

<b>Section</b>	<b>Description</b>	<b>Page</b>
Part 1	GENERAL PROVISIONS	
1.01	Definitions .....	3
1.02	Order of Precedence .....	4
1.03	Execution and Intent .....	5
PART 2	INSURANCE AND BONDS	
2.01	Contractor’s Liability Insurance .....	5
2.02	Coverage Limits .....	6
2.03	Insurance Coverage Certificates.....	6
2.04	Payment and Performance Bonds.....	6
2.05	Additional Bond Security .....	6
2.06	Builder’s Risk .....	7
PART 3	TIME AND SCHEDULE	
3.01	Progress and Completion .....	7
3.02	Construction Schedule.....	7
3.03	Owner’s Right to Suspend the Work for Convenience .....	8
3.04	Owner’s Right to Stop the Work for Cause.....	8
3.05	Delay.....	8
3.06	Notice to Owner of Labor Disputes.....	9
3.07	Damages for Failure to Achieve Timely Completion .....	9
PART 4	SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS	
4.01	Discrepancies and Contract Document Review .....	10
4.02	Project Record .....	10
4.03	Shop Drawings .....	10
4.04	Organization of Specifications .....	11
4.05	Ownership and Use of Drawings, Specifications & other Documents .....	11
PART 5	PERFORMANCE	
5.01	Contractor Control and Supervision .....	12
5.02	Permits, Fees and Notices.....	13
5.03	Patents and Royalties.....	13
5.04	Prevailing Wages.....	13
5.05	Hours of Labor .....	14
5.06	Nondiscrimination .....	14
5.07	Safety Precautions .....	14
5.08	Operations, Material Handling, & Storage Areas .....	16
5.09	Prior Notice of Excavation .....	16
5.10	Unforeseen Physical Conditions.....	17
5.11	Protection of Existing Structures, Equipment, Vegetation, Utilities, & Improvements.....	17
5.12	Layout of Work .....	17
5.13	Material and Equipment .....	17
5.14	Availability and Use of Utility Services.....	18
5.15	Tests and Inspections.....	18
5.16	Correction of Nonconforming Work .....	19
5.17	Clean Up .....	20
5.18	Access to Work.....	20
5.19	Other Contracts.....	20
5.20	Subcontractors and Suppliers .....	20
5.21	Warranty of Construction.....	21
5.22	Indemnification.....	22
5.23	Performance Evaluation .....	22

PART 6	PAYMENTS AND COMPLETION	
6.01	Contract Sum .....	22
6.02	Schedule of Values .....	22
6.03	Application for Payment.....	22
6.04	Progress Payments.....	23
6.05	Payments Withheld.....	24
6.06	Retainage & Bond Claim Rights .....	24
6.07	Substantial Completion .....	24
6.08	Prior Occupancy .....	24
6.09	Final Completion, Acceptance, and Payment.....	25
PART 7	CHANGES	
7.01	Change in the Work.....	25
7.02	Change in the Contract Sum.....	26
7.03	Change in the Contract Time.....	32
PART 8	CLAIMS AND DISPUTE RESOLUTION	
8.01	Claims Procedure.....	33
8.02	Dispute Resolution .....	34
8.03	Claims Audits .....	37
PART 9	TERMINATION OF THE WORK	
9.01	Termination by Owner for Cause .....	38
9.02	Termination by Owner for Convenience .....	39
PART 10	MISCELLANEOUS PROVISIONS	
10.01	Governing Law .....	39
10.02	Successors and Assigns .....	40
10.03	Meaning of Words.....	40
10.04	Rights and Remedies .....	40
10.05	Contractor Registration .....	40
10.06	Time Computations .....	40
10.07	Records Retention .....	40
10.08	Third-Party Agreements .....	40
10.09	Antitrust Assignments .....	40
10.10	Business Equity Requirements .....	41
10.11	Asbestos.....	42
10.12	Apprentice Utilization Requirements .....	43
10.13	Headings and Captions .....	45

## **PART 1 – GENERAL PROVISIONS**

### **1.01 DEFINITIONS**

- A. “Application for Payment” means a written request submitted by Contractor to A/E for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or A/E may require.
- B. “Architect,” “Engineer,” or “A/E” means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. “Change Order” means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- D. “Claim” means Contractor’s exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Part 8.
- E. “Contract Award Amount” is the sum of the Base Bid and any accepted Alternates.
- F. “Contract Documents” means the Advertisement for Bids, Instructions for Bidders, completed Form of Proposal, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Public Works Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.
- G. “Contract Sum” is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents.
- H. “Contract Time” is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- I. “Contractor” means the person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents.
- J. “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- K. “Final Acceptance” means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents.
- L. “Final Completion” means that the Work is fully and finally completed in accordance with the Contract Documents.
- M. “Force Majeure” means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.05A.
- N. “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.
- O. “Notice to Proceed” means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- P. “Owner” means the state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.

- Q. “Person” means a corporation, partnership, business association of any kind, trust, company, or individual.
- R. “Prior Occupancy” means Owner’s use of all or parts of the Project before Substantial Completion.
- S. “Progress Schedule” means a schedule of the Work, in a form satisfactory to owner, as further set forth in section 3.02.
- T. “Project” means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- U. “Project Manual” means the volume usually assembled for the Work which may include the bidding requirements, sample forms, and other Contract Documents.
- V. “Project Record” means the separate set of Drawings and Specifications as further set forth in paragraph 4.02A.
- W. “Schedule of Values” means a written breakdown allocating the total Contract Sum to each principle category of Work, in such detail as requested by Owner.
- X. “Specifications” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- Y. “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.
- Z. “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.
- AA. “Substantial Completion” means that stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities for the purpose intended, as more fully set forth in section 6.07.
- AB. “Work” means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

## 1.02 ORDER OF PRECEDENCE

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

- A. Change Orders to signed GC/CM Contract.
- B. Signed GC/CM Contract.
- C. Supplemental Conditions to GC/CM General Conditions.
- D. Modifications to GC/CM General Conditions.
- E. GC/CM General Conditions.
- F. Specifications—provisions in Division 01 shall take precedence over provisions of any other Division.
- G. Drawings—in case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.

- H. Signed and Completed Form of Proposal.
- I. Request for Final Proposals for GC/CM Services.
- J. Request for Proposals for GC/CM Services.

### 1.03 EXECUTION AND INTENT

Contractor makes the following representations to Owner:

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

## PART 2 – INSURANCE AND BONDS

### 2.01 CONTRACTOR'S LIABILITY INSURANCE

Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this part shall be licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington. 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 certificate holder shall be:

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

- A. Contractor shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by section 5.16.
  - 1. General liability on the ISO 1986 New Occurrence Form or its equivalent which will include:
    - a. Completed operations/products liability;
    - b. Explosion, collapse, and underground; and
    - c. Employer's liability coverage.

2. Automobile liability: coverage for all owned, non-owned and hired automobiles.

- B. Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act.
- C. All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.
- D. All insurance coverages shall name the Board of Regents of the University of Washington as additional insured with respect to liability arising out of work performed by contractor, 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.

## 2.02 COVERAGE LIMITS

The coverage limits shall be as follows:

- A. Limits of Liability shall not be less than \$5,000,000 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 Annual Aggregate for Products and Completed Operations Liability.
- C. \$1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.

## 2.03 INSURANCE COVERAGE CERTIFICATES

- A. Prior to commencement of the Work, Contractor shall furnish Owner a completed certificate of insurance coverage.
- B. All insurance certificates shall name Owner's Project number and Project title.
- C. All insurance certificates shall specifically require 45 days prior notice to Owner of cancellation or any material change, except 30 days for surplus line insurance.

## 2.04 PAYMENT AND PERFORMANCE BONDS

Performance/Payment Bond. The Contractor shall include within the GC/CM fee percentage proposed by the Contractor in its completed Form of Proposal the premium for providing a performance/payment bond in the estimated total Contract Sum. If the actual total Contract Sum is less than eighty five percent (85%) of this amount, the Owner shall be entitled to a credit based on the Contractor's actual reduction in premium cost, if any. If the actual total Contract Sum is more than one hundred percent (100%) of this amount or is subsequently increased above that amount by Change Order, the Contractor's cost of the additional premium is included in the GC/CM fee percentage to be applied to the Change Order.

## 2.05 ADDITIONAL BOND SECURITY

Contractor shall promptly furnish additional security required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

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

## 2.06 BUILDER'S RISK

- A. Owner will purchase and maintain Builder's Risk property insurance in the amount of the Contract Sum including all Change Orders for the Work on a replacement cost basis excluding earthquake and flood coverage until Substantial Completion. Contractor shall be responsible for all losses up to the policy deductible. A specimen policy is available for inspection.
- B. Owner and Contractor waive all subrogation rights against each other, any Subcontractors, and separate contractors described in section 5.19 and 5.20, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- C. If Contractor believes it has a loss that is covered by Builder's Risk Insurance and it is likely to exceed the policy deductible, Contractor shall notify the Owner within 48 hours.

## PART 3 – TIME AND SCHEDULE

### 3.01 PROGRESS AND COMPLETION

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.

### 3.02 CONSTRUCTION SCHEDULE

- A. Unless otherwise provided in Division 01, Contractor shall, within 14 days after issuance of the Notice to Proceed, submit a preliminary Progress Schedule. The Progress Schedule shall show the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor plans to start and finish major portions of the Work, including dates for shop drawings and other submittals, and for acquiring materials and equipment.
- B. The Progress Schedule shall be in the form of a bar chart, or a critical path method analysis, as specified by Owner. The preliminary Progress Schedule may be general, showing the major portions of the Work, with a more detailed Progress Schedule submitted as directed by Owner.
- C. Owner shall return comments on the preliminary Progress Schedule to Contractor within 14 days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this section.
- D. Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in section 3.05, 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 and revise the Progress Schedule to reconcile with the actual progress of the Work.
- E. Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work.

Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, 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.

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

### 3.04 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 Contractor, in writing, to stop Work, or any portion thereof, until satisfactory corrective action has been taken.

### 3.05 DELAY

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



adjustment according to section 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.

- C. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to sections 7.02 and 7.03.
- D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to section 7.03, but shall not be entitled to an adjustment in Contract Sum.
- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

### 3.06 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 any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

### 3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

#### A. Liquidated Damages

1. Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents.
2. The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
3. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

#### B. Actual Damages

Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date

Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

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

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

- A. The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings Specifications, and other provisions of the Contract Documents.
- B. The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to A/E in writing.
- D. Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.
- E. Contractor 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 A/E.

### **4.02 PROJECT RECORD**

- A. Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order proposals. This separate set of Drawings and Specifications 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 A/E prior to Final Acceptance.

### **4.03 SHOP DRAWINGS**

- A. "Shop Drawings" means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and

equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.

- B. Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to A/E without evidence of Contractor's approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.
- C. 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 A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time; a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. Unless otherwise provided in Division 01, Contractor shall submit to A/E for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by A/E and 2 sets shall be returned to Contractor.

#### 4.04 ORGANIZATION OF SPECIFICATIONS

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

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

- A. The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.
- B. The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use

and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.

- C. Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.
- D. The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and produce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

## **PART 5 – PERFORMANCE**

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

- A. Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.
- B. Performance of the Work shall be directly supervised by a competent superintendent who is satisfactory to Owner and has authority to act for Contractor. The superintendent shall not be changed without the prior written consent of Owner.
- 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 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 keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit drawings.
- F. Contractor shall insure that its owner(s) and employees, and those of its Subcontractors, comply with the Ethics in Public Service Act RCW 42.52, which, among other things, prohibits state employees from having an economic interest in any public works contract that was made by, or supervised by, that employee. Contractor shall remove, at its sole cost and expense, any of its, or its Subcontractors' employees, if they are in violation of this act.
- G. Work During 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 9:00 p.m. to 7:30 a.m.

is subject to approval of Owner, except work within the existing Medical Center which shall be between 8:00a.m. to 8:00p.m.

- H. Contractor to comply with University of Washington's campus conduct code: Contractor shall ensure that its owner(s) and 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 this code.

#### 5.02 PERMITS, FEES, AND NOTICES

- A. Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.
- B. If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference shall be adjusted by Change Order.
- C. Contractor 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.
- D. For Work within the City of Seattle, Owner shall pay the City of Seattle directly for the cost of the Master Use and Building Permit. Prior to Final Acceptance, the building permit and City-approved drawings, signed inspection card(s), and any appropriate occupancy permits shall be submitted to Owner.

#### 5.03 PATENTS AND ROYALTIES

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

#### 5.04 PREVAILING WAGES

- A. Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. Before commencing the Work, Contractor shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
- C. 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 prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- 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 and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

#### 5.05 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 of each calendar day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours' 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.

#### 5.06 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, the Washington State Law Against Discrimination, RCW 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.
- B. During performance of the Work:
  - 1. 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.

#### 5.07 SAFETY PRECAUTIONS

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

1. Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance hereinafter collectively referred to as "hazardous substances," in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 days on the Project site.
  2. Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
- F. All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
- G. In an emergency affecting the safety of life or the Work or of adjoining property. Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.
- H. Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

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

- A. Contractor shall confine all operations, including storage of materials, to Owner-approved areas.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall be removed by Contractor at its expense upon completion of the Work.
- C. Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.
- D. Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.
- E. Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.
- F. Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or



loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

#### 5.09 PRIOR NOTICE OF EXCAVATION

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

#### 5.10 UNFORESEEN PHYSICAL CONDITIONS

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

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

#### 5.12 LAYOUT OF WORK

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

#### 5.13 MATERIAL AND EQUIPMENT

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

#### 5.14 AVAILABILITY AND USE OF UTILITY SERVICES

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

#### 5.15 TESTS AND INSPECTION

- A. Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.
- B. Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:
  - 1. Constitute or imply acceptance;
  - 2. Relieve Contractor of responsibility for providing adequate quality control measures;
  - 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
  - 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or

5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- C. Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term of condition of the Contract Documents.
- D. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

#### 5.16 CORRECTION OF NONCONFORMING WORK

- A. If a portion of the Work is covered contrary to the requirements in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense and without change in the Contract Time.
- B. If, at any time prior to Final Completion, Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes a request therefore as provided in part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.
- C. Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.
- D. If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under section 5.21, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor.
- G. Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

- H. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in paragraph 5.16 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and equitable.

#### 5.17 CLEAN UP

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

#### 5.18 ACCESS TO WORK

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

#### 5.19 OTHER CONTRACTS

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

#### 5.20 SUBCONTRACTORS AND SUPPLIERS

- A. Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of \$2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.
- B. 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.
- C. 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.
- D. Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:

1. The assignment is effective only after termination by Owner for cause pursuant to section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and
  2. After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
  3. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- E. 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. Not have violated more than one time the offsite, prefabricated, non-standard, project specific items reporting requirements of RCW 39.04.370.
  6. 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 or apprenticeship under RCW 49.04 for the one-year period immediately preceding the first date of advertising for this Project.

#### 5.21 WARRANTY OF CONSTRUCTION

- A. In addition to any special warranties provided elsewhere in the Contract Documents, Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor.
- B. 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.

## 5.22 INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:
1. 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; and
  3. 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, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

## 5.23 PERFORMANCE EVALUATION

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.

## PART 6 – PAYMENTS AND COMPLETION

### 6.01 CONTRACT SUM

Owner shall pay Contractor the Contract Sum 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 Project, including sales tax.

### 6.02 SCHEDULE OF VALUES

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

### 6.03 APPLICATION FOR PAYMENT

- A. At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.
- B. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011 as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in section 1.03, are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment.
- C. At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.
- D. If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
  - 1. The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
  - 2. The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
  - 3. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
  - 4. Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
  - 5. The warehouse (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
  - 6. Owner shall at all times have the right of access in company of Contractor;
  - 7. Contractor and its surety assume total responsibility for the stored materials; and
  - 8. Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Project site.
  - 9. For material stored off-site not in a warehouse, Contractor may request payment, provided that the remaining requirements of this paragraph and any additional requirements of Owner are met.

### 6.04 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. Owner shall retain 5% of the amount of each progress payment until 45 days after Final Acceptance and receipt of all documents required by law or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage. In accordance with RCW 60.28, Contractor may request that monies

reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.

- C. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials. Or waive any rights of Owner to insist on full compliance by Contractor with Contract Documents.
- D. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in RCW 39.76.

#### 6.05 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 Contract Documents;
  - 2. Reasonable evidence that the Work required by the 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 section 5.16;
  - 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 or 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.

#### 6.06 RETAINAGE AND BOND CLAIM RIGHTS

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.

#### 6.07 SUBSTANTIAL COMPLETION

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 can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective and incidental 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 routs. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

#### 6.08 PRIOR OCCUPANCY

- A. 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; accelerated 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.

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

- A. Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing.
- B. 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 Public Works Bond, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents. Final Acceptance of the Work shall be by action of the Board of Regents or its delegated representative.
- C. Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in part 8.

### PART 7 – CHANGES

#### 7.01 CHANGE IN THE WORK

- A. Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.
- B. If Owner desires to order a change in the Work, it may request a written Change Order Proposal from Contractor. Contractor shall submit a Change Order Proposal within 14 days of the request from Owner, or within such other period as mutually agreed. Contractor's Change Order Proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.
- C. Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.

- D. If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in part 8.
- F. Field Authorizations: The Owner may direct the Contractor to proceed with a change in the work through a written Field Authorization (also referred to as a Field Order) when the time required to price and execute a Change Order would impact the Project.

The Field Authorization shall describe and include the following:

- 1. The scope of work
- 2. An agreed upon maximum not-to-exceed amount
- 3. Any estimated change to the Contract Time
- 4. The method of final cost determination in accordance with the requirements of Part 7 of the General Conditions
- 5. The supporting cost data to be submitted in accordance with the requirements of Part 7 of the General Conditions

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

- G. If Owner and Contractor enter into a GC/CM Contract that includes the Maximum Allowable Construction Cost (MACC) for only a portion of the Work due to early subcontract bidding of a portion of the Work, any adjustments to the MACC and work based on additional subcontract bidding or negotiations shall be formalized in an Amendment to the GC/CM Contract and not by a Change Order.

## 7.02 CHANGE IN THE CONTRACT SUM

### A. General Application

- 1. Except as provided in paragraph 7.01 G above, the Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order proposal.
- 2. If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in section 3.05.
  - a. A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 days of the occurrence of the event giving rise to the request. For

purposes of this part, “occurrence” means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.

- b. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 days before Contractor’s written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.
  - c. Within 30 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with section 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.
  - d. Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
  - e. Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.
3. The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:
    - a. On the basis of a fixed price as determined in paragraph 7.02B.
    - b. By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
    - c. On the basis of time and material as determined in paragraph 7.02D.
  4. When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph 3 above to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

**B. Change Order Pricing – Fixed Price**

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

1. Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.
2. All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.
3. If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
4. The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.
5. If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.
6. If the total cost of the change in the Work or request for equitable adjustment is between \$1,000 and \$2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:
  - a. Lump sum labor;
  - b. Lump sum material;
  - c. Lump sum equipment, usage;
  - d. Overhead and profit as set forth below; and
  - e. Insurance and bond costs as set forth below.
7. Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
  - a. Craft labor costs: These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. When estimating labor hours for electrical work, such hours shall be no greater than the Labor Units for specific items included in the "Normal" project conditions column of the NECA Manual of Labor Units, most recent edition. When estimating labor hours for mechanical work, such hours shall be no greater than 75% of the Labor Units for specific items included in the MCAA Web-Based Estimating Manual (WebLEM), subject to the assumptions and notes in the WebLEM, except that the Labor Units for "Hangers, Sleeves, & Inserts" shall be no greater than 50% of the WebLEM Labor Units. Special exceptions for electrical and mechanical work may be made for work having to be performed under extraordinary conditions. Such exceptions shall be identified and explained in any applicable pricing proposals and shall be subject to approval by the Owner's representative. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
    - (1) Basic wages and benefits: Hourly rates and benefits as stated on the Department of Labor and Industries approved "statement of intent to pay prevailing wages" or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to

exceed 15% of the cost of direct labor. No supervision markup shall be allowed in a change order that contains direct labor costs for a working supervisor's hours (including any category of foreman).

- (2) Worker's insurance: Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the Department of Labor and Industries.
- (3) Federal insurance: Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
- (4) Travel allowance: Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.
- (5) Safety: Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.

- b. Material costs: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, including, but not limited to, Contractors' supplier(s)' actual cost(s) available from the standard industry pricing guide "Trade Service", second from supplier quotations, or, if these are not available, and third from other standard industry pricing guides.

Material costs shall include all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.

- c. Equipment costs: This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work, or for additional rental costs actually incurred by the Contractor. The Contractor's cost for utility vehicles and other items such as pickup trucks, vans, flatbed trucks, storage trailers, containers, etc. that are already in use or planned for use on the Project will not be compensated in change order work except for the time that, in the opinion of the Owner, such items: (1) are directly and necessarily used for the performance of the change work; and (2) the cost of using such items has not been included within the Contractor's total project overhead costs. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:

- (1) Associated General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement; current edition, as of the Contract execution date.
- (2) The National Electrical Contractors Association for equipment used on electrical work. Equipment pricing shall be no greater than 75% of NECA monthly rates.
- (3) The Mechanical Contractors Association of America for equipment used on mechanical work.

The EquipmentWatch Rental Rate Blue Book shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, current edition, as of the Contract execution date.

- d. Allowance for small tools, expendables & consumable supplies: Small tools consist of tools which cost \$1,000 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:
- (1) For Contractor, 3% of direct labor costs.
  - (2) For Subcontractors and Contractor, for any Work performed by Contractor as its own Subcontractor, 5% of direct labor costs.
- Expendables and consumables supplies directly associated with the change in Work must be itemized.
- e. Subcontractor costs: This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.
- f. Allowance for overhead: This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum. If the Contractor is compensated under Section 7.03D, the amount of such compensation shall be reduced by the amount Contractor is otherwise entitled to under this subsection (f). This allowance shall compensate Contractor for all noncraft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:
- (1) For Contractor, for any Work actually performed by Contractor's own forces, 0%.
  - (2) For Subcontractor of any tier, for any Work actually performed by its own forces and Contractor, for any Work performed by Contractor as its own Subcontractor, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
  - (3) For Contractor, for any work performed by its Subcontractor(s), 0%.
  - (4) For Subcontractor of any tier, for any Work performed by a Subcontractor of a lower tier, and Contractor, for any Work performed by Contractor as its own Subcontractor, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
    - (a) The cost to which overhead and profit is to be applied shall be determined in accordance with subparagraphs a.-e. above.
- g. Allowance for profit: Allowance for profit is an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor has been compensated pursuant to the conditions set forth in Section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:
- (1) For Subcontractor of any tier for work performed by its own forces, 6% of the cost determined in accordance with 7.02.B.7 a-e above.
  - (2) For Subcontractor of any tier, and Contractor, for any Work performed by Contractor as its own Subcontractor, for work performed by a Subcontractor of a lower tier, 4% of the cost determined in accordance with 7.02.B.7 a-e above.

- (3) For Contractor, for any work actually performed by Contractor's own forces, for any Work performed by Contractor as its own Subcontractor, and for any work performed by its Subcontractor, the GC/CM fee percentage proposed by the Contractor in the Form of Proposal times the value of the work.

h. Cost of change in insurance or bond premium. This is defined as:

- (1) Contractor's liability insurance: For Subcontractors of any tier, the cost of any changes in Contractor's liability insurance arising directly from execution of the Change Order. Subcontractor will apply a payroll-driven and/or volume-driven liability insurance mark-up to the Change Order as applicable.  
For the Contractor, for any Work actually performed by Contractor's own forces, for any Work performed by Contractor as its own Subcontractor, and for any work performed by its Subcontractor, the cost of any changes in Contractor's liability insurance is included in the GC/CM fee percentage to be applied to the Change Order.
- (2) Public works bond: For Subcontractors of any tier required to provide a payment and performance bond, the cost of any additional bonding premium arising directly from the changed work. For the Contractor, for any Work actually performed by Contractor's own forces, for any Work performed by Contractor as its own Subcontractor, and for any work performed by its Subcontractor, the cost of the additional premium for the payment and performance bond is included in the GC/CM fee percentage to be applied to the Change Order.

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

C. Change Order Pricing – Unit Prices

1. Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
  - a. Scope of work to be performed;
  - b. Type of reimbursement including pre-agreed rates for material quantities; and
  - c. Cost limit of reimbursement.
2. Contractor shall submit costs in accordance with paragraph 7.02B and satisfy the following requirements:
  - a. Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead and profit, bond and insurance costs; and
  - b. Quantities must be supported by field measurement statements signed by Owner.

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

1. Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner's authorization shall clearly state:
  - a. Scope of Work to be performed;
  - b. Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
  - c. Cost limit of reimbursement.

2. Contractor shall:
  - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Identify on daily time sheets all labor performed in accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner's review.
  - c. Leave access as appropriate for quantity measurement;
  - d. Perform all Work in accordance with this section as efficiently as possible; and
  - e. Not exceed any cost limit(s) without Owner's prior written approval.
3. Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:
  - a. Labor detailed on daily time sheets; and
  - b. Invoices for material.

### 7.03 CHANGE IN THE CONTRACT TIME

- A. The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order proposal.
- B. If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
  1. A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.
  2. Contractor shall be entitled to an adjustment in the Contract Time for any events that occurred more than 7 days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
  3. Within 30 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such



additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

4. 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 Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work event(s) giving rise to the request for equitable adjustment. Any Change Order proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.
- D. Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 7.03D, subject to the following conditions:
1. The change in Contract Time shall solely be caused by the fault or negligence of Owner or A/E;
  2. Compensation under this paragraph is limited to funds in excess of any that may have been paid pursuant to a change in the Contract Sum that contributed to this change in Contract Time;
  3. Contractor shall follow the procedure set forth in paragraph 7.03B;
  4. Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and
  5. The daily cost of any change in Contract Time shall be limited to:
    - a. Cost of nonproductive field supervision or labor extended because of 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;
    - e. General and administrative overhead in an amount to be agreed upon, but not to exceed 3% of the Contract Sum divided by the Contract Time for each day of the delay. This amount shall be the total paid for general and administrative overhead to the Contractor for the Contractor and all affected Subcontracts.

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

### **8.01 CLAIMS PROCEDURE**

- A. If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in section 7.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in section 7.02 or the Contract Time as provided in section 7.03, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. Contractor shall file its Claim within 120 days from the date of Owner's final offer made in accordance with paragraph 7.01.E, but in no event after the date of Final Acceptance.

- 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 Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
  8. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and the detail required by, section 7.02; 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 Contract Sum or Contract 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 7 and 8, 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 visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in paragraph 8.02I.
- 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 this section.

## 8.02 DISPUTE RESOLUTION

- A. General: This section describes the purpose, procedure, function, and features of the Disputes Review Board (DRB) or a third party neutral (Project Neutral or PN). A Three-Party Agreement among the Owner,

Contractor, and three members of the DRB or the PN will formalize creation of the DRB or PN and establish the scope of services and the rights and responsibilities of the three parties. In the event of a conflict between this section and the Three-Party Agreement, this section governs.

B. Purpose

1. The DRB or the PN, as an independent third party, will assist in and facilitate the timely and equitable resolution of disputes between the Owner and the Contractor in an effort to avoid acrimony, construction delay, and more formal means of dispute resolution. Creation of the DRB or PN is not intended to promote Owner or Contractor default on the responsibility of making a good-faith effort to settle amicably and fairly their differences by indiscriminate referral to the DRB or PN.
2. If at the start of the Project a PN is selected rather than a DRB, the PN shall be responsible for providing informal non-binding guidance to the Owner and Contractor for the resolution of any issue arising during the Work. A DRB may be established by mutual agreement of the parties at a later time during the Project to provide formal guidance and additional informal non-binding guidance to the Owner and Contractor for the resolution of any issue arising during the Work.

C. Continuance of Work: Both parties shall proceed diligently with the work and comply with all applicable Contract provisions while the DRB or PN considers a dispute.

D. Membership.

1. General.

- a. The DRB will consist of one member selected by the Owner, one member selected by the Contractor, and a third member selected by the first two members. No reason need be given for rejection of a nominee. The DRB shall be established within 30 days of the Owner's issuance of the latest notice to proceed with construction Work. DRB members can be terminated for cause only by their original selector. The third member can be terminated if the first two members agree to terminate the third, or one of the parties requests termination. The process used to replace any member shall be the same process used in the original selection of the member being replaced. In the event of an impasse in selection or replacement of any member, the selection or replacement will be made by a member of Judicial Arbitration and Mediation Services.
- b. The PN shall consist of one person selected by mutual agreement of the parties. The parties may terminate the services of the PN for cause. The process used to replace the PN shall be the same process used in the original selection of the PN.
- c. If at the start of the Project a PN is selected rather than a DRB and a DRB is established by mutual agreement of the parties at a later time during the Project, the DRB will consist of the PN as Chairperson, unless the parties otherwise agree, one member selected by the Owner, and one member selected by the Contractor. Each party has the right to refuse the other party's member selection.

2 Experience and Neutrality

- a. It is desirable that all DRB members or the PN be experienced with the type of construction involved in the project, interpretation of contract documents and resolution of construction disputes.
- b. The goal in selecting the third member is to complement the experience of the first two and to provide leadership of the DRB's activities. The third member or PN will serve as Chairperson unless the parties otherwise agree.

- c. It is imperative that the DRB or PN be neutral, act impartially, and be free of any conflict of interest.
  - d. No DRB member or PN shall have a financial interest in the Work, except for payments for services on the DRB or PN. No employee of Owner, Contractor, any subcontractor, or Design Team shall be a member of the DRB or a PN.
- E. Compensation: Compensation for the DRB members or PN, and the expenses of operation of the DRB or PN shall be shared by Owner and Contractor in accordance with the following:
  - 1. Owner shall pay the fee and travel expenses for its selected member.
  - 2. Contractor shall pay the fee and travel expenses for its selected member.
  - 3. Owner and Contractor shall share equally in the third member's or PN's fee and travel, and all other expenses of the DRB or PN. These equally shared expenses shall be billed to and paid by Owner. Contractor's share will be deducted from the monies due the Contractor from the Owner.
  - 4. Owner shall, at its cost, provide administrative services, such as a meeting room and secretarial services, to the DRB.
- F. Three-Party Agreements: All DRB members and the authorized representatives of the Owner and the Contractor shall execute the Disputes Review Board Three-Party Agreement within 3 weeks after selection of the third member. The PN and the authorized representatives of the Owner and the Contractor shall execute the Project Neutral Three-Party Agreement within 3 weeks after selection by the parties of the PN.
- G. Operation: The DRB will formulate its own rules of operation, except to the extent any such rules are provided for herein. The DRB or PN will attend and participate in one construction progress meeting each month at or near the Work site for the duration of the Project and at such other time as required to review disputes. The Owner shall provide a conformed set of plans and specifications to each DRB member or the PN.
- H. Review of Disputes: Informal Guidance Meetings: The DRB or PN will be available on relatively short notice to meet with the parties to provide informal non-binding guidance regarding any issue. Either party may request such a meeting through telephonic, facsimile, or electronic communication with the Chairperson or PN. The Chairperson or PN shall contact the other party to obtain approval for any informal procedures requested. This informal guidance process is in addition to the formal process set herein. Use of the DRB informally shall not waive the formal requirements set forth herein. Guidance provided during informal meetings of the DRB or PN is not admissible in a subsequent formal hearing in front of the DRB or litigation. The Chairperson shall be responsible for contacting the other DRB members if a meeting is agreeable to the parties. These meetings will be very informal discussions with input and comments encouraged from all parties. Initial impressions and guidance will be provided by the DRB members or PN orally. No written recommendations will be made. All communication and materials submitted during this informal process shall be privileged and confidential pursuant to chapter 7.07 RCW.
- I. Review of Disputes: Formal DRB Hearings
  - 1. If Contractor disagrees with Owner's decision regarding a Claim rendered in accordance with paragraph 8.01D, Contractor shall be required to provide Owner with a written appeal within 14 days after the date of Owner's decision. Should Contractor timely appeal Owner's decision, the matter shall be referred to the DRB. Failure to file a written appeal within the 14-day period shall result in Owner's decision being final and binding upon Contractor.
  - 2. Contractor's appeal shall be heard by the DRB within 30 days of the date of receipt of the appeal by Owner, unless another time is mutually agreed to by Owner and Contractor. Pending final decision by the DRB regarding a Claim, Contractor shall diligently proceed with the Work as previously ordered.

3. Contractor and Owner shall be afforded an opportunity to be heard by the DRB and by offer of evidence. In order to provide Owner the opportunity to fully and fairly evaluate Contractor Claims, the full disclosure and presentation at the DRB hearing of all relevant facts and circumstances giving rise to the Claims required above shall be a condition precedent to Contractor's right to further pursue its claims in any tribunal with authority to render binding decisions. The DRB's recommendations shall be based on the Contract provisions and the actual cost incurred.
4. Within 30 days of receiving the DRB recommendations, both Owner and Contractor shall respond to the other in writing signifying that the Claim is either resolved or remains unresolved. If Owner and Contractor are able to resolve their Claim with the aid of the DRB's recommendations, the terms of the resolution shall be incorporated in a Change Order. Should the Claim remain unresolved, Contractor shall serve and file a lawsuit in an appropriate court within 120 days of the DRB's recommendation. 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 8.01D being final and binding on Contractor and its Subcontractors of any tier. The DRB's findings and recommendations shall be admissible evidence in any further proceedings.
5. In the event further proceedings, either judicial or nonjudicial, are required to resolve the Claim, Contractor will be barred from offering in such further proceedings any evidence of facts or legal theories that Contractor did not offer or assert at the DRB hearing unless such evidence or theory, was not and could not have been discovered, in the exercise of due diligence, prior to the DRB's hearing. Contractor's failure to consult with counsel or fully investigate its Claim prior to presenting such Claim to Owner will not excuse Contractor from its obligations to fully apprise Owner of the detailed basis of the Claims.
6. At any time, either before or after a lawsuit has been commenced by Contractor in accordance with this section, Owner may require Contractor to participate in further mediation or arbitration, or both, in any forum or format acceptable to Owner.
7. Claims between Owner and Contractor and its Subcontractors, shall, upon demand by Owner, be submitted in single forum, or Owner may consolidate such Claims or join any of the above-named parties in the same forum.
8. If the parties resolve the Claim prior to Final Acceptance, the terms of the resolution shall be incorporated in a Change Order. The Change Order, including any adjustment in the Contract Sum or Contract Time, shall be full compensation for any changes in the Work, including full payment of costs of all delays in connection with such changes and including full payment for any expense of inconvenience, disruption, of schedule, and loss of efficiency or productivity by Contractor.

### 8.03 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:
  1. Daily time sheets and supervisor's daily reports;
  2. Collective bargaining agreements;
  3. Insurance, welfare, and benefits records;

4. Payroll registers;
  5. Earnings records;
  6. Payroll tax forms;
  7. Material invoices, requisitions, and delivery confirmations;
  8. Material cost distribution worksheet;
  9. Equipment records (list of company equipment, rates, etc.);
  10. Vendors', rental agencies', Subcontractors', and agents' invoices;
  11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
  12. Subcontractors' and agents' payment certificates;
  13. Cancelled checks (payroll and vendors);
  14. Job cost report, including monthly totals;
  15. Job payroll ledger;
  16. Planned resource loading schedules and summaries;
  17. General ledger;
  18. Cash disbursements journal;
  19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
  20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
  21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
  22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
  23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
  24. Work sheets, software, and all other documents used by Contractor to prepare its bid.
- C. The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

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

9.01 TERMINATION BY OWNER FOR CAUSE

- A. Owner may, upon 7 days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
1. Contractor fails to prosecute 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. Upon termination, Owner may at its option:
1. Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
  2. Accept assignment of subcontracts pursuant to section 5.20; 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 9.02B, and shall not be entitled to receive further payment until the Work is accepted.
- E. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.
- F. 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 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to section 9.02.

9.02 TERMINATION BY OWNER FOR CONVENIENCE

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

## **PART 10 – MISCELLANEOUS PROVISIONS**

### **10.01 GOVERNING LAW**

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

### **10.02 SUCCESSORS AND ASSIGNS**

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

### **10.03 MEANING OF WORDS**

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard



specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

#### 10.04 RIGHTS AND REMEDIES

No 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.

#### 10.05 CONTRACTOR REGISTRATION

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

#### 10.06 TIME COMPUTATIONS

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

#### 10.07 RECORDS RETENTION

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

#### 10.08 THIRD-PARTY AGREEMENTS

The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

#### 10.09 ANTITRUST ASSIGNMENT

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

#### 10.10 BUSINESS EQUITY REQUIREMENTS

##### 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 state-certified minority and women-owned and controlled businesses 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.

Prior to conducting sub-contract bidding Contractor shall implement a University-approved outreach plan to include small business entities (sbe), disadvantaged business enterprises (dbe), and OMWBE-certified and non OMWBE-certified minority business enterprises (MBE), women's business enterprises (WBE), and minority women's business enterprises (MWBE) as subcontractors and suppliers for this project.

B. Voluntary Efforts

1. Contractors shall:

- a. Advertise opportunities for subcontractors or suppliers in a manner reasonably designed to provide sbe, dbe, MBE, WBE, and MWBE capable of performing the Work with timely notice of such opportunities, and all advertisement shall include a provision encouraging participation by these firms. Advertising may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting bids/proposals directly from such firms.
- b. Provide sbe, dbe, MBE, WBE, and MWBE that express interest with adequate and timely information about plans, specifications, and requirements of the Contract.
- c. Conduct at least one outreach meeting prior to subcontractor bidding, for the purpose of familiarizing sbe, dbe, MBE, WBE, and MWBE with the Contractor's subcontract bidding requirements, procedures, the nature of the subcontract bid packages likely to be bid on the Project, and any other information or training opportunities that would provide these firms with knowledge and skills to support preparation of responsive bids as prime subcontractors/suppliers or as sub-tier subcontractors/suppliers to prime contractors/suppliers. Each meeting shall be advertised in a manner so as to provide reasonable notice of the subject matter, date, and time of the meeting, including, but not limited to, notices placed on the OMWBE website and in the Seattle Daily Journal of Commerce.

2. Contractors are further encouraged to:

- a. Break down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by sbe, dbe, MBE, WBE, and MWBE.
- b. Establish delivery schedules, where the requirements of this contract permit, that encourage participation by sbe, dbe, MBE, WBE, and MWBE.
- c. Reduce bonding requirements where practicable.
- d. Utilize the services of available minority community organizations, minority contractor groups, local minority assistance offices and other organizations that provide assistance in recruitment and placement of sbe, dbe, MBE, WBE, and MWBE.

C. Reporting Requirements

1. Prior to Application of First Progress Payment, Contractor shall submit a list of all sbe, dbe, MBE, WBE, and MWBE subcontractors/suppliers it intends to use and identify which firms are currently OMWBE-certified MBE, WBE, and MWBE and include their respective certification numbers.
2. On a monthly basis, Contractor shall submit a report in a format acceptable to the University providing a list of the sbe, dbe, MBE, WBE, and MWBE utilized that month, the payments made to each, and identifying which firms are currently OMWBE-certified MBE, WBE, and MWBE and including their respective certification numbers.

3. Prior to Final Acceptance, Contractor shall submit a report of total dollar amounts paid to each sbe, dba, MBE, WBE, and MWBE.

D. Non-Discrimination

Contractors shall not create barriers to open and fair opportunities to all businesses including sbe, dba, MBE, WBE, and MWBE 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.

E. 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.

10.11 ASBESTOS

A. Asbestos Products

Contractor shall ensure that no Asbestos products in any form are incorporated into the Work.

B. Good Faith Inspection

1. Owner has performed a good faith inspection to determine whether the materials to be worked on or removed contain Asbestos, and will make this inspection report available to all bidders. Contractor shall not commence Work without receiving a copy of this report.
2. Contractor shall keep the asbestos inspection report on site.
3. The usual policy of the Owner is to identify and abate Asbestos before the Work begins, unless Asbestos abatement is included in the scope of Work of these Contract Documents. In limited cases where Owner is reasonably certain that Asbestos will not be disturbed, asbestos materials are to remain intact in the work area. These materials would be identified in the Asbestos inspection report and Contractor advised of protective measures.
4. In some cases, where certain construction or demolition tasks must be performed before the Asbestos can be accessed for removal, or where phasing of the construction does not permit complete removal prior to beginning the Work, portions of the Asbestos removal may be scheduled during the Contract Time. In such cases, Owner and Contractor must coordinate the scheduling of the work of the separate Asbestos contractor.

C. Notice

If in the course of performing the Work Contractor encounters an Asbestos Project which was not specifically referenced in the Contract Documents, or disturbs Asbestos, Contractor shall immediately stop work and notify Owner. Contractor shall not commence work until authorized by Owner.

D. Delays

Owner will use its best efforts to identify the scope of an Asbestos Project in the Contract Documents. Contractor acknowledges that the condition or scope of an Asbestos Project cannot be fully determined if it would result in disturbance or exposure of asbestos prior to undertaking the Work. If Contractor is significantly delayed during the course of performance because of the presence of Asbestos not identified in the Contract Documents, Contractor may request an equitable adjustment in the Contract Sum in accordance with the provisions of section 7.02.

E. Permits

At least twenty days before undertaking an Asbestos Project, Contractor shall submit to Owner information needed for Owner to file a Notice of Intent to Remove Asbestos with the Puget Sound Air Pollution Control Agency. Contractor shall file Notice of Intent to Remove Asbestos with the Department of Labor and Industries.

F. Safety Precautions

Contractor shall provide, at Contractor's cost, appropriate clothing, caution signs, supply items, and safety equipment in order to perform the Asbestos Project in accordance with the Regulations and the performance standards of Owner.

During the course of performing an Asbestos Project, Contractor shall monitor the work place and adjacent areas in accordance with the Regulations and the performance standards of Owner to ensure that permissible levels of airborne concentrations of asbestos fibers are not exceeded. The results of all monitoring shall be immediately provided to Owner. If the prescribed exposure limits are exceeded, Contractor shall immediately execute a compliance program of engineering and work practices approved by Owner.

G. Certification

No Contractor or person shall undertake an Asbestos Project unless certified by the Department of Labor and Industries as a qualified asbestos contractor, supervisor, or worker in accordance with the requirements of WAC Chapter 296-65.

H. Records

Contractor shall maintain complete records of personal and environmental monitoring. A copy of these records shall be provided to Owner before Final Acceptance. Contractor is also required by regulation to arrange for medical examinations for those employees who work on an Asbestos Project and to maintain those records for at least twenty years.

I. Definitions

1. "Asbestos" includes different forms of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.
2. "Asbestos Project" means the construction, demolition, repair, maintenance or renovation of any building, mechanical piping equipment or system involving the demolition, removal, encapsulation, salvage, or disposal of material which may release asbestos fibers into the air.
3. "Regulations" for purpose of this section Regulations shall mean the National Emission Standards for Hazardous Air Pollutants (40 CFR 61), Occupational Safety and Health Requirements Pertaining to Asbestos (29 CFR 1910), the Regulations of the Washington State Department of Labor and Industries, WAC Chapters 296-62, 65, 155, and Puget Sound Air Pollution Control Agency (PSAPCA) regulating Asbestos Projects as adopted or hereafter amended.

#### 10.12 APPRENTICE UTILIZATION REQUIREMENTS

A. For contracts advertised for bid on or after January 1, 2012, the Contractor shall ensure that no less than fifteen percent (15%) of the total labor hours utilized on the project are performed by apprentices registered with the Washington State Apprenticeship and Training Council.

1. Total labor hours include additional hours worked as a result of change orders.
2. Total labor hours exclude hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements. However, total labor hours shall include the

hours worked by supervisors, foremen, and superintendents if it is determined they are subject to prevailing wage requirements pursuant to Washington Administrative Code (WAC) 296-127-015.

3. Total labor hours include all hours worked by the Contractor and all subcontractors on the Project.
- B. The Contractor shall meet or exceed the apprentice utilization requirements of the Contract Documents on all labor hours on the Project.
  - C. The Contractor shall include the apprentice utilization requirements of Paragraph A, above, in all subcontracts executed for the Project.
  - D. If, during the term of the Contract, the Contractor determines that it will be unable to meet the percentage utilization requirement in Paragraph A, above, the Contractor may make a written request to the Owner to reduce the required percentage. The request shall include documentation of:
    1. The Contractor's good faith efforts to use registered apprentices; and/or
    2. The lack of availability of registered apprentices; and or
    3. A disproportionately high ratio of material costs to labor hours, which makes infeasible the required minimum level of apprentice participation.
  - E. The Owner shall evaluate the request made under Paragraph D, above, and, if appropriate, a change order shall be prepared by the Owner reducing the utilization requirement.
  - F. With its monthly Application for Payment, the Contractor shall submit the Apprentice and Journey Level Worker Utilization Report on the form in Appendix A.

#### 10.13 HEADINGS AND CAPTIONS

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