



Cowlitz County Administration Building  
Roof Replacement  
Project #2025-0028-01

Purchasing Services Department  
1600 13<sup>th</sup> Avenue S.  
Kelso, WA 98626  
360-577-3030  
[www.co.cowlitz.wa.us](http://www.co.cowlitz.wa.us)

## TABLE OF CONTENTS

INVITATION FOR BIDS .....	2
SUMMARY OF WORK .....	3
INSTRUCTIONS TO BIDDERS .....	5
BIDDER CHECKLIST.....	9
BIDDER QUALIFICATIONS .....	10
BID FORM .....	12
BIDDER RESPONSIBILITY CRITERIA .....	13
BIDDER REPRESENTATIONS AND CERTIFICATIONS .....	16
BID SURETY BOND FORM .....	17
AGREEMENT FORM .....	18
CONTRACTOR’S PERFORMANCE AND PAYMENT BOND .....	22
GENERAL CONDITIONS .....	23
PART 1 – GENERAL PROVISIONS .....	23
PART 2 – INSURANCE AND BONDS .....	25
PART 3 – TIME AND SCHEDULE.....	26
PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS .....	29
PART 5 – PERFORMANCE.....	31
PART 6 – PAYMENTS AND COMPLETION .....	41
PART 7 – CHANGES .....	44
PART 8 – CLAIMS AND DISPUTE RESOLUTION .....	53
PART 9 – TERMINATION OF THE WORK .....	56
PART 10 – MISCELLANEOUS PROVISIONS .....	58

## INVITATION FOR BIDS

Cowlitz County invites interested and qualified contractors to submit sealed bids for the following project:

TITLE: Admin Roof Replacement  
ESTIMATED PROJECT AMOUNT: \$450,000.00  
BID SUBMITTAL TIME/DATE/LOCATION: Prior to **1:30 PM local time on May 12, 2025** to:  
Cowlitz County Public Works  
Attn: Ashley Claussen, Purchasing Services  
Admin Roof Replacement: ITB #2025-0028-01  
1600 13<sup>th</sup> Avenue S  
Kelso, WA 98626

Bids can be mailed or delivered in person to the address listed above. Cowlitz County will assume no responsibility for any delay in U.S., County, or any other delivery service resulting in a bid being received late. Faxed and/or E-mailed bids will not be accepted.

PUBLIC BID OPENING: On the time and date listed above, bids will be opened and read aloud in the Cowlitz County Public Works Training Room. The public is invited to attend. The bid opening will also be accessible via Zoom live stream by visiting <https://us06web.zoom.us/j/81540321509>. A recording of the bid opening, along with the bid results, will be posted online following the meeting.

PRE-BID CONFERENCE: Wednesday, April 30, 2025 at 9:00 AM local time at the Cowlitz County Administration Building. The address is 207 4<sup>th</sup> Avenue N in Kelso, WA. While not mandatory, interested Bidders are urged to attend. Please check in upon arrival.

### ITEM FOR BID:

The project consists of demolition of existing roofing system and installation of new thermoplastic polyolefin (TPO) membrane roof system at the Cowlitz County Administration building located at 207 N. 4<sup>th</sup> Avenue in Kelso, WA. Specifications for this project can be found at <https://www.co.cowlitz.wa.us/DocumentCenter/View/34815/2025-0028-01-Admin-Roof-Replacement---Specifications>.

Final completion of this project must be achieved by September 30, 2025.

### BID SUBMITTAL ENVELOPE:

Upon submittal, bids will be recorded by Cowlitz County as to time and date received and secured until the time set for public bid opening. All bid submittals shall be sealed in an opaque envelope which has been clearly marked with “**Admin Roof Replacement: ITB #2025-0028-01.**” NO BIDS WILL BE ACCEPTED AFTER THE BID SUBMITTAL TIME.

### CONTRACTOR REGISTRATION:

Pursuant to RCW 39.06, the bidder shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. In order to perform public work, the successful bidder and subcontractors, prior to contract award, shall hold or obtain such licenses and registrations as required by State Statutes and Coded, and Federal and local laws and regulations.

### BID SECURITY:

Certified check, bank cashier’s check, or bid bond congruent with the Bid Bond Security Form as identified in the “Instructions to Bidders” section is required to be submitted with each bid in response to this solicitation.

## **SUMMARY OF WORK**

### **1.01 PROJECT OVERVIEW**

- A. Project location is the Cowlitz County Administration Building at 207 Fourth Avenue N in Kelso, Washington.
- B. The County intends to occupy the building throughout the entire project. To minimize conflict and interactions with the public, the performance of the project on weekend days will be allowed. The contractor shall not charge additional fees for this optional weekend work. All work conducted on weekends should be included in the original bid pricing, and no separate charges for weekend work will be accepted.
- C. The successful contractor will have 30 days to complete the project once work has commenced. The start date will be established during the pre-construction meeting, which will take place following contract award and execution. **Final completion of the project must be achieved by September 30, 2025.**
- D. At least seventy-five percent (75%) of the work to be performed must be completed by the contractor's own forces.
- E. Contractor must meet all Supplemental Bidder Criteria and submit documentation as required.
- F. Specifications for this project are provided as a separate document and are not included as part of this ITB. Bidders can access the specifications at <https://www.co.cowlitz.wa.us/DocumentCenter/View/34815/2025-0028-01-Admin-Roof-Replacement---Specifications>. It is essential that Bidders review the specifications in conjunction with the ITB to ensure the submission of a complete and compliant bid.

### **1.02 PROJECT SCOPE**

- A. Roof tear-off.
- B. Removal of base flashings.
- C. Roof replacement preparation.
- D. Disposal of non-hazardous demolition and construction waste.
- E. Adhered thermoplastic polyolefin (TPO) roofing system on concrete deck, including:
  - 1. Roof insulation.
  - 2. Roof insulation cover board.

### **1.03 CONTRACTOR RESPONSIBILITIES:**

- A. Keeping all exits required by code open during construction period and provide temporary exit signs if exit routes are temporarily altered.
- B. Not obstructing roadways, sidewalks, or other public ways without permit and written approval by County.
- C. Monitoring quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce work of specified quality.
- D. Compliance with manufacturers' instructions, including each step in sequence.
- E. Request clarification before proceeding should manufacturers' instructions conflict with Contract Documents.

- F. Compliance with specified standards as minimum quality for the work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- G. Verification that field measurements are as indicated on shop drawings or as instructed by the manufacturer.
- H. Securing products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, and disfigurement.
- I. The Contractor shall provide the appropriate types and skill levels of personnel necessary to accomplish the Work.
- J. Contractor shall be responsible for the conduct and performance of the Contractor's employees and/or agents.
- K. Contractor shall be responsible for the safety of Contractor's employees, agents, and others related to Contractor's work, work procedures, materials, equipment, transportation, signage, and related activities and equipment.
- L. Contractor shall give notices required by and comply with all applicable laws, ordinances, and codes of the local government.
- M. All permits, if required, are the responsibility of the Contractor. The Contractor shall secure and pay for all necessary permits to execute the work from each involved governmental unit.
- N. Contractor shall replace work or portions of the work not complying with specified requirements.

**END OF SECTION**

## **INSTRUCTIONS TO BIDDERS**

### **1.01 PREPARATION OF BIDS**

- A. Bids must be: (1) submitted on the bid proposal forms, or copies of forms, furnished by the Owner or the Owner's agent, and (2) signed in ink. The person signing a bid must initial each change appearing on any bid form. If the bid is made by a corporation, it shall be signed by the corporation's designee. The address of the bidder shall be typed or printed on the bid form in the space provided.
- B. The bid form may require bidders to submit bid prices for one or more items on various bases, including: (1) lump sum base bid; (2) lump sum bid alternate prices; (3) unit prices; or (4) any combination of items 1 through 3 above.
- C. If the solicitation includes alternate bid items, failure to bid on the alternates may disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.
- D. Substitute bid proposals will not be considered unless this solicitation authorizes their submission.
- E. It will be the responsibility of the bidder to conform to the requirements; failure to comply with exact specifications could result in rejection of bid documents.

### **1.02 BID GUARANTEE**

- A. A bid guarantee in the amount of 5% of the base bid amount is required. Failure of the bidder to provide bid guarantee when required shall render the bid non-responsive.
- B. Acceptable forms of bid guarantee are a bid bond or postal money order, or certified check or cashier's check made payable to Cowlitz County.

The Owner will return bid guarantees (other than bid bond) to unsuccessful bidders as soon as practicable, but not sooner than the execution of a contract with the successful bidder. The successful bidder's bid guarantee will be returned to the successful bidder with its official notice to proceed with the work of the contract.

- C. The bidder will allow 60 days from bid opening date for acceptance of its bid by the Owner.

The bidder will return to the Owner a signed contract, insurance certificate, and bond or bond waiver within 10 days after receipt of the contract. If the apparent successful bidder fails to sign all contractual documents or provide the bond and insurance as required or return documents within 10 days after receipt of the contract, the Owner may terminate the award of the contract.

- D. In the event a bidder discovers an error in its bid following the bid opening, the bidder may request to withdraw its bid under the following conditions:
  - 1. Written notification is received by the Owner within 24 hours following bid opening.
  - 2. The bidder provides written documentation of the claimed error to the satisfaction of the owner within 72 hours following the bid opening.

The Owner will approve or disapprove the request for withdrawal of the bid in writing. If the bidder's request for withdrawal of its bid is approved, the bidder will be released from further obligation to the Owner without penalty. If it is disapproved, the Owner may retain the bidder's bid guarantee.

### **1.03 ADDITIVE OR DEDUCTIVE BID ITEMS**

The low bidder, for purposes of award, shall be the responsive bidder offering the low aggregate amount for the base bid

item, plus additive or deductive bid alternates selected by the Owner, and within funds available for the project.

The bidder agrees to hold all bid alternate prices for sixty (60) days from date of bid opening.

#### **1.04 ACKNOWLEDGEMENT OF ADDENDA**

Bidders shall acknowledge receipt of all addenda to this solicitation by identifying the addenda numbers in the space provided for this purpose on the bid proposal form. Failure to do so may result in the bid being declared non-responsive.

#### **1.05 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

The bidder acknowledges that it has taken steps necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and road; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during the work. The bidder also acknowledges that it has satisfied itself as to 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 site, including exploratory work done by the Owner, as well as from the drawing and specifications made a part of this contract. Any failure of the bidder to take the actions described and acknowledged in this paragraph will not relieve the bidder from responsibility for estimating properly the difficulty and cost of successfully performing the work.

#### **1.06 BID AMOUNTS**

- A. The bid prices shown for each item on the bid proposal shall include all labor, material, equipment, overhead and compensation to complete all of the work for that item. All prices including bid prices are in US funds.
- B. A contingency allowance of \$20,000 is included in this bid to cover unforeseen conditions, changes in scope, or other unanticipated costs that may arise during the course of the project. This amount is part of the total bid price.
- C. The actual cost of building permit (only) and the public utility hookup fees will be a direct reimbursement to the Contractor or paid directly by the permitting agency by the Owner. Fees for these permits should not be included by the bidder in the bid amount.
- D. The bidder agrees to hold the base prices for sixty (60) days from the date of bid opening.

#### **1.07 TAXES**

The Owner is required to pay Washington State Sales Tax on all purchases and contracts. Sales tax should be added as a separate item only, not to be included in the base bid price. All bidders whether inside or outside the state of Washington shall show the tax rate applicable to this bid. All taxes payable by the Owner as a result of this contract are considered part of the bid evaluation. Washington State tax is payable by the County direct to the state of Washington on awards made to out-of-state contractors who do not have a Washington State Sales Tax number. If you have any questions concerning the appropriate rate, contact the Washington State Department of Revenue.

If a cash discount is offered and taken it is understood that sales tax will be applied to the discounted amount.

It shall be the contractor's responsibility to furnish Federal Excise Tax Exemption Certificate, when applicable.

#### **1.08 SUBMISSION OF BIDS**

- A. Bid proposals must be submitted on or before the time specified in the Invitation to Bid.
- B. If the base bid and the sum of additive alternates is one million dollars or more, the bid proposal shall comply with the following requirements:

1. Pursuant to [RCW 39.30.060](#), if the base bid and the sum of bid additive alternates is one million dollars or more, the bidder shall provide names of the subcontractors with whom the bidder will subcontract for performance of heating, ventilation and air condition (HVAC), plumbing, and electrical.
  2. The bidder can name itself for the performance of the work.
  3. The bidder shall not list more than one subcontractor for each category of work identified UNLESS subcontractors vary with bid alternates, in which case the bidder must indicate with subcontractors will be used for which alternate.
  4. Failure of the bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work shall render the bid non-responses and, therefore, void.
- C. The bid proposal shall be submitted in a sealed envelope addressed to the office specified in the Invitation to Bid. The envelope shall have printed outside:
1. The project number.
  2. The name and address of the bidder.
  3. Identification as bid proposal.
- D. Prior to the bid opening, the Owner's representative will designate the official bid clock. Any part of the bid proposal or bid modification not received prior to the times specified, per the designated bid clock, will not be considered and the bid will be returned to the bidder unopened.
- E. A bid may be withdrawn in person by a bidder's authorized representative before the opening of the bids. Bidder(s) representative will be required to show ID and sign on bid summary sheet before it will be released.
- F. People with disabilities who wish to request special accommodation, (e.g., sign language interpreters, Braille, etc.) need to contact the Owner ten (10) working days prior to the scheduled bid opening.

### **1.09 BID RESULTS**

After bid openings, bid results can be obtained from the Procurement Services office by calling (360) 577-3030 ext. 6856 or by visiting the County website at <https://www.co.cowlitz.wa.us/Bids.aspx?BidID=419>.

### **1.10 LOW RESPONSIBLE BIDDER**

Before award of a public works contract, a bidder must meet the following mandatory responsibility criteria under [RCW 39.04.350 \(1\)](#) to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

- A. At the time of bid submittal, have a certificate of registration in compliance with chapter [18.27](#) RCW;
- B. Have a current state unified business identifier number;
- C. If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title [51](#) RCW; an employment security department number as required in Title [50](#) RCW; and a state excise tax registration number as required in Title [82](#) RCW;
- D. Not be disqualified from bidding on any public works contract under [RCW 39.06.010](#) or [39.12.065](#)(3);
- E. If bidding on a public works project subject to the apprenticeship utilization requirements in [RCW 39.04.320](#), not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter [49.04](#) RCW for the one-year period immediately preceding the date of the bid solicitation;

- F. Have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12](#) RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and
- G. Within the three-year period immediately preceding the date of the bid solicitation, 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, as defined in [RCW 49.48.082](#), any provision of chapter [49.46](#), [49.48](#), or [49.52](#) RCW.

### **1.11 CONTRACT AWARD**

- A. The Owner will evaluate bids responsiveness and responsibility.
  - 1. A bid will be considered responsive if it meets the following requirements:
    - a) It is received at the proper time and place.
    - b) It meets the stated requirements of the bid proposal.
    - c) It is submitted by a licensed/registered contractor within the state of Washington at the time of bid opening and is not banned from bidding by the Department of Labor and Industries.
    - d) It is accompanied by a bid guarantee.
  - 2. A bid will be considered responsible if it meets the following requirements:
    - a) It meets the mandatory responsibility criteria established in RCW [39.05.350](#) and an overall accounting of the supplemental responsibility criteria established for the project.
- B. The Board or their designee reserves the right to reject any or all bids for good cause shown, to waive minor deviations from the specifications, and to waive any informality in bids received when such acceptance, rejection, or waiver is in the best interest of the County. Without limiting the generality of the foregoing, the County may reject any Bid which is incomplete, non-responsive, obscure or irregular, any Bid which omits a bid on any items for which bids are required, any Bid which omits unit prices, if unit prices are required, any Bid in which unit prices are unbalanced in the opinion of the County, and any Bid from a Bidder which has previously failed to perform satisfactorily or which has failed to meet contract deadlines to complete construction or delivery of any nature. All bids or proposals are likely to be rejected if the lowest responsive bid received exceeds the project's estimate by an unreasonable amount or the budget by any amount. If all bids are rejected for either of these reasons, the project may be deferred and re-bid when more competitive conditions exist.
- C. The Owner may negotiate bid price adjustments with the low responsive bidder, including changes to the contract documents, to bring the bid within the available funding per RCW [39.04.015](#).
- D. The apparent low bidder, for purpose of award, shall be the responsive and responsible bidder offering the low aggregate amount for the base bid plus selected additive or deductive bid alternates and meeting all other bid submittal requirements.

**END OF SECTION**

## **BIDDER CHECKLIST**

The omission or deletion of any bid item may be considered non-responsive and may be cause for the rejection of the bid.

1.  Has a bid bond or certified check been enclosed with bid? Is the amount of the guarantee at least 5 percent of the total amount of the bid?
2.  Has the bid been properly completed and signed in all required areas? Do written amounts on the bid agree with the amounts shown in the figures?
3.  Is there a bid for all items?
4.  Have all addenda, if any, been acknowledged in the Bid Form?
5.  Are the Bidder and any subcontractors familiar with the schedule of value requirements?
6.  Has the Bidder reviewed the Bidder Qualifications, Bidder Responsibility Criteria, and Supplemental Bidder Criteria and understand these obligations if selected as the apparent low bidder?
7. The following items must be completed and included with the Bid Form within the sealed envelope:
  - A.  Bidder Qualification Form
  - B.  Bid Form
  - C.  Bidder Representation and Certification
  - D.  Bid Surety Bond Form or guarantee
8. The following items are to be executed after the contract is awarded to the lowest responsible bidder:
  - A.  Agreement Form
  - B.  Performance and Payment Bond
  - C.  Certificates of Insurance

**END OF SECTION**

## **BIDDER QUALIFICATIONS**

Each bidder submitting a proposal for this project shall submit, as part of its bid, the following information:

1. Registered Name of Firm Submitting Bid: \_\_\_\_\_
2. Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Telephone Number (with Area Code): \_\_\_\_\_
4. E-mail address: \_\_\_\_\_
5. IRS Federal Employer's Identification Number: \_\_\_\_\_
6. Current State Unified Business Identification (UBI) Number: \_\_\_\_\_
7. Washington State Contractor Registration Number: \_\_\_\_\_
8. Number of years of experience the Bidder has in roofing for public works or similar projects: \_\_\_\_\_
9. Percentage of the project to be completed by the Bidder's own forces: \_\_\_\_\_
10. List below projects of similar scope and size completed by the Bidder.
  1. Project Name: \_\_\_\_\_  
Project Value: \_\_\_\_\_  
Contact Name, Phone Number, & Email: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  2. Project Name: \_\_\_\_\_  
Project Value: \_\_\_\_\_  
Contact Name, Phone Number, & Email: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  3. Project Name: \_\_\_\_\_  
Project Value: \_\_\_\_\_  
Contact Name, Phone Number, & Email: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Receipt of the following Addenda is hereby acknowledged:

1. Addendum No. \_\_\_\_\_ dated \_\_\_\_\_
2. Addendum No. \_\_\_\_\_ dated \_\_\_\_\_
3. Addendum No. \_\_\_\_\_ dated \_\_\_\_\_
4. Addendum No. \_\_\_\_\_ dated \_\_\_\_\_
5. Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

12. In compliance with the invitation to bid, bidder hereby proposes to perform all work for this project in strict accordance with the contract documents, within the time set forth therein, and at the prices bid.  YES  NO

13. The bidder certifies below that their bid complies in all respects with the attached specification documents, including the minimum specifications.  YES  NO

\*If NO, attach additional pages detailing all proposed deviations.

14. In accordance with Chapter 42.23 RCW bidders must disclose any and all personal relatives, or any relatives of the bidder's employees or subcontractors, who are presently employed by Cowlitz County, or who stand to realize any financial gain, or beneficial interest, if this contract is awarded to the bidder or any subcontractor of the bidder for the work of this invitation to bid.

The bidder certifies below that there are no persons meeting the criteria above that have any beneficial interest in the work of this invitation to bid.  YES  NO

\*If NO, attach additional pages detailing the name of any person, organization, relationship and interest.

Signature of Authorized Person: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**END OF SECTION**

# **BID FORM**

**NAME OF PROJECT: Admin Roof Replacement**  
**PROJECT NUMBER: 2025-0028-01**

**Company Name:** \_\_\_\_\_

Having carefully examined all drawings & specifications prepared by Cowlitz County, as well as the premises and conditions affecting the work, the Undersigned proposes to furnish all labor, equipment, and materials and perform all work, in accordance with the terms & conditions and prevailing wage requirements attached, which price is hereby designated as to the total proposal price for all necessary work.

<b>Admin Roof Replacement</b>		
<b>Line Item</b>	<b>Description</b>	<b>Base Price</b>
1.	Materials & Equipment	\$
2.	Time & Labor	\$
3.	Contingency Allowance	\$ 20,000.00
4.	Washington State Sales Tax – 8.1%	\$
<b>Total</b>		<b>\$</b>

The undersigned bids for all line items above for the Admin Roof Replacement Project #2025-0028-01 a **total amount**, including Washington State sales tax, the sum of:

\_\_\_\_\_  
(Print dollar amount in words in space above)

\$ \_\_\_\_\_  
(Print dollar figure in numeric form in space above)

Signature of Authorized Person: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**END OF SECTION**

# **BIDDER RESPONSIBILITY CRITERIA**

## **Low Responsible Bidder**

It is the intent of the Owner to award a contract to the low responsible bidder. In addition, the Owner shall consider an overall accounting of the items listed below, which the Bidder must meet. The Bidder must submit the Non-Collusion, Bidder Responsibility, and Minimum Wage Certification Form demonstrating that they meet the following criteria:

## **Bid Procedures and Conditions**

### **Qualifications of Bidder**

- A. Bidders must meet the minimum qualifications of RCW 39.04.350, as amended. Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
  - a. At the time of bid submittal, have a certificate of registration in compliance with chapter [18.27](#) RCW;
  - b. Have a current state unified business identifier number;
  - c. If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title [51](#) RCW; an employment security department number as required in Title [50](#) RCW; and a state excise tax registration number as required in Title [82](#) RCW;
  - d. Not be disqualified from bidding on any public works contract under RCW [39.06.010](#) or [39.12.065](#)(3);
  - e. If bidding on a public works project subject to the apprenticeship utilization requirements in RCW [39.04.320](#), not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter [49.04](#) RCW for the one-year period immediately preceding the date of the bid solicitation;
  - f. Have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12](#) RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and
  - g. Within the three-year period immediately preceding the date of the bid solicitation, 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, as defined in RCW [49.48.082](#), any provision of chapter [49.46](#), 49.48, or [49.52](#) RCW.
- B. In addition to the bidder responsibility criteria above, the Bidder must also meet the following relevant supplemental bidder responsibility criteria applicable to the project:
  - a. The Bidder must have a minimum of three (3) years of experience in roofing for public works or similar projects.
  - b. The Bidder must provide a list of at least three (3) roofing projects of similar scope and size. The list shall include the name, description, location, amount, date of completion, and contact information.

Cowlitz County may conduct reference checks for Bidder whose bid is under consideration for award. The low bidder may be considered unresponsive and ineligible for award if reference checks indicate concerns about the Bidder's performance on projects which may include but not be limited to the quality of construction, management of subcontractors (if used), timeliness, and safety record.

- c. The Bidder shall not currently be debarred or suspended by the Federal government. The Bidder shall not be listed as a current debarred or suspended bidder on the U.S. General Services Administration's "Excluded Parties List System" website. Bidder debarment or suspension status may be verified through this website: <http://www.sam.gov/>. The Owner may also use other sources of information that may be available to otherwise determine whether the Bidder is in compliance with these supplemental criteria.
  - d. The Bidder shall not have been convicted of a crime involving bidding on a public works contract within five (5) years prior to the bid submittal deadline. The Bidder shall provide a duly executed sworn statement (on the included form, or on a form otherwise determined to be acceptable by the Owner), that the Bidder has not been convicted of a crime involving bidding on a public works contract. The Owner may also use other sources of information that may be available to otherwise determine whether the Bidder is in compliance with these supplemental criteria.
  - e. The Bidder's standard subcontract form shall include the subcontractor responsibility language required by RCW 39.06.020, and the Bidder shall have an established written procedure which the Bidder uses to validate the responsibility of each of its subcontractors. The Bidder's subcontract form shall also include a requirement that each of its subcontractors shall have and document a similar procedure to determine whether the sub-tier subcontractors with whom it contracts are also "responsible" contractors as defined per RCW 39.06.020. The Owner may also use other sources of information that may be available to otherwise determine whether the Bidder is in compliance with these supplemental criteria.
  - f. The Bidder shall not have a record of prevailing wage complaints filed against the Bidder within five (5) years prior to the bid submittal date that demonstrates a pattern of failing to pay workers prevailing wages, unless there are extenuating circumstances that are acceptable to the Owner. The Owner may also use other sources of information that may be available to otherwise determine whether the Bidder is in compliance with these supplemental criteria.
  - g. The Bidder shall not have had any public works contract terminated for cause by a government agency during the five (5) year period immediately preceding the bid submittal deadline for the project, unless there are extenuating circumstances acceptable to the Owner. The Bidder shall provide a duly executed sworn statement (on the included form, or in a form otherwise determined to be acceptable by the Owner), that the Bidder has not had any public works contract terminated for cause by a government agency during the five (5) year period immediately preceding the bid submittal deadline for the project. The Owner may also use other sources of information that may be available to otherwise determine whether the Bidder is in compliance with these supplemental criteria.
  - h. Within two (2) years prior to the bid submittal date the Bidder shall not have had a project construction site shut down due to a safety violation (i.e., WISHA/OSHA written citations) from the Washington State Department of Labor & Industries or analogous agency with jurisdiction in the location the work was performed, regardless of whether such willful and/or serious safety violations have been abated or not. The Bidder shall maintain compliance with all safety and health requirements (i.e., WISHA/OSHA) from the Washington State Department of Labor & Industries (or analogous agency with jurisdiction in the location the work is performed). The Owner may verify such information provided with the Washington State Department of Labor & Industries or analogous agency with jurisdiction in the location the work was performed. The Owner may also use other sources of information that may be available to otherwise determine whether the Bidder is in compliance with these supplemental criteria.
- C. If a Bidder fails to supply the required bidder responsibility documentation, information, or materials, the Bidder may be determined by the Owner to be non-responsive, and the bid may be rejected on this basis. If the Owner determines the apparent successful bidder does not meet the bidder responsibility criteria above and is therefore not a responsible bidder, the Owner shall notify the bidder in writing with the reasons for its determination. If the bidder disagrees with the determination, it may appeal the determination within twenty-four (24) hours of receipt

of the Owner's determination by presenting additional written information to the Owner. The Owner will consider the additional information before issuing its final determination. If the Owner's final determination affirms that the bidder is not responsible, the Owner will not execute a contract with any other bidder until two (2) business days after the bidder determined to be not responsible has received the final determination. Please note that the above-described information, materials, and documentation requested by the Owner for purposes of determining bidder responsibility is not necessarily exclusive, and the Owner expressly reserves the right to request additional information, materials, and documentation as may be determined to be necessary or desirable by the Owner in order to evaluate and determine Bidder's compliance with the above-described bidder responsibility criteria. At all times, the Owner may also use other sources of information that may be available to otherwise determine whether the Bidder is in compliance with the forgoing bidder responsibility criteria.

#### NOTICE TO ALL BIDDERS

To report bid rigging activities call: 1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., ET. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

**END OF SECTION**

## **BIDDER REPRESENTATIONS AND CERTIFICATIONS**

In accordance with the Contract Documents, the Bidder must provide the following sworn statement and certification:

I, \_\_\_\_\_, the undersigned declarant, as the duly authorized representative on behalf of \_\_\_\_\_ (herein the "Bidder") hereby make this declaration on the basis of facts within the scope of my firsthand knowledge and authority to which I am competent to testify:

1. I hereby certify, swear, and affirm under penalty of perjury, that the Bidder, as of the date of this declaration (below) meets all of the minimum bidder responsibility qualifications of RCW 39.04.250, as amended.
2. I hereby certify, swear, and affirm under penalty of perjury, that the Bidder, as of the date of this declaration (below) meets all of the minimum project bidding requirements.
3. I hereby certify, swear, and affirm under penalty of perjury, that the Bidder, as of the date of this declaration (below) meets all of the supplemental bidder responsibility criteria as set forth in the Bidder Responsibility Criteria, Section B.
4. I hereby certify, swear, and affirm under penalty of perjury, that the undersigned is the person that submitted the bid herewith, that such bid is genuine and not a sham or collusive, or made in the interest of any person not therein named; and he/she further says that said Bidder has not directly or indirectly induced or solicited any Bidder on the above work and supplies to put in a sham bid, or any other person or corporation to refrain from bidding; and that said Bidder has not in any manner sought by collusion to secure himself to any other person an advantage over any other Bidder or Bidders.
5. I hereby certify, swear, and affirm under penalty of perjury, that no officer or employee of the Owner, having the power or duty to perform an official act or action related to this submittal, shall have or acquire any interest in this submittal, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this submittal.
6. I hereby certify, swear, and affirm under penalty of perjury, that in connection with the performance of the work of this project, if awarded, I will pay each classification of laborer, workman, or mechanic employed in the performance of such work not less than the prevailing rate of wage or not less than the minimum rate of wages as specified in the Contract Documents.
7. I hereby certify, swear, and affirm under penalty of perjury, that in submitting this bid we represent that the bid documents have been read in their entirety and are understood, that the site has been visited or that we have familiarized ourselves with the local conditions under which the work is to be performed, that by signature of this proposal we acknowledge all requirements and that we have signed all certificates contained herein.
8. I hereby certify, swear, and affirm under penalty of perjury, that in submitting this bid we acknowledge the requirements and conditions applicable to deposit in the form of a bid surety bond.
9. I hereby certify, swear, and affirm under penalty of perjury, that to the best of my knowledge the information contained in this proposal is accurate and complete and that I have the legal authority to commit this Firm to a contractual agreement. I realize the final funding for any service is based upon budget levels and the approval of the Owner.

Signature of Authorized Person: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**END OF SECTION**

**BID SURETY BOND FORM**

**NAME OF PROJECT: Admin Roof Replacement**

**PROJECT NUMBER: 2025-0028-01**

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

We, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the COUNTY OF COWLITZ, a Washington State County, in the penal sum of \$ \_\_\_\_\_ ( \_\_\_\_\_ & \_\_\_\_\_ /100 dollars), for the payment of which we jointly and severally bind ourselves, and our legal representatives and successors.

THE CONDITIONS OF THE OBLIGATION are that if the County of Cowlitz shall make timely award to the Principal according to the terms of the bid documents; and the Principal shall, within ten (10) days after notice of the award, exclusive of the day of notice, enter into the contract with the County of Cowlitz and furnishes the contractor's bond (performance and payment bond) with Surety satisfactory to Cowlitz County in an amount equal to one hundred percent (100%) of the amount of the bid proposed including Washington State Sales Tax then this obligation shall be null and void; otherwise if the Principal fails to enter into the contract and furnish the contractor's bond within ten (10) days after notice of the award, exclusive of the day of notice, the amount of the penal sum shall be forfeited to the County; but in no event will the Surety's liability exceed this bond's face amount.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ YEAR 20\_\_\_\_

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(SEAL)

**END OF SECTION**

# AGREEMENT FORM

## COWLITZ COUNTY CONSTRUCTION SERVICES AGREEMENT PROJECT #2023- -01

TITLE:

---

**CONTRACT SUMMARY**

Contract Value: [\$                    ]  
Estimated Completion Date: (    ) continuous days after Notice to Proceed  
Contract Type: Lump Sum, Cost Not-To-Exceed  
Contract Administrator:  
Email:

---

**PARTIES**

**COUNTY:**

Cowlitz County Washington  
C/O Department  
207 N. Fourth Ave, Room 308  
Kelso, WA 98626  
Project Coordinator:  
Phone:  
Email:

**CONTRACTOR:**

Company Name  
Address  
City, State, Zip  
Contact:  
Phone:  
Fax:  
Email:

THIS AGREEMENT made and entered into effective the [ ] by and between COWLITZ COUNTY, a political subdivision of the State of Washington having offices for the transaction of business indicated above and hereinafter referred to as the "County", and the "Contractor", named and having offices for the transaction of business indicated above jointly, hereinafter referred to along with the County as the "Parties".

WHEREAS, the Board of County Commissioners of Cowlitz County pursuant to the provisions of the Revised Code of Washington Section 36.32.120(6) has the care of County property and the management of County funds and business; and

WHEREAS, the Board of County Commissioners of Cowlitz County pursuant to the above cited statutory section and those provisions as set forth in the Revised Code of Washington Section 39.04.155, et seq. did let out for bid the Cowlitz County Morgue; Project #2020-0020-01.

WHEREAS, the Purchasing Service Department on behalf of Cowlitz County did on [ ] open said bid and did on [ ] accept the bid of the Contractor herein as the lowest responsible bidder for Cowlitz County bid [ ].

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties hereto do mutually agree as follows:

**ARTICLE 1. COMPENSATION, WORK AND SERVICES**

The Contractor for the consideration of [ ] (\$ ), not including sales tax, for work performed as specified in the "Contract Documents" as enumerated herein below, shall in strict accordance with all of the provisions therein, perform all work and provide all materials called for by the Contract Documents Project #2020-0020-01. The County agrees to pay the Contractor for said work as specified in the "Contract Documents."

**ARTICLE 2. CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, all conditions of Cowlitz County Morgue; Project #2020-0020-01 and other documents listed below issued prior to the execution of this Agreement and all modifications and change orders issued subsequent thereto. These form a contract and all are as fully a part of the contract as if attached to this Agreement or repeated herein. In the event of a conflict between documents the order of precedence will be the order listed below. An enumeration of the contract documents is set forth below:

- 1.Change Orders; and
- 2.Notice to Proceed; and

3. Notice of Award; and
4. Agreement; and
5. Addenda; and
6. Procurement & Contract Requirements, Project Specifications and Drawings; and
7. The provisions of Cowlitz County Bid No. [REDACTED]; and
8. The bid proposal of the contractor dated [REDACTED]

#### ARTICLE 3. RELATIONSHIP OF THE PARTIES

The parties intend that an independent contractor relationship will be created by this Agreement. The County is interested only in the results to be achieved, and the conduct and control of all services or work will lie solely with the Contractor. No agent, employee, servant or otherwise of the Contractor shall be or shall be deemed to be an employee, agent, servant or otherwise of the County for any purpose, and the employees of the Contractor are not entitled to any of the benefits that the County provides for County employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of his Contract. In the performance of the services herein contemplated, the Contractor is an independent contractor with the authority to control and direct the performance and details of the work, the County being interested only in the results obtained; however, the work contemplated herein must meet the approval of the County pursuant to the provisions of the agreement under which the services and work were let to the Contractor.

#### ARTICLE 4. INDEMNIFICATION

The Contractor is an independent contractor and not the agent or employee of the County. No liability shall attach to the County for entering into this Contract or because of any act or omission of the Contractor except as expressly provided.

The Contractor agrees to defend, indemnify and hold the County and the County's Consultant(s), when used on the project, harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the County and Consultant shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the County or Consultant, their agents or employees. The Contractor's duty to indemnify the County and Consultant for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the County or Consultant, their agents or employees, and (b) Contractor, its agents or employees shall apply only to the extent of negligence of the Contractor or its agents or employees. Contractor's duty to defend, indemnify and hold the County harmless shall include, as to all claims, demands, losses and liability to which it applies, the County's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses.

The Contractor's indemnification shall specifically include all claims for loss liability because of wrongful payments under the Uniform Commercial Code, or other statutory or contractual liens or rights or third parties, including taxes, accrued or accruing as a result of this contract or work performed or materials furnished directly or indirectly because of this contract.

Contractor further agrees that this duty to indemnify County applies regardless of any provisions in RCW Title 51 to the contrary, including but not limited to any immunity of Contractor for liability for injuries to Contractor's workers and employees, and Contractor hereby waives any such immunity for the purpose of this duty to indemnify County.

#### ARTICLE 5. TERMINATION

Contract(s) resulting from this bid may be terminated, in whole or in part, under the following conditions: 1) by mutual written agreement; 2) by the County for breach by the bidder of any of the obligations or requirements set forth in the contract documents. The County retains the option to require the bidder to assume liability for any and all damages, including the excess of re-procuring similar products or services; 3) for the convenience of the County; or 4) by the County for non-appropriation of funds.

#### ARTICLE 6. TERMINATION BY THE COUNTY WITHOUT CAUSE

Notwithstanding any other provisions contained herein, the County, without cause, may terminate the contract between the parties by providing notice to the Contractor. Upon termination under this section: 1) All remaining obligations of the parties are discharged, but any right based upon breach or performance occurring prior to termination survives; 2) If the reasonable costs of performance incurred by the Contractor prior to termination exceed the amount paid by the County to the Contractor on the Contract Sum, the County shall reimburse the Contractor in the amount of such excess; 3) If the amount paid by the County to the Contractor on the Contract Sum exceeds the reasonable costs of performance incurred by the Contractor prior to termination, the Contractor shall reimburse the County in the amount of such excess; 4) Any funds obtained or retained by the Contractor as provided in 2) or 3) of this paragraph, shall constitute full payment and consideration for the services performed by the Contractor prior to termination.

#### ARTICLE 7. MAINTENANCE OF RECORDS

The Firm will maintain, for at least three (3) years after completion of this contract, all relevant records pertaining to this contract. The Firm shall make available to the County or the Washington State Auditor or their duly authorized representatives, at any time during their normal operating hours, all records, books or pertinent information which the Firm shall have kept in conjunction with this Agreement and which the County may be required by law to include or make part of its auditing procedures, an audit trail or which may be required for the purpose of funding the services contracted for herein.

#### ARTICLE 8. VENUE STIPULATION

This Agreement has and shall be construed as having been made and delivered in the State of Washington, and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provisions hereto shall be instituted only in courts of competent jurisdiction within Cowlitz County, Washington, unless relocation or commencement elsewhere is required by law.

#### ARTICLE 9. COMPLIANCE WITH LAWS

The Contractor in the performance of this Agreement agrees to comply with all applicable federal, state and local laws, ordinances and regulations including but not limited to those pertaining to civil rights. The Contractor may not, without the prior written approval of the County, assign, sublet or transfer in whole or in part his interest in this Agreement.

#### ARTICLE 10. INTEGRATION

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties. All Parties have read and understand the above contract and now state that no representations, promises, or agreements not expressed by this Agreement have been made to induce the other to execute the same.

#### ARTICLE 11. LIQUIDATED DAMAGES

Time is of the essence in the performance of the contract. Because the County finds it impractical to calculate the actual costs of delays, it has adopted the Liquidated Damage Table in the Bid Documents.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payments of liquidated damages will in any degree, release the Contractor from further obligation and liabilities to complete the entire work.

#### ARTICLE 12. RECOVERY OF FUNDS

Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to Cowlitz County the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the contractor and Cowlitz County. The rights of Cowlitz County are in addition and without prejudice to any other right Cowlitz County may have to claim the amount of any loss or damage suffered by Cowlitz County on account of the acts or omissions of the Contractor.

#### ARTICLE 13. ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

#### ARTICLE 14. ANTI-KICKBACK

No officer or employee of the County, having the power or duty to perform an official act or action related to this Agreement, shall have or acquire any interest in this agreement, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this Agreement.

#### ARTICLE 15. WAIVER

No officer, employee, agent or otherwise of the COUNTY has the power, right or authority to waive any of the conditions or provisions to this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law. Failure of the COUNTY to enforce at any time any of the provisions of this Agreement or to require at any time performance by CONTRACTOR of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof, or the right of the COUNTY to hereafter enforce each and every such provision.

**ARTICLE 16. EXECUTION**

The PARTIES warrant that the officers/individuals executing below have been duly authorized to act for and on behalf of the Party for purposes of confirming this Agreement.

**ARTICLE 17. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

**ARTICLE 18. THIRD PARTY BENEFICIARIES**

This Agreement is intended for the benefit of the COUNTY and CONTRACTOR and not for the benefit of any third parties.

**ARTICLE 19. SURVIVAL**

Without being exclusive, the Article for Indemnification and the Article for Venue Stipulation of this Agreement shall survive any termination, expiration or determination of invalidity of this Agreement in whole or in part. Any other Articles of this Agreement which, by their sense and context, are intended to survive shall also survive.

IN WITNESS WHEREOF, the said Contractor has executed this instrument, and the said Board of County Commissioners pursuant to resolution duly adopted, has caused this instrument to be executed by and in the name of said Board on the day and year set forth herein.

CONTRACTOR

BOARD OF COUNTY COMMISSIONERS OF COWLITZ COUNTY, WASHINGTON

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dennis P. Weber, Chairman

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Arne Mortensen, Commissioner

\_\_\_\_\_  
Title

\_\_\_\_\_  
Richard R. Dahl, Commissioner

Date: \_\_\_\_\_, 20\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kelly Dombrowsky, Clerk of the Board

**CONTRACTOR'S PERFORMANCE AND PAYMENT BOND**

Bond No. \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_, (Contractor), as Principal, and \_\_\_\_\_, (Bonding Company), as Surety, a corporation duly organized under the laws of the State of \_\_\_\_\_, and authorized to do business as a surety in the State of Washington, are held and firmly bound unto the County of Cowlitz in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), lawful money of the United States of America, plus the total amount of extra orders issued by the County to the Principal pursuant to the terms of the Contract referred to in the next succeeding paragraph hereof, for the payment whereof Principal and Surety bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written proposal dated \_\_\_\_\_, 2021 offered to enter into Contract Number 2021-\_\_\_\_\_-01 with Cowlitz County pursuant to the terms and conditions set forth in the Contract Documents dated \_\_\_\_\_.

WHEREAS, the contract is a public works contract, subject to the provisions of RCW Titles 39 and 60.

THEREFORE, the condition of this obligation is such that if the Principal shall faithfully perform all the provisions of the Contract on its part, and pay all laborers, mechanics, subcontractors and material suppliers, and all persons who supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and indemnify and hold harmless the Obligees from all loss, cost or damage which it may suffer by reason of the failure to do any of the foregoing, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

All persons who have furnished labor, materials or supplies for use in and about the work provided for in the Contract shall have a direct right of action under this bond, to the extent and in the manner set forth in RCW 39.08.

The said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

No final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety hereby waives notice of any modification of the contract or extension of time made by the County.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ YEAR 2021.

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title  
(SEAL)

\_\_\_\_\_  
Title

# **GENERAL CONDITIONS**

## **PART 1 – GENERAL PROVISIONS**

### **1.01 DEFINITIONS**

- A. “Application for Payment” means a written request submitted by Contractor to A/E for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or A/E may require.
- B. “Architect,” “Engineer,” or “A/E” means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. “Change Order” means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- D. “Claim” means Contractor’s exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Part 8.
- E. “Contract Award Amount” is the sum of the Base Bid and any accepted Alternates.
- F. “Contract Documents” means the Advertisement for Bids, Instructions for Bidders, completed Bid Form, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Public Works Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.
- G. “Contract Sum” is the total amount payable by Owner to Contractor, for performance of the Work in accordance with the Contract Documents, including all taxes imposed by law and properly chargeable to the Work, except Washington State sales tax.
- H. “Contract Time” is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- I. “Contractor” means the person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents.
- J. “Day(s)” unless otherwise specified shall mean calendar day(s).
- K. “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- L. “Final Acceptance” means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents, as more fully set forth in Section 6.09 B.
- M. “Final Completion” means that the Work is fully and finally complete in accordance with the Contract Documents, as more fully set forth in Section 6.09 A.
- N. “Force Majeure” means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.04A.
- O. “Notice” means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.
- P. “Notice to Proceed” means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.

- Q. “Owner” means the state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.
- R. “Person” means a corporation, partnership, business association of any kind, trust, company, or individual.
- S. “Prior Occupancy” means Owner’s use of all or parts of the Project before Substantial Completion, as more fully set forth in Section 6.08 A.
- T. “Project” means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- U. “Project Record” means the separate set of Drawings and Specifications as further set forth in paragraph 4.02A.
- V. “Schedule of Values” means a written breakdown allocating the total Contract Sum to each principal category of Work, in such detail as requested by Owner.
- W. “Specifications” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- X. “Subcontract” means a contract entered into by Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.
- Y. “Subcontractor” means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.
- Z. “Substantial Completion” means that stage in the progress of the Work when the construction is sufficiently complete, as more fully set forth in Section 6.07.
- AA. “Work” means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

## **1.02 ORDER OF PRECEDENCE**

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

1. Signed Contract, including any Change Orders.
2. Supplemental Conditions.
3. Modifications to the General Conditions.
4. General Conditions.
5. Specifications. Provisions in Division 1 shall take precedence over provisions of any other Division.
6. Drawings. In case of conflict with the Drawings, large scale drawings shall take precedence over small scale drawings.
7. Signed and completed Bid Form.
8. Instructions to Bidders.

9. Advertisement for Bids.

### **1.03 EXECUTION AND INTENT**

Contractor Representations: Contractor makes the following representations to Owner:

1. Contract Sum reasonable: The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;
2. Contractor familiar with project: Contractor has carefully reviewed the Contract Documents, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;
3. Contractor financially capable: Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
4. Contractor can complete Work: Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.

## **PART 2 – INSURANCE AND BONDS**

### **2.01 CONTRACTOR'S LIABILITY INSURANCE**

General insurance requirements: Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this part shall be licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington. Contractor shall include in its bid the cost of all insurance and bond costs required to complete the base bid work and accepted alternates. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A.M. Best rating shall be indicated on the insurance certificates.

- A. Term of insurance coverage: Contractor shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 5.16.
  1. General Liability Insurance: Commercial General Liability (CGL) on an Occurrence Form. Coverage shall include, but not be limited to:
    - a. Completed operations/products liability;
    - b. Explosion, collapse, and underground; and
    - c. Employer's liability coverage.
  2. Automobile Liability Insurance: Automobile liability
- B. Industrial Insurance compliance: Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act.
- C. Insurance to protect for the following: All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.

- D. Owner as Additional Insured: All insurance coverages shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence the Owner as an additional insured.

## **2.02 COVERAGE LIMITS**

Insurance amounts: The coverage limits shall be as follows:

- A. General Liability Insurance: The Contractor shall have Commercial General Liability coverage with limits of \$2,000,000.00 per occurrence, \$5,000,000 aggregate. This coverage shall include products, completed operations, personal injury, fire damage and medical expense.
- B. Proof of Automobile Insurance: The Contractor shall carry, for the duration of this Agreement, comprehensive automobile liability coverage of \$1,000,000.00 for any vehicle used in conjunction with the provision of services under the terms of this Contract. Said policy shall provide that it shall not be canceled, materially changed, or renewed without forty-five (45) days written notice prior thereto to Cowlitz County.
- C. Workers Compensation: When the Contractor has employees of the company, the Contractor shall carry Worker's Compensation Industrial Injury Insurance coverage and effective in Washington State. Proof of insurance shall be reflected on the Contractor's Certificate of Insurance or by providing the Contractor's State Industrial Account Identification Number.

## **2.03 INSURANCE COVERAGE CERTIFICATES**

- D. Certificate required: Prior to commencement of the Work, Contractor shall furnish to Owner a completed certificate of insurance coverage.
- E. List Project info: All insurance certificates shall name Owner's Project number and Project title.
- F. Cancellation provisions: All insurance certificates shall specifically require 45 Days prior notice to Owner of cancellation or any material change, except 30 Days for surplus line insurance.

## **2.04 PAYMENT AND PERFORMANCE BONDS**

Conditions for bonds: Payment and performance bonds for 100% of the Contract Award Amount, plus state sales tax, shall be furnished for the Work, using the Cowlitz County Performance and Payment Bond form provided. Prior to execution of a Change Order that, cumulatively with previous Change Orders, increases the Contract Award Amount by 15% or more, the Contractor shall provide either new payment and performance bonds for the revised Contract Sum, or riders to the existing payment and performance bonds increasing the amount of the bonds. The Contractor shall likewise provide additional bonds or riders when subsequent Change Orders increase the Contract Sum by 15% or more. No payment or performance bond is required if the Contract Sum is \$35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

## **2.05 ALTERNATIVE SURETY**

When alternative surety required: Contractor shall promptly furnish payment and performance bonds from an alternative surety as required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if required by Owner.

## **PART 3 – TIME AND SCHEDULE**

### **3.01 PROGRESS AND COMPLETION**

Contractor to meet schedule: Contractor shall diligently prosecute the Work, with adequate forces, achieve Final Completion within the Contract Time.

### **3.02 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE**

- A. Owner may suspend Work: Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 Days, or for such longer period as mutually agreed.
- B. Compliance with suspension; Owner's options: Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 Days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
1. Cancel the written notice suspending the Work; or
  2. Terminate the Work covered by the notice as provided in the termination provisions of Part 9.
- C. Resumption of Work: If a written notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Equitable Adjustment for suspensions: Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance directly attributable to such suspension, provided Contractor complies with all requirements set forth in Part 7.

### **3.03 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE**

- A. Owner may stop Work for Contractor's failure to perform: If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. No Equitable Adjustment for Contractor's failure to perform: Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

### **3.04 DELAY**

- A. Force Majeure actions not a default; Force Majeure defined: Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:
1. Acts of God or the public enemy;
  2. Acts or omissions of any government entity;
  3. Fire or other casualty for which Contractor is not responsible;
  4. Quarantine or epidemic;
  5. Strike or defensive lockout;
  6. Unusually severe weather conditions which could not have been reasonably anticipated; and
  7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.
- B. Contract Time adjustment for Force Majeure: Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it

makes a request for equitable adjustment according to Section 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.

- C. Contract Time or Contract Sum adjustment if Owner at fault: Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to Sections 7.02 and 7.03.
- D. No Contract Time or Contract Sum adjustment if Contractor at fault: Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. Contract Time adjustment only for concurrent fault: To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to Section 7.03, but shall not be entitled to an adjustment in Contract Sum.
- F. Contractor to mitigate delay impacts: Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

### **3.05 NOTICE TO OWNER OF LABOR DISPUTES**

- A. Contractor to notify Owner of labor disputes: If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner.
- B. Pass through notification provisions to Subcontractors: Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

### **3.06 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION**

#### **A. Liquidated Damages**

- 1. Reason for Liquidated Damages: Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are outlined in the formula below:

<b>LD = 0.15C/T</b>	
where:	
LD	Liquidated damages per calendar or working day (rounded to the nearest dollar)
C =	Original contract amount plus change orders
T =	Original time for physical completion plus change orders

- 2. Calculation of Liquidated Damages amount: The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.

Liquidated damages will not be assessed for any days for which an extension of time is granted.

3. Contractor responsible even if Liquidated Damages assessed: Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

B. Actual Damages

Calculation of Actual Damages: Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

## **PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS**

### **4.01 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW**

- A. Specifications and Drawings are basis of the Work: The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Specifications, and other provisions of the Contract Documents.
- B. Parts of the Contract Documents are complementary: The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. Contractor to report discrepancies in Contract Documents: Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to A/E in writing.
- D. Contractor knowledge of discrepancy in documents – responsibility: Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.
- E. Contractor to perform Work implied by Contract Documents: Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.
- F. Interpretation questions referred to A/E: Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the A/E.

### **4.02 PROJECT RECORD**

- A. Contractor to maintain Project Record Drawings and Specifications: Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order Proposals (COP). This separate set of Drawings and Specifications shall be the “Project Record.”
- B. Update Project Record weekly and keep on site: The Project Record shall be maintained on the project site

throughout the construction and shall be clearly labeled "PROJECT RECORD." The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.

- C. Final Project Record to A/E before Final Acceptance: Contractor shall submit the completed and finalized Project Record to A/E prior to Final Acceptance.

#### **4.03 SHOP DRAWINGS**

- A. Definition of Shop Drawings: "Shop Drawings" means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.
- B. Approval of Shop Drawings by Contractor and A/E: Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to A/E without evidence of Contractor's approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.
- C. Contractor not relieved of responsibility when Shop Drawings approved: Approval, or other appropriate action with regard to Shop Drawings, by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.
- D. Variations between Shop Drawings and Contract Documents: If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. Contractor to submit 5 copies of Shop Drawings: Unless otherwise provided in Division 1, Contractor shall submit to A/E for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by A/E and 2 sets shall be returned to Contractor.

#### **4.04 ORGANIZATION OF SPECIFICATIONS**

Specification organization by trade: Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

#### **4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS**

- A. A/E, not Contractor, owns Copyright of Drawings and Specifications: The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.
- B. Drawings and Specifications to be used only for this Project: The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.
- C. Shop Drawing license granted to Owner: Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in Section 5.03 and 5.22 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.
- D. Shop Drawings to be used only for this Project: The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, 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 Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

### **PART 5 – PERFORMANCE**

#### **5.01 CONTRACTOR CONTROL AND SUPERVISION**

- A. Contractor responsible for Means and Methods of construction: Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.
- B. Competent Superintendent required: Performance of the Work shall be directly supervised by a competent superintendent who has authority to act for Contractor. The superintendent must be satisfactory to the Owner and shall not be changed without the prior written consent of Owner. Owner may require Contractor to remove the superintendent from the Work or Project site, if Owner reasonably deems the superintendent incompetent, careless, or otherwise objectionable, provided Owner has first notified Contractor in writing and allowed a reasonable period for transition.
- C. Contractor responsible for acts and omissions of self and agents: Contractor shall be responsible to Owner for acts

and omissions of Contractor, Subcontractors, and their employees and agents.

- D. Contractor to employ competent and disciplined workforce: Contractor shall enforce strict discipline and good order among all of the Contractor's employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.
- E. Contractor to keep project documents on site: Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit drawings.
- F. Contractor to comply with ethical standards: Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, comply with the Ethics in Public Service Act RCW 42.52, which, among other things, prohibits state employees from having an economic interest in any public works contract that was made by, or supervised by, that employee. Contractor shall remove, at its sole cost and expense, any of its, or its Subcontractors' employees, if they are in violation of this act.

## **5.02 PERMITS, FEES, AND NOTICES**

- A. Contractor to obtain and pay for permits: Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.
- B. Allowances for permit fees: If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference shall be adjusted by Change Order.
- C. Contractor to comply with all applicable laws: Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

## **5.03 PATENTS AND ROYALTIES**

Payment, indemnification, and notice: Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement.

## **5.04 PREVAILING WAGES**

- A. Contractor to pay Prevailing Wages: Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. Statement of Intent to Pay Prevailing Wages: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the Contractor shall submit, or shall have previously submitted to the Owner for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

- C. Affidavit of Wages Paid: Prior to release of retainage, the Contractor shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.
- D. Disputes: Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.
- E. Statement with pay application; Post Statements of Intent at job site: Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- F. Contractor to pay for Statements of Intent and Affidavits: In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.
- G. Certified Payrolls: Consistent with WAC 296-127-320, the Contractor and any subcontractor shall submit a certified copy of payroll records if requested.

#### **5.05 HOURS OF LABOR**

- A. Overtime: Contractor shall comply with all applicable provisions of RCW 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work more than eight hours in any one calendar day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight hours of each calendar day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours of service.
- B. 4-10 Agreements: Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions, to enter into an agreement with its employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28 shall not apply to the hours, up to forty hours per week, worked pursuant to any such agreement.

#### **5.06 NONDISCRIMINATION**

- A. Discrimination prohibited by applicable laws: Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, Sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.
- B. During performance of the Work:
  - 1. Protected Classes: Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in RCW 49.60.
  - 2. Advertisements to state nondiscrimination: Contractor shall, in all solicitations or advertisements for

employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.

3. Contractor to notify unions and others of nondiscrimination: Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and RCW 49.60.
4. Owner and State access to Contractor records: Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
5. Pass through provisions to Subcontractors: Contractor shall include the provisions of this section in every Subcontract.

### **5.07 SAFETY PRECAUTIONS**

- A. Contractor responsible for safety: Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- B. Contractor safety responsibilities: In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.
- C. Contractor to maintain safety records: Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
- D. Contractor to provide HazMat training: Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
  1. Information. At a minimum, Contractor shall inform persons working on the Project site of:
    - a. WAC: The requirements of chapter 296-62 WAC, General Occupational Health Standards;
    - b. Presence of hazardous chemicals: Any operations in their work area where hazardous chemicals are present; and
    - c. Hazard communications program: The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by chapter 296-62 WAC.
  2. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:
    - a. Detecting hazardous chemicals: Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being

released, etc.);

- b. Hazards of chemicals: The physical and health hazards of the chemicals in the work area;
  - c. Protection from hazards: The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
  - d. Hazard communications program: The details of the hazard communications program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.
- E. Hazardous, toxic or harmful substances: Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
- 1. Illegal use of dangerous substances: Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "hazardous substances"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 Days on the Project site.
  - 2. Contractor notifications of spills, failures, inspections, and fines: Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
- F. Public safety and traffic: All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
- G. Contractor to act in an emergency: In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.
- H. No duty of safety by Owner or A/E: Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

#### **5.08 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS**

- A. Limited storage areas: Contractor shall confine all operations, including storage of materials, to Owner-approved areas.
- B. Temporary buildings and utilities at Contractor expense: Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall be removed by Contractor at its expense upon completion of the Work.
- C. Roads and vehicle loads: Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading

capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

- D. Ownership and reporting by Contractor of demolished materials: Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.
- E. Contractor responsible for care of materials and equipment on-site: Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.
- F. Contractor responsible for loss of materials and equipment: Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

#### **5.09 PRIOR NOTICE OF EXCAVATION**

Excavation defined; Use of locator services: "Excavation" means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line. Before commencing any excavation, Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.

#### **5.10 UNFORESEEN PHYSICAL CONDITIONS**

- A. Notice requirement for concealed or unknown conditions: If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly and in no event later than 7 Days after the first observance of the conditions. Conditions shall not be disturbed prior to such notice.
- B. Adjustment in Contract Time and Contract Sum: If such conditions differ materially and cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefore as provided in Part 7.

#### **5.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES AND IMPROVEMENTS**

- A. Contractor to protect and repair property: Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.
- B. Tree and vegetation protection: Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

## **5.12 LAYOUT OF WORK**

- A. Advanced planning of the Work: Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. Layout responsibilities: Contractor shall lay out the Work from Owner-established baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

## **5.13 MATERIAL AND EQUIPMENT**

- A. Contractor to provide new and equivalent equipment and materials: All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.
- B. Contractor responsible for fitting parts together: Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
- C. Owner may reject defective Work: Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this work, in whatever stage of completion, may be rejected by Owner.

## **5.14 AVAILABILITY AND USE OF UTILITY SERVICES**

- A. Owner to provide and charge for utilities: Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities furnished.
- B. Contractor to install temporary connections and meters: Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

## **5.15 TESTS AND INSPECTION**

- A. Contractor to provide for all testing and inspection of Work: Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.

- B. Owner may conduct tests and inspections: Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:
1. Constitute or imply acceptance;
  2. Relieve Contractor of responsibility for providing adequate quality control measures;
  3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
  4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
  5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- C. Inspections or inspectors do not modify Contract Documents: Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- D. Contractor responsibilities on inspections: Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

#### **5.16 CORRECTION OF NONCONFORMING WORK**

- A. Work covered by Contractor without inspection: If a portion of the Work is covered contrary to the requirements in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense and without change in the Contract Time.
- B. Payment provisions for uncovering covered Work: If, at any time prior to Final Completion, Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes such a request as provided in Part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.
- C. Contractor to correct and pay for non-conforming Work: Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.
- D. Contractor's compliance with warranty provisions: If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under Section 6.08, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired

or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.

- E. Contractor to remove non-conforming Work: Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. Owner may charge Contractor for non-conforming Work: If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor.
- G. Contractor to pay for damaged Work during correction: Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. No Period of limitation on other requirements: Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in Section 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. Owner may accept non-conforming Work and charge Contractor: If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and equitable.

#### **5.17 CLEAN UP**

Contractor to keep site clean and leave it clean: Contractor shall at all times keep the Project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Contractor.

#### **5.18 ACCESS TO WORK**

Owner and A/E access to Work site: Contractor shall provide Owner and A/E access to the Work in progress wherever located.

#### **5.19 OTHER CONTRACTS**

Owner may award other contracts; Contractor to cooperate: Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall reasonably cooperate with the other contractors and with Owner's employees and shall carefully adapt scheduling and perform the Work in accordance with these Contract Documents to reasonably accommodate the other work.

#### **5.20 SUBCONTRACTORS AND SUPPLIERS**

- A. Subcontractor Responsibility: The Contractor shall include the language of this paragraph in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this paragraph apply to all subcontractors regardless of tier. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
  2. Have a current Washington Unified Business Identifier (UBI) number;
  3. If applicable, have:
    - a. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
    - b. A Washington Employment Security Department number, as required in Title 50 RCW;
    - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
    - d. An electrical contractor license, if required by Chapter 19.28 RCW;
    - e. An elevator contractor license, if required by Chapter 70.87 RCW.
  4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
  5. On a project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the Owner's first advertisement of the project.
- B. Provide names of Subcontractors and use qualified firms: Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of \$2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.
- C. Subcontracts in writing and pass through provision: All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- D. Coordination of Subcontractors; Contractor responsible for Work: Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.
- E. Automatic assignment of subcontracts: Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:
1. Effective only after termination and Owner approval: The assignment is effective only after termination by Owner for cause pursuant to Section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and

2. Owner assumes Contractor's responsibilities: After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
3. Impact of bond: The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

## **5.21 WARRANTY OF CONSTRUCTION**

- A. Contractor warranty of Work: In addition to any special warranties provided elsewhere in the Contract Documents, Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor.
- B. Contractor responsibilities: With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
  1. Obtain warranties: Obtain all warranties that would be given in normal commercial practice;
  2. Warranties for benefit of Owner: Require all warranties to be executed, in writing, for the benefit of Owner;
  3. Enforcement of warranties: Enforce all warranties for the benefit of Owner, if directed by Owner; and
  4. Contractor responsibility for subcontractor warranties: Be responsible to enforce any subcontractor, manufacturer, or supplier warranties should they extend beyond the period specified in the Contract Documents.
- C. Warranties beyond Final Acceptance: The obligations under this section shall survive Final Acceptance.

## **5.22 INDEMNIFICATION**

- A. Contractor to indemnify Owner: Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:
  1. Sole negligence of Contractor: The sole negligence of Contractor or any of its Subcontractors;
  2. Concurrent negligence: The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and
  3. Patent infringement: The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.
- B. Employee action and RCW Title 51: In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

## **PART 6 – PAYMENTS AND COMPLETION**

### **6.01 CONTRACT SUM**

Owner shall pay Contract Sum: Owner shall pay Contractor the Contract Sum plus state sales tax for performance of the Work, in accordance with the Contract Documents.

## **6.02 SCHEDULE OF VALUES**

Contractor to submit Schedule of Values: Before submitting its first Application for Payment, Contractor shall submit to Owner for approval a breakdown allocating the total Contract Sum to each principal category of work, in such detail as requested by Owner (“Schedule of Values”). The approved Schedule of Values shall include appropriate amounts for demobilization, record drawings, O&M manuals, and any other requirements for Project closeout, and shall be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

## **6.03 APPLICATION FOR PAYMENT**

- A. Monthly Application for Payment with substantiation: At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.
- B. Contractor certifies Subcontractors paid: By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in Section 1.03, are true and correct, to the best of Contractor’s knowledge, as of the date of the Application for Payment.
- C. Reconciliation of Work with Progress Schedule: At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.
- D. Payment for material delivered to site or stored off-site: If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
1. Suitable facility or location: The material will be placed in a facility or location that is structurally sound, dry, lighted and suitable for the materials to be stored;
  2. Facility or location within 10 miles of Project: The facility or location is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
  3. Facility or location exclusive to Project’s materials: Only materials for the Project are stored within the facility or location (or a secure portion of a facility or location set aside for the Project);
  4. Insurance provided on materials in facility or location: Contractor furnishes Owner a certificate of insurance extending Contractor’s insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
  5. Facility or location locked and secure: The facility or location (or secure portion thereof) is continuously under lock and key, and only Contractor’s authorized personnel shall have access;
  6. Owner right of access to facility or location: Owner shall at all times have the right of access in company of Contractor;
  7. Contractor assumes total responsibility for stored materials: Contractor and its surety assume total responsibility for the stored materials; and
  8. Contractor provides documentation and Notice when materials moved to site: Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and

shall also furnish Notice to Owner when materials are moved from storage to the Project site.

#### **6.04 PROGRESS PAYMENTS**

- A. Owner to pay within 30 Days: Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 Days after receipt of a properly executed Application for Payment. Owner shall notify Contractor in accordance with chapter 39.76 RCW if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Withholding retainage; Options for retainage: Owner shall retain 5% of the amount of each progress payment until 45 Days after Final Acceptance and receipt of all documents required by law or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage. In accordance with chapter 60.28 RCW, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.
- C. Title passes to Owner upon payment: Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.
- D. Interest on unpaid balances: Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in chapter 39.76 RCW.

#### **6.05 PAYMENTS WITHHELD**

- A. Owner's right to withhold payment: Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
  - 1. Non-compliant Work: Work not in accordance with the Contract Documents;
  - 2. Remaining Work to cost more than unpaid balance: Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
  - 3. Owner correction or completion Work: Work by Owner to correct defective Work or complete the Work in accordance with Section 5.16;
  - 4. Contractor's failure to perform: Contractor's failure to perform in accordance with the Contract Documents;  
or
  - 5. Contractor's negligent acts or omissions: Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.
- B. Owner to notify Contractor of withholding for unsatisfactory performance: In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with chapter 39.76 RCW.

#### **6.06 RETAINAGE AND BOND CLAIM RIGHTS**

Chapters 39.08 RCW and 60.28 RCW incorporated by reference: Chapters 39.08 RCW and 60.28 RCW, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein.

#### **6.07 SUBSTANTIAL COMPLETION**

Substantial Completion defined: Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner has full and unrestricted use and benefit of the facilities (or portion thereof designated and approved by Owner) for the use for which it is intended. All Work other than incidental corrective or punch list work shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

## **6.08 PRIOR OCCUPANCY**

- A. Prior Occupancy defined; Restrictions: Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.
- B. Damage; Duty to repair and warranties: Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy. Contractor's one year duty to repair any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

## **6.09 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT**

- A. Final Completion defined: Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing, but in no case shall constitute Final Acceptance which is a subsequent, separate, and distinct action.
- B. Final Acceptance defined: Final Acceptance shall be achieved when the Contractor has completed the requirements of the Contract Documents. The date Final Acceptance is achieved shall be established by Owner in writing. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the payment and performance bonds, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Final payment waives Claim rights: Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in Part 8.

## **PART 7 – CHANGES**

### **7.01 CHANGE IN THE WORK**

- A. Changes in Work, Contract Sum, and Contract Time by Change Order: Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an

equitable adjustment shall be made as provided in Section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.

- B. Owner may request COP from Contractor: If Owner desires to order a change in the Work, it may request a written Change Order Proposal (COP) from Contractor. Contractor shall submit a Change Order Proposal within 14 Days of the request from Owner, 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, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.
- C. COP negotiations: Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in Sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- D. Change Order as full payment and final settlement: If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment 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. Failure to agree upon terms of Change Order; Final offer and Claims: If Owner 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, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 Days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in Part 8.
- F. Field Authorizations: The Owner may direct the Contractor to proceed with a change in the work through a written Field Authorization (also referred to as a Field Order) when the time required to price and execute a Change Order would impact the Project. The Field Authorization shall describe and include the following:
  - 1. The scope of work
  - 2. An agreed upon maximum not-to-exceed amount
  - 3. Any estimated change to the Contract Time
  - 4. The method of final cost determination in accordance with the requirements of Part 7 of the General Conditions
  - 5. The supporting cost data to be submitted in accordance with the requirements of Part 7 of the General Conditions

Upon satisfactory submittal by the Contractor and approval by the Owner of supporting cost data, a Change Order will be executed. The Owner will not make payment to the Contractor for Field Authorization work until that work has been incorporated into an executed Change Order.

## **7.02 CHANGE IN THE CONTRACT SUM**

- A. General Application

1. Contract Sum changes only by Change Order: The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order Proposal.
2. Owner fault or negligence as basis for change in Contract Sum: If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.04.
  - a. Notice and record keeping for equitable adjustment: A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 Days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.
  - b. Content of notice for equitable adjustment; Failure to comply: Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 Days before Contractor's written notice to Owner. 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 of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  - c. Contractor to provide supplemental information: Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with Section 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  - d. Contractor to proceed with Work as directed: Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
  - e. Contractor to combine requests for same event together: 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.
3. Methods for calculating Change Order amount: 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:

- a. Fixed Price: On the basis of a fixed price as determined in paragraph 7.02B.
  - b. Unit Prices:By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
  - c. Time and Materials:On the basis of time and material as determined in paragraph 7.02D.
4. Fixed price method is default; Owner may direct otherwise: When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph 3 above to use when submitting its proposal. 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.

B. Change Order Pricing – Fixed Price

Procedures: When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

1. Breakdown and itemization of details on COP: Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.
2. Use of industry standards in calculating costs: All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.
3. Costs contingent on Owner's actions: If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
4. Markups on additive and deductive Work: The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.
5. Breakdown not required if change less than \$1,000: If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.
6. Breakdown required if change between \$1,000 and \$2,500: If the total cost of the change in the Work or request for equitable adjustment is between \$1,000 and \$2,500, Contractor may 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 definitive to permit the Owner to determine fair value:
  - a. lump sum labor;
  - b. lump sum material;
  - c. lump sum equipment usage;
  - d. overhead and profit as set forth below; and
  - e. insurance and bond costs as set forth below.
7. Components of increased cost: Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:

- a. Craft labor costs: These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall 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" or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.
  - (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.
  - (4) Travel allowance: Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.
  - (5) Safety: Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.
- b. Material costs: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.
- c. Equipment costs: This is 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 in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:
- (1) Associated General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement current edition, on the Contract execution date.
  - (2) The National Electrical Contractors Association for equipment used on electrical work.
  - (3) The Mechanical Contractors Association of America for equipment used on mechanical work.
- The EquipmentWatch Rental Rate Blue Book 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 that shown in the AGC WSDOT Equipment Rental Agreement, current edition on the Contract execution date.
- d. Allowance for small tools, expendables & consumable supplies: Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:

- (1) 3% for Contractor: For Contractor, 3% of direct labor costs.
- (2) 5% for Subcontractors: For Subcontractors, 5% of direct labor costs.

Expendables and consumables supplies directly associated with the change in Work must be itemized.

- e. Subcontractor costs: This is defined as 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 herein for Contractor.
- f. Allowance for overhead: This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum. If the Contractor is compensated under Section 7.03D, the amount of such compensation shall be reduced by the amount Contractor is otherwise entitled to under this subsection (f). 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, estimating costs, 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 rates below:
  - (1) Projects less than \$3 million: For projects where the Contract Award Amount is under \$3 million, the following shall apply:
    - (a) Contractor markup on Contractor Work: For Contractor, for any Work actually performed by Contractor's own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
    - (b) Subcontractor markup for Subcontractor Work: For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
    - (c) Contractor markup for Subcontractor Work: For Contractor, for any work performed by its Subcontractor(s) 6% of the first \$50,000 of the amount due each Subcontractor, and 4% of the remaining amount if any.
    - (d) Subcontractor markup for lower tier Subcontractor Work: For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
    - (e) Basis of cost applicable for markup: The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.
  - (2) Projects more than \$3 million: For projects where the Contract Award Amount is equal to or exceeds \$3 million, the following shall apply:
    - (a) Contractor markup on Contractor Work: For Contractor, for any Work actually performed by Contractor's own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
    - (b) Subcontractor markup for Subcontractor Work: For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
    - (c) Contractor markup for Subcontractor Work: For Contractor, for any Work performed by its Subcontractor(s), 4% of the first \$50,000 of the amount due each Subcontractor, and

2% of the remaining amount if any.

- (d) Subcontractor markup for lower tier Subcontractor Work: For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
  - (e) Basis of cost applicable for markup: The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.
- g. Allowance for profit: Allowance for profit is an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor has been compensated pursuant to the conditions set forth in Section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:
- (1) Contractor/Subcontractor markup for self-performed Work: For Contractor or Subcontractor of any tier for work performed by their forces, 6% of the cost developed in accordance with Section 7.02B 7a. – e.
  - (2) Contractor / Subcontractor markup for Work performed at lower tier: For Contractor or Subcontractor of any tier for work performed by a subcontractor of a lower tier, 4% of the subcontract cost developed in accordance with Section 7.02B 7a. – h.
- h. Insurance and bond premiums: Cost of change in insurance or bond premium: This is defined as:
- (1) Contractor’s liability insurance: The cost of any changes in Contractor’s liability insurance arising directly from execution of the Change Order; and
  - (2) Payment and Performance Bond: The cost of the additional premium for Contractor’s bond arising directly from the changed Work.

The cost of any change in insurance or bond premium shall be added after overhead and allowance for profit are calculated in accordance with subparagraph f. and g above.

### C. Change Order Pricing – Unit Prices

- 1. Content of Owner authorization: Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner’s authorization shall clearly state:
  - a. Scope: Scope of work to be performed;
  - b. Reimbursement basis: Type of reimbursement including pre-agreed rates for material quantities; and
  - c. Reimbursement limit: Cost limit of reimbursement.
- 2. Contractor responsibilities: Contractor shall:
  - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Leave access as appropriate for quantity measurement; and
  - c. Not exceed any cost limit(s) without Owner’s prior written approval.
- 3. Cost breakdown consistent with Fixed Price requirements: Contractor shall submit costs in accordance with

paragraph 7.02B and satisfy the following requirements:

- a. Unit prices must include overhead, profit, bond and insurance premiums: Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead, profit, bond, and insurance costs; and
- b. Owner verification of quantities: Quantities must be supported by field measurement statements signed by Owner.

D. Change Order Pricing – Time-and-Material Prices

1. Content of Owner authorization: Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner's authorization shall clearly state:
  - a. Scope: Scope of Work to be performed;
  - b. Reimbursement basis: Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
  - c. Reimbursement limit: Cost limit of reimbursement.
2. Contractor responsibilities: Contractor shall:
  - a. Identify workers assigned: Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Provide daily timesheets: Identify on daily time sheets all labor performed in accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner's review.
  - c. Allow Owner to measure quantities: Leave access as appropriate for quantity measurement;
  - d. Perform Work efficiently: Perform all Work in accordance with this section as efficiently as possible; and
  - e. Not exceed Owner's cost limit: Not exceed any cost limit(s) without Owner's prior written approval.
3. Cost breakdown consistent with Fixed Price requirements: Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:
  - a. Timesheets: Labor detailed on daily time sheets; and
  - b. Invoices: Invoices for material.

**7.03 CHANGE IN THE CONTRACT TIME**

- A. COP requests for Contract Time: 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. Time extension permitted if not Contractor's fault: If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner 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.

1. Notice and record keeping for Contract Time request: A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 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 Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.
  2. Timing and content of Contractor's Notice: Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 Days before Contractor's written notice to Owner. 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 Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  3. Contractor to provide supplemental information: Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; 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 supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  4. Contractor to proceed with Work as directed: 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.
- C. Contractor to demonstrate impact on critical path of schedule: Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order Proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.
- D. Cost of change in Contract Time: Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 7.03D, subject to the following conditions:
1. Must be solely fault of Owner or A/E: The change in Contract Time shall solely be caused by the fault or negligence of Owner or A/E;
  2. Procedures: Contractor shall follow the procedure set forth in paragraph 7.03B;
  3. Demonstrate impact on critical path: Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and
  4. Limitations on daily costs: The daily cost of any change in Contract Time shall be limited to the items below, less the amount of any change in the Contract Sum the Contractor may otherwise be entitled to pursuant to Section 7.02B 7f for any change in the Work that contributed to this change in Contract Time:
    - a. Non-productive supervision or labor: cost of nonproductive field supervision or labor extended because of delay;

- b. Weekly meetings and indirect activities: cost of weekly meetings or similar indirect activities extended because of the delay;
- c. Temporary facilities or equipment rental: cost of temporary facilities or equipment rental extended because of the delay;
- d. Insurance premiums: cost of insurance extended because of the delay;
- e. Overhead: general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

## **PART 8 – CLAIMS AND DISPUTE RESOLUTION**

### **8.01 CLAIMS PROCEDURE**

- A. Claim is Contractor's remedy: If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in Section 7.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in Section 7.02 or the Contract Time as provided in Section 7.03, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. Claim filing deadline for Contractor: Contractor shall file its Claim within 120 Days from Owner's final offer made in accordance with paragraph 7.01E, or by the date of Final Acceptance, whichever occurs first.
- C. Claim must cover all costs and be documented: The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:
  - 1. Factual statement of Claim: A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
  - 2. Dates: The date on which facts arose which gave rise to the Claim;
  - 3. Owner and A/E employee's knowledgeable about Claim: The name of each employee of Owner or A/E knowledgeable about the Claim;
  - 4. Support from Contract Documents: The specific provisions of the Contract Documents which support the Claim;
  - 5. Identification of other supporting information: The identification of any documents and the substance of any oral communications that support the Claim;
  - 6. Copies of supporting documentation: Copies of any identified documents, other than the Contract Documents, that support the Claim;
  - 7. Details on Claim for Contract Time: If an adjustment in the Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
  - 8. Details on Claim for adjustment of Contract Sum: If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail as required by Section 7.02; and
  - 9. Statement certifying Claim: A statement certifying, under penalty of perjury, that the Claim is made in good

faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.

- D. Owner's response to Claim filed: After Contractor has submitted a fully documented Claim that complies with all applicable provisions of Parts 7 and 8, Owner shall respond, in writing, to Contractor as follows:
1. Response time for Claim less than \$50,000: If the Claim amount is less than \$50,000, with a decision within 60 Days from the date the Claim is received; or
  2. Response time for Claim of \$50,000 or more: If the Claim amount is \$50,000 or more, with a decision within 60 Days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.
- E. Owner's review of Claim and finality of decision: To assist in the review of Contractor's Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in Section 8.02.
- F. Waiver of Contractor rights for failure to comply with this Section: Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by the Contractor unless made in accordance with the requirements of this Section.

## **8.02 ARBITRATION**

- A. Timing of Contractor's demand for arbitration: If Contractor disagrees with Owner's decision rendered in accordance with paragraph 8.01D, Contractor shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than 30 Days after the date of Owner's decision on such Claim; failure to demand arbitration within said 30 Day period shall result in Owner's decision being final and binding upon Contractor and its Subcontractors.
- B. Filing of Notice for arbitration: Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provided to Owner. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:
1. Claims less than \$30,000: Disputes involving \$30,000 or less shall be conducted in accordance with the Northwest Region Expedited Commercial Arbitration Rules; or
  2. Claims greater than \$30,000: Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.
- C. Arbitration is forum for resolving Claims: All Claims arising out of the Work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.
- D. Owner may combine Claims into same arbitration: Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall, upon demand by Owner, be submitted in the same arbitration or mediation.
- E. Settlement outside of arbitration to be documented in Change Order: If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

### **8.03 CLAIMS AUDITS**

- A. Owner may audit Claims: All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.
- B. Contractor to make documents available: In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:
1. Daily time sheets and supervisor's daily reports;
  2. Collective bargaining agreements;
  3. Insurance, welfare, and benefits records;
  4. Payroll registers;
  5. Earnings records;
  6. Payroll tax forms;
  7. Material invoices, requisitions, and delivery confirmations;
  8. Material cost distribution worksheet;
  9. Equipment records (list of company equipment, rates, etc.);
  10. Vendors', rental agencies', Subcontractors', and agents' invoices;
  11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
  12. Subcontractors' and agents' payment certificates;
  13. Cancelled checks (payroll and vendors);
  14. Job cost report, including monthly totals;
  15. Job payroll ledger;
  16. Planned resource loading schedules and summaries;
  17. General ledger;
  18. Cash disbursements journal;
  19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
  20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
  21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in

establishing the actual cost of owning and operating equipment, all such other source documents;

22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
24. Work sheets, software, and all other documents used by Contractor to prepare its bid.

C. Contractor to provide facilities for audit and shall cooperate: The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

## **PART 9 – TERMINATION OF THE WORK**

### **9.01 TERMINATION BY OWNER FOR CAUSE**

- A. 7 Day Notice to Terminate for Cause: Owner may, upon 7 Days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
1. Contractor fails to prosecute Work: Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
  2. Contractor bankrupt: Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
  3. Contractor fails to correct Work: Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
  4. Contractor fails to supply workers or materials: Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
  5. Contractor failure to pay Subcontractors or labor: Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
  6. Contractor violates laws: Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
  7. Contractor in material breach of Contract: Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Owner's actions upon termination: Upon termination, Owner may at its option:
1. Take possession of Project site: Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
  2. Accept assignment of Subcontracts: Accept assignment of subcontracts pursuant to Section 5.20; and
  3. Finish the Work: Finish the Work by whatever other reasonable method it deems expedient.
- C. Surety's role: Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if

any, obligated under any bond provided in accordance with the Contract Documents.

- D. Contractor's required actions: When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.
- E. Contractor to pay for unfinished Work: If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.
- F. Contractor and Surety still responsible for Work performed: Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. Conversion of "Termination for Cause" to "Termination for Convenience": If Owner terminates Contractor for cause and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to Section 9.02.

## **9.02 TERMINATION BY OWNER FOR CONVENIENCE**

- A. Owner Notice of Termination for Convenience: Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Contractor response to termination Notice: Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
  - 1. Cease Work: Stop performing Work on the date and as specified in the notice of termination;
  - 2. No further orders or Subcontracts: Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
  - 3. Cancel orders and Subcontracts: Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
  - 4. Assign orders and Subcontracts to Owner: Assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;
  - 5. Take action to protect the Work: Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
  - 6. Continue performance not terminated: Continue performance only to the extent not terminated
- C. Terms of adjustment in Contract Sum if Contract terminated: If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.
- D. Owner to determine whether to adjust Contract Time: If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

## **PART 10 – MISCELLANEOUS PROVISIONS**

### **10.01 GOVERNING LAW**

Applicable law and venue: The Contract Documents and the rights of the parties herein shall be governed by the laws of the state of Washington. Venue shall be in the county in which Owner's principal place of business is located, unless otherwise specified.

### **10.02 SUCCESSORS AND ASSIGNS**

Bound to successors; Assignment of Contract: Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other, except that Contractor may assign the Work for security purposes, to a bank or lending institution authorized to do business in the state of Washington. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

### **10.03 MEANING OF WORDS**

Meaning of words used in Specifications: Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings or required to complete the installation.

### **10.04 RIGHTS AND REMEDIES**

No waiver of rights: No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall action or failure to act constitute approval or an acquiescence in a breach therein, except as may be specifically agreed in writing.

### **10.05 CONTRACTOR REGISTRATION**

Contractor must be registered or licensed: Pursuant to RCW 39.06, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.

### **10.06 TIME COMPUTATIONS**

Computing time: When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

### **10.07 RECORDS RETENTION**

Six-year records retention period: The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with Section 8.03, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

### **10.08 THIRD-PARTY AGREEMENTS**

No third-party relationships created: The Contract Documents shall not be construed to create a contractual relationship of

any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

#### **10.09 ANTITRUST ASSIGNMENT**

Contractor assigns overcharge amounts to Owner: Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub- Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

#### **10.10 HEADINGS AND CAPTIONS**

Headings for convenience only: All headings and captions used in these General Conditions are only for convenience of reference, and shall not be used in any way in connection with the meaning, effect, interpretation, construction, or enforcement of the General Conditions, and do not define the limit or describe the scope or intent of any provision of these General Conditions.

**END OF SECTION**