

The Contractor agrees by submitting a proposal to WTA to the following general provisions and to the enforceability and binding effect of these terms and conditions against Contractor if WTA accepts Contractor's bid/ proposal, whether or not a formal written contract is executed between the parties. Contractor also agrees by submitting a bid/proposal to WTA these terms and conditions cannot be modified or amended unless expressly requested in writing by Contractor during the solicitation process, and expressly agreed to by WTA prior to its announcement of a successful bid or proposal.

**Contract Documents:** The terms and conditions that will govern any contract with Contractor includes the following where applicable:

- Executed Contract
- These Terms and Conditions
- Scope of Work & Specifications
- Solicitation Response
- Special Provisions
- Exhibits & Appendices
- Addenda
- Notice to Proceed
- Purchase Order

**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 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 assertions that the Contractor is not an independent contractor.

**Payments:** Unless otherwise agreed by the Contractor and WTA, invoices are paid thirty (30) days from receipt, and subject to WTA's acceptance of the invoiced work and receipt of any required deliverables, goods or services. Notwithstanding the above, WTA will adhere to any previously negotiated and agreed upon payment schedule, including any terms based upon negotiated milestones.

**Taxes:** Contractor will include applicable Washington State sales and local tax as a separate line item on the invoice, excluding Federal Excise Tax, and supply exemption certificate when necessary.

**Inspection and Acceptance:** Services performed for and goods provided to WTA will be monitored and inspected, with payment conditioned upon acceptance by WTA's Project Manager or designee. Acceptance of any portion of the services or goods to be provided does not release the Contractor from liability for faulty workmanship or goods, or failure to comply with all Contract terms and conditions. WTA may inspect all goods and services at any time during the Contract term. WTA may, in its discretion, reject goods or services not conforming to specifications or other Contract terms. Until delivery & acceptance by WTA, risk of loss or damage to goods or finished work will be with the Contractor unless the loss or damages is caused by WTA's negligence.

**Contract Modifications/Change Orders:**

No changes, modifications or amendments to these terms and conditions, or to any prices, quantities, or specifications otherwise included as part of the RFP shall be effective without prior written consent of WTA's General Manager. Oral changes or agreements are not permitted nor enforceable, and will not be paid for. All changes must be in writing and executed by both Parties.

Either party may initiate a change request that is reasonably within the general scope of the contract. Such changes might include, but are not limited to: changes in the method of operations, requirements for record keeping, and emergency service. After receipt of a written change request, Contractor shall submit a price for the change in work scope and modifications of other provisions of the Contract required as a result (i.e. insurance). Failure to agree to any adjustment shall be a dispute resolved through the Disputes clauses in Appendix A, however, nothing shall excuse the Contractor from proceeding with the Contract Work as agreed.

WTA may add or delete items or locations, provided such items or locations are related to those on Contract and will not represent a significant increase or decrease in size or scope of the Contract. Such additions or deletions will be by mutual agreement, at prices consistent with the original Bid, relate to the original scope of work, and evidenced by issuance of a written Contract Amendment issued by WTA.

Any plan or method of work suggested by WTA to Contractor, but not specified or required in writing under the Contract, if adopted or followed by Contractor in whole or part, shall be used at the risk and responsibility of Contractor and WTA shall assume no responsibility therefore.

**Suggestions to Contractor:** Any suggested work by WTA to the Contractor, but not 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 task order.

**Compliance with Laws:** Contractor shall comply with all applicable federal, state, and local laws and regulations, including the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1970 (WISHA), and the standards and regulations issued. WTA will not make adjustments for loss of time or disruption of work caused by any actions against the Contractor. Any contract financed with FTA assistance must comply with applicable Federal requirements. Any applicable law or regulation change will apply to the project as required.

**Access to Records and Sites of Project Performance:** As a recipient of State and Federal funds, WTA agrees to provide, and require its Contractors at each tier to provide, sufficient access to inspect and audit records and information pertaining to the Project to the:

- a. U.S. Secretary of Transportation or the Secretary's duly authorized representatives
- b. Comptroller General of the United States, and the Comptroller General's duly authorized representatives
- c. Washington State Auditor's Office and their duly authorized representatives
- d. WTA, member agencies, and its Contractors

**Availability of Records for Public Inspection:** 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 and its sub-Contractors 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 public disclosure request 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.

**Licenses, Permits and Taxes:** Contractor shall obtain all permits and licenses, pay all charges, fees and taxes, and give all notices necessary to perform the services for or provide the goods to WTA.

**Civil Rights Requirements and Discrimination:** Contractor shall not discriminate on the basis of race, color, national origin, or sex marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification in the performance of this contract, or in any hiring or employment resulting from this contract<sup>1</sup>. Contractor shall comply with the Federal Civil Rights Act of 1964, the Equal Employment Opportunity Act, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, and their regulations. Contractor shall include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**Personal Liability:** In no event shall any official, officer, employee, or agent of the WTA be liable or responsible for any term or condition of this Contract or statement whether expressed or implied, and Contractor waives any such claim that it may have arising from the Contract.

**Assignment:** This Contract may not be assigned by Contractor to a third party without the prior written consent of WTA which shall be in its sole discretion. In the event of an unauthorized assignment by Contractor, WTA may terminate the Contract for convenience as outlined herein. Involuntary assignment of the Contract due to bankruptcy or receiver appointment from Contractor's insolvency is considered breach of the Contract and subject to termination. WTA may assign the Contract without need for any consent of Contractor.

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.

**Project Time Limit:** All goods and services shall be provided within negotiated time periods. Modifications to any time periods will only be granted by WTA if contractor is delayed by causes outside of its/his/her control, such as weather, nature, labor stoppages, or Force Majeure event. If Contractor fails to work for more than seven (7) working days as called for under the Contract, and is not excused, WTA may terminate the Contract and complete the Contract on its own or through another contractor. In such event, Contractor shall be responsible for all expenses reasonably incurred by WTA in completing the work, above and beyond the original Contract price, and all legal, or other costs associated with the Contract termination.

**Delays and Extensions of Time:** Contractor waives claims for damages for any hindrance or delay in performing under the Contract, except those incurred for unreasonable delays caused by WTA. Contractor may be granted equivalent extensions of time under the following circumstances:

- Contractor shall be granted an extension for a delay caused by any suit or other legal action against WTA, unless the delay exceeds ninety (90) calendar days. In such instance, WTA may, upon written request of the Contractor, either negotiate a Contract termination or grant a further extension of time, whichever is in the best interest of WTA.
- Time lost due to inclement weather which could not have been anticipated by Contractor, but only subject to the approval of WTA.
- Time lost due to a strike, fire, flood, a natural disaster, or events which are not the fault of or are beyond the control of the Contractor, but only subject to the approval of WTA.

If WTA later determines that there was an excusable reason for untimely performance, it may in its discretion

allow Contractor to continue work under a new performance schedule or terminate for convenience.

### **Force Majeure**

- a. **No Liability.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its/his/her reasonable control, except for payment obligations.
- b. **Best Efforts to Cure.** In the event of a threatened default or default as a result of any cause beyond its/his/her reasonable control, the defaulting party shall nonetheless exercise its best efforts to avoid and cure such default.
- c. **Right to Terminate.** In the event such an event prevents performance thereunder for a period in excess of ninety (90) days, then the non-defaulting party may elect to terminate this Agreement and/or cancel or suspend any Purchase Orders thereunder by a written notice to the defaulting party.

**Suspension of Contract:** WTA may, at any time and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from WTA.

**Termination for Convenience:** WTA may terminate all or part of this Contract by providing written notice, when in WTA's best interest. In such case, Contractor shall deliver to WTA any goods and/or work completed, and equipment or property of WTA. Contractor may invoice WTA for services provided prior to termination, or goods accepted by WTA, within thirty (30) days of receiving notice from termination for convenience, and shall be entitled to the Contract price for such accepted services or accepted goods.

**Notice of Breach Contractor:** Contractor will notify WTA immediately if it/he/she becomes aware of any breach of this Contract, or commission of an error or omission. Any work done by Contractor after such discovery will be done at the Contractor's risk and with no obligation by WTA to pay for any services or products provided.

**Termination for Default:** If Contractor breaches any term of the Contract, WTA may terminate this Contract for default by providing three (3) days written notice to Contractor. Contractor may invoice WTA for accepted services provided prior to termination, or goods accepted by WTA prior to termination, within thirty (30) days of receiving notice of termination for cause, and shall be entitled to the Contract price for such accepted services or accepted goods. In addition to the right to terminate, WTA shall be entitled to seek and recover all available remedies against Contractor and its sureties caused by default. If WTA later determines that there was an excusable reason for Contractor's breach, it may in its discretion allow Contractor to continue work under a new performance schedule or terminate for convenience.

**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 within any allowed cure period, WTA may terminate the Contract without any further obligation to Contractor.

**Substitute Services & Damage Recovery:** If Contractor breaches any portion of the Contract, WTA may seek all remedies allowed by law, including to procure substitute services or products elsewhere and recover its damages, attorneys' fees and costs from Contractor.

**Dispute Resolution:** If Contractor has a dispute relating to the Contract, Contractor must submit a request for administrative review of the dispute to the WTA Director of Finance or Designee within ten (10) business days after Contractor becomes aware of such dispute. The Director of Finance will provide a written determination within three (3) business days of notification. An appeal of the Director's decision must be made to WTA's General Manager within three (3) business days of receipt of the decision from the Director of Finance. The General Manager will make a written determination to the Contractor that shall be

final and conclusive within three

(3) business days. Additional relief may be made at the Contractor's expense, but only in the Superior Court for the State of Washington, Whatcom County. Compliance with this administrative resolution procedure shall be a condition precedent to Contractor's right to commence an action against WTA.

Pending final decision of any dispute, Contractor shall proceed diligently with the performance of the Contract. This "dispute" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph above; provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

**No Waiver of Rights by WTA:** WTA's failure to immediately enforce any of its rights shall not be a waiver of its rights to seek enforcement of such right, or to enforce any other rights or remedy under the Contract for any other breach by Contractor.

**Applicable Law, Jurisdiction Venue, and Attorneys' Fees:** This Contract is executed and governed in interpretation and performance by the laws of the State of Washington. Any dispute to interpret or enforce the Contract shall be filed in the Superior Court for the State of Washington, Whatcom County, and Contractor waives any objection to the jurisdiction and venue of this Court. In any action to enforce or interpret this Contract, the prevailing party shall be entitled to recover, in addition to all other remedies, its reasonable attorneys' fees and costs incurred.

**Refusal to Execute Contract:** If Contractor refuses to execute a formal written contract following an award by WTA, which the need for such shall be in the discretion of WTA, furnish a performance specific bond, or provide proof of insurance within fifteen (15) days of Contract award, WTA's General Manager may withdraw the award, and award the Contract to another bidder/proposer or resubmit for bidding/proposals.

**Severability:** If any portion of this Contract is legally unenforceable or invalid that portion may be renegotiated by the parties. The remaining portions of the Contract shall remain in full force and effect.

**Joint Venture and Partnering:** In the event the Contractor is a partnership or joint venture of two or more people or entities, each partner and/or joint venture party shall be jointly and severally liable for all grants, covenants, provisos and claims, rights, powers, privileges, and liabilities of the contract. Notice given by WTA under this Contract given to one partner or joint venture partner shall be deemed notice to all partners and/or joint venture partners.

**Counterparts:** Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to the same extent as that of an original signature.

Signatures submitted electronically must be fully legible to be valid.

**Supervision and Coordination:** Contractor shall: 1) Competently and efficiently, supervise and direct the implementation and completion of all Contract requirements specified herein; 2) Designate a representative for the Work under this Contract to which all communications given by WTA to the representative shall be binding on Contractor.

**Safety Measures:** All work under this Contract will be performed in a safe manner. The Contractor and all subcontractors will follow all rules and regulations of the Washington State Department of Labor and Industries, OSHA, WISHA, and all other applicable safety standards. The Contractor will be solely responsible for conditions of

the job site, including safety of all persons and property during performance. This requirement will not be limited to normal working hours. The Contractor will exercise every precaution at all times for the prevention of accidents and the protection of people and property.

**Warranties & Guarantees:** Contractor guarantees that goods and services will meet all specification requirements. Goods and services provided by Contractor will be warrantied for a minimum of (1) year after final invoice payment unless agreed upon otherwise.

1. All work, services and materials furnished under this Contract are subject to all warranties or guarantees arising by operation or law and shall conform to the requirements herein, including any manufacturer's warranty. Contractor shall furnish to WTA any guaranty or warranty furnished as a normal trade practice in connection with the Contractor's purchase of any goods and services; provided such guaranty or warranty shall be in addition to those specific requirements for particular materials or work items indicated elsewhere in the Contract Documents.
2. Contractor warrants to WTA as follows in association with the services to be provided:
  - a. Contractor and all of its/his/her employees shall be knowledgeable and have proper training to provide the proposed services, and to safely operate any and all equipment associated with the services;
  - b. Contractor will timely pay all wages, salaries and other compensation to its employees, agents, subcontractors and others who provide services to WTA;
  - c. All equipment used by Contractor will be suitable to provide the services; and
  - d. All services provided by Contractor to WTA shall be in conformity with all specifications, terms and conditions of the Contract Documents.
3. Contractor warrants to WTA that it has the right and all necessary licenses to provide the services and that such services will be of the highest quality; free from liens, infringements and defects, be in conformance with the Contract Documents. In addition to any other obligation to indemnify, defend and hold harmless, Contractor will save and hold WTA harmless, defend and indemnify WTA from all loss, damage, and expense due to liens or adverse claims against WTA for all services provided. All services not so conforming to these standards shall be considered deficient. Such duty to defend, indemnify and hold harmless WTA shall extend to any claim made by an employee of Contractor, and to this limited extent, Contractor waives any exclusivity protection provided by the Industrial Insurance Act, RCW Title 51.

**Indemnification/Hold Harmless:** Contractor shall defend, hold harmless and indemnify WTA, and its agents, employees, representatives, and Board members against and from any all claims, demands, suits, judgments, defense costs, 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 liability or damages of any kind arising out of (a) Contractor's goods or services provided to WTA; (b) actions or business operations of Contractor, its/his/her sub-Contractors, their property, employees or agents, or caused in whole or in part by the Contractor, its sub-Contractors, their property, employees, or agents;; (c) Contractor's actions taken under the Contract, or for any breach of the Contract; (d) Contractor's alleged infringement of any intellectual property rights; or (e) Contractor's negligence, errors or omissions, misconduct, violation of any law, unpaid wages or services. Contractor will defend itself at its own expense in any lawsuit. Such duties shall apply to any claim covered by the above obligation and brought by an employee of Contractor, and in this limited context, Contractor waives any exclusivity protection under any industrial insurance or worker's compensation laws, including, but not limited to, the Washington State Industrial Insurance Act, RCW Title 51.

The Contractor's liability, and/or duty to indemnify, hold harmless or defend shall not be dependent upon

whether or not such damage or injury is caused by Contractor negligence, or whether or not such damage or injury is caused by the inherent nature of the services provided.

If a lawsuit that falls within the terms of this indemnity, duty to defend and hold harmless provision ensues, WTA is entitled to select counsel to represent it, and the Contractor shall pay directly all costs, attorneys' fees, and expenses associated with the representation and defense, and if judgment is rendered or settlement made requiring payment of damages by the WTA, its officers, agents, employees, and volunteers, the Contractor shall pay any judgment amount or award of any other amounts, attorneys' fees or costs.

**Liens:** Contractor shall not allow any liens or other encumbrances to be placed on WTA real or personal property, and shall timely pay any and all amounts due and owing to suppliers, sub-Contractors and others. WTA may demand a certification or lien waiver as a condition of payment of any amounts due and owing to the Contractor.

In the event a lien is placed against the property of the WTA, Contractor shall remedy the lien by paying such lien in full. The Contractor's agreement to defend and to pay the related expenses shall exist whether or not injuries or damage are due to Contractor's negligence, and whether or not such injuries or damage be caused by the inherent nature of the provided services. Contractor shall defend, hold harmless and indemnify WTA from and against any lien that may be asserted, recorded, filed or alleged by any supplier, sub-Contractor or other person arising out of the provided services.

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.

**No Limitations on Contractor Liability:** Contractor shall be liable for damages and injury to persons caused by Contractor's performance of this Contract or providing of services to WTA. Contractor shall be liable for any and all damages and injuries suffered by WTA for any breach by Contractor of this Contract, including, but not limited to consequential or incidental damages. Under no circumstances shall there be any limitation on Contractor's liability, or cap on the amount of any damages recoverable against Contractor for any breach of this Contract.

**Public Records Obligations:** WTA complies with RCW Chapter 42.56. This Contract and any other documents relating to this Contract or services or goods provided by Contractor will be disclosed if a Public Disclosure Request (PDR) is submitted. Under no circumstances shall there be any "confidentiality" obligation imposed against WTA. If WTA receives any PDR that includes a request for all or a portion of this Contract or any documents relating to the Contract or services or goods provided by Contractor, WTA is required to comply with this request under RCW Chapter 42.56, subject to any exception that may apply to WTA. Nonetheless, any information provided by Contractor labeled "Confidential" or "Proprietary" but does not, in WTA's opinion, fall into an exception from public disclosure, will be initially withheld and WTA will notify Contractor of the request. WTA will continue to withhold the confidential or proprietary labeled materials for a total of fourteen (14) days after providing notice. Thereafter, WTA shall release the confidential or proprietary labeled materials pursuant to the PDR, subject to any court order or injunction that Contractor may obtain.

Contractor shall reimburse to WTA all costs and attorneys' fees WTA incurs in any legal action instigated by Contractor or arising from dealing with Contractor's labeling of any documents as "Confidential" or "Proprietary."