is accepted, the Contract Documents shall be modified by a change order.
- G. If the Contractor wishes to offer a substitution for equipment, the Contractor shall bear WTA's cost for evaluating the requested substitution even though the request may be denied. Costs will be charged on a time-and-expense basis and will be deducted from progress payments due the Contractor.
- H. Requests may be submitted only by General Contractors or installing subcontractors. No proposed approved equals or substitution requests will be acknowledged from suppliers, distributors, or manufacturers.

01 26 00 CONTRACT CHANGE ORDERS AND AMENDMENTS

- A. The Contractor shall not make an alteration, variation, addition, deviation, or omission from the requirements of this Contract without the written consent of WTA's General Manager. Unless such written consent expressly so provides, any such alteration, variation, addition, deviation or omission by the Contractor

shall not result in any extra compensation or extension of time. The General Manager shall have the right to treat a deviation as a breach or default, if the Project Manager determines the deviation to jeopardize the integrity or quality of the Work.

- B. WTA may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes as necessary to complete the Work. Changes shall be incorporated into the Contract Documents through the execution of Change Orders or Amendments. No additional compensation shall be made to the Contractor for changes that extend the Contractor's scheduled duration and falls within the stipulated project duration of ninety (90) calendar days. If any change in the Work ordered by WTA causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in Section C below and incorporated into a Change Order. Changes to the administration of the Contract or other provisions will be made by amendment.
- C. Contractor will notify its surety and increase the Payment and Performance Bonds:
- a. When a single change order increases the Contract Sum by 25% or more.
 - b. When the cumulative changes on multiple change orders have increased the Contract Sum by 25% or more.
- Contractor will provide updated Payment and Performance Bonds to WTA's Contract Manager. Failure to provide updated bonds will be considered a material breach and WTA may, at its discretion, terminate the agreement as outlined herein.
- D. Changes in quantities and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to perform the Work as altered. Among others, these changes and alterations may include:
1. Deleting any part of the Work.
 2. Increasing or decreasing quantities.
 3. Altering Specifications, designs, or both.
 4. Altering the way the Work is to be done.
 5. Adding new related Work.
 6. Altering facilities, equipment, materials, services, or sites, provided by WTA.
 7. Ordering the Contractor to speed up or delay the Work.
- E. WTA's Contract Manager will issue written change orders for all changes to the Work scope. Any adjustment to Work scope must be pre-approved in writing. Adjustments affecting the Contract Sum must be pre-approved through Purchase Order or Purchase Order Change from WTA's Contract Manager. Work performed without written consent will be at the Contractor's expense. Claims will not be considered after final payment.

- F. If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract. *Significant change* shall be construed to apply when the character of the Work differs materially in kind or nature from that involved or included in the original proposed construction.

1.01 CHANGE ORDER WORK PROCEDURES

- A. If WTA desires to order a change in the Work, it may request a written Change Order proposal from Contractor. The Contractor shall submit its proposal within fourteen (14) days of the request, or within such other period as mutually agreed. Contractor's Change Order proposal shall be full compensation for implementing the proposed change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency in the Work.
- B. Upon receipt of the Change Order proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, WTA may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Contractor shall not proceed with any change in the Work until it has obtained WTA's written approval or direction to proceed. All Work done relating to any WTA-directed change shall be executed in accordance with the Contract Documents.
- C. If it is determined a delay will cause undue harm to WTA, the Project Manager may direct Contractor to proceed immediately with a Field Authority Change on a time and materials basis. A price proposal for the change must be submitted to the Project Manager and approved by WTA no more than five (5) business days after the authorization is applicable.
- D. If WTA and Contractor reach agreement on the terms of any change in the Work, including any adjustments in the Contract Sum or Contract Time, such agreement shall be incorporated in a change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. If WTA and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, WTA shall provide Contractor with its final offer. If Contractor does not accept WTA's final offer within seven (7) days, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file an appeal.

1.02 CHANGE IN THE CONTRACT SUM

- A. The Contract Sum shall only be changed by an approved Change Order issued by WTA's Procurement office. Contractor shall include any request for a change in the Contract Sum in its Change Order proposal.
- B. If the cost of Contractor's performance is changed due to the fault or negligence of WTA, or anyone for whose acts WTA is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum. No change in the Contract sum shall be allowed when
 - 1. Contractor's changed cost is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
 - 2. The change is caused by both Contractor and WTA.
 - 3. The change is caused by an act of Force Majeure.
- C. A request for an equitable adjustment in the Contract Sum shall be based on written notice to the Project Manager within seven (7) days of the occurrence in question. For purposes of this part, "occurrence" means when Contractor knew, or should have known, of the event. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify the Project Manager and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall provide access to any records and promptly furnish copies of such records to WTA.
- D. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than seven (7) days before Contractor's written notice to the Project Manager. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice constitutes a waiver of Contractor's right to an equitable adjustment.
- E. Within thirty (30) days of the occurrence of the event, unless WTA agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement written notice with additional supporting data. Such additional data shall include, at a minimum:
 - 1. The itemized amount of requested compensation.
 - 2. Specific facts, circumstances, and analysis that confirms suffered claimed damages and the damages were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment in this instance.
 - 3. Documentation sufficiently detailed to permit an informed analysis of the request by WTA.

- F. When the request for compensation relates to a delay or other change in Contract Time, Contractor shall demonstrate the impact on Contract completion. Failure to provide additional information and documentation within the time allowed or within the format required shall constitute a waiver of Contractor's right to an equitable adjustment.
- G. Pending final resolution of any request made in accordance with this section, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- H. Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.
- I. The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:
1. On the basis of a Fixed Price.
 2. By application of unit prices to the quantities of the items involved.
 3. On the basis of Time and Material.

When the Project Manager has requested Contractor to submit a Change Order proposal, the Project Manager may direct Contractor as to which equitable adjustment method to use. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

1.03 ECONOMIC PRICE ADJUSTMENTS AND MARKET VOLATILITY

- A. In the event of market volatility pertaining to component materials used in the manufacture of products required for this Contract, WTA may consider requests for relief from the Vendor at any time during Contract, provided that Vendor submits specific and detailed documentation of a need for such relief. In this event, Vendor shall provide documentation such as
- Changes to the Producers Price Index (PPI) for New Nonresidential Building Construction by Region – West
 - The Consumer Price Index (CPI) All-Urban-Consumers-Seattle-Tacoma-Bellevue-Not Seasonally Adjusted-Current Base Year – Commodities less food and beverages-Monthly period, or
 - A vendor, manufacturer, or trade invoice reflecting the modification of price changes.

The start date for using an index will be calculated based on the change in the index over the year prior to the request. WTA, at its sole discretion, will determine whether such relief is valid and necessary. WTA reserves the right

- to negotiate any and all price increase requests under this clause. Requests for relief will only be allowed once in a twelve-month period.
- B. Price increase requests shall be submitted in writing to Procurement and follow the process outlined in 1.04 Fixed Price below. WTA will evaluate the request to determine if the price adjustment is considered fair and reasonable to the satisfaction WTA. A written Change Order or Contract Amendment issued by WTA will institute the price adjustment, provide the new prices, and establish the effective date for the new prices.
 - C. All price reductions at the Vendor's or distributor's level shall be reflected in a reduction of the contract price(s) to WTA, retroactive to the effective date of the price reductions.

1.04 CHANGE ORDER PRICING - FIXED PRICE

When the fixed price method is used to determine the value of a Change Order or a request for an equitable adjustment, the following procedures shall apply:

- A. Contractor's Change Order proposal or request for adjustment shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, overhead and profit. The costs shall be itemized in the manner set forth below and shall be submitted on breakdown sheets to WTA's Project Manager and Contract Manager.
- B. All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.
- C. If any of Contractor's pricing assumptions are contingent upon anticipated actions of WTA, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
- D. The cost of any additive or deductive changes in the Work shall be calculated as set forth in #5 below, except that overhead and profit shall not be included on deductive changes in the Work.
- E. The Contractor will submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently for WTA to determine fair value:
 - 1. Lump sum labor
 - 2. Lump sum material
 - 3. Lump sum equipment and tool usage
 - 4. Overhead and profit as set forth below
 - 5. Insurance and bond costs

- F. Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
- G. Labor costs: These are the labor costs determined by multiplying the estimated or actual additional number of hours needed to perform the change in the Work by the hourly labor costs for each job classification. Hours will cover direct labor, as well as indirect labor due to trade inefficiencies and be based on the following:
1. Basic wages and benefits: Hourly rates and benefits as stated on the Department of Labor and Industries approved "statement of intent to pay prevailing wages."
 2. Worker's insurance: Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the Department of Labor and Industries.
 3. Federal insurance: Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
- H. Material costs: An itemization of the quantity and cost of materials needed to perform the change. Material costs shall be developed from actual known costs, supplier quotations, or standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges shall be itemized.
- I. Equipment costs: An itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change. Costs will be allowed for construction equipment only if used for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be developed from the current edition of one of the following sources:
1. Associated General Contractors - Washington State Department of Transportation Equipment Rental Agreement; use most current edition.
 2. The state of Washington Utilities and Transportation Commission for trucks used on highways.
 3. The National Electrical Contractors Association for equipment used on electrical work.
 4. The Mechanical Contractors Association of America for equipment used on mechanical work.
 5. The Contractor's Equipment Cost Guide, published By Primedia Information Inc. shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed 50 percent (50%) of the applicable rate.
- J. Subcontractor costs: Payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work

shall be calculated and itemized in the same manner as prescribed for Contractor.

- K. Allowances for overhead and profit: Costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to WTA of any Change Order, or any request for additional Work or extra payment of any kind on the Project. This allowance shall compensate Contractor for all **noncraft labor**, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimated costs, travel⁶, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the following:
1. For Contractor, for any Work actually performed by Contractor's own forces, fifteen percent (15%) of the first \$50,000 of the cost, and ten percent (10%) of the remaining cost, if any.
 2. For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, fifteen percent (15%) of the first \$50,000 of the cost, and ten percent (10%) of the remaining cost, if any.
 3. For Contractor, for any Work performed by its Subcontractor(s), eight percent (8%) of the first \$50,000 of the amount due each Subcontractor, and six percent (6%) of the remaining amount if any.
 4. For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, eight percent (8%) of the first \$50,000 of the amount due the sub-Subcontractor, and six percent (6%) of the remaining amount if any.
 5. The cost to which overhead and profit is to be applied.
- L. Cost of change in insurance or bond premium:
1. Contractor's liability insurance: The cost of any changes in Contractor's liability insurance arising directly from execution of the change Order.
 2. Payment and Performance bond(s): The cost of the additional premium for Contractor's bond arising directly from the changed Work.
 3. The costs of any change in insurance or bond premium shall be added after overhead and profit are calculated.

1.05 CHANGE ORDER PRICING - UNIT PRICES

- A. Whenever WTA authorizes Contractor to perform Work on a unit-price basis, the directive shall clearly state:
1. Scope of work to be performed.

⁶ Any travel costs that are incurred under the ensuing contract will be subject to WTA's own travel reimbursement policy and will be provided to the awarded contractor.

2. Type of reimbursement including pre-agreed rates for material quantities.
3. Cost limit of reimbursement.

B. Contractor shall:

1. Cooperate and assist in monitoring the Work being performed. As requested by WTA, Contractor shall identify workers assigned to the Work and areas in which they are working.
2. Leave access as appropriate for quantity measurement.
3. Not exceed any cost limit(s) without WTA's prior written approval.

C. Contractor shall submit costs and satisfy the following requirements:

1. Unit prices shall include reimbursement for all direct and indirect costs, including overhead and profit, and bond and insurance costs.
2. Quantities must be supported by field measurement statements signed by WTA.

1.06 CHANGE ORDER PRICING - TIME-AND-MATERIAL PRICES

A. Whenever WTA authorizes Contractor to perform Work on a time-and-material basis, the directive shall clearly state:

1. Scope of Work to be performed
2. Type of reimbursement including pre-agreed rates, if any, for material quantities or labor
3. Cost limit of reimbursement

B. Contractor shall:

1. Cooperate and assist in monitoring the Work being performed. As requested, identify workers assigned to the Work and areas in which they are working.
2. Identify on daily time sheets all labor performed in accordance with this authorization.
3. Submit copies of daily time sheets at the end of the working day for the Project Manager's review.
4. Leave access as appropriate for quantity measurement.
5. Perform all Work in accordance with this section as efficiently as possible.
6. Not exceed any cost limit(s) without WTA'S prior written approval.

C. For Invoice approval, Contractor must submit:

1. Daily time sheets for all workers.
2. Invoices for material, equipment, and any sub-Contracting.

1.07 CHANGE IN THE CONTRACT TIME

- A. GENERAL: The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order proposal.
- B. PROCEDURES: If the time of Contractor's performance is changed due to an act of Force Majeure or the fault or negligence of WTA or anyone for whose acts WTA is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
- C. A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within seven (7) days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify WTA and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give WTA access to any such record and, if requested, shall promptly furnish copies of such record to WTA.
- D. Contractor shall now be entitled to an adjustment in the Contract Time for any events that occurred from the time of written notice WTA. The written notice shall set forth, at a minimum, a description of:
 - 1. The event giving rise to the request for an equitable adjustment in the Contract Time;
 - 2. The nature of the impacts to contractor and its subcontractors of any tier, if any;
 - 3. The extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall constitute a waiver of contractor's right to an equitable adjustment.
- E. Within thirty (30) days of the occurrence of the event giving rise to the request, unless WTA agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice with additional supporting data. Such additional data shall include, at a minimum:
 - 1. The amount of delay claimed, itemized in accordance with the procedure set forth herein;
 - 2. Specific facts, circumstances, and analysis that confirms not only that contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and

3. Supporting documentation sufficiently detailed to permit an informed analysis of the request by WTA.
- F. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent WTA's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
- G. Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- H. If time extensions are granted, Contractor shall indemnify and hold WTA harmless from any losses to any other Contractor or subcontractor caused by such time extensions.
- I. Any Change Order request for an adjustment in the Contract Time shall demonstrate the impact on the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event:
 1. Had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact
 2. Could not have been avoided by resequencing of the Work or other reasonable alternatives.

1.08 COST OF CHANGE TO CONTRACT TIME

Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph subject to the following conditions:

1. The change in Contract Time shall solely be caused by the fault or negligence of WTA.
2. Compensation under this paragraph is limited to changes in Contract Time for which Contractor is not entitled to be compensated.
3. Contractor shall follow the procedures set forth above.
4. Contractor shall establish the extent of the change in Contract Time
5. The daily cost of any change in Contract Time shall be limited to:
 - a) Cost of nonproductive field supervision or labor extended.
 - b) Cost of weekly meetings or similar indirect activities extended because of the delay.
 - c) Cost of temporary facilities or equipment rental extended because of the delay.
 - d) Cost of insurance extended because of the delay.
 - e) General and administrative overhead in an amount to be agreed upon, but not to exceed three percent (3%) of contract sum divided by the Contract Time for each day.

01 29 00 MEASUREMENT & PAYMENT**1.01 BREAKDOWN OF CONTRACT SUM:**

The Contractor shall submit with the executed contract, a schedule of values for the proposed Contract Sum, acceptable to the Project Manager, showing the value assigned to each activity of the Work, including separate allowances for profit and overhead. The Contractor guarantees accurate representations of the value of each activity. The schedule of values shall be prepared with sufficient detail to permit its use by the Project Manager and Contract Manager as bases for evaluating requests for payment and Contract compliance.

1.02 PROGRESS PAYMENTS**A. PAYMENT REQUEST PROCEDURES**

By close of business of the last day of each month the Contractor shall submit to ap@ridewta.com a completed WTA provided Application for Progress Payment and invoice on Contractor letterhead. Payment periods shall end on the last working day of each month. The Contractor's statement regarding payment of prevailing wages, and the Contractor's current progress schedules, copies of supplier and subcontractor invoices, and reports as required shall be provided with each submission. If requested by the Project Manager, the Contractor shall provide such additional data as may be reasonably required to support the payment for materials and labor, including payments to subcontractors, and suppliers. The term "materials" is considered to include those items which are fabricated and manufactured material and equipment. Only those materials for which the Contractor can transfer clear title to WTA and labor including mobilization performed by the invoice date will be qualified for partial payment, except as specifically provided below. WTA will issue payment 30 working days following the Progress Payment Application approval (Net 30).

B. The payment request will include:

1. The value of the Work performed.
2. The cost of materials and equipment delivered but not yet incorporated in the Work.
3. Copies of invoices and certified payroll for any Work completed under a time-and-material change order.

C. PARTIAL PAYMENT FOR MATERIALS & EQUIPMENT DELIVERED BUT NOT INSTALLED.

To receive partial payment for materials & equipment delivered but not incorporated in the Work, the Contractor shall include with its invoice, a list with supplier invoices and a statement of where the materials & Equipment will be incorporated to the Project Manager for approval. The Contractor's claimed

purchase value must be supported by supplier or subcontractor. Proper storage and protection shall be the responsibility of the Contractor. Partial payment for materials and equipment delivered but not yet incorporated in the Work will be paid at fifty percent (50 %) of the cost minus installation labor, except as may be determined otherwise by the Project Manager.

D. PARTIAL PAYMENT BASED ON UNIT PRICES

If the Contract includes unit price items, then partial payments for such items will be based on the actual quantities performed or provided. For Work performed or provided, the Contractor shall not be entitled to any payment beyond those unit prices.

1.03 SUBCONTRACTOR PAYMENTS

- A. When the Contractor receives a payment under this Contract, the Contractor shall pay any subcontractor within ten (10) days after the receipt WTA's payment⁷. WTA reserves the right to request copies of cancelled checks, invoices, and interview any sub-Contractors to verify adherence to this section.
- B. If the Contractor fails or neglects to make such payment within ten (10) days, the Contractor shall pay to the subcontractor an interest penalty computed at one percent (1%) per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount due is made⁸.
- C. The Contractor shall include in each of its subcontracts at all tiers a provision outlining this payment and interest clause (Refer to Division 00 21 13 part 1.08 Subcontracts).
- D. The Contractor will return retainage payments to each subcontractor at such time as WTA receives the final release from the State of Washington Department of Revenue and Employment Security Department that all requirements have been met by the subcontractor, after the subcontractor's work is satisfactorily completed.
- E. Any deviation from the above referenced time frame may occur only for good cause following written approval of WTA. The Contractor shall require that subcontractors execute a lien release for any liens that have been filed as a condition of payment (Refer to Division 01, Part 1 General Conditions 1.05).

⁷ RCW 39.04.250

⁸ RCW 39.04.250(3)

1.06 REVIEW OF PAYMENT APPLICATION

- A. Upon submission of the invoice to ap@ridewta.com, the Project Manager will review the request and approve the payment request. Should any part or all of the payment is denied, the Project Manager will notify the Contractor in writing and include remedial actions the Contractor must take to receive the withheld amount. If the Project Manager recommends payment WTA will, within thirty (30) days of receipt of the Contractor's properly completed payment application pay the Contractor on the basis of the submitted payment request less retention.
- B. WTA bears no liability for payments delayed when the invoice, application for payment, and supporting documentation is not sent to ap@ridewta.com.
- C. In the event WTA's Project Manager does not concur with the payment request, the Contractor may make the changes necessary to obtain the Project Manager's concurrence and resubmit the request. If the Project Manager recommends payment, within thirty (30) days of receipt of the Contractor's remedied invoice, WTA will pay the Contractor a progress payment on the basis of the approved partial payment request.

1.07 RETAINAGE

- A. WTA will withhold five percent (5%) of each invoice⁹. This money will be set aside as a trust for the protection and payment of anyone performing labor; providing materials, supplies, or equipment; or subcontractors.
- B. At the contractor's option, this retainage will be either¹⁰:
 - Withheld from each invoice.
 - Retained in a fund by the WTA.
 - Deposited in an interest-bearing bank account. Any interest earned will be paid to the contractor.
 - Placed in escrow with a bank or trust by WTA.
- C. The Contractor may submit a retainage bond for the retainage amount on the contract.
- D. Washington State Department of Revenue (DOR), Employment Security Department (ESD), and Department of Labor & Industries (L&I) all have lien rights against this fund whether held by WTA or submitted as a bond. Should claims be made against this retainage amount, the priority of payment will be:
 - 1. Workers not paid prevailing wages
 - 2. DOR– taxes due on the public works project

⁹ RCW 60.28.011, WAC 458-20-217

¹⁰ RCW 60.28.011

3. DOR– taxes due on other public works projects
4. ESD and L&I for taxes due on the public works project
5. Subcontractors and suppliers on the public works project
6. Other taxes due (ESD, L&I for taxes due on other projects and/or other taxes)
7. WTA

- E. Before WTA releases retainage, DOR, EST, and L&I must certify that there are no retainage claims. An affidavit of wages paid must also be approved by L&I for all contractor and subcontractor work before Notice of Completion can be submitted.

1.08 RELEASE OF RETAINAGE

- A. The retainage will be held and applied by WTA as a trust fund¹¹. Payment or release of retainage will be made in ordinary course of business approximately sixty (60) days¹² following completion of the Work provided the following conditions are met:
1. Certificates approved by the Washington State Department of Labor and Industries, Washington State Department of Revenue, Washington State Employment Security Department, and all other departments and agencies having jurisdiction over the activities of the Contractor have been provided to WTA's Contract Manager.
 2. Affidavits of Wages Paid for the Contractor and each subcontractor approved by the Industrial Statistician of the Washington State Department of Labor and Industries have been provided to WTA's Contract Manager.
 3. No claims or notices of lien, as provided by law, have been filed against the retainage, nor remain filed or recorded against any property.
 4. WTA has no claims under this Contract.
- B. If such taxes have not been discharged or the claims, expenses, and fees have not been paid, WTA shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the Contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the Contractor.

¹¹ RCW 60.28

¹² RCW 60.28.011

1.09 FINAL PAYMENT

- A. WTA will make final payment to the Contractor following acceptance of Work, Final acceptance will occur after Punch List items are complete, release of claims brought to the attention of WTA, receipt of releases from WTA of property affected by the Contractor's performance under this Contract, and all state requirements have been met. Final payment shall include the entire sum found to be due after deducting such amounts as the terms of this Contract permit. Prior estimates and payments, including those relating to extra work or work omitted, shall be subject to correction by the final payment.
- B. By accepting final payment, the Contractor shall be deemed to have released WTA from all claims of and all liability to the Contractor for things done or furnished in connection with the Work and for every act and neglect of WTA and others relating to or arising out of the Work, other than timely written claims identified in detail and stated amounts that were submitted prior to final payment and in strict compliance with the requirements of this Contract.
- C. Payment by WTA shall not release the Contractor or its surety from any obligation under the Contract Performance or Performance Bond, nor indemnity, hold harmless and defense obligations.

01 30 00 REQUIRED CONTRACTOR DOCUMENTS

The contractor will be required to submit the following documents:

At Pre-Construction Meeting (some items may also be submitted with the bid at Contractor's discretion)

- ☐ Schedule
- ☐ Completed performance and payment bonds
- ☐ Certificate of Insurance
- ☐ Detailed schedule of values showing the value assigned to each activity of the Work, including separate allowances for profit and overhead.
- ☐ Direction for Retainage
- ☐ Product Data sheets for any materials as specified Technical Specifications and Drawings
- ☐ Subcontractor Qualifications and copies of sub-contracts

Before Payment

- ☐ Intent to Pay Prevailing Wage filed by Contractor and all subs
- ☐ Copies of Permits
- ☐ Certified Payroll, if requested
- ☐ Application for Progress Payment
- ☐ Copies of any invoices and timesheets, if requested

Before Final Payment

- ☐ As-Built Drawings (if applicable)
- ☐ Affidavit of Prevailing Wage filed by Contractor and all subs
- ☐ Original, signed off Permits

01 70 00 CONTRACT CLOSE OUT

Upon completion of the Work, the Contractor shall notify the Project Manager in writing. Upon receipt of the notification, the Project Manager will determine if the Work conforms to the terms of the Contract. If materials, equipment, or workmanship do not meet the terms of the Contract, the Project Manager shall prepare a final punch list of such items and submit it to the Contractor. Following completion of the corrective work by the Contractor, the Project Manager shall notify WTA's Contract Manager that the Work has been completed in accordance with the Contract. Final determination of the acceptability shall be made by WTA. Upon acceptance of the project, WTA shall immediately file a notice of completion.

The final application for payment shall be accompanied by all required documentation called for in the contract. Please refer to RCW Chapter 60.28 for procedures regarding lien releases and waivers.

If, after reviewing the Contractor's final application for payment including all documentation required and the Project Manager determines that the Work is complete, they will recommend that final payment, including all retainages, be made by WTA. The final payment, less retainage, will be due and payable by WTA thirty (30) days after any legal notice periods have expired.

1.01 SUBSTANTIAL COMPLETION

- A. The Contractor, on considering the Work to be substantially complete at each stop location and ready for its intended use, shall notify the Project Manager and Procurement in writing.

The notification shall include an itemized list of remaining incomplete Work (Punch List items). If WTA determines the Work is not substantially complete, the Project Manager will notify the Contractor in writing identifying the reasons. If WTA finds the Work substantially complete WTA's Project Manager and Procurement will meet with the Contractor to:

1. Prepare a punch list of incomplete items of Work.
2. Define the division of responsibility between WTA and Contractor with respect to security, operation, maintenance, heat, utilities, insurance, and warranties.
3. Describe any other issues related to acceptance of the substantially completed Work.

4. Establish a date for completion
 5. Set forth any other terms relating to final acceptance
- B. Upon provision of the Contractor's acknowledgment of substantial completion acceptance, WTA shall take possession of the Work or portion of the Work and put it into its intended service. The date that the Work or portion of the Work is put into service will become the date of substantial completion. Unless otherwise specified, guarantees and warranties will begin on the date of substantial completion.
- C. Subsequent to the substantial completion date, WTA may exclude the Contractor from the Work during such periods when construction activities might interfere with the operation of the stop. WTA, however, shall allow the Contractor reasonable access for completion or correction of incomplete punch list items.
- D. **REINSPECTION PROCEDURE:** WTA's Project Manager will re-inspect the Work upon receipt of the Contractor's notice that the Work, including Punch List items resulting from earlier inspections, has been completed, except for these items whose completion has been delayed because of circumstances that are acceptable to WTA. Upon completion of re-inspection, WTA will either prepare a certificate of final acceptance, or will advise the Contractor of Work that is incomplete or of obligations that have not been fulfilled but are required for final inspection. If necessary, the re-inspection procedure will be repeated. Additional inspections will be done at Contractor's expense.

1.02 POSSESSION OF PORTIONS OF THE PROJECT

Should the Contractor fail to meet any date specified for substantial completion of the Work or any portion of the Work requiring early possession and use, WTA may, after a ten (10)-day written notice to the Contractor, take over such portion or all of the Work that is behind schedule. In such case, the Project Manager will prepare a punch list of incomplete Work. WTA may allow the Contractor reasonable access to the Work at such times that the operation of the project will not be affected, or he/she/it may complete the Work himself/herself/itself after giving the Contractor notice of his/her/it's intention to do so. The cost of WTA's work will be charged to and deducted from amounts due to the Contractor. The substantial completion date will be established as the date when WTA actually begins using the project or portion of the project for its intended purpose. Division of responsibilities between WTA and Contractor, beginning of warranties, and any other issues relating to substantial completion shall be as specified.

DIVISION 02 EARTHWORK

Contractor will use applicable specifications found in WSDOT Standard Specification Division 2 for Earthwork.

<https://wsdot.wa.gov/publications/manuals/fulltext/M41-10/Division2.pdf>

- **DISPOSAL**

In conjunction with the terms outlined in WSDOT Specifications 2-01.2, 2-03.3(7), and 2-09.3(1)D

Contractor shall remove and properly dispose of all surplus excavated materials at an approved licensed dump site.

Soft and/or unsuitable material will be removed and replaced with $\frac{3}{4}$ inch compacted crushed rock.

- **EROSION AND SEDIMENT CONTROL**

Contractor shall be responsible for erosion and sediment control to protect stormwater systems.

Best Management Practice for work within Bellingham city limits will be in conformance with Bellingham Municipal Code 15.42 – Stormwater Management. Contact Bellingham Public Works Engineering at 360-778-7900 to answer any questions.

For work within other jurisdictions contractor shall comply with the proper erosion control measures as required by the authorities having jurisdiction for each location.

DIVISION 08 MISCELLANEOUS CONSTRUCTION

Contractor will use applicable specifications found in WSDOT Standard Specification Division 8 for Miscellaneous Construction unless otherwise directed by WTA's Project Manager in writing.

<https://wsdot.wa.gov/publications/manuals/fulltext/M41-10/Division8.pdf>

- **PADS AND RETAINING WALLS**

Pads and associated retaining walls shall be installed in locations as staked and/or painted by WTA to dimensions indicated per site details. Pads shall be flush with adjacent sidewalks and curbs and if possible higher than surrounding existing ground.

- **BACKFILLING**

Upon completion of pad installation contractor shall promptly backfill against new concrete pad or retaining wall, level surrounding soil, install new topsoil where needed, reseed where grass has been removed and restore any damage to the surrounding area.

Pursuant to RCW 43.19A, Contractor will use compost and biochar whenever feasible.

DIVISION 09 MATERIALS

Contractor will use applicable specifications found in WSDOT Standard Specification Division 9 for Materials.

<https://wsdot.wa.gov/publications/manuals/fulltext/M41-10/Division9.pdf>

- **CONCRETE**

Concrete shall be standard air entrained 3000 PSI Portland cement concrete, conforming to WSDOT Construction Manual M 41-01.38, July 2021, page 8-40 for Cement Concrete Sidewalks, SS 8-14.3(3).