

## **JOB ORDER CONTRACT GENERAL CONDITIONS**

### **ARTICLE 1 – GENERAL PROVISIONS**

- 1.01 Definitions
- 1.02 Order of Precedence
- 1.03 Execution and Intent

### **ARTICLE 2 – SCOPE OF SERVICES**

- 2.01 General Information
- 2.02 Documents
- 2.03 Work Authorization
- 2.04 Scheduling of Work
- 2.05 Contract Pricing Coefficients
- 2.06 Owner Field Office and on Site Management

### **ARTICLE 3 – INSURANCE AND BONDS**

- 3.01 Contractor's Liability Insurance
- 3.02 Coverage Limits
- 3.03 Insurance Coverage Certificates
- 3.04 Payment and Performance Bonds
- 3.05 Builder's Risk

### **ARTICLE 4 – TIME AND SCHEDULE**

- 4.01 Progress and Completion
- 4.02 Construction Schedule
- 4.03 Owner's Right to Suspend the Work for Convenience
- 4.04 Owner's Right to Stop the Work for Cause
- 4.05 Delay
- 4.06 Notice to Owner of Labor Disputes
- 4.07 Damages for Failure to Achieve Timely Completion

### **ARTICLE 5 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS**

- 5.01 Design Requirements and Design Documentation
- 5.02 Discrepancies and Contract Document Review
- 5.03 Project Record
- 5.04 Shop Drawings
- 5.05 Organization of Specifications

### **ARTICLE 6 – PERFORMANCE**

- 6.01 Contractor Control and Supervision
- 6.02 Quality Control
- 6.03 Permits, Fees and Notices

- 6.04 Prevailing Wages
- 6.05 Hours of Labor
- 6.06 Nondiscrimination
- 6.07 Submittals
- 6.08 Material and Workmanship
- 6.19 Testing of Materials
- 6.10 Layout of Work
- 6.11 Site Investigation and Conditions Affecting the Work
- 6.12 Differing Site Conditions
- 6.13 Inspection of Construction and Acceptance
- 6.14 Operations and Storage Areas
- 6.15 Protections of Existing Structures, Equipment, Vegetation, Utilities and Improvements
- 6.16 Clean Up
- 6.17 Access to Work
- 6.18 Other Contracts
- 6.19 Subcontractors and Suppliers
- 6.20 Warranty of Construction
- 6.21 Indemnification
- 6.22 Final Acceptance of Work Orders
- 6.23 Performance Evaluation

#### ARTICLE 7 – PAYMENTS AND COMPLETION

- 7.01 Contract Sum
- 7.02 Schedule of Values
- 7.03 Application for Payment
- 7.04 Progress Payments
- 7.05 Payments Withheld
- 7.06 Retainage and Bond Claim Rights
- 7.07 Substantial Completion
- 7.08 Prior Occupancy
- 7.09 Final Completion, etc.

#### ARTICLE 8 – CHANGES

- 8.01 Change in the Work Order Contract Work
- 8.02 Change in the Work Order Sum
- 8.03 Change Order Pricing

#### ARTICLE 9 – CLAIMS AND DISPUTE RESOLUTION

- 9.01 Claims Procedure
- 9.02 Arbitration
- 9.03 Claims Audits

#### ARTICLE 10 – TERMINATION BY OWNER FOR CONVENIENCE

- 10.01 Termination by Owner for Convenience

## ARTICLE 11 – TERMINATION BY OWNER FOR CAUSE

### 11.01 Termination by Owner for Cause

## ARTICLE 12 – MISCELLANEOUS PROVISIONS

- 12.01 Governing Law
- 12.02 Successors and Assigns
- 12.03 Meaning of Words
- 12.04 Rights and Remedies
- 12.05 Contractor Registration
- 12.06 Time Computations
- 12.07 Records Retention
- 12.08 Third-Party Agreements
- 12.09 Antitrust Assignments
- 12.10 Partnering
- 12.11 BEE Requirements

## **JOB ORDER CONTRACT GENERAL CONDITIONS**

### ARTICLE I GENERAL PROVISIONS

#### 1.01 Definitions

- A. “Application for Payment” means a written request submitted by Contractor to the Owner for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner 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. In cases where no Architect, Engineer or A/E is associated with Work or a Work Order, the Owner will act instead.
- C. “Business Equity Enterprise” means, and shall include, all of the following (certified, registered, or self-identified):
  - 1. Small Business Enterprise (SBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is owned and operated independently from all other businesses and either:
    - I. Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which the business entity is proposed to be engaged; or
    - II. Is certified with the Washington State Office of Minority and Women’s Business Enterprises (OMWBE).

2. Disadvantaged Business Enterprise (DBE): Any business certified with the OMWBE.

3. Minority Business Enterprise (MBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority person.

4. Women's Business Enterprise (WBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one woman.

5. Minority Women's Business Enterprise (MWBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority woman.

The term "minority" means a person of Asian, African-American, Hispanic and/or Native American racial or ethnic heritage.

- D. "Change Order" means a written instrument signed by Owner and Contractor stating their agreement upon all of the following, for the Contract or for an individual Work Order: (1) a change in the Work; (2) the amount of the adjustment in the Sum, if any, and (3) the extent of the adjustment in the 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 Article 9.
- E. "Coefficient" is the Contractor's competitively bid price adjustment to the unit prices as published in the Unit Price Book. The contents allowed in the "Coefficient" are further defined in the contract.
- F. "Contract" is the "Job Order Contract" as defined below in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated definitive Work Orders.
- G. "Contract Award Amount" is the "Minimum Committed Amount" and is the minimum dollar amount of total Work Orders that the Owner commits to spending.
- H. "Contract Documents" means the following: the various University departmental Design Guides, as amended from time to time; the JOC Solicitation Documents and Specification Standards for University of Washington Job Order Contracting, dated January 2014, which include the Request for Proposals, together with any addenda thereto, and the Contractor's response to the Request for Proposals; the completed Bid Form; the Request for Final Proposals; Instructions for Bidders; General Conditions; other Special Forms identified in the Appendix to the Specification Standards; Divisions 00 and 01; any and all technical specifications and drawings both identified in the Specification Standards and/or developed in accordance with

the terms of the Contract Documents; Payment and Performance Bonds; any Work Orders issued under this Contract, together with any Change Orders thereto; and this Job Order Contract, together with any Change Orders to this Job Order Contract.

- I. "Contract Sum" is the total amount paid by Owner to Contractor for performance of the Work in accordance with the Contract Documents, including the Contract Award Amount and any amount for Work Orders that is above the Contract Award Amount, including all taxes imposed by law and properly chargeable to the Work, except Washington State Sales Tax.
- J. "Contract Time" is either the number of calendar days allotted, or time indicated through dates, in the Work Order for achieving Substantial Completion of the Work Order.
- K. "Contractor" (also "Job Order Contractor") means the person or entity awarded the Contract who has agreed with Owner to perform Work in accordance with specific Work Orders, associated Project Documents, and the Contract Documents.
- L. "Drawings" are the graphic and pictorial portions of the Project Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- M. "Final Acceptance" means the written acceptance associated with a Work Order issued to Contractor by Owner after Contractor has completed the requirements of the Project Documents, as more fully set forth in Article 6.22.
- N. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in Article 4.05.
- O. "Job Order Contract" (JOC) is a contract between the Owner and a licensed contractor in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated definitive Work Orders for public works as defined in Chapter 39.10 RCW. The Contract and individual Work Orders are further defined and/or limited in location, work content, term, and amounts by the Contract Documents, and other requirements included in the General Conditions.
- P. "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.
- Q. "Notice to Proceed" means a notice from Owner to Contractor that defines the date on which the Contract Time on individual Work Order begins to run.
- R. "Open Contract Sum" means the total sum of all open Work Orders. This term is used to set the parameters for bonding level and insurance requirements.

- S. "Owner" means the University of Washington acting through 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.
- T. "Person" means a corporation, partnership, business association of any kind, trust, company, or individual.
- U. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion.
- V. "Priced Items" means those items contained in the Unit Price Book or included with the Bid.
- W. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Article 4.02.
- X. "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.
- Y. "Project Documents" means the documents associated with a specific Work Order and includes the scope or work, dollar amounts, schedule, drawings and specifications, and all addenda and modifications thereof.
- Z. "Project Record" means the separate set of Work Order Drawings and Specifications as further set forth in Article 5.03.
- AA. "Schedule of Values" means a written breakdown allocating the total Work Order sum to each principle category of Work, in such detail as requested by Owner.
- AB. "Specifications" are that portion of the Project Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- AC. "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.
- AD. "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.
- AE. "Substantial Completion" means that stage in the progress of the Work when the construction is sufficiently complete, as more fully set forth in Article 7.07.

- AF. "Unit Price Book" is the edition of the RS Means Facilities Construction Cost Data Book as specified in the RFP containing specific prices to be used in establishing a price for a Work Order.
- AG. "Work" means the construction and services required by the Contract Documents associated with a specific Work Order, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and the fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.
- AH. "Work Order" is the negotiated and agreed definition of the work to be performed, considering the Work Order Request and Work Order Proposal. The contents of the Work Order are further defined in Article 2.03 of these Contract Documents.
- AI. "Work Order Request For Pricing" is an order issued by an Owner to the Contractor for a definite scope of work to be performed pursuant to a Job Order Contract. Article 2 of these Contract Documents describes what is to be included in the definite scope of work.
- AJ. "Work Order Proposal" is a proposal from the Contractor for the work requested in a Work Order Request. The contents of the Proposal are further defined in Article 2 of these Contract Documents.
- AK. "Start-up Period" The time from the issuance of the master JOC contract until the issuance of the second work order notice to proceed (NTP). If by the second work order the guaranteed \$ 100,000 minimum contract amount is not reached the "Start-up Period" will extend until this amount is obtained.

## 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.

- A. Signed Job Order Contract and Change Orders to the Job Order Contract.
- B. Job Order Contract General Conditions.
- C. Work Orders and Change Orders to Work Orders.
- D. Specifications – Provisions in Division 01 shall take precedence over provisions of any other Division. Specifications for a specific project Work Order shall take precedence over "Specifications Standards for University of Washington Job Order Contracting."
- E. Drawings – in case of conflict within the Drawings, large-scale detail drawings shall take precedence over small-scale plan drawings.
- F. Signed and Completed Bid Form.

- G. Instructions to Bidders.
- H. Request for Final Proposals.
- I. Request for Proposals for Job Order Contracting.

## ARTICLE 2 SCOPE OF SERVICES

### 2.01 GENERAL INFORMATION

- A. This is a fixed period, indefinite quantity delivery order contract for the performance of a broad range of construction, repair, and renovation work on an as-needed basis as may be required by Owner. The specific work requirements will be identified in Work Orders to be issued by Owner.

### 2.02 DOCUMENTS

- A. The current R.S. Means Facilities Construction Cost Data Unit Price Book or other R.S. Means books as required contains pricing information for the Work. The Unit Price Book will be updated effective agreement at the next annual master JOC contract review. Previously issued Work Orders and Changes will not be retroactively re-priced although any Changes priced after receipt of an update will be priced by the updated version of the Unit Price Book. Any Line items added to the Unit Price Book by R.S. Means to or other R.S. Means books after the date of the Contract are excluded unless mutually agreed upon by Owner and Contractor.
- B. The University's JOC Solicitation Documents and Specification Standards for University of Washington Job Order Contracting, dated July 2018, are attached and made part of this Contract.

### 2.03 WORK AUTHORIZATION

As further detailed in 00 42 46, any Work required under this Contract shall be authorized by issuance of formal, written Work Orders, as follows:

- A. As the need exists (as determined by Owner) for performance under the terms of this Contract, Owner will notify verbally or in writing (including e-mail) Contractor of an existing requirement and request a pre-pricing meeting.
- B. Upon the receipt of this request, Contractor shall respond within two (2) working days, or as otherwise agreed, by:
  - 1. Visiting the proposed site in the company of Owner, or;
  - 2. Establishing contact with Owner to further define the scope of the requirement.



- C. After a mutual agreement on the scope of work for the individual requirement, the owner will issue the Work Order Pricing Request and the contractor shall then prepare a proposal for accomplishment of the task unless Contractor, by mutual agreement with the owner, requests not to undertake the Work. If the Work is declined, Contractor will so notify Owner within 5 working days.
- D. The Unit Price Book, and any applicable bid items, shall serve as the basis for establishing the value of the Work to be performed.
- E. Contractor's price proposal and proposed duration schedule shall be submitted within ten (10) working days unless otherwise agreed.
- F. Upon receipt of Contractor's proposal, Owner will review the proposal for completeness and will reach agreement with Contractor on pricing, schedule, and all other terms, prior to issuance of the Work Order Notice to Proceed.
- G. The Contractor shall return a signed copy of the "Work Order Notice to Proceed" along with the project schedule of values within 5 working days. From the time that these are received by the Owner it may require up to 14 working days before billing can be processed on the work order.
- H. In the event Owner does not issue a Work Order after receipt of Contractor's proposal, Owner is not obligated to reimburse Contractor for any costs incurred in the preparation of the proposal.

#### 2.04 SCHEDULING OF WORK

- A. For each Work Order, Owner will issue a Notice to Proceed. The first day of performance under a Work Order shall be the effective date specified in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Contractor. Contractor shall diligently prosecute the Work to completion within the time set forth in the Work Order. The agreed work order time includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup. Therefore, claims for delay based on these elements will not be allowed. When Contractor considers the Work complete and ready for its intended use, Contractor shall request Owner to inspect the Work to determine the status of completion. When Owner determines the Work to be substantially complete in accordance with Article 7.07 A, Owner will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Work Order. Contractor shall proceed promptly to complete and correct items on the list.
- B. Job placement of materials and equipment shall be made with a minimum of interference to Owner operations and personnel.
- C. Furniture and portable office equipment in the immediate work area will be moved by Contractor and replaced to its original location, Owner will designate new locations. If furniture and portable office equipment (or other items) must be moved

and/or stored outside the immediate area, Owner will compensate Contractor for any such transportation and storage costs incurred.

- D. Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by Contractor at no cost to Owner.
- E. If work is scheduled to impact campus vehicular and pedestrian traffic, Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flaggers, wayfinding, ADA access, etc., as required for each Work Order. Proposed traffic control methods shall be submitted to Owner for review.

## 2.05 WORK ORDER PRICING

- A. Contractor shall furnish all supervision, labor, materials, tools, supplies, equipment, transportation, insurance, taxes, required permits, overhead and profit to perform all operations necessary and required in accordance with the terms and conditions of the Contract, and as further specified in individual Work Orders.
- B. Pricing will be provided in excel spread sheet format exported from Means Cost Works. The Contractor upon approval of the Owner may use proprietary software that interfaces with Means Cost Works. If the Contractor chooses to do so, the contractor must provide up to three copies of this software to the Owner at no cost.
- C. The pricing of the Work Order shall be determined by adding together the following:

Any applicable bid items and mutually-agreed to quantities applied to the "Total Bare Cost" rates contained in the Unit Price Book, modified by the City total weighted average City Cost Index, multiplied by the application of the appropriate coefficient. (1) A coefficient of one (1) shall be applied to non-priced items. (2) The City Cost Index for Seattle shall be used for work at the Friday Harbor Laboratory, UW Bothell, the Seattle campus, UW Medical Center, and Harborview Medical Center. The City Cost Index for Tacoma shall be used for UW Tacoma and Pack Forest. Other remote locations shall use the City Cost Index for the closest indexed city to the location. If work is requested at other University owned properties not addressed the coefficient for the nearest or most related site will be used and the closest city found in Means City Cost Index to the construction site will establish the City Cost Index.

This price, together with any design support work requested by Owner as described in Article 5.01 shall be the total compensation paid to Contractor absent unforeseen conditions and Owner-directed changes.

- 1. Coefficients. The Contractor Coefficient includes the following indirect Contractor expenses, overhead and profit:

- a. Non-specified staff and consultant costs and benefits to include costs by Contractor's firm for taxes, all B&O taxes for the cost of the work, contributions, assessments, and benefits required by law or collective bargaining agreements. For personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions are considered to be provided within wages and salaries paid. The reference to "consultant" in line one of this paragraph includes any consultant that is hired by the contractor to perform functions that are defined elsewhere in these documents. All responsibilities of such consultants are to be covered by the coefficient. An example would be: the contractor is short of staff and hires a consultant to provide estimating services. This is a task that is covered under the coefficient and would not be reimbursed by the Owner.
- b. All corporate travel, oversight, and per diem expenses.
- c. Solicitation of subcontractors. The Contractor shall manage the printing and distribution of any Work Order bid packages.
- d. All general reproduction, phone, facsimile charges, postage, and so forth.
- e. All office support of the Contractor's firm for this project, including direct costs, indirect costs, company overhead and so forth.
- f. Legal expenses incurred in the administration of the contract and subcontracts.
- g. All work necessary to establish and maintain an effective quality control system, as further defined in Article 6.02.
- h. Bonds and Insurance

Performance & Payment Bonds: Contractor shall include within its coefficient the cost for providing a payment and performance bond in the full amount of \$4,000,000, plus Washington State Sales Tax, as specified in Article 3.04 A. Upon award of the Contract, the Contractor shall provide the above bonds in the form stipulated in this contract. As the contract value increases, the amount of the bonds will be increased.

Retainage Bond: Contractor shall include within its coefficient the cost for providing a retainage bond, as more fully set forth in Article 7.04 B.

General Liability Coverage. For the duration of coverage of the type and the amounts specified in this Contract, as more fully set forth in Article 3.01.

- i. Fees for filing the Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid on each Work Order shall be included in the Coefficient.
  - j. Overhead and Profit:  

Contractor shall include in the coefficient for all overhead, profit on non-craft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, office engineering, estimating costs, additional overhead of any kind, and any other incidentals to the Work. It shall be strictly limited in all cases to comply with Chapter 39.10 RCW.
  - k. Unless specifically excluded, all other obligations of Contractor under this Contract shall be included in the Coefficient.
2. Unit Price Book. The following sections and line items of the Unit Price Book are not allowable for use and are excluded.
    - a. Means 2017 CSI Format
      - 0121 Allowances
      - 0131 Project Management and Coordination
      - 0132 Construction Progress Documentation except for 013233, Construction Photos, which is included
      - 0141 Regulatory Requirements except for 014126 Permits Rule of Thumb, most cities, which is included
      - 0151 Temporary Utilities
      - 0152 Construction Facilities
      - 22 01 02.20 4000 Add to labor for work in existing occupied buildings
      - 22 01 02.20 9000 Other factors to be considered are:  
Assembly Section A-G
  3. Non-priced items are specific line items not found in the Unit Price Book. If needed, Contractor shall submit unit prices for non-priced items that include reimbursement for all direct and indirect costs of the work, including overhead and profit:
    - a. Direct costs for Labor and Materials:  
Owner may request up to three bids from sources acceptable to Owner.
    - b. Equipment Costs: If not found in the Unit Price Book, 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 General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement; current edition.
- 2) The State of Washington Utilities and Transportation Commission for trucks used on highways.
- 3) The National Electrical Contractors Association for equipment used for electrical work.
- 4) The Mechanical Contractors Association of America for equipment used on mechanical work.

The Equipment Watch 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.

#### 4. Hours of Work

Standard hours of work, nonstandard weekday hours, and nonstandard weekend or holiday hours shall be as defined in Section 002113, Paragraph 3, COEFFICIENTS.

#### D. Reserved

- E. A Coefficient of 1.0 shall be applied to non-priced items. For non pre-priced items the coefficient will be actual cost times 1.08.
- F. Items that are treated as non-pre-priced on two or more separate work orders may be incorporated into the Unit Price Book for future work based on the pricing established for the previous work orders. These costs may be escalated yearly based on the issuance of a new Means Historical Cost Index.

### 2.06 OWNER FIELD OFFICE AND ON SITE MANAGEMENT

#### A. Responsibilities for field office:

1. During the contract start-up period, until the second Work Order notice is issued and as further defined in Article 1.01 AK, the Owner will provide at no cost to the Contractor an office space. All furnishings, equipment and communications connections will be the responsibility of the Contractor.
2. After the start-up period and until the final acceptance of the last open work order under this Contract, the Contractor shall maintain an office within five (5) miles of the University Seattle Campus, solely at the Contractor's own expense. All costs associated with the office including, but not limited to, rent/lease and/or related building charges, furnishings, equipment, utilities and communications connections will be the sole responsibility of the Contractor.

#### B. The contractor shall supply dedicated staff based on the following requirements:

1. From the issuance of the second work order request for pricing or the first work order NTP, whichever comes first, the Contractor will have a minimum of one full time person with Project Manager or Superintendent level skills.
2. Once the Contractor obtains three (3) active construction work orders (defined as any project on which the Contractor has received a notice to proceed but has not yet reached final acceptance), the Contractor shall, at a minimum, employ on-site, one full-time project manager and one full-time field superintendent.
3. Once the Contractor obtains ten (10) active construction work orders (defined as any project on which the Contractor has received a notice to proceed but has not yet reached final acceptance) the Contractor shall at a minimum employ on-site, one full-time project manager, one full-time field superintendent and one full-time project engineer.
4. Items one, two and three above shall be considered minimum requirements. The Contractor shall at all times maintain adequate staffing to fully comply with the Contract Documents, meet the project and construction management demands of work in pricing, construction and through final acceptance.

### ARTICLE 3 INSURANCE AND BONDS

#### 3.01 CONTRACTOR'S LIABILITY INSURANCE

##### A. GENERAL

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 Liens Law of the State of Washington. Contractor shall include in its co-efficient the cost of all insurance and bond costs required to complete the work of all Work Orders. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A.B. Best rating shall be indicated on the insurance certificates.

The insurance certificate holder shall be:

University of Washington  
Capital Planning & Development  
Box 352205  
Seattle, WA 98195

- ##### B.
- Contractor shall maintain the following insurance coverage during the Work and for one year after Final Acceptance of all work orders. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Article 6.13.

1. Commercial General liability (CGL) on an Occurrence Form which will include coverage for:
  - a. Bodily Injury, property damage
  - b. Premises operations
  - c. Independent contracts
  - d. Broad-form contractual liability
  - e. Stop-gap
  - f. Completed operations/products liability;
  - g. Explosion, collapse, and underground (XCU); and
  - h. Employer's liability coverage.
  - 1.A.: XCU: The Contractor's CGL insurance must not exclude perils generally known as XCU (explosion, collapse, and underground property damage), subsidence, absolute earth movement (except as it pertains to earthquake peril only) or any equivalent peril.
  - 1.B.: Products Complete Operations Additional Insured: The Contractor's CGL insurance must include the Owner as an additional insured states on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provisions. The Products Completed Operations additional insured status for the Owner must remain in effect for not less than 3 year following Final Completion of the last Work Order.
2. Automobile liability: Commercial Automobile Liability with a combined single limit of not less than \$1,000,000 for each accident. Coverage shall include Bodily Injury and Property Damage Liability for all owned, non-owned, leased, and hire automobiles and contains waiver of Subrogation in favor or the Owner. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required to the Author Liability policy unless the transportation pollution risk is covered under the Contractor's Pollution insurance policy.
3. Contractor's Pollution Liability (CPL) policy covering against claims for bodily injury, property damage and cleanup costs/environmental damages arising from pollution conditions caused in the performance of covered operations.
  - a. If the work involves remediation, abatement, repair, maintenance or other work with asbestos containing materials, lead-containing products (paint, coatings, components), mercury, chemicals, underground storage tanks, and/or other hazardous materials, the CPL policy shall not exclude such coverage, or a specific policy covering such exposure shall be required from the Contractor or the subcontractor performing such work.
  - b. If the work involves transporting hazardous materials or waste, a separate policy or endorsement to the CPL policy specifically providing coverage for liability and cleanup, arising from an upset or collision during

transportation of hazardous materials is required from the Contractor or subcontractor performing such work.

Such policy shall name the Owner as an additional insured, be primary and noncontributory, and provide at least 45 days notice of cancellation or non-renewal to the Owner. If the work is performed by a subcontractor and such coverage is provided by the subcontractor, coverage shall name both the Contractor and Owner as additional insureds.

- C. 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.
- D. 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.
- E. All insurance coverages shall name the Board of Regents of the University of Washington as an additional insured with respect to the liability arising out of work performed by Contractor, and an additional insured endorsement to the policy must be provided to the Owner. All insurance coverages shall be endorsed to be primary and non-contributory with any insurance maintained by the University of Washington, provide a waiver of any rights of subrogation against the University of Washington, and contain a severability of interest provision in favor of the University of Washington, and all insurance certificates shall evidence full compliance with the above enumerated requirements.

### 3.02 COVERAGE LIMITS

The coverage limits shall be as follows:

- A. Limits of Liability shall not be less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile Liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.
- B. \$2,000,000 Combined Single Limit Annual General Aggregate.
- C. \$2,000,000 Annual Aggregate for Products and Completed Operations Liability.
- D. \$1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss. Automobile coverage shall be for all owned, non-owned and hired vehicles.
- E. The Contractor must provide minimum Excess or Umbrella Liability coverage limits of \$4M each occurrence in excess of the primary CGL and Automobile liability insurance limits stated above. The minimum total limits of \$5M may also be satisfied with primary CGL insurance limits or any combination of primary excess/umbrella limits.



- E. \$2,000,000 each claim, \$2,000,000 aggregate, Contractor's Pollution Liability.

### 3.03 INSURANCE COVERAGE CERTIFICATES

- A. Prior to commencement of the Work, Contractor shall furnish to Owner a certificate of insurance demonstrating coverage as required by the Contract Documents.
- B. 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.

### 3.04 PAYMENT AND PERFORMANCE BONDS

- A. Upon execution of the Contract, the Contractor shall provide a separate Payment and Performance bond each in the amount of \$4,000,000, plus Washington State Sales Tax. At the beginning of the second year of the Contract, the Contractor shall provide a separate Payment and Performance bond, or a rider to the original Payment and Performance bonds each, for a total of \$8,000,000, less the dollar amount of Work Orders that have received Final Acceptance and for which the retainage bond obligation has been released by the Owner, plus Washington State Sales Tax. If the Owner elects to extend the Contract for a third and final year, the Contractor shall provide a separate Payment and Performance bond or a rider to the original Payment and Performance bonds each for a total of \$12,000,000, less the dollar amount of Work Orders that have received Final Acceptance and for which the retainage bond obligation has been released by the Owner, plus Washington State Sales Tax.
- B. AIA Payment Bond and Performance Bond forms A312 are required by the Owner for the work of this contract. These forms must be obtained from the Contractor's bonding company. The Payment Bond shall cover payment to laborers and mechanics, including payments to Employee Benefit Funds, and payments to subcontractors, material suppliers, and persons who shall supply such person or persons, or subcontractors with materials and supplies.

### 3.05 BUILDER'S RISK

Owner maintains a property policy for coverage of activities of this size. The policy covers the Owner's risks. If the Contractor would like additional coverage for builder's risk, Contractor can purchase their own builder's risk coverage at their own expense.

## ARTICLE 4 TIME AND SCHEDULE

### 4.01 PROGRESS AND COMPLETION

- A. Contractor shall diligently prosecute the Work, with adequate forces, achieve Substantial Completion within the Contract Time, and achieve Final Completion within a reasonable period thereafter.

## 4.02 CONSTRUCTION SCHEDULE

### PROGRESS SCHEDULE

- A. Contractor shall submit with each Work Order Request for Pricing a proposed duration schedule for the Work. The schedule shall indicate proposed Work Order start date, on-site date, constraining dates indicated by Owner on Work Order Request, constraining dates in the Contractors work that might affect Owner, such as utility shutdowns and access or use limitations of the site, key dates of interest such as start or complete of subcontractors efforts, and Substantial and Final Completion dates. Any mutually-agreed adjustments to this schedule will be incorporated in the Work Order Notice to Proceed.
- B. A pre-construction meeting will be scheduled by the owner prior to the contractor mobilizing on site. At this pre-construction meeting the contractor shall have their schedule updated and presented in a Critical Path Format.
- B. The Schedule shall be submitted in a form acceptable to the Owner and be capable of being transmitted electronically.
- C. The contractor shall prepare a weekly, or other period agreed to by Owner and Contractor, Short Interval Schedule (See Appendix A), Contractor shall submit this updated Short Interval Schedule at to Owner indicating actual progress. This schedule shall show the previous week's progress, the current week and the anticipated activities for the coming two weeks. If, in the opinion of Owner, the Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in Article 4.05, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Progress Schedule, and if directed by Owner, Contractor shall submit a corrective action plan or revise the Progress Schedule to reconcile with the actual progress of the Work.
- D. Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone on the Progress Schedule. Contractor shall indicate the expected duration of the delay and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

## 4.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE

- A. Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work Order for up to 90 days, or for such longer period as mutually agreed.
- B. Upon receipt of a written notice suspending the Work Order, 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 Order; or
  2. Terminate the Work Order covered by the notice as provided in the termination provisions of Article 10.01.
- C. If a written notice suspending the Work Order is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. 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 Article 8.

#### 4.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order the Contractor, in writing, to stop Work, or any portion thereof, and present a cure for the default.
- B. 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.

#### 4.05 DELAY

- A. Any delay in, or failure of schedule performance by Owner or Contractor, other than the payment of money, shall not constitute a default if and to the extent the cause for such delay, or failure of schedule performance, was attributable to unforeseeable circumstances 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. Labor strike or 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. Contractor may be entitled to an extension of 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 Article 8. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.
- C. Contractor may be entitled to an extension of 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 of negligence of the Owner, provided the Contractor makes a request according to Article 8.
- D. Contractor shall not be entitled to an extension of 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. To the extent any delay or failure of performance was **concurrently** caused by the Owner and Contractor, Contractor may 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 Article 8, but shall not be entitled to an adjustment in Contract Sum.
- F. 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.

#### 4.06 NOTICE TO OWNER OF LABOR DISPUTES

- A. 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. 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 an 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.

#### 4.07 RESERVED

### ARTICLE 5 SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

## 5.01 DESIGN REQUIREMENTS AND DESIGN DOCUMENTATION

- A. Design Requirements are to be included in a Work Order Request and are intended to document Owner requirements for basic physical objectives to be achieved by accomplishing the Work and any specific required design features. The Design Requirements shall include sufficient information on location, dimensions, quantities, physical interfaces with existing structures and systems, and desired functional characteristics, so that the Contractor can proceed with a Work Order Proposal. If the Owner does not also provide Design Documentation such as sketches, lists, Specifications, and Drawings, the Contractor can proceed with preparation of an appropriate level of detail of Design Documentation, as necessary for preparing the Work Order Proposal, with the approval of the Owner. The Contractor-prepared Design Documentation is subject to the review and approval of the Owner as part of the Work Order Proposal negotiation. Any additional Design Documentation prepared by the Contractor during the course of the Work is also subject to Owner review and approval.
- B. Design Documentation requirements will be defined in the Work Order Request and will be tailored to be appropriate for the complexity and size of the requested Work. Owner approved design work if provided by the Contractor shall be compensated by the Owner. The contractor shall provide a separate line item in the work order pricing for this design.

## 5.02 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW

- A. The intent of the Design Documentation is to scope 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 Design Documents and other provisions of the Contract Documents.
- B. 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 design documentation, or shown on the design documentation and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. 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 Owner in writing.
- D. Contractor shall do no Work without applicable design documentation, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and knows, or reasonably should have known, that any one 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 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. Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the Owner.

#### 5.03 PROJECT RECORD

- A. Contractor shall legibly mark in ink on a separate set of the Design Documentation 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 Design Documents shall be the "Project Record".
- B. 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. Contractor shall submit the completed and finalized Project Record to Owner prior to Final Acceptance.
- D. Owner reserves the right to require electronic project record information regarding updated assets and infrastructure into a format designated at any time during the active JOC contract.

#### 5.04 SHOP DRAWINGS

- A. "Shop Drawings" means documents and other information required to be submitted by Contractor pursuant to the Work Order, 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, if required, 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 on a particular Work Order, or as 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. 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 Owner 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 Owner and A/E review. Owner and 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 Owner, or A/E has approved or taken other appropriate action. Owner and A/E shall respond to Shop Drawings 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 Work Order may be returned without action.
- C. 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. 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 Owner or 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 Work Order; a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. Unless otherwise provided in Division 01 or in an individual Work Order, Contractor shall submit to Owner for approval electronic PDF Shop Drawings.

#### 5.05 ORGANIZATION OF SPECIFICATIONS

- A. Specifications are prepared in sections which generally conform 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.

## ARTICLE 6 PERFORMANCE

### 6.01 CONTRACTOR CONTROL AND SUPERVISION

- A. 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 Work Order gives other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.
- B. At all times during performance of a Work Order and until the Work is completed and accepted, Contractor shall directly superintend the Work on site or assign and have on site a competent superintendent who is satisfactory to Owner and has authority to act for Contractor. Owner may require Contractor to remove the superintendent from the Work, 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. Failure by the superintendent to maintain and submit required daily reports may be grounds for Owner to request removal of superintendent. Daily reports shall be turned in if working on punch list. Daily reports will include hours worked.
- C. Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, and their employees and agents.
- D. 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 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 Contractor or Subcontractor employees, if they are in violation of this act.

#### F. Working Off Hours

When work is to be performed during other than normal working hours or on University of Washington holidays, Contractor shall give Owner prior notice so that Owner's Police Department may be properly notified. Any construction activity between the hours of 5:00 p.m. to 7:00 a.m. is subject to approval of Owner.

- G. Contractor to comply with University of Washington's Campus Conduct Code



Contractor shall ensure that its owner(s), employees, and those of its Subcontractors, comply with the University's conduct on campus code, WAC 478-124-020, which, among other things, prohibits the possession or use of firearms or other dangerous weapons or instrumentalities on the University campus, except for authorized University purposes. At the discretion of the University, Contractor shall remove from the University campus, at its sole cost and expense, any of its, or its Subcontractors' employees, if they are in violation of the code."

## 6.02 QUALITY CONTROL

- A. As proposed, the Contractor is responsible for quality control and shall establish and maintain an effective quality control system. The Quality Control (QC) system shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations, both on-site and off-site that complies with Work Order requirements, and are keyed with the construction schedule. The Contractor shall review and certify as correct, complete, and in compliance with equipment as required by the Contract Documents. Quality Control is the sole responsibility of the Contractor.

## 6.03 PERMITS, FEES AND NOTICES

- A. Unless otherwise provided in the Work Order, Contractor shall obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Owner will pay the permitting authority directly for the cost of any building permit. All other permits are the financial responsibility of the Contractor. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.
- B. 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.

## 6.04 PREVAILING WAGES

- A. Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of each Work Order 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. The effective date of prevailing wages for each Work Order shall be the rates in effect at the time each individual Work Order is issued.
- B. Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors, of any tier, whose work is included in the application for payment, a Statement of Intent to Pay Prevailing Wages (Intent) must be approved by the Department of Labor and Industries, certifying the rate of hourly

wage to be paid or paid to each classification of laborers, workers, or mechanics. Such rates of hourly wage shall not be less than the prevailing wage rate.

Prior to release of the retainage bond, the Contractor must have an Affidavit of Wages Paid (Affidavit) approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.

1. If the Contractor is not performing with its own employees any work subject to prevailing wages on any Work Order, Contractor may file one Intent before commencing the first Work Order, and one Affidavit after the work of the last Work Order has been completed.
  2. In the event the Contractor employs its own workers subject to prevailing wage requirements who will perform work for any Work Order under this Contract, the Contractor must have an Intent approved by the Department of Labor and Industries for each Work Order issued employing Contractor's own workers.
  3. For every Work Order issued, Contractor must have an Intent approved by the Department of Labor and Industries from each subcontractor (of any tier) who performed work on the Work Order.
  4. After the work of each Work Order has been completed, the Contractor must have an Affidavit approved by the Department of Labor and Industries from each subcontractor (of any tier) who performed on the Work Order.
- C. 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.
- D. Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the pre-filed Statement(s) of Intent to Pay Prevailing Wages, and include the number assigned by the Department of Labor and Industries to the approved Intent. Copies of the approved Statement(s) of Intent to Pay Prevailing Wages 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.
- E. 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 to Pay Prevailing Wages and/or Affidavit of Wages Paid submitted to the Department of Labor and Industries for certification.

#### 6.05 HOURS OF LABOR

- A. 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 or 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' service.

- B. 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.

#### 6.06 NONDISCRIMINATION

- A. 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, and the Washington State Law Against Discrimination, RCW 49.60. 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. 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. 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 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. 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. Contractor shall include the provisions of this section in every Subcontract.

#### 6.07 SUBMITTALS

- A. Within seven (7) working days of Intent to Award of contract and prior to the issuance of any work order Requests for Pricing, a copy of the company Safety Program shall be provided to the Owner. Through the duration of the contract or possible extension of the contract, when changes are made to personnel or other aspects of the submitted Safety Program the Contractor shall provide the Owner with a written amendment to or revision of their Safety Program within 10 days of that change.

The Safety program shall contain, at a minimum, the following:

1. Organizational, including names of individuals who will perform safety duties, titles, work assignments authority and reporting relationships.
  2. Training Program. Who, how and when training is provided; method of employee training concerning safety rules and procedures; training in use of protective equipment.
  3. Protective Equipment. List of personal protective equipment to be provided to employees.
  4. Accident Preventions and Loss Control Plan. Work site inspection and hazard correction procedures; disciplinary procedures for safety infractions; accident response, investigation and reporting procedures.
  5. Regular Safety Meetings. On-site weekly or other frequency as appropriate, safety meetings mandatory for all employees.
- B. For individual work orders an appropriate site specific safety plan tailored to the needs of the particular work order project and to the types of hazards involved and in compliance with WISHA requirements shall be provided to the Owner within 10 working days following the NTP or prior to mobilization on site whichever comes first.
  - C. All required product submittals for individual work orders shall be given to the Owner within 15 working days of notice to proceed.
  - D. All shop drawing submittals for individual work orders shall be given to the Owner within 20 working days **after notice** to proceed or as otherwise mutually agreed upon

between Contractor and Owner but in no case shall it be later than ten (10) working days prior to required **date of work to be accomplished.**

#### 6.08 MATERIAL AND WORKMANSHIP

- A. All equipment, material, and articles incorporated into the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. Contractor shall ensure that all equipment, materials and articles incorporated into the Work shall be asbestos free. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Contractor, may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Owner, is equal to that named in the specifications.
- B. Contractor shall obtain Owner's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, Contractor shall furnish to Owner the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the Contract or by Owner, Contractor shall also obtain Owner's approval of the material or articles which Contractor contemplates incorporating into the Work. When requesting approval, Contractor shall provide full information concerning the material or articles. When directed to do so, Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- C. All work under the Contract shall be performed in a skillful and workmanlike manner.

#### 6.09 TESTING OF MATERIALS

- A. Unless otherwise specified in a Work Order, the Contractor shall be responsible for any required testing of materials prior to incorporation into the Work.

#### 6.10 LAYOUT OF WORK

- A. Contractor shall lay out its work in accordance with the Project Documents and shall be responsible for all measurements in connection with the layout of the Work. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the Work. Contractor shall also be responsible for maintaining and preserving all control points established by Owner.

#### 6.11 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. Contractor acknowledges that it has taken steps reasonably 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 roads;
  3. Uncertainties of 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 work performance.
- B. Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of this Contract.

#### 6.12 DIFFERING SITE CONDITIONS

- A. Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:
1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Project Documents, or
  2. Unknown physical conditions at the site, or an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Project Documents.
  3. If Contractor encounters mold in the course of its work it shall notify Owner to evaluate what action might be necessary. Contractor shall ensure that all building materials used during the work are dry prior to incorporation into the Work. If Contractor encounters water intrusion from any source it shall take immediate steps to ensure that any effected material is dry according to generally accepted industry standards.
- B. Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Work Order modified in writing accordingly.
- C. No request by Contractor for an increase in value to the Work Order under this Section shall be allowed, unless Contractor has given the written notice required.

- D. No request by Contractor for an equitable adjustment to the Work Order for differing site conditions shall be allowed if made after final payment under such Work Order.

#### 6.13 INSPECTION OF CONSTRUCTION AND CORRECTION OF NON-CONFORMING WORK

- A. As proposed, the Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Work Order requirements. Contractor shall maintain complete inspection records and make them available to Owner. All work shall be conducted under the general direction of Owner and is subject to inspection and test by Owner at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- B. Owner inspections and tests are for the sole benefit of Owner and do not:
  - 1. Relieve Contractor of responsibility for providing adequate quality control measures;
  - 2. Relieve Contractor of responsibility for damage to or loss of the material before acceptance;
  - 3. Constitute or imply acceptance; or
  - 4. Affect the continuing rights of Owner after acceptance of the complete work under Article 6.20.
- C. The presence or absence of an inspector does not relieve Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Owner's written authorization.
- D. Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Contractor any additional cost of inspection or test when Work is not ready at the time specified by Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Work Order.
- E. Contractor shall, without charge, replace or correct Work found by Owner not to conform to Work Order requirements, unless Owner consents to accept the Work with an appropriate adjustment in Contract price. Contractor shall promptly segregate and remove rejected material from the premises.

- F. If Contractor does not promptly replace or correct rejected Work, Owner may:
  - 1. By Contract or otherwise, replace or correct the Work and charge the cost to the Contractor or
  - 2. Terminate for default Contractor's right to proceed.
- G. If, before acceptance of the entire Work Order, Owner decides to examine already completed Work by removing it or tearing it out, Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or its subcontractors, Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.
- H. 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 Article 6.20, 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.

#### 6.14 OPERATIONS AND STORAGE AREAS

- A. Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Owner.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Contractor only with the approval of Owner and shall be built with labor and materials furnished by Contractor without expense to Owner. The temporary buildings and utilities shall be removed by Contractor at its expense upon the completion of the Work. With the written consent of Owner, the buildings and utilities may be abandoned and need not be removed.
- C. Contractor shall use only established roadways or temporary roadways constructed by Contractor when and as authorized by Owner. Contractor shall comply with all Federal, state and local laws and regulations when transporting materials.



6.15 PROTECTIONS OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES AND IMPROVEMENTS

- A. 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 the Contractor.
- B. Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

6.16 CLEAN UP

- A. 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 each Work Order, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing each Work Order, 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.

6.17 ACCESS TO WORK

- A. Contractor shall provide Owner, and A/E if applicable, access to the Work in progress wherever located.

6.18 OTHER CONTRACTS

- A. 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.

6.19 SUBCONTRACTORS AND SUPPLIERS

- A. 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. Have 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. Before submitting the first Application for Payment for each Work Order, the 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. 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. 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.

#### 6.20 WARRANTY OF CONSTRUCTION

- A. In addition to any special warranties provided in any individual Work Order, 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. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
  - 1. Obtain all warranties that would be given in normal commercial practice;
  - 2. Require all warranties to be executed, in writing, for the benefit of Owner;
  - 3. Enforce all warranties for the benefit of Owner, if directed by Owner; and
  - 4. Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranty should they extend the period specified in the Contract Documents.
- C. The obligations under this section shall survive Final Acceptance.

#### 6.21 INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold Owner 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. The sole negligence of Contractor or any of its Subcontractors;
  - 2. The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor;

3. Willful misconduct: The act, or failure to act, that was intended to cause or was in reckless disregard of, or wanton indifference to, the harmful consequences to the safety or property which the person acting or failing to act resulted in loss.
  4. 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 In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Contractor, its Subcontractors of any tier 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 only, in accordance with RCW Title 51. The Contractor agrees to include this language in each of their subcontracts and require of their lower tier Subcontractors that these provisions be included in the language of their Subcontracts.

#### 6.22 FINAL ACCEPTANCE OF WORK ORDERS

- A. Operation and Maintenance Manuals: In a format acceptable to the Owner, the Contractor shall furnish draft Operation and Maintenance Manuals, or equivalent, to the Owner within five (5) working days following Substantial Completion of each work order with the final versions furnished within five (5) working days following receipt of comments on the draft.
- B. All punch list items shall be addressed in a timely manner as directed by the Owner.
- C. Redline as-built drawings shall be submitted to the Owner within 5 working days after project Substantial Completion.
- D. All permits will be signed by the authorities having jurisdiction by Substantial Completion.
- E. When the all the above criteria, and line items on the schedule of values are complete and Final Pay Application is approved Final Acceptance will be issued.

#### 6.23 PERFORMANCE EVALUATION

The Owner shall evaluate Contractor for the performance categories as set forth in the "Contractor Performance Evaluation Report" in Appendix A. Section 00 73 20, Contractor Performance Evaluation Program, describes the evaluation process.

### ARTICLE 7 PAYMENTS AND COMPLETION

## 7.01 COMPENSATION

- A. Owner shall pay Contractor the Contract Sum for each Work Order for performance of the Work, in accordance with the Contract Documents. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Work Order, excluding Washington State sales tax.

## 7.02 SCHEDULE OF VALUES

- A. Sub-sets of the Priced Item List and Non-priced Item List in logical divisions of work, at a minimum in CSI format divisions, presented on Owner APPLICATION AND CERTIFICATE FOR PAYMENT ON CONTRACT form (see Appendix A) satisfy the requirement for a Schedule of Values. Payment for Work shall be made only for and in accordance with those items included in the Priced Item List and Non-Priced Item List.
- B. The work order schedule of values shall include a line item of 2% of work order amount for supervision, schedule preparation and update, not less than 1% for submittals and a line item of not less than 4% of the work order amount for the project close out to include redline drawings, Operation and Maintenance Manuals, punch list and the sign off on all permits by the authority having jurisdiction.
- C.. To accommodate the Owner's Builders Risk insurance reporting requirements, the Schedule of Values shall have all demolition and abatement costs shown as separate line items on the Schedule of Values.

## 7.03 APPLICATION FOR PAYMENT

- A. 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 Priced Item List and Non-priced Item List. Each application shall be supported by such substantiating data as Owner may require.
- B. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment.
- C. At the time it submits an Application for Payment, the Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.
- D. All material and work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:
  - 1. Relieving Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or

2. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract.

#### 7.04 PROGRESS PAYMENTS

- A. 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 RCW 39.76 if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Contractor shall include costs in the coefficient to provide a bond in lieu of the Owner withholding a five percent retainage on each Work Order. The retainage bond shall be in the amount of \$200,000 plus 5% of the amount of active Work Orders over \$4,000,000 that may have occurred or may occur, due to Work Orders, change orders, increases in the quantities or the addition of any new item of work. The retainage bond must be on the Owner's retainage bond form that may be found in Appendix A of the Contract Documents.

#### 7.05 PAYMENTS WITHHELD

- A. 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. Work not in accordance with the Project or Contract Documents;
  2. Reasonable evidence that the Work required by the Project or Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
  3. Work by Owner to correct defective Work or complete the Work in accordance with Article 6.13.
  4. Failure to perform in accordance with the Contract Documents; or
  5. Cost or liability that may occur to Owner as the result of Contractor's fault of negligent acts or omissions.
- B. 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 RCW 39.76.

#### 7.06 RETAINAGE AND BOND CLAIM RIGHTS

- A. RCW Chapters 39.08 and 60.28, 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.

## 7.07 SUBSTANTIAL COMPLETION

- A. 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 the designated portion thereof) 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. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved. A draft copy of the Operation and Maintenance Manuals is due to the Owner within five (5) working days after the date of Substantial Completion of each work order, with the final versions due within the five (5) working days following receipt of the comments on the draft.

## 7.08 PRIOR OCCUPANCY

- A. 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. 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.

## 7.09 FINAL ACCEPTANCE AND PAYMENT

- A. 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.
- B. 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 Article 9.

## ARTICLE 8 CHANGES

### 8.01 CHANGE IN THE WORK ORDER CONTRACT WORK

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



Change Order or an additional Work Order, at the option of the Owner. Further, the Contractor can request an equitable adjustment 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 a Work Order Sum in accordance with the following procedure. No change in a Work Order Sum shall be allowed to the extent that 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 Article 4.05.

- B. 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 10 days of the request from Owner, or within such other period as mutually agreed. Contractor's proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Work Order Sum or 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. Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Work Order Sum or Time, or both, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor, and provide written authorization to proceed with the Change Order or Work Order. Pending agreement on the terms of the Change Order or Work Order, Owner may direct Contractor to proceed immediately with the Work proposed. 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 Project and Contract Documents.
- D. The Change Order Proposal 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 Work Order, or related to the events giving rise to the request for equitable adjustment.
- E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Work Order Sum or 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 Article 9.
- F. Field authorization

1. The Field Authorization (FA) is executed as a directive to proceed with work when the processing time for an approved change order would impact the project.
2. A scope of work must be defined, a maximum not to exceed cost agreed upon, and any estimated modification to the contract completion time determined. The method of final cost verification must be noted and supporting cost data must be submitted in accordance with the requirements of Article 8.03A. Upon satisfactory submittal and approval of supporting cost data, the completed FA will be processed into a change order. No payment will be made to the Contractor for FA work until that FA is converted to a Change Order.

## 8.02 CHANGE IN THE WORK ORDER SUM

### A. General Application

A Work Order Sum can only be changed by Change Order. Contractor shall include any request for a change in the Work Order Sum in its Change Order Proposal.

### B. 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 Work Order Sum in accordance with the following procedure. No change in the Work Order 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 Article 4.05.

1. A request for an equitable adjustment in the Work Order 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 Work Order 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.
2. Contractor shall not be entitled to any adjustment in the Work Order 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 Work Order 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 Work Order Sum requested. Failure to properly give such written notice shall constitute a waiver of Contractor's right to an equitable adjustment.

3. Within 10 working 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 1 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 Project and Contract Documents provide entitlement to an equitable adjustment to the Contractor or 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 Progress Schedule. Failure to provide such additional information and documentation within the time allowed or within the format required shall constitute a waiver of Contractor's right to an equitable adjustment.
4. 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.
5. 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.

#### 8.03 CHANGE ORDER PRICING

- A. The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Work Order Sum, shall be determined by applying the Unit Cost Manual method for costing Work Orders as defined in Article 2.

#### 8.04 CHANGE IN THE CONTRACT TIME

- A. A Work Order Time can only be changed by Change Order. Contractor shall include any request for a change in the Work Order Time in its Change Order proposal.
- B. 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 or Work Order Time in accordance with the following procedure. No adjustment in the Work Order 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. A request for an equitable adjustment in the Work Order 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 Work

Order 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. Contractor shall not be entitled to an adjustment in the Work Order 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 Work Order 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 Work Order Time requested. Failure to properly give such written notice shall constitute a waiver of Contractor's right to an equitable adjustment.
  3. Within 10 working 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 1 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 claims, but that the delay claims was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Work Order 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 constitute a waiver of Contractor's right to an equitable adjustment.
  4. 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. Any change in the Work Order Time covered by a Change Order, or based on a request for an equitable adjustment in the Work Order 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 Work Order 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 re-sequencing of the Work of other reasonable alternatives.
- D. Contractor may request compensation for the cost of a change in Work Order Time in accordance with this paragraph, 8.04D, subject to the following conditions:

1. The change in Work Order Time shall solely be caused by the fault or negligence of Owner or A/E;
2. Compensation under this paragraph is limited to changes in Contract or Work Order Time for which Contractor is not entitled to be compensated under Article 8.02.
3. Contractor shall follow the procedure set forth in paragraph B.3.
4. Contractor shall establish the extent of the change in Contract or Work Order Time in accordance with paragraph C above; and
5. The daily cost of any change in Work Order Time shall be limited to the items below, unless funds that may have been paid pursuant to a change in the Work Order Sum that contributed to this change in Time:
  - a. Cost of nonproductive field supervision or labor extended because of the delay;
  - b. Cost of weekly meetings or similar indirect activities extended because of the delay;
  - c. Cost of temporary facilities or equipment rental extended because of the delay;
  - d. Cost of insurance extended because of the delay;

## ARTICLE 9 CLAIMS AND DISPUTE RESOLUTION

### 9.01 CLAIMS PROCEDURE

- A. If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in Article 8.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in Article 8.02 or the Work Order Time as provided in Article 8.04, Contractor's only remedy shall be to file a Claim with Owner as provided in this Section.
- B. Contractor shall file its Claim within: 120 days from the date of Owner's Final Offer made in accordance with Article 8.01.E, but in no event after the date of Final Acceptance whichever occurs first.
- C. 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. 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. The date on which facts arose which gave rise to the Claim;
  3. The name of each employee of Owner or A/E knowledgeable about the Claim;
  4. The specific provisions of the Contract Documents which support the Claim;
  5. The identification of any documents and the substance of any oral communications that support the Claim;
  6. Copies of any identified documents, other than the Contract Documents, that support the Claim;
  7. If an adjustment in the Work Order Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Work Order Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Work Order Time;
  8. If an adjustment in the Work Order 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, Articles 8.02 and 8.03; and
  9. 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 Work Order Sum or Work Order Time for which Contractor believes Owner is liable.
- D. After Contractor has submitted a fully documented Claim that complies with all applicable provisions of Parts 8 and 9, Owner shall respond, in writing, to Contractor as follows:
1. If the Claim amount is less than \$50,000 with a decision within 60 days from the date the Claim is received; or
  2. 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. To assist in the review of Contractor's Claim, Owner may 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 Article 9.02.

- F. 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.

## 9.02 LITIGATION

- A. If Contractor disagrees with Owner's decision rendered in accordance with paragraph 9.01D, Contractor shall serve and file a lawsuit in an appropriate court within 120 days of Owner's decision. This requirement cannot be waived except by an explicit waiver signed by Owner. The failure to file a lawsuit within said 120-day period shall result in Owner's decision rendered in accordance with paragraph 9.01D being final and binding on Contractor and all of its Subcontractors.
- B. At any time, either before or after a lawsuit has been commenced by Contractor in accordance with paragraph 9.02A, Owner may require Contractor to participate in further mediation or arbitration, or both, in any forum or format as determined by Owner.
- C. 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 a single forum, or Owner may consolidate such Claims or join any of the above-named parties in the same forum.
- D. 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. 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.

## 9.03 CLAIMS AUDITS

- A. 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. In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents for the Contractor and/or its subcontractors:

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 non-privileged 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. 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.

## ARTICLE 10 TERMINATION BY OWNER FOR CONVENIENCE

### 10.01 TERMINATION BY OWNER FOR CONVENIENCE

- A. Owner may terminate performance of the Work under this Contract in whole or, from time to time, in part if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by Owner, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts under this Section:
  1. Stop work as specified in the notice;
  2. Place no further subcontracts or orders (referred to as subcontracts in this Section) for materials, services or facilities, except as necessary to complete any Work not terminated;
  3. Assign to Owner, as directed by Owner, all right, title, and interest of Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Section;
  4. As directed by Owner, transfer title and deliver to Owner:

- a. The fabricated or un-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and
  - b. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Owner;
5. Complete performance of the Work not terminated;
  6. Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of Contractor and in Which Owner has or may acquire an interest;
  7. Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in paragraph 9.0 above; provided, however, that Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Owner.
- C. After termination, Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification prescribed by Owner. Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination.
  - D. Contractor and Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include reasonable allowance for profit on work done. The Contract shall be amended, and Contractor paid the agreement amount.
  - E. If Contractor and Owner fail to agree on the whole amount to be paid Contractor because of the termination of work, Owner shall pay Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph C above.
    1. For Work performed before the effective date of termination, the total (without duplication of any items) of:
      - a. The cost of this Work computed as set forth in Article 2.05.
    2. The reasonable costs of settlement of the Work terminated, including:
      - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- F. Except for normal spoilage, and except to the extent that Owner expressly assumed the risk of loss, Owner shall exclude from the amounts payment to Contractor under the paragraph above, the fair value, as determined by Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner or to a buyer.
- G. In arriving at the amount due Contractor under this Section, there shall be deducted:
  - 1. All un-liquidated advances or other payments to Contractor under the terminated portion of the Work Order;
  - 2. Any claim which Owner has against Contractor under the Contractor; and
  - 3. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Contractor or sold under the provisions of this Section and not recovered by or credited to Owner.
- H. If the termination is partial, Contractor may file a proposal with Owner for an equitable adjustment of the price(s) of the continued portion of the Work Order. Any proposal by Contractor for an equitable adjustment under this Section shall be requested within sixty (60) calendar days from the effective date of termination unless extended in writing by Owner. Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Contractor of the terminated portion of the Work Order, if Owner believes the total of these payments will not exceed the amount to which Contractor will be entitled.
- I. If the total payments exceed the amount finally determined to be due Contractor shall repay the excess to Owner upon demand.
- J. Unless otherwise provided in this Contract or by statute, Contractor shall maintain all records and documents relating to the terminated portion of this Contract for five (5) years after final settlement. This includes all books and other evidence bearing Contractor's costs and expenses under this Contract. Contractor shall make these records and documents available to Owner, at Contractor's office, at all reasonable times, without cost. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## ARTICLE 11 TERMINATION BY OWNER FOR CAUSE

### 11.01 TERMINATION BY OWNER FOR CAUSE

- A. The Owner may, terminate for cause upon the occurrence of any one or more of the following:
1. 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 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 in a material way to replace or correct Work not in conformance with the Contract Documents;
  4. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
  5. Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
  6. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
  7. Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Notice: The Owner will provide the Contractor written notice of default and provide the opportunity to cure. In no instance will the Owner request cure, or plan to cure, sooner than 7 calendar days of notice.
- C. Upon termination, Owner may at its option:
1. Take possession of any project sites 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 Orders.
  2. Accept assignment of subcontracts pursuant to Article 10.01; and
  3. Finish the Work by whatever other reasonable method it deems expedient.
- C. 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. When Owner terminates the Work in accordance with this Section, Contractor shall take the actions set forth in paragraph 10.01B, and shall not be entitled to receive further payment until the Work is accepted.
- E. If the unpaid balance of any Work Orders exceeds the cost of finishing the Work, including 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. Termination of the Work in accordance with this Section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. If Owner terminates Contractor for cause and it is later determined that none of the circumstances set forth in paragraph 11.01 exist, then such termination shall be deemed a termination for convenience pursuant to Article 10.01.

## ARTICLE 12 MISCELLANEOUS PROVISIONS

### 12.01 GOVERNING LAW

- A. 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 King County, Washington.

### 12.02 SUCCESSORS AND ASSIGNS

- A. 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.

### 12.03 MEANING OF WORDS

- A. 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 by 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.

#### 12.04 RIGHTS AND REMEDIES

- A. 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 of an acquiescence in a breach therein, except as may be specifically agreed in writing.

#### 12.05 CONTRACTOR REGISTRATION

- A. 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.

#### 12.06 TIME COMPUTATIONS

- A. 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.

#### 12.07 RECORDS RETENTION

- A. The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with Article 9.03, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

#### 12.08 THIRD-PARTY AGREEMENTS

- A. 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.

#### 12.09 ANTITRUST ASSIGNMENT

- A. 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.

#### 12.10 PARTNERING

- A. The Owner and the Contractor shall utilize the “partnering” concept for this Contract. Partnering emphasizes a cooperative approach to problem-solving involving all key parties to the Project.
- B. A workshop to define partnering relationships may be scheduled not-to-exceed one day or as mutually agreed. The workshop is anticipated to occur shortly after award of the Contract. The purpose of the workshop shall be:
  - 1. To establish mutual understanding of Job Order Contracting concepts;
  - 2. To develop the mission statement and goals for all parties; and
  - 3. To develop a process so that Job Order Contract Work Orders can be efficiently executed and issues can be quickly resolved.
- C. The Owner will be responsible for providing the facilities for the workshops, as well as a facilitator and any workshop materials. The Contractor shall pay ½ of the costs of the facilitator and facilities not-to-exceed \$3,000 total. The Contractor is expected to provide project personnel for the workshop at no additional cost to the Owner.
- D. At the conclusion of each workshop it is anticipated that a definitive working arrangement for partnering will be agreed upon and committed to in writing by the participants. Parties may withdraw from the partnering arrangement upon written notice to the others. Should the partnering arrangement be terminated, claims or disputes settled or changes approved during the existence of the partnering arrangement shall not be affected.

#### 12.11 BUSINESS EQUITY

##### A. General Requirements

Contractor shall comply with the following requirements: In accordance with Chapter 39.19 RCW, it is the policy of the State of Washington to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses (MWBE) in public works.

The Washington State Office of Minority and Women’s Business Enterprises (OMWBE) certifies firms that are owned and controlled by minorities or women, and can provide information regarding the certification process. Information about the certification status of a particular firm is available at the following OMWBE website address: <http://www.omwbe.wa.gov/biznetwas/>, or by contacting OMWBE at (360) 753-9693 (406 South Water, P.O. Box 41160, Olympia, Washington 98504-4611).

No Work Orders shall be issued under this Contract until Owner has approved, in consultation with the OMWBE, Contractor's MWBE Outreach and Participation Plan as required by RCW 39.10.450(5).

**B. Inclusion Efforts**

1. Contractor shall apply all the agreed Inclusion initiatives presented, or negotiated, with their proposal to each Work Order, as practicable.
2. Contractors shall:
  - a. Advertise opportunities for subcontractors and/or suppliers in a manner reasonable, designed to provide BEEs timely notice of such opportunities, with clear and organized scope and work expectations. All advertisements shall include a provision encouraging participation by BEE firms. Advertising may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting bids/proposals directly from BEEs.
  - b. Provide BEEs that express interest with adequate and timely information about plans, specifications, and requirements of the Contract.
3. Contractors are further encouraged to:
  - a. Assign work packages instead of bidding.
  - b. Break down work into smaller tasks or quantities, where economically feasible and appropriate to BEE firm capabilities, in order to permit maximum participation by BEEs and other small businesses.
  - c. Establish delivery schedules, where the requirements of this contract permit, that encourage participation by BEEs and other small businesses.
  - d. Reduce bonding requirements where practicable.
  - e. Utilize the services of available minority community organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of BEEs and other small business.
  - f. When needed, provide mentoring and assistance, to BEEs and subcontractors to help build capacity and/or technical expertise.

**C. Reporting Requirements**

1. Prior to Application of First Progress Payment on each Work Order, Contractor shall submit a list of all BEE subcontractors/suppliers it intends to use by updating the monthly tracking log.



2. Every month, or as mutually agreed, as part of the monthly tracking log, Contractor shall submit to the Owner a comprehensive report of all work orders for which either the Owner made payment to the Contractor or the Contractor made payment to subcontractors. The report, in a format acceptable to the Owner, shall include the names of all subcontractors used, a BEE designation and the dollar amount paid to each, along with the dollar amount of the Work Order and amount paid by the Owner.
3. Prior to the annual close out of the master JOC contract, Contractor shall submit a report of total dollar amounts paid to BEEs.

C. Non-Discrimination:

Contractors shall not create barriers to open and fair opportunities to all businesses including BEEs to participate in University contracts and to obtain or compete for contracts and subcontracts as sources of suppliers, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental or physical disability in an otherwise qualified disabled person.

D. Sanctions

Failure to comply with any of the mandatory requirements of this part of the contract may subject the Contractor to sanctions or damages as provided for by RCW 39.19.090, or by other applicable laws.

12.12 Monthly Reporting of Project Information:

To support Owner's compliance with the reporting requirements of RCW 39.10.460, on a monthly basis Contractor shall provide to the Owner the following project information for the previous quarter:

- A. A list of work orders issued;
- B. The cost of each Work Order;
- C. A list of subcontractors hired under each Work Order; and
- D. Any other information requested by the Capital Project Advisory Review Board.

**END OF SECTION 00 72 00**