UNIVERSITY of WASHINGTON

UW BOTHELL DISCOVERY
HALL 150/152 RENOVATION

PROJECT NUMBER: 207478
PROJECT MANUAL
May 10, 2021
UNIVERSITY OF WASHINGTON
Project Delivery Group

ARCHITECT
Magellan Architects
8383 158th Ave NE, Suite 280
Redmond, WA 98052
POC: Clover Schuler, AIA
clover@magellanarchitects.com

MECHANICAL & ELECTRICAL ENGINEER
GLUMAC
1601 Fifth Avenue, Suite 2210
Seattle, WA 98101
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ADVERTISEMENT FOR BIDS

University of Washington
UW Bothell Discovery Hall 150/152 Renovation (UW Project # 207478)
Date of Bid Opening: June 10, 2021
A/E’s estimate: $375,000 (excluding WSST)

NOTICE TO CONTRACTORS:

Bid Submittal: The University of Washington is taking precautions to limit exposure and impacts related to COVID-19. To comply with the Governor’s “Safe Start” plan, the requirement to submit a sealed bid is waived. Bids will be received by the University of Washington, Project Delivery Group, by email at PDGbids@uw.edu.

COVID Option: The Bid Form will be received up to 3:00 p.m. on June 10, 2021. Bids will then be publicly opened and read aloud via Zoom Version 5.0 (required) https://washington.zoom.us/j/94154252912. Bids received after the date and hour above stated will not receive consideration. Attendance in person is not allowed.

Project Description: The project includes the following work: ~2,152sf interior remodel to combine two existing spaces (rooms #150 and #152) inside of Discovery Hall on the Bothell Campus of University of Washington to create one new collaborative workspace. The scope of work includes but is not limited to interior demo, wall and ceiling framing, upgraded finishes, and reconfiguration of existing lighting, power, and ventilation systems.

All construction operations must comply with the most current Covid 19 related rules and guidance from the Governor’s Office. All activities must also comply with all related and applicable requirements issued by the Washington State Department of Labor and Industries and Public Health Agencies having jurisdiction.

Questions: Questions about this project should be directed to:

A/E Name: Magellan Architects
Contact Person: Clover Schuler
Phone Number: (425) 941-9494
Email: Clover@magellanarchitects.com

Pre-Bid Site Meeting: The Project site is available for inspection by prospective bidders at a pre-bid site meeting and walk-through at 3:00pm on June 1, 2021 at Discovery Hall on the UW Bothell Campus. Meet just outside the front/east entry to the building.

Bid Documents: Bidders may obtain or access plans, specifications, and addenda for this project at https://facilities.uw.edu/projects/business-opportunities/solicitations. Contractors who would like to be included on the Planholder's list shall either attend a pre-bid meeting or request to be added by emailing PDGbids@uw.edu.

Bid Guarantee: A surety company bid bond on a form acceptable to Owner, a cashier’s check or a certified check payable to the order of University of Washington, or cash, shall accompany each bid in an amount not less than five percent (5%) of the Base Bid. No bidder may withdraw its bid after the hour set for the opening thereof, unless the award of the contract is delayed for a period exceeding 60 days.
BUSINESS EQUITY: The University of Washington is committed to providing optimal opportunity for participation in contracting by Business Equity Enterprises (BEE). The University of Washington defines a Business Equity Enterprise (BEE) as "any entity licensed to do business in the State of Washington, including a corporation, partnership, sole proprietorship, or other legal entity that meets any of the following:"


Lesbian/Gay/Bisexual/Transgender Business Enterprise (LGBTBE): More than 50% owned and controlled by at least one person who is a member of the LGBT community.

Minority Business Enterprise (MBE): More than 50% owned and controlled by at least one person who is a member of one or more of the following minority groups:
- Asian Pacific American
- Black American
- Hispanic American
- Native American
- Subcontinent Asian American

Minority Women’s Business Enterprise (MWBE): More than 50% owned and controlled by at least one woman who is a member of one or more of the above minority groups.

Small Business Enterprise (SBE): A business entity that:
- Can attest that it is owned and operated independently from all other businesses and
- Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which it is to be engaged at the UW; or
- Is certified with the OMWBE.

Veteran’s Business Enterprise (VBE): Certified with the Washington State Department of Veteran’s Affairs (DVA)

Women’s Business Enterprise (WBE): More than 50% owned and controlled by one or more women.
The University of Washington has determined that an overall aspirational goal of 20% Business Equity Enterprise (BEE) utilization, inclusive of 15% minority and women-owned business utilization, is practicable and attainable on this construction project; that goal is negotiable based upon the specialized nature of the work and the relative availability of BEE to perform the specific work scopes identified in this project. The University of Washington welcomes the participation of all BEE, irrespective of gross revenues, including those that are self-designated and those that are state (OMWBE) certified. Participation may be on a direct basis in response to this invitation to bid, or as a subcontractor or supplier.

Safety Plans: Prior to the issuance of the Notice to Proceed, the Contractor will be required to submit to the Owner a copy of its company safety program. See Modifications to the General Conditions, Part 5 for details.

The Owner reserves the right to reject any or all bids and to waive as an informality any irregularities in the bids received.

Date(s) of Publication: May 21, 2021

END OF SECTION
1. CONTRACTOR'S REGISTRATION

All bidders must be registered by the Washington State Department of Labor and Industries in accordance with R.C.W. 18.27.020.

2. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

A. Bidder acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost.

B. The Project site is available for inspection for prospective bidders at a pre-bid site meeting and walk-through, as indicated in the Advertisement for Bids, and existing conditions should be examined. This will be the only opportunity for bidders to visit the project site.

C. Bidder acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of these Contract Documents.

D. Bidder acknowledges that adjoining areas will be conducting normal operations during the work. Bidder should anticipate pedestrian and traffic congestion, limited parking, and the requirement that the work be coordinated with ongoing operations.

E. Bidder acknowledges that its bid is based upon a schedule and assumptions which incorporate these conditions.

F. Owner assumes no responsibility for any conclusions or interpretations made by bidder based on the information made available by Owner. Should a bidder find discrepancies or omissions in the drawings or specifications, or should bidder be in doubt as to their meaning, bidder shall at once notify the Owner. If appropriate, Owner will send written instructions to all bidders by addenda. Questions received less than 10 days before the time of bid opening may not be answered. All addenda issued shall be incorporated into these Contract Documents.

3. PREPARATION OF BIDS

Bidder shall comply with the following instructions in preparing its bid.

A. The name, address, and Contractor's license number of bidder shall be typed or printed on the bid in the space provided. The name must match the name on the bid guarantee.

Bids must be (1) submitted on the forms furnished by Owner or on copies of those forms, and (2) manually signed in ink.

B. Bidders shall submit bids in the format provided in the Bid Form. Only the amounts and information asked for in the Bid Form furnished will be considered as the bid. All blank spaces must be filled in.

C. Bidder shall bid upon all alternates indicated in the Bid Form. When bidding on alternates for which there is no charge, bidder shall write the words "No Charge" in the space provided on the Bid Form. If a bidder fails to bid an alternate, or notes "no bid," it will be construed as meaning that there will be no change in the Contract Sum and that the alternate is included in the Contract Sum. Alternate bids will not be considered unless requested in the Bid Form.
D. The cost of trench safety systems for trench excavation that exceeds a depth of four feet must be identified as a lump sum amount on the Bid Form as well as included in the Base Bid amount. The costs of trench safety systems shall not be considered as incidental to any other contract item, and any attempt to include the trench safety systems as an incidental cost is prohibited. Identification of this amount is an acknowledgment that the bidder has considered proper safety provisions in the estimate but does not relieve the bidder of responsibility for full compliance with all laws and statutes regardless of their actual cost. If this project will involve trench excavation in excess of a depth of four feet, bidder must include a lump sum dollar amount. “N/A” and ‘zero” are not responsive.

E. Bidders shall acknowledge all addenda by identifying the addendum number(s) in the space provided on the Bid Form. Notwithstanding any automatic notification methods utilized by Bidder, Bidder is responsible for checking Owner’s bid posting website for any addenda issued up to and until the bid opening date and time specified in Section 00 11 00.

F. Bidder shall include in the bid all allowances provided in the Bid Form. Owner will pay the difference if the actual cost exceeds the allowance.

4. TAXES

The bid shall include all taxes imposed by law except Washington State Sales Tax. Sales tax shall not be included in the bid price, except that the retail sales tax upon sales and rentals to prime contractors and subcontractors of tools, equipment, and material primarily for use by the Contractor rather than for resale as a component part of the finished structure, shall be included in the bid price. A proportionate amount of State sales tax will be added to each progress payment, collected from Owner, and paid to the State by Contractor.

5. BID GUARANTEE

Bidder shall furnish a bid guarantee in the form of a firm commitment, such as bid bond, postal money order, cash or cashier's check payable to Owner, in the amount of at least 5% of the base bid. Owner reserves the right to hold the bid guarantees of all bidders until the successful bidder has entered into the contract and furnished the required bonds and insurance certificates, or for a period of 60 days, whichever is the shorter time.

6. FILING FEES

Applicable state laws concerning prevailing wages, hours, workers' compensation and other conditions of employment are called to the attention of bidders for their compliance. Bidder shall include in the bid any filing fees required to comply with applicable labor laws.

7. SPECIFIED PRODUCTS

Bids must be based upon use of items named in the specifications, or approved equals or substitutions. In certain cases, specific items have been named because of operational or maintenance considerations; approval of equals or substitutions should not be assumed.

Requests for approval of equals or substitutions must be made in writing and received by the A/E at least 10 days prior to the date of bid opening. Said request must include complete descriptions, technical data, and performance records. Any approval of the proposed equal or substitution will be made by addendum issued to all bidders. See Section 01 25 00, Substitution Procedures, for instructions.
8. SUBMISSION AND WITHDRAWAL OF BIDS

A. Bids and bid modifications shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the advertisement for bids and (2) showing the project title, bid opening date and time, and the name and address of bidder.

B. Bids may be modified if in writing and received before bid opening time.

C. Receipt of bids and bid modifications by telegraph, facsimile, telephone, or orally will not be considered.

D. A bidder may withdraw its bid by submitting a written request before the bid opening time. Owner will return the bid unopened after Contract award.

9. LATE SUBMISSIONS

A. Any bid, bid modification or request to withdraw a bid which is received after bid opening time will not be considered.

B. The only acceptable evidence to establish the time of receipt at the office designated in the advertisement for bid is the time/date stamped or printed by Owner on the bid wrapper or other documentary evidence of receipt maintained by Owner.

10. BID EVALUATION

Bids which are incomplete, or which are conditioned in any way, or which contain erasures, alterations, or items not called for in the Bid Form, or which are not in conformity with the law or with these Instructions, shall be rejected as nonresponsive if the irregularity is material and may be rejected as nonresponsive if the irregularity is not material.

If the bid includes a supplemental schedule of unit prices for labor and materials, or other items for the purpose of establishing a cost basis for unforeseen contract changes, Owner reserves the right to reject, without impairing the balance of the bid, any or all such predetermined unit prices.

Owner reserves the right to reject any or all bids and to waive any informalities or nonmaterial irregularities in the bids received.

The determination of the low responsive bid shall be made by Owner based upon any combination of the base bid and alternates which, in Owner's sole discretion, is in Owner's best interest considering price, schedule and other factors. The numbering of the alternates in the Bid Form bears no relationship to the order in which the alternates may be selected by Owner.

In accordance with RCW 39.04.380, for a public works bid received from a nonresident contractor from a state that provides an in-state percentage bidding preference, a Comparable Percentage Disadvantage (CPD) will be applied to the bid of that nonresident contractor. The CPD is the percent advantage provided by the nonresident contractor’s home state. For the purpose of determining the successful bidder, Owner will multiply the nonresident contractor bid amount by the CPD. The “bid amount” shall be the total of the base bid and all accepted alternate bid items. The CPD shall be added to the nonresident contractor bid amount to establish the Nonresident Disadvantage Total. The Nonresident Disadvantage Total shall be compared to the Washington state contractor bid amounts.

See example below:

<table>
<thead>
<tr>
<th>Alaska Nonresident Contractor Bid Amount</th>
<th>$100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiplied by the Alaska CPD</td>
<td>x 0.05</td>
</tr>
<tr>
<td>Alaska CPD Total</td>
<td>$ 5,000</td>
</tr>
</tbody>
</table>
Alaska Nonresident Contractor Bid Amount  $100,000
Alaska CPD Total + $5,000
Nonresident Disadvantage Total $105,000

If the Nonresident Disadvantage Total is lower than all other Washington contractor bid amounts, the Alaska nonresident contractor is the low bidder and will be awarded a contract for the bid amount of $100,000, provided that they are determined to be a responsive and responsible bidder.

If the Nonresident Disadvantage Total is higher than a Washington contractor bid amount, the Washington bidder will be awarded a contract for the bid amount, provided that they are determined to be a responsive and responsible bidder.

11. LOW RESPONSIBLE BIDDER

A. It is the intent of Owner to award a contract to the low responsible bidder. Before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. The bidder may be required by the Owner to submit documentation demonstrating compliance with the criteria. The bidder must:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of bid submittal.

2. Have a current Washington Unified Business Identifier (UBI) number.

3. If applicable:
   a. Have Industrial Insurance (workers’ compensation) coverage for the bidder’s employees working in Washington, as required in Title 51 RCW;
   b. Have a Washington Employment Security Department number, as required in Title 50 RCW;
   c. Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW.

4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

5. If applicable, provide evidence of the required contractor training from Washington State Department of Labor & Industry. Chapter 39.04.350 and 39.06.020 RCW.

6. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of Chapter 49.46, 49.48, or 49.52 RCW.

B. In addition to the bidder responsibility criteria above, the bidder must also meet the following relevant supplemental bidder responsibility criteria applicable to the project:

1. Performance Evaluations: The Bidder shall not have received one or more overall evaluations of “Deficient” or “Inadequate” as part of the Owner’s Contractor Performance Evaluation Program.
2. Debarment by Owner: The Bidder shall not be currently debarred by the Owner from contracting with the Owner for having received overall evaluations of their performance of “Deficient” or “Inadequate” on three or more projects of the Owner physically completed during the preceding five (5) year period.

C. If the Owner determines the bidder does not meet the bidder responsibility criteria in paragraph B above and is therefore not a responsible bidder, the Owner shall notify the bidder in writing with the reasons for its determination. If the bidder disagrees with this determination, it may appeal the determination within 24 hours of receipt of the Owner’s determination by presenting additional information to the Owner. The Owner will consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the Owner will not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

12. CONTRACT AWARD AND EXECUTION

The formal acceptance by the Owner of the lowest responsive bid of a responsible bidder will be in the form of a notice of award of public works contract issued by the Owner to the bidder. Within 7 days of the notice of award date, bidder shall submit an executed Contract (see Appendix A); certificate of insurance and endorsements as required in the Contract Documents; and Payment and Performance Bonds using AIA Document A312, most current edition, or other form acceptable to Owner, in Contract Award Amount plus Washington State Sales Tax. If the successful bidder, after award of the Contract, fails to execute all Contract Documents or provide insurance documentation and bonds as required within the time specified, Owner may revoke award of the Contract and the bid guarantee may be retained by Owner.

END OF SECTION
BID FORM

TO: Board of Regents
    University of Washington
    Seattle, Washington 98195

The undersigned Bidder submits the following bid:

BASE BID:

Pursuant to and in compliance with the Contract Documents, including the Advertisement for Bids and Instructions for Bidders, the Bidder hereby certifies that it has carefully examined the Contract Documents entitled:

207478 UW Bothell Discovery Hall 150/152 Renovation

Prepared by Magellan Architects

and the conditions affecting the Work, and being familiar with the site; and having made the necessary examinations, proposes to furnish all labor, materials, equipment, and services necessary to complete the Work in strict accordance with the Contract Documents for the above-named project for the following sum, which is hereby designated as the Base Bid:

<table>
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<th>Base Bid</th>
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SALES TAX:

None of the sums stated in the foregoing include Washington State Sales Tax, except as designated in Article 4 of the Instructions for Bidders.

TIME OF COMPLETION AND LIQUIDATED DAMAGES:

The undersigned Bidder agrees, if awarded the Contract, to complete the Work of the Contract within the number of calendar days specified in Supplemental Conditions, Section 00 73 00, and also agrees to the amounts specified for Liquidated Damages. It is further agreed that the time for completion of the Work described herein is a reasonable time considering the average climatic range and usual industrial conditions prevailing in the locality.
TRENCH EXCAVATION SAFETY PROVISIONS:

If the Contract Documents contain any work which requires trenching exceeding a depth of four feet, all costs for adequate trench safety systems shall be identified as a separate bid item in compliance with Chapter 39.04 RCW and WAC 296-155-650. The purpose of this provision is to ensure that the Bidder agrees to comply with all the relevant trench safety requirements of Chapter 49.17 RCW. This bid amount shall be considered as part of the Base Bid set forth above. Bidder must include a lump sum dollar amount in blank below (even if the value is $0.00) to be responsive.

Trench Excavation Safety Provisions Only: N/A

CONTRACT AND BONDS:

If the Owner awards a contract based on this bid within sixty (60) days of the bid submittal deadline, the Bidder agrees to execute a contract for the above work, for compensation computed from the above stated sums, on the University of Washington Public Works Contract form, and to furnish Payment and Performance Bonds and acceptable evidence of insurance as required by the Contract Documents.

BID GUARANTEE:

Pursuant to paragraph 5 of the Instruction to Bidders, Section 00 21 00, Bidder hereby certifies that it has furnished a bid guarantee for no less than 5% of the base bid, and that such guarantee accompanies this Bid Form.

The successful bidder shall submit an executed Contract, Payment and Performance Bonds, and acceptable evidence of insurance within seven (7) days after receipt of award notice and Public Works Contract form from the Owner. If the successful bidder, upon award of a contract by the Owner, fails to execute the Public Works Contract or submit the Payment and Performance Bonds and acceptable evidence of insurance as required within the time specified, Owner may revoke the award. Should the successful bidder fail to enter into a contract with Owner, the bid guarantee may be retained by Owner as liquidated damages, not as a penalty.

If a contract is not awarded within sixty (60) days after the bid submittal deadline, or if the bidder delivers a signed Public Works Contract, Payment and Performance Bonds, and acceptable evidence of insurance, then the certified or cashier’s check or cash submitted as the bid guarantee shall be returned to the bidder, or the Bid Bond shall become void.
Bidder’s Business Name:

<table>
<thead>
<tr>
<th>Type of Business:</th>
</tr>
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<tbody>
<tr>
<td>☐ Sole Proprietorship  ☐ Partnership  ☐ Corporation (State of Incorporation:___)  ☐ Other</td>
</tr>
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Physical Business Address (Must not be a P.O. Box):

<table>
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<tr>
<th>City:</th>
<th>State:</th>
<th>Zip Code:</th>
</tr>
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<table>
<thead>
<tr>
<th>Business Telephone Number:</th>
<th>Business Fax Number:</th>
<th>Business E-mail Address:</th>
</tr>
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</table>

State of Washington numbers for the following:

<table>
<thead>
<tr>
<th>Contractor Registration No.:</th>
<th>UBI No.:</th>
<th>Employment Security Dept. No.:</th>
</tr>
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</table>

Receipt is hereby acknowledged of Addenda No(s): _____ _____ _____ _____ _____

Bidder is in compliance with the responsible bidder criteria requirement of RCW 39.04.350(1)(g).

OFFICIAL AUTHORIZED TO SIGN FOR BIDDER:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Date:</th>
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<table>
<thead>
<tr>
<th>Print Name and Title</th>
<th>Location or Place Executed: (City, State)</th>
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END OF SECTION
## GENERAL CONDITIONS

### FOR WASHINGTON STATE FACILITY CONSTRUCTION

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PART 1 – GENERAL PROVISIONS

1.01 DEFINITIONS

A. “Application for Payment” means a written request submitted by Contractor to A/E for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or A/E may require.

B. “Architect,” “Engineer,” or “A/E” means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.

C. “Change Order” means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.

D. “Claim” means Contractor’s exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Part 8.

E. “Contract Award Amount” is the sum of the Base Bid and any accepted Alternates.

F. “Contract Documents” means the Advertisement for Bids, Instructions for Bidders, completed Bid Form, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Public Works Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.

G. “Contract Sum” is the total amount payable by Owner to Contractor, for performance of the Work in accordance with the Contract Documents, including all taxes imposed by law and properly chargeable to the Work, except Washington State sales tax.

H. “Contract Time” is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.

I. “Contractor” means the person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents.

J. “Day(s): Unless otherwise specified, day(s) shall mean calendar day(s).”

K. “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.

L. “Final Acceptance” means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents, as more fully set forth in Section 6.09 B.

M. “Final Completion” means that the Work is fully and finally complete in accordance with the Contract Documents, as more fully set forth in Section 6.09 A.

N. “Force Majeure” means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.05A.

O. “Notice” means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.
P. “Notice to Proceed” means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.

Q. “Owner” means the state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.

R. “Person” means a corporation, partnership, business association of any kind, trust, company, or individual.

S. “Prior Occupancy” means Owner’s use of all or parts of the Project before Substantial Completion, as more fully set forth in Section 6.08 A.

T. “Progress Schedule” means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Section 3.02.

U. “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.

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 principal 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 when the construction is sufficiently complete, 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 the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

1.02 ORDER OF PRECEDENCE

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

1. Signed Public Works Contract, including any Change Orders.

2. Supplemental Conditions.

3. Modifications to the General Conditions.

4. General Conditions.
5. **Specifications.** Provisions in Division 1 shall take precedence over provisions of any other Division.

6. **Drawings.** In case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.

7. **Signed and Completed Bid Form.**

8. **Instructions to Bidders.**

9. **Advertisement for Bids.**

### 1.03 EXECUTION AND INTENT

**Contractor Representations:** Contractor makes the following representations to Owner:

1. **Contract Sum reasonable:** The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;

2. **Contractor familiar with project:** Contractor has carefully reviewed the Contract Documents, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;

3. **Contractor financially capable:** Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and

4. **Contractor can complete Work:** Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.

### PART 2 – INSURANCE AND BONDS

#### 2.01 CONTRACTOR’S LIABILITY INSURANCE

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

A. **Term of insurance coverage:** Contractor shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 5.16.
1. **General Liability Insurance:** Commercial General Liability (CGL) on an Occurrence Form. Coverage shall include, but not be limited to:
   a. Completed operations/products liability;
   b. Explosion, collapse, and underground; and
   c. Employer’s liability coverage.

2. **Automobile Liability Insurance:** Automobile liability

   B. **Industrial Insurance compliance:** Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen’s and Harbor Workers’ Act and the Jones Act.

   C. **Insurance to protect for the following:** All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.

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

### 2.02 COVERAGE LIMITS

**Insurance amounts:** The coverage limits shall be as follows:

A. Limits of Liability shall not be less than $1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile Liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.

B. $2,000,000 Combined Single Limit Annual General Aggregate.

C. $2,000,000 Annual Aggregate for Products and Completed Operations Liability.

D. $1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.

### 2.03 INSURANCE COVERAGE CERTIFICATES

A. **Certificate required:** Prior to commencement of the Work, Contractor shall furnish to Owner a completed certificate of insurance coverage.

B. **List Project info:** All insurance certificates shall name Owner’s Project number and Project title.

C. **Cancellation provisions:** All insurance certificates shall specifically require 45 Days prior notice to Owner of cancellation or any material change, except 30 Days for surplus line insurance.

### 2.04 PAYMENT AND PERFORMANCE BONDS

**Conditions for bonds:** Payment and performance bonds for 100% of the Contract Award Amount, plus state sales tax, shall be furnished for the Work, using the Payment Bond and Performance Bond form published by and available from the American Institute of Architects (AIA) – form A312. Prior to execution of a Change Order that, cumulatively with previous Change Orders, increases the Contract Award Amount by 15% or more, the Contractor shall provide either new payment and performance bonds for the
revised Contract Sum, or riders to the existing payment and performance bonds increasing the amount of the bonds. The Contractor shall likewise provide additional bonds or riders when subsequent Change Orders increase the Contract Sum by 15% or more. No payment or performance bond is required if the Contract Sum is $35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

2.05 ALTERNATIVE SURETY

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

A. Owner has a reasonable objection to the surety; or

B. Any surety fails to furnish reports on its financial condition if required by Owner.

2.06 BUILDER’S RISK

A. Contractor to buy Property Insurance: Contractor shall purchase and maintain property insurance in the amount of the Contract Sum including all Change Orders for the Work on a replacement cost basis until Substantial Completion. For projects not involving New Building Construction, “Installation Floater” is an acceptable substitute for the Builder’s Risk Insurance. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear.

B. Losses covered: Contractor property insurance shall be placed on an “all risk” basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for A/E’s services and expenses required as a result of an insured loss.

C. Waiver of subrogation rights: Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E’s subconsultants, separate contractors described in Section 5.20, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other 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.

PART 3 – TIME AND SCHEDULE

3.01 PROGRESS AND COMPLETION

Contractor to meet schedule: 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. Preliminary Progress Schedule: Unless otherwise provided in Division 1, 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. **Form of Progress Schedule:** Unless otherwise provided in Division 1, 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 comments on Progress Schedule:** 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. **Monthly updates and compliance with Progress Schedule:** 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 or revise the Progress Schedule to reconcile with the actual progress of the Work.

E. **Contractor to notify Owner of delays:** 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 suspend Work:** Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 Days, or for such longer period as mutually agreed.

B. **Compliance with suspension; Owner’s options:** Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 Days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:

1. Cancel the written notice suspending the Work; or

2. Terminate the Work covered by the notice as provided in the termination provisions of Part 9.

C. **Resumption of Work:** If a written notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.

D. **Equitable Adjustment for suspensions:** Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance...
directly attributable to such suspension, provided Contractor complies with all requirements set forth in Part 7.

3.04 OWNER’S RIGHT TO STOP THE WORK FOR CAUSE

A. Owner may stop Work for Contractor’s failure to perform: If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.

B. No Equitable Adjustment for Contractor’s failure to perform: Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor’s failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

3.05 DELAY

A. Force Majeure actions not a default; Force Majeure defined: Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party (“Force Majeure”). Acts of Force Majeure include, but are not limited to:

1. Acts of God or the public enemy;
2. Acts or omissions of any government entity;
3. Fire or other casualty for which Contractor is not responsible;
4. Quarantine or epidemic;
5. Strike or defensive lockout;
6. Unusually severe weather conditions which could not have been reasonably anticipated; and
7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.

B. Contract Time adjustment for Force Majeure: Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for equitable adjustment according to Section 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.

C. Contract Time or Contract Sum adjustment if Owner at fault: Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor’s performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to Sections 7.02 and 7.03.

D. No Contract Time or Contract Sum adjustment if Contractor at fault: Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
E. **Contract Time adjustment only for concurrent fault:** To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to Section 7.03, but shall not be entitled to an adjustment in Contract Sum.

F. **Contractor to mitigate delay impacts:** Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

### 3.06 NOTICE TO OWNER OF LABOR DISPUTES

A. **Contractor to notify Owner of labor disputes:** If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner.

B. **Pass through notification provisions to Subcontractors:** Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

### 3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

A. **Liquidated Damages**

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

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

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

B. **Actual Damages**

**Calculation of Actual Damages:** Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.
PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

4.01 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW

A. Specifications and Drawings are basis of the Work: The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Specifications, and other provisions of the Contract Documents.

B. Parts of the Contract Documents are complementary: The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.

C. Contractor to report discrepancies in Contract Documents: Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to A/E in writing.

D. Contractor knowledge of discrepancy in documents – responsibility: Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.

E. Contractor to perform Work implied by Contract Documents: Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.

F. Interpretation questions referred to A/E: Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the A/E.

4.02 PROJECT RECORD

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

B. Update Project Record weekly and keep on site: The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled “PROJECT RECORD.” The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.

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

A. **Definition of Shop Drawings:** “Shop Drawings” means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.

B. **Approval of Shop Drawings by Contractor and A/E:** Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to A/E without evidence of Contractor’s approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor’s submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

C. **Contractor not relieved of responsibility when Shop Drawings approved:** Approval, or other appropriate action with regard to Shop Drawings, by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor’s means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.

D. **Variations between Shop Drawings and Contract Documents:** If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.

E. **Contractor to submit 5 copies of Shop Drawings:** Unless otherwise provided in Division 1, Contractor shall submit to A/E for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by A/E and 2 sets shall be returned to Contractor.
4.04 **ORGANIZATION OF SPECIFICATIONS**

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

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

A. **A/E, not Contractor, owns Copyright of Drawings and Specifications:** The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E’s service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor’s set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.

B. **Drawings and Specifications to be used only for this Project:** The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.

C. **Shop Drawing license granted to Owner:** Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in Section 5.03 and 5.22 from any violations of copyright or other intellectual property rights arising out of Owner’s use of the Shop Drawings hereunder, or to secure for Owner, at Contractor’s own cost, licenses in conformity with this section.

D. **Shop Drawings to be used only for this Project:** The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

**PART 5 – PERFORMANCE**

5.01 **CONTRACTOR CONTROL AND SUPERVISION**

A. **Contractor responsible for Means and Methods of construction:** Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the
Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.

B. **Competent Superintendent required:** Performance of the Work shall be directly supervised by a competent superintendent who has authority to act for Contractor. The superintendent must be satisfactory to the Owner and shall not be changed without the prior written consent of Owner. Owner may require Contractor to remove the superintendent from the Work or Project site, if Owner reasonably deems the superintendent incompetent, careless, or otherwise objectionable, provided Owner has first notified Contractor in writing and allowed a reasonable period for transition.

C. **Contractor responsible for acts and omissions of self and agents:** Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, and their employees and agents.

D. **Contractor to employ competent and disciplined workforce:** Contractor shall enforce strict discipline and good order among all of the Contractor’s employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor’s employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.

E. **Contractor to keep project documents on site:** Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit drawings.

F. **Contractor to comply with ethical standards:** Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, comply with the Ethics in Public Service Act RCW 42.52, which, among other things, prohibits state employees from having an economic interest in any public works contract that was made by, or supervised by, that employee. Contractor shall remove, at its sole cost and expense, any of its, or its Subcontractors’ employees, if they are in violation of this act.

### 5.02 PERMITS, FEES, AND NOTICES

A. **Contractor to obtain and pay for permits:** Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.

B. **Allowances for permit fees:** If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor’s bid, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference shall be adjusted by Change Order.

C. **Contractor to comply with all applicable laws:** Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

### 5.03 PATENTS AND ROYALTIES

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

5.04 PREVAILING WAGES

A. Contractor to pay Prevailing Wages: Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor’s responsibility to verify the applicable prevailing wage rate.

B. Statement of Intent to Pay Prevailing Wages: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the Contractor shall submit, or shall have previously submitted to the Owner for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

C. Affidavit of Wages Paid: Prior to release of retainage, the Contractor shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.

D. Disputes: Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

E. Statement with pay application; Post Statements of Intent at job site: Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefilled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

F. Contractor to pay for Statements of Intent and Affidavits: In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

G. Certified Payrolls: Consistent with WAC 296-127-320, the Contractor and any subcontractor shall submit a certified copy of payroll records if requested.

5.05 HOURS OF LABOR

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

5.06 **NONDISCRIMINATION**

A. **Discrimination prohibited by applicable laws:** Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, Sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.

B. **During performance of the Work:**

1. **Protected Classes:** Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in RCW 49.60.

2. **Advertisements to state nondiscrimination:** Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.

3. **Contractor to notify unions and others of nondiscrimination:** Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers’ representative of Contractor’s obligations according to the Contract Documents and RCW 49.60.

4. **Owner and State access to Contractor records:** Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.

5. **Pass through provisions to Subcontractors:** Contractor shall include the provisions of this section in every Subcontract.

5.07 **SAFETY PRECAUTIONS**

A. **Contractor responsible for safety:** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.

B. **Contractor safety responsibilities:** In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations,
and orders of any public body having jurisdiction for the safety of persons or property or to protect
them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such
safety and protection; and shall notify owners of adjacent property and utilities when prosecution
of the Work may affect them.

C. **Contractor to maintain safety records:** Contractor shall maintain an accurate record of exposure
data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease,
or damage to property, materials, supplies, or equipment. Contractor shall immediately report
any such incident to Owner. Owner shall, at all times, have a right of access to all records of
exposure.

D. **Contractor to provide HazMat training:** Contractor shall provide all persons working on the
Project site with information and training on hazardous chemicals in their work at the time of their
initial assignment, and whenever a new hazard is introduced into their work area.

1. **Information.** At a minimum, Contractor shall inform persons working on the Project site of:
   a. **WAC:** The requirements of chapter 296-62 WAC, General Occupational Health
      Standards;
   b. **Presence of hazardous chemicals:** Any operations in their work area where
      hazardous chemicals are present; and
   c. **Hazard communications program:** The location and availability of written hazard
      communication programs, including the required list(s) of hazardous chemicals
      and material safety data sheets required by chapter 296-62 WAC.

2. **Training.** At a minimum, Contractor shall provide training for persons working on the
Project site which includes:
   a. **Detecting hazardous chemicals:** Methods and observations that may be used to
detect the presence or release of a hazardous chemical in the work area (such
as monitoring conducted by the employer, continuous monitoring devices, visual
appearance or odor of hazardous chemicals when being released, etc.);
   b. **Hazards of chemicals:** The physical and health hazards of the chemicals in the
      work area;
   c. **Protection from hazards:** The measures such persons can take to protect
      themselves from these hazards, including specific procedures Contractor, or its
      Subcontractors, or others have implemented to protect those on the Project site
      from exposure to hazardous chemicals, such as appropriate work practices,
      emergency procedures, and personal protective equipment to be used; and
   d. **Hazard communications program:** The details of the hazard communications
      program developed by Contractor, or its Subcontractors, including an explanation
      of the labeling system and the material safety data sheet, and how employees
can obtain and use the appropriate hazard information.

E. **Hazardous, toxic or harmful substances:** Contractor’s responsibility for hazardous, toxic, or
harmful substances shall include the following duties:

1. **Illegal use of dangerous substances:** Contractor shall not keep, use, dispose, transport,
generate, or sell on or about the Project site, any substances now or hereafter
designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or
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harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as “hazardous substances”), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 Days on the Project site.

2. **Contractor notifications of spills, failures, inspections, and fines:** Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.

F. **Public safety and traffic:** All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor’s responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.

G. **Contractor to act in an emergency:** In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.

H. **No duty of safety by Owner or A/E:** Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

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

A. **Limited storage areas:** Contractor shall confine all operations, including storage of materials, to Owner-approved areas.

B. **Temporary buildings and utilities at Contractor expense:** Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall be removed by Contractor at its expense upon completion of the Work.

C. **Roads and vehicle loads:** Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

D. **Ownership and reporting by Contractor of demolished materials:** Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.

E. **Contractor responsible for care of materials and equipment on-site:** Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of
Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.

F. Contractor responsible for loss of materials and equipment: Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

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

5.10 UNFORESEEN PHYSICAL CONDITIONS
A. Notice requirement for concealed or unknown conditions: If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly and in no event later than 7 Days after the first observance of the conditions. Conditions shall not be disturbed prior to such notice.

B. Adjustment in Contract Time and Contract Sum: If such conditions differ materially and cause a change in Contractor’s cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefore as provided in Part 7.

5.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES AND IMPROVEMENTS
A. Contractor to protect and repair property: Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.

B. Tree and vegetation protection: Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

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

5.13 **MATERIAL AND EQUIPMENT**

A. **Contractor to provide new and equivalent equipment and materials:** All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.

B. **Contractor responsible for fitting parts together:** Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.

C. **Owner may reject defective Work:** Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this work, in whatever stage of completion, may be rejected by Owner.

5.14 **AVAILABILITY AND USE OF UTILITY SERVICES**

A. **Owner to provide and charge for utilities:** Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities furnished.

B. **Contractor to install temporary connections and meters:** Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

5.15 **TESTS AND INSPECTION**

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

**B. Owner may conduct tests and inspections:** Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:

1. Constitute or imply acceptance;
2. Relieve Contractor of responsibility for providing adequate quality control measures;
3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
5. Impair Owner’s right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.

**C. Inspections or inspectors do not modify Contract Documents:** Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.

**D. Contractor responsibilities on inspections:** Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

**5.16 CORRECTION OF NONCONFORMING WORK**

**A. Work covered by Contractor without inspection:** If a portion of the Work is covered contrary to the requirements in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner’s observation and be replaced at the Contractor's expense and without change in the Contract Time.

**B. Payment provisions for uncovering covered Work:** If, at any time prior to Final Completion, Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes such a request as provided in Part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.

**C. Contractor to correct and pay for non-conforming Work:** Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or
completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.

D. **Contractor’s compliance with warranty provisions:** If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under Section 6.08, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor’s duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.

E. **Contractor to remove non-conforming Work:** Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

F. **Owner may charge Contractor for non-conforming Work:** If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor.

G. **Contractor to pay for damaged Work during correction:** Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

H. **No Period of limitation on other requirements:** Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in Section 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor’s obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.

I. **Owner may accept non-conforming Work and charge Contractor:** If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and equitable.

5.17 **CLEAN UP**

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

5.18 **ACCESS TO WORK**

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

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

5.20 **SUBCONTRACTORS AND SUPPLIERS**

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

1. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;

2. Have a current Washington Unified Business Identifier (UBI) number;

3. If applicable, have:
   a. Industrial Insurance (workers’ compensation) coverage for the subcontractor’s employees working in Washington, as required in Title 51 RCW;
   b. A Washington Employment Security Department number, as required in Title 50 RCW;
   c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
   d. An electrical contractor license, if required by Chapter 19.28 RCW;
   e. An elevator contractor license, if required by Chapter 70.87 RCW.

4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

5. On a project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the Owner’s first advertisement of the project.

B. **Provide names of Subcontractors and use qualified firms:** Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of $2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner’s written consent before making any substitutions or additions.
C. **Subcontracts in writing and pass through provision:** All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.

D. **Coordination of Subcontractors; Contractor responsible for Work:** Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.

E. **Automatic assignment of subcontracts:** Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:

1. **Effective only after termination and Owner approval:** The assignment is effective only after termination by Owner for cause pursuant to Section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and

2. **Owner assumes Contractor’s responsibilities:** After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.

3. **Impact of bond:** The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

5.21 **WARRANTY OF CONSTRUCTION**

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

B. **Contractor responsibilities:** With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:

1. **Obtain warranties:** Obtain all warranties that would be given in normal commercial practice;

2. **Warranties for benefit of Owner:** Require all warranties to be executed, in writing, for the benefit of Owner;

3. **Enforcement of warranties:** Enforce all warranties for the benefit of Owner, if directed by Owner; and

4. **Contractor responsibility for subcontractor warranties:** Be responsible to enforce any subcontractor’s, manufacturer’s, or supplier’s warranties should they extend beyond the period specified in the Contract Documents.

C. **Warranties beyond Final Acceptance:** The obligations under this section shall survive Final Acceptance.

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5.22 INDEMNIFICATION

A. **Contractor to indemnify Owner:** Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

1. **Sole negligence of Contractor:** The sole negligence of Contractor or any of its Subcontractors;

2. **Concurrent negligence:** The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and

3. **Patent infringement:** The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.

B. **Employee action and RCW Title 51:** In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

PART 6 – PAYMENTS AND COMPLETION

6.01 CONTRACT SUM

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

6.02 SCHEDULE OF VALUES

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

6.03 APPLICATION FOR PAYMENT

A. **Monthly Application for Payment with substantiation:** At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.

B. **Contractor certifies Subcontractors paid:** By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in Section 1.03, are true and correct, to the best of Contractor’s knowledge, as of the date of the Application for Payment.
C. **Reconciliation of Work with Progress Schedule:** At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.

D. **Payment for material delivered to site or stored off-site:** If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:

1. **Suitable facility or location:** The material will be placed in a facility or location that is structurally sound, dry, lighted and suitable for the materials to be stored;

2. **Facility or location within 10 miles of Project:** The facility or location is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;

3. **Facility or location exclusive to Project’s materials:** Only materials for the Project are stored within the facility or location (or a secure portion of a facility or location set aside for the Project);

4. **Insurance provided on materials in facility or location:** Contractor furnishes Owner a certificate of insurance extending Contractor’s insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;

5. **Facility or location locked and secure:** The facility or location (or secure portion thereof) is continuously under lock and key, and only Contractor’s authorized personnel shall have access;

6. **Owner right of access to facility or location:** Owner shall at all times have the right of access in company of Contractor;

7. **Contractor assumes total responsibility for stored materials:** Contractor and its surety assume total responsibility for the stored materials; and

8. **Contractor provides documentation and Notice when materials moved to site:** Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish Notice to Owner when materials are moved from storage to the Project site.

### 6.04 PROGRESS PAYMENTS

A. **Owner to pay within 30 Days:** Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 Days after receipt of a properly executed Application for Payment. Owner shall notify Contractor in accordance with chapter 39.76 RCW if the Application for Payment does not comply with the requirements of the Contract Documents.

B. **Withholding retainage; Options for retainage:** Owner shall retain 5% of the amount of each progress payment until 45 Days after Final Acceptance and receipt of all documents required by law or the Contract Documents, including, at Owner’s request, consent of surety to release of the retainage. In accordance with chapter 60.28 RCW, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.
C. Title passes to Owner upon payment: Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.

D. Interest on unpaid balances: Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in chapter 39.76 RCW.

6.05 PAYMENTS WITHHELD

A. Owner’s right to withhold payment: Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:

1. Non-compliant Work: Work not in accordance with the Contract Documents;

2. Remaining Work to cost more than unpaid balance: Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;

3. Owner correction or completion Work: Work by Owner to correct defective Work or complete the Work in accordance with Section 5.16;

4. Contractor’s failure to perform: Contractor’s failure to perform in accordance with the Contract Documents; or

5. Contractor’s negligent acts or omissions: Cost or liability that may occur to Owner as the result of Contractor’s fault or negligent acts or omissions.

B. Owner to notify Contractor of withholding for unsatisfactory performance: In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with chapter 39.76 RCW.

6.06 RETAINAGE AND BOND CLAIM RIGHTS

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

6.07 SUBSTANTIAL COMPLETION

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

A. **Prior Occupancy defined; Restrictions:** Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.

B. **Damage; Duty to repair and warranties:** Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy. Contractor’s one year duty to repair any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

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

A. **Final Completion defined:** Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing, but in no case shall constitute Final Acceptance which is a subsequent, separate, and distinct action.

B. **Final Acceptance defined:** Final Acceptance shall be achieved when the Contractor has completed the requirements of the Contract Documents. The date Final Acceptance is achieved shall be established by Owner in writing. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the payment and performance bonds, or constitute a waiver of any claims by Owner arising from Contractor’s failure to perform the Work in accordance with the Contract Documents.

C. **Final payment waives Claim rights:** Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in Part 8.

**PART 7 – CHANGES**

7.01 **CHANGE IN THE WORK**

A. **Changes in Work, Contract Sum, and Contract Time by Change Order:** Owner may, at any time and without notice to Contractor’s surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in Section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.

B. **Owner may request COP from Contractor:** If Owner desires to order a change in the Work, it may request a written Change Order Proposal (COP) from Contractor. Contractor shall submit a Change Order Proposal within 14 Days of the request from Owner, or within such other period as mutually agreed. Contractor’s Change Order Proposal shall be full compensation for
implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

C. **COP negotiations:** Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in Sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner’s approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.

D. **Change Order as full payment and final settlement:** If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.

E. **Failure to agree upon terms of Change Order; Final offer and Claims:** If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 Days of Contractor’s request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner’s final offer, or the parties are otherwise unable to reach agreement, Contractor’s only remedy shall be to file a Claim as provided in Part 8.

F. **Field Authorizations:** The Owner may direct the Contractor to proceed with a change in the work through a written Field Authorization (also referred to as a Field Order) when the time required to price and execute a Change Order would impact the Project.

The Field Authorization shall describe and include the following:

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

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

A. **General Application**

1. **Contract Sum changes only by Change Order:** The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order Proposal.

2. **Owner fault or negligence as basis for change in Contract Sum:** If the cost of Contractor’s performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor’s changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.05.

   (a) **Notice and record keeping for equitable adjustment:** A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 Days of the occurrence of the event giving rise to the request. For purposes of this part, “occurrence” means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.

   (b) **Content of notice for equitable adjustment; Failure to comply:** Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 Days before Contractor’s written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.

   (c) **Contractor to provide supplemental information:** Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with Section 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.
(d) **Contractor to proceed with Work as directed:** Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.

(e) **Contractor to combine requests for same event together:** Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.

3. **Methods for calculating Change Order amount:** The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:

   a. **Fixed Price:** On the basis of a fixed price as determined in paragraph 7.02B.

   b. **Unit Prices:** By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.

   c. **Time and Materials:** On the basis of time and material as determined in paragraph 7.02D.

4. **Fixed price method is default; Owner may direct otherwise:** When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph 3 above to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

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

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

1. **Breakdown and itemization of details on COP:** Contractor’s Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.

2. **Use of industry standards in calculating costs:** All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.

3. **Costs contingent on Owner’s actions:** If any of Contractor’s pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.

4. **Markups on additive and deductive Work:** The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.

5. **Breakdown not required if change less than $1,000:** If the total cost of the change in the Work or request for equitable adjustment does not exceed $1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.
6. **Breakdown required if change between $1,000 and $2,500:** If the total cost of the change in the Work or request for equitable adjustment is between $1,000 and $2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:

   a. lump sum labor;
   b. lump sum material;
   c. lump sum equipment usage;
   d. overhead and profit as set forth below; and
   e. insurance and bond costs as set forth below.

7. **Components of increased cost:** Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:

   a. **Craft labor costs:** These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:

      (1) **Basic wages and benefits:** Hourly rates and benefits as stated on the Department of Labor and Industries approved “statement of intent to pay prevailing wages” or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor’s hours.

      (2) **Worker’s insurance:** Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the Department of Labor and Industries.

      (3) **Federal insurance:** Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.

      (4) **Travel allowance:** Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.

      (5) **Safety:** Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.

   b. **Material costs:** This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.
c. **Equipment costs:** This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:

   (1) Associated General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement current edition, on the Contract execution date.

   (2) The National Electrical Contractors Association for equipment used on electrical work.

   (3) The Mechanical Contractors Association of America for equipment used on mechanical work.

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

d. **Allowance for small tools, expendables & consumable supplies:** Small tools consist of tools which cost $250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:

   (1) **3% for Contractor:** For Contractor, 3% of direct labor costs.

   (2) **5% for Subcontractors:** For Subcontractors, 5% of direct labor costs.

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

e. **Subcontractor costs:** This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors’ cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.

f. **Allowance for overhead:** This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum. If the Contractor is compensated under Section 7.03 D, the amount of such compensation shall be reduced by the amount Contractor is otherwise entitled to under this subsection (f). This allowance shall compensate Contractor for all noncraft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:

   (1) **Projects less than $3 million:** For projects where the Contract Award Amount is under $3 million, the following shall apply:
(a) **Contractor markup on Contractor Work:** For Contractor, for any Work actually performed by Contractor's own forces, 16% of the first $50,000 of the cost, and 4% of the remaining cost, if any.

(b) **Subcontractor markup for Subcontractor Work:** For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 16% of the first $50,000 of the cost, and 4% of the remaining cost, if any.

(c) **Contractor markup for Subcontractor Work:** For Contractor, for any work performed by its Subcontractor(s) 6% of the first $50,000 of the amount due each Subcontractor, and 4% of the remaining amount if any.

(d) **Subcontractor markup for lower tier Subcontractor Work:** For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first $50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.

(e) **Basis of cost applicable for markup:** The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.

(2) **Projects more than $3 million:** For projects where the Contract Award Amount is equal to or exceeds $3 million, the following shall apply:

(a) **Contractor markup on Contractor Work:** For Contractor, for any Work actually performed by Contractor's own forces, 12% of the first $50,000 of the cost, and 4% of the remaining cost, if any.

(b) **Subcontractor markup for Subcontractor Work:** For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 12% of the first $50,000 of the cost, and 4% of the remaining cost, if any.

(c) **Contractor markup for Subcontractor Work:** For Contractor, for any Work performed by its Subcontractor(s), 4% of the first $50,000 of the amount due each Subcontractor, and 2% of the remaining amount if any.

(d) **Subcontractor markup for lower tier Subcontractor Work:** For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first $50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.

(e) **Basis of cost applicable for markup:** The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.

g. **Allowance for profit:** Allowance for profit is an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor has been compensated pursuant to the conditions set forth in Section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:

(1) **Contractor / Subcontractor markup for self-performed Work:** For Contractor or Subcontractor of any tier for work performed by their forces, 6% of the cost developed in accordance with Section 7.02B 7a. – e.
(2) **Contractor / Subcontractor markup for Work performed at lower tier:** For Contractor or Subcontractor of any tier for work performed by a subcontractor of a lower tier, 4% of the subcontract cost developed in accordance with Section 7.02B 7a. – h.

**h. Insurance and bond premiums:** Cost of change in insurance or bond premium: This is defined as:

1. **Contractor’s liability insurance:** The cost of any changes in Contractor’s liability insurance arising directly from execution of the Change Order; and

2. **Payment and Performance Bond:** The cost of the additional premium for Contractor’s bond arising directly from the changed Work.

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

**C. Change Order Pricing – Unit Prices**

1. **Content of Owner authorization:** Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner’s authorization shall clearly state:

   a. **Scope:** Scope of work to be performed;

   b. **Reimbursement basis:** Type of reimbursement including pre-agreed rates for material quantities; and

   c. **Reimbursement limit:** Cost limit of reimbursement.

2. **Contractor responsibilities:** Contractor shall:

   a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;

   b. Leave access as appropriate for quantity measurement; and

   c. Not exceed any cost limit(s) without Owner’s prior written approval.

3. **Cost breakdown consistent with Fixed Price requirements:** Contractor shall submit costs in accordance with paragraph 7.02B and satisfy the following requirements:

   a. **Unit prices must include overhead, profit, bond and insurance premiums:** Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead, profit, bond, and insurance costs; and

   b. **Owner verification of quantities:** Quantities must be supported by field measurement statements signed by Owner.

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

1. **Content of Owner authorization:** Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner’s authorization shall clearly state:

   a. **Scope:** Scope of Work to be performed;
b. **Reimbursement basis:** Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and

c. **Reimbursement limit:** Cost limit of reimbursement.

2. **Contractor responsibilities:** Contractor shall:

   a. **Identify workers assigned:** Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;

   b. **Provide daily timesheets:** Identify on daily time sheets all labor performed in accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner’s review.

   c. **Allow Owner to measure quantities:** Leave access as appropriate for quantity measurement;

   d. **Perform Work efficiently:** Perform all Work in accordance with this section as efficiently as possible; and

   e. **Not exceed Owner’s cost limit:** Not exceed any cost limit(s) without Owner’s prior written approval.

3. **Cost breakdown consistent with Fixed Price requirements:** Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:

   a. **Timesheets:** Labor detailed on daily time sheets; and

   b. **Invoices:** Invoices for material.

### 7.03 CHANGE IN THE CONTRACT TIME

A. **COP requests for Contract Time:** The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order Proposal.

B. **Time extension permitted if not Contractor’s fault:** If the time of Contractor’s performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor’s changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.

   1. **Notice and record keeping for Contract Time request:** A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 Days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.

   2. **Timing and content of Contractor’s Notice:** Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 Days before Contractor’s written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the
Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.

3. **Contractor to provide supplemental information:** Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.

4. **Contractor to proceed with Work as directed:** Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.

C. **Contractor to demonstrate impact on critical path of schedule:** Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor’s schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order Proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.

D. **Cost of change in Contract Time:** Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 7.03D, subject to the following conditions:

1. **Must be solely fault of Owner or A/E:** The change in Contract Time shall solely be caused by the fault or negligence of Owner or A/E;

2. **Procedures:** Contractor shall follow the procedure set forth in paragraph 7.03B;

3. **Demonstrate impact on critical path:** Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and

4. **Limitations on daily costs:** The daily cost of any change in Contract Time shall be limited to the items below, less the amount of any change in the Contract Sum the Contractor may otherwise be entitled to pursuant to Section 7.02B 7f for any change in the Work that contributed to this change in Contract Time:

a. **Non-productive supervision or labor:** cost of nonproductive field supervision or labor extended because of delay;

b. **Weekly meetings and indirect activities:** cost of weekly meetings or similar indirect activities extended because of the delay;
c. **Temporary facilities or equipment rental:** cost of temporary facilities or equipment rental extended because of the delay;

d. **Insurance premiums:** cost of insurance extended because of the delay;

e. **Overhead:** general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

PART 8 – CLAIMS AND DISPUTE RESOLUTION

8.01 CLAIMS PROCEDURE

A. **Claim is Contractor's remedy:** If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in Section 7.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in Section 7.02 or the Contract Time as provided in Section 7.03, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.

B. **Claim filing deadline for Contractor:** Contractor shall file its Claim within 120 Days from Owner's final offer made in accordance with paragraph 7.01E, or by the date of Final Acceptance, whichever occurs first.

C. **Claim must cover all costs and be documented:** The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:

1. **Factual statement of Claim:** A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;

2. **Dates:** The date on which facts arose which gave rise to the Claim;

3. **Owner and A/E employee’s knowledgeable about Claim:** The name of each employee of Owner or A/E knowledgeable about the Claim;

4. **Support from Contract Documents:** The specific provisions of the Contract Documents which support the Claim;

5. **Identification of other supporting information:** The identification of any documents and the substance of any oral communications that support the Claim;

6. **Copies of supporting documentation:** Copies of any identified documents, other than the Contract Documents, that support the Claim;

7. **Details on Claim for Contract Time:** If an adjustment in the Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor’s analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;

8. **Details on Claim for adjustment of Contract Sum:** If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail as required by Section 7.02; and

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9. **Statement certifying Claim:** A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor’s knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.

D. **Owner’s response to Claim filed:** After Contractor has submitted a fully documented Claim that complies with all applicable provisions of Parts 7 and 8, Owner shall respond, in writing, to Contractor as follows:

1. **Response time for Claim less than $50,000:** If the Claim amount is less than $50,000, with a decision within 60 Days from the date the Claim is received; or

2. **Response time for Claim of $50,000 or more:** If the Claim amount is $50,000 or more, with a decision within 60 Days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.

E. **Owner’s review of Claim and finality of decision:** To assist in the review of Contractor’s Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner’s written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in Section 8.02.

F. **Waiver of Contractor rights for failure to comply with this Section:** Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by the Contractor unless made in accordance with the requirements of this Section.

**8.02 ARBITRATION**

A. **Timing of Contractor’s demand for arbitration:** If Contractor disagrees with Owner’s decision rendered in accordance with paragraph 8.01D, Contractor shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than 30 Days after the date of Owner’s decision on such Claim; failure to demand arbitration within said 30 Day period shall result in Owner’s decision being final and binding upon Contractor and its Subcontractors.

B. **Filing of Notice for arbitration:** Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provided to Owner. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:

1. **Claims less than $30,000:** Disputes involving $30,000 or less shall be conducted in accordance with the Northwest Region Expedited Commercial Arbitration Rules; or

2. **Claims greater than $30,000:** Disputes over $30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.

C. **Arbitration is forum for resolving Claims:** All Claims arising out of the Work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may
occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.

D. **Owner may combine Claims into same arbitration:** Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall, upon demand by Owner, be submitted in the same arbitration or mediation.

E. **Settlement outside of arbitration to be documented in Change Order:** If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

### 8.03 CLAIMS AUDITS

A. **Owner may audit Claims:** All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

B. **Contractor to make documents available:** In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:

1. Daily time sheets and supervisor’s daily reports;
2. Collective bargaining agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices, requisitions, and delivery confirmations;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
12. Subcontractors’ and agents’ payment certificates;
13. Cancelled checks (payroll and vendors);
14. Job cost report, including monthly totals;
15. Job payroll ledger;
16. Planned resource loading schedules and summaries;
17. General ledger;

18. Cash disbursements journal;

19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;

20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;

21. If a source other than depreciation records is used to develop costs for Contractor’s internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;

22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;

23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and

24. Work sheets, software, and all other documents used by Contractor to prepare its bid.

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

PART 9 – TERMINATION OF THE WORK

9.01 TERMINATION BY OWNER FOR CAUSE

A. 7 Day Notice to Terminate for Cause: Owner may, upon 7 Days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:

1. Contractor fails to prosecute Work: Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;

2. Contractor bankrupt: Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;

3. Contractor fails to correct Work: Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;

4. Contractor fails to supply workers or materials: Contractor repeatedly fails to supply skilled workers or proper materials or equipment;

5. Contractor failure to pay Subcontractors or labor: Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
6. **Contractor violates laws:** Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or

7. **Contractor in material breach of Contract:** Contractor is otherwise in material breach of any provision of the Contract Documents.

B. **Owner’s actions upon termination:** Upon termination, Owner may at its option:

1. **Take possession of Project site:** Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;

2. **Accept assignment of Subcontracts:** Accept assignment of subcontracts pursuant to Section 5.20; and

3. **Finish the Work:** Finish the Work by whatever other reasonable method it deems expedient.

C. **Surety’s role:** Owner’s rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

D. **Contractor’s required actions:** When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.

E. **Contractor to pay for unfinished Work:** If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E’s services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor’s actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.

F. **Contractor and Surety still responsible for Work performed:** Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.

G. **Conversion of “Termination for Cause” to “Termination for Convenience”:** If Owner terminates Contractor for cause and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to Section 9.02.

**9.02 TERMINATION BY OWNER FOR CONVENIENCE**

A. **Owner Notice of Termination for Convenience:** Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.

B. **Contractor response to termination Notice:** Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:

1. **Cease Work:** Stop performing Work on the date and as specified in the notice of termination;
2. **No further orders or Subcontracts:** Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;

3. **Cancel orders and Subcontracts:** Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;

4. **Assign orders and Subcontracts to Owner:** Assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;

5. **Take action to protect the Work:** Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and

6. **Continue performance not terminated:** Continue performance only to the extent not terminated

C. **Terms of adjustment in Contract Sum if Contract terminated:** If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.

D. **Owner to determine whether to adjust Contract Time:** If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

**PART 10 – MISCELLANEOUS PROVISIONS**

**10.01 GOVERNING LAW**

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

**10.02 SUCCESSORS AND ASSIGNS**

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

**10.03 MEANING OF WORDS**

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

10.04 RIGHTS AND REMEDIES

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

10.05 CONTRACTOR REGISTRATION

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

10.06 TIME COMPUTATIONS

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

10.07 RECORDS RETENTION

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

10.08 THIRD-PARTY AGREEMENTS

No third party relationships created: The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

10.09 ANTITRUST ASSIGNMENT

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

10.10 HEADINGS AND CAPTIONS

Headings for convenience only: All headings and captions used in these General Conditions are only for convenience of reference, and shall not be used in any way in connection with the meaning, effect, interpretation, construction, or enforcement of the General Conditions, and do not define the limit or describe the scope or intent of any provision of these General Conditions.
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These University of Washington Modifications to the General Conditions form a part of, and are incorporated in the Contract Documents and modify, delete, add, and replace provisions of the General Conditions. Provisions not altered remain in effect. All terms defined elsewhere in the Contract Documents shall have the same meaning here.

PART 1 – GENERAL PROVISIONS

1.01 DEFINITIONS

Add the following definitions:

Certified Business Enterprise (CBE): *Any* business enterprise certified with the Washington State Office of Minority and Women’s Business Enterprises (OMWBE), Northwest Mountain Minority Supplier Diversity Council (NWMMSDC), or Women’s Business Enterprise Council (WBEC).

Lesbian/Gay/Bisexual/Transgender Business Enterprise (LGBTBE): More than 50% owned and controlled by at least one person who is a member of the LGBT community.

Minority Business Enterprise (MBE): More than 50% owned and controlled by at least one person who is a member of one or more of the following minority groups:

- Asian Pacific American
- Black American
- Hispanic American
- Native American
- Subcontinent Asian American

Minority Women’s Business Enterprise (MWBE): More than 50% owned and controlled by at least one woman who is a member of one or more of the above minority groups.

Small Business Enterprise (SBE): A business entity that:

- Can attest that it is owned and operated independently from all other businesses and
- Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which it is to be engaged at the UW; or
- Is certified with the OMWBE.

Veteran’s Business Enterprise (VBE): Certified with the Washington State Department of Veteran’s Affairs (DVA)

Women’s Business Enterprise (WBE): More than 50% owned and controlled by one or more women.

PART 2 – INSURANCE AND BONDS

2.01 Contractor’s Liability Insurance
Add the following language to the end of the first paragraph of section 2.01:

"The certificate holder shall be:
UW Facilities, Project Delivery Group
University of Washington
Box 352205
Seattle, WA 98195"

A policy for Commercial General Liability Insurance which includes coverage for bodily injury, property damage, premises operations, independent contracts, and broad-form contractual liability, and Stop Gap, unless as Employer Liability under Part B of Worker's Compensation Insurance Policy.

Products Completed Operations Additional Insured. The Contractor’s CGL insurance must include the Owner as an additional insured status on ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provisions. The Product Completed Operations additional insured status for the Owner must remain in effect for not less than 3 years following Final Completion.

Delete subparagraph 2.01A2 and replace it with the following language:

“Automobile Liability Insurance:
Commercial Automobile Liability with a combined single limited of not less than $1,000,000 for each accident. Coverage shall include Bodily Injury and Property Damage Liability for all owned, non-owned, leased, and hired automobiles and contain a Waiver of Subrogation in favor of the Owner. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability policy unless the transportation pollution risk covered under a Pollution Liability insurance policy carried by the Contractor.

Delete paragraph 2.01D and replace it with the following language:

“Owner as Additional Insured: All insurance coverages shall name the Board of Regents of the University of Washington as an additional insured with respect to liability arising out of work performed by Contractor, and an additional insured endorsement to the policy must be provided to the Owner. All insurance coverages shall be endorsed to be primary and non-contributory with any insurance maintained by the University of Washington, provide a waiver of any rights of subrogation against the University of Washington, and contain a severability of interest provision in favor of the University of Washington, and all insurance certificates shall evidence full compliance with the enumerated requirements. If the contract amount, including alternates, is less than $5 million, the primary and non-contributory endorsement is not mandatory.”

The Contractor must provide a Pollution Liability policy for pollutants that are or may be remediated on or off site covering claims, including investigation, defense, or settlement costs and expenses that involve bodily injury and property damage (including natural resources damages and loss of use of tangible property that has not been physically injured) covering:

Pollution conditions caused or made worse by the Contractor, including clean-up costs for a newly caused condition or a historical condition that is made worse the vicarious liability of subcontractors of any tier.

The Pollution Liability insurance must provide a minimum limit of liability of $1,000,000 each claim with a minimum aggregate limit of 200% of the each claim limit. There is no requirement for a dedicated project aggregate limit provided that the Contractor (1) submits to the Owner before the Notice to Proceed Date with its insurance certification a written statement from its authorized insurance representative that the full minimum aggregate limit is available and has
not been impaired by any claims reserved on another project, and (2) thereafter, until the completion of the Work, provides notice in writing to the City within 10 Days of Contractor’s constructive knowledge of any pending or actual impairment of the aggregate limit. If in-Transit Pollution Liability is required but is not provided under the Automobile Liability, the Contractor must provide evidence of transportation coverage under the Contractor’s Pollution Liability policy.

### 2.04 Payment and Performance Bonds

- Delete the last sentence of section 2.04 and replace it with the following language:
  “No payment or performance bond is required if the Contract Sum is $150,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 10% of the Contract Sum for the period allowed by RCW 39.08.010.”

### PART 5 - PERFORMANCE

#### 5.01 Contractor Control and Supervision

Add a new paragraph 5.01G as follows:

“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 10:00 p.m. to 6:00 a.m. is subject to approval of Owner.”

Add a new paragraph 5.01H as follows:

“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 Notice

Add a new paragraph 5.02D as follows:

“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.”

#### 5.07 Safety Precautions

- Add a new paragraph 5.07I as follows:

  “In order to receive a Notice to Proceed, the Contractor must submit the following to Owner:

  1. A copy of its company Safety Program. The Safety Program shall contain, at a minimum, the following:

    a. Organization, including names of individuals who will perform safety duties, titles, work assignments, authority and reporting relationships.”
b. Training Program. Who, how and when training is provided; method of employee training concerning safety rules and procedures; training in use of protective equipment.

c. Protective Equipment. List of personal protective equipment to be provided to employees.

d. Accident Prevention and Loss Control Plan. Work site inspection and hazard correction procedures; disciplinary procedures for safety infractions; accident response, investigation and reporting procedures.

e. Regular Safety Meetings. On-site weekly or other frequency as appropriate, safety meetings mandatory for all employees."

• Add a new paragraph 5.07J as follows:

  "Prior to commencing any Work on-site, Contractor shall submit an appropriate site specific safety plan for Owner’s acceptance. The plan must be tailored to the needs of the particular project and to the types of hazards involved, and be in compliance with WISHA requirements. Contractor shall not begin any on-site Work until the site specific safety plan has been accepted by Owner."

• Add a new paragraph 5.07K

  "With its monthly Application for Payment, the Contractor shall submit the Monthly Safety report on the form in Appendix A.

5.10 Unforeseen Physical Conditions

Add a new paragraph 5.10C as follows:

  "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."

5.13 Material and Equipment

Add the following new sentence after the last sentence of paragraph 5.13A:

  "Contractor shall ensure that all equipment, materials and articles incorporated into the Work shall be asbestos free."

5.20 Subcontractors and Suppliers

Add the following new subparagraph 5.20A6 as follows:

  "For contracts entered into between September 1, 2010 and December 31, 2013, not have violated the reporting requirements of RCW 39.04.370 more than one time, as determined by the Department of Labor and Industries."

5.23 Contractor Performance Evaluation

Add a new section 5.23 as follows:
"CONTRACTOR 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

6.07 Substantial Completion

Delete the second sentence of paragraph 6.07 and replace it with the following language:

“All Work other than incidental corrective and incidental punch list work shall be completed.”

PART 7 – CHANGES

7.02 Change in the Contract Sum

- Add the following new sentence after the second sentence of subparagraph 7.02B7a:

  “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 Owner.”

- Delete the last sentence of subparagraph 7.02B7a(1) and replace it with the following:

  “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).”

- Replace subparagraph 7.02B7b in its entirety with the following:

  “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.”

- Add the following new language after the second sentence of subparagraph 7.02B7c:
“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.”

- Add the following new language after the last sentence of subparagraph 7.02B7c(2):

  “Equipment pricing shall be no greater than 75% of NECA monthly rates.”

- Delete the first sentence of subparagraph 7.02B7d and replace it with the following language:

  “Small tools consist of tools which cost $1,000 or less and are normally furnished by the performing contractor.”

### PART 8 - CLAIMS AND DISPUTE RESOLUTION

8.02 Replace section 8.02 in its entirety with the following:

“LITIGATION

A. If Contractor disagrees with Owner's decision rendered in accordance with paragraph 8.01D, Contractor shall serve and file a lawsuit in an appropriate court within 120 days of Owner's decision. This requirement cannot be waived except by an explicit waiver signed by Owner. The failure to file a lawsuit within said 120-day period shall result in Owner's decision rendered in accordance with paragraph 8.01D being final and binding on Contractor and all of its Subcontractors.

B. At any time, either before or after a lawsuit has been commenced by Contractor in accordance with paragraph 8.02A, Owner may require Contractor to participate in further mediation or arbitration, or both, in any forum or format as determined by Owner.

C. Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall, upon demand by Owner, be submitted in a single forum, or Owner may consolidate such Claims or join any of the above-named parties in the same forum.”

### PART 10 - MISCELLANEOUS PROVISIONS

10.11 Add a new section 10.11 as follows:

“Business Equity Requirements

A. General Requirements

Contractor shall conduct business in an equitable and inclusive manner. The University of Washington welcomes the participation of all Business Equity Enterprises (BEE), irrespective of gross revenues, including those that are self-designated and those that are state (OMWBE) certified. Participation may be on a direct basis in response to this invitation to bid, or as a subcontractor or supplier. The University of Washington has set an overall aspirational goal of 20% BEE utilization, inclusive of 15% minority and women-owned business utilization across our public works program.
Contractor shall comply with the following requirements:
In accordance with Chapter 39.19 RCW, it is the policy of the State of Washington to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses (MWBE) in public works.

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

B. Inclusion Efforts

1. The identified lowest responsive bidder shall submit, as provided by the Owner, a BEE Contribution Form, along with their Schedule of Values for review. The BEE Contribution Form shall include a project specific BEE inclusion goal and capture the efforts and business practices the Contractor used to ensure that BEEs have the maximum practicable opportunity to participate and be included in the project. The BEE Contribution Form shall be complete and the information in each section shall demonstrate the Contractor's approach to providing these opportunities and the inclusion of BEE. The BEE Contribution Form is subject to review and approval by the Owner. The Owner may request clarification and/or corrections, however, non-responsive or incomplete Forms may be grounds for rejecting the Bidder as not responsible.

2. Contractors shall:
   a. Advertise opportunities for subcontractors or suppliers in a manner reasonably designed to provide BEEs capable of performing the work with timely notice of such opportunities, and all advertisements shall include a provision encouraging participation by BEE firms. Advertising may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting bids/proposals directly from BEEs.
   b. Provide BEEs that express interest with adequate and timely information about plans, specifications, schedules, and requirements of the Contract.

3. Contractors are further encouraged to:
   a. Break down work into tasks or quantities that are appropriately sized for the intended subcontractor and/or BEE, in order to permit maximum participation by BEEs and other small businesses.
   b. Establish delivery schedules, where the requirements of this contract permit, that encourage participation by BEEs and other small businesses.
   c. Reduce bonding requirements where practicable.
   d. Utilize the services of available minority community organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of BEEs and other small businesses.

C. Reporting Requirements
1. With the application for Progress Payment, Contractor shall submit a list of all BEE subcontractors/suppliers paid during the payment period along with any certification or Self-Declaration information. The Owner has provided a BEE Declaration Form, which is to be completed by every subcontractor, supplier, and materialman or similar on the project.

2. Prior to Final Acceptance, Contractor shall submit a report of total dollar amounts paid to BEEs.

D. Non-Discrimination

Contractors shall not create barriers to open and fair opportunities to all businesses including BEEs to participate in University contracts and to obtain or compete for contracts and subcontracts as sources of supplies, 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.”

END OF SECTION
These Supplemental Conditions form a part of, and are incorporated in, the Contract Documents and modify, delete, add, and replace provisions of the General Conditions. Provisions not altered remain in effect. All terms defined elsewhere in the Contract Documents shall have the same meaning in these Supplemental Conditions.

00 73 01 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Work shall be commenced on the effective date specified in the Notice to Proceed and shall be substantially complete within a period not to exceed Eighty-two (82) calendar days. For failure to achieve Substantial Completion of the Work within the time provided, Contractor shall pay Owner $500 for each calendar day from the date when Substantial Completion should have been achieved to the date Substantial Completion is actually achieved. The provisions of the General Conditions section 3.07, for liquidated damages, remain in effect.

00 73 02 (NOT USED)

00 73 03 (NOT USED)

00 73 04 BUILDER'S RISK

Delete Section 2.06 A and B and replace with the following new Section 2.06 A:

Owner will purchase and maintain Builder’s Risk property insurance in the amount of the Contract Sum including all Change Orders for the entire Work on a replacement cost basis until Substantial Completion. Contractor shall be responsible for all losses up to the policy deductible amount of $5,000 per occurrence for projects valued at $500,000 or less; and $10,000 per occurrence for projects valued at more than $500,000. A specimen policy is available for inspection. Contractor is not required to obtain Builder’s Risk property insurance. All other provisions of the General Conditions Section 2.06, Builder’s Risk, remain in effect except that Architects and Engineers (A/E’s) and A/E’s Subconsultants are deleted from paragraph C.

If the Contractor believes it has a loss that is covered by Builder’s Risk/Property Insurance, and it is likely to exceed the policy deductible, the Contractor shall notify the Owner within 48 hours.

00 73 05 PARTNERING (NOT USED)

00 73 06 CLAIMS AND DISPUTE RESOLUTION (NOT USED)
SUPPLEMENTAL CONDITIONS TO THE GENERAL CONDITIONS

00 73 06 PERMITS REQUIRED
- Building Permit – By Architect
- Mechanical Permit – By GC
- Electrical Permit – By GC
- Fire Systems Permit – BY GC
- Low Voltage Permit – By GC

00 73 07 ENVIRONMENTAL MITIGATION (NOT USED)

00 73 08 FINAL PAYMENT (NOT USED)

00 73 09 APPRENTICESHIP UTILIZATION REQUIREMENTS (NOT USED)

END OF SECTION
I. POLICY

The University of Washington through its Capital Planning and Development service group (Owner), is charged with the responsibility of ensuring that all public works improvement projects are awarded to the responsible bidder submitting the lowest responsive bid, and are performed in compliance with the Contract Documents and applicable federal, state, and local laws and regulations. The Owner is responsible to the citizens of the State to oversee the expenditure of public funds, and to secure the best possible results for that expenditure. To assist the Owner in evaluating a Contractor's responsibility, as well as its performance on contracts of the Owner, the Contractor Performance Evaluation Program has been developed. The implementation of a mandatory, standardized system of evaluating Contractors' performance is expected to yield consistency, objectivity, fairness, and accountability.

II. PURPOSE

The purpose of the Contractor Performance Evaluation Program is to better assure that Contractors considered for contract award on public works projects either possess, or will likely possess at the time contract performance is set to begin, all qualifications necessary to successfully complete the project on time. Among other things, the Program is intended to:

° Assist the Owner in exercising its discretion to determine a Contractor's qualifications and abilities to successfully perform a particular contract.

° Provide the Owner with a rational basis for determining that a Contractor is or is not responsible.

° Provide Contractors with a means of enhancing their qualifications and reputation by receiving recognition for high standards of performance.

° Encourage better working relationships between the Owner and Contractors.

° Provide official, verifiable references for Contractors who may be under consideration for award of, or approval on, contracts to be awarded by other public owners.

° Provide a history and an assessment of a Contractor's performance on prior contracts of the Owner for use in suspension or debarment proceedings.

The Contractor Performance Evaluation Program is not intended to determine whether a Contractor has breached a contract with the Owner, or to determine the acceptability of any particular noncompliance with Contract requirements.

III. PERFORMANCE CATEGORY EVALUATION GUIDE

The Performance Category Evaluation Guide establishes criteria to be used in evaluating the Contractor's performance in connection with each Performance Category, and describes five Performance Levels, which range in ascending order of merit from "Inadequate" to "Superior".
The "Standard" Performance Level is considered a baseline; it characterizes the level of acceptable performance normally associated with a reasonably prudent, diligent, and skilled Contractor working on projects of the same general type and size. Both the "Superior" and "Good" Levels characterize performance levels that exceed the baseline; they respectively connote consistent and substantial positive contributions to the overall project. Both the "Deficient" and "Inadequate" Levels characterize levels of performance that fall below the baseline, and respectively connote substantial and serious detriment to the overall project. The "No Evaluation" Level is to be used only where the Contractor had no direct or indirect responsibility for performance.

The five Performance Levels are more specifically described as follows, and the criteria set forth for each shall be applied in evaluating the Contractor's performance in connection with each of the Performance Categories listed in Section III of the Contractor Performance Evaluation Report:

A. Superior To merit an evaluation of "Superior" in any Performance Category, the Contractor must have consistently demonstrated:

   (1) Command or virtual mastery of the Contract Documents related to that Performance Category;

   (2) Performance of the work or activity being evaluated under that Performance Category that always exceeded or surpassed the material requirements of the Contract;

   (3) A highly cooperative attitude in dealing with Owner's employees, consultants, and the public in connection with that Performance Category, which attitude made a substantial, positive contribution to the Project; and

   (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner without prompting by the Owner's Representative.

If the Contractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Good" Level by applying the criteria for that Level.

B. Good To merit an evaluation of "Good" in any Performance Category, the Contractor must have demonstrated:

   (1) Thorough knowledge of Contract Documents related to that Performance Category;

   (2) Performance of the work or activity being evaluated under that Performance Category that always met, and often exceeded, the material requirements of the Contract;

   (3) A cooperative attitude in dealing with Owner's employees, consultants, and the public in connection with that Performance Category, which attitude made a positive contribution to the project; and
(4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only minimal prompting by the Owner’s Representative.

If the Contractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Standard" Level by applying the criteria for that Level.

C. Standard To merit an evaluation of "Standard" in any Performance Category, the Contractor must have demonstrated:

(1) Acceptable knowledge of the Contract Documents related to that Performance Category;

(2) Performance of the work or activity being evaluated under that Performance Category that met all material Contract requirements;

(3) A generally cooperative attitude toward Owner’s employees, consultants, and the public in connection with that Performance Category; and

(4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only moderate prompting by the Owner’s Representative.

If the Contractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Deficient" and "Inadequate" Levels by applying the criteria for those Levels.

D. Deficient To merit an evaluation of "Deficient" in any Performance Category, the Contractor must have demonstrated:

(1) Marginal knowledge of the Contract Documents related to that Performance Category;

(2) Performance of the work or activity being evaluated under that Performance Category that did not always meet the material Contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;

(3) An occasionally uncooperative attitude toward Owner’s employees, consultants, or the public in connection with that Performance Category; or

(4) Performance of his or her duties in connection with that Performance Category in a moderately unresponsive, inattentive, or dilatory manner, or after frequent or repeated prompting by the Owner’s Representative.

E. Inadequate To merit an evaluation of "Inadequate" in any Performance Category, the Contractor must have either: (a) failed to satisfy the criteria listed for the Performance Levels of "Superior", "Good", "Standard", and "Deficient" set out above and did not qualify for treatment under Section III.F below; or (b) must have demonstrated:
(1) Inadequate knowledge of the Contract Documents related to that Performance Category;

(2) Performance of the work or activity being evaluated under that Performance Category which seldom met the material Contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;

(3) A seriously uncooperative attitude toward Owner’s employees, consultants, or the public in connection with that Performance Category; or

(4) Performance of his or her duties in connection with that Performance Category in a seriously unresponsive, inattentive, or dilatory manner, or only after frequent prompting by Owner’s Representative.

F. No Evaluation. This rating should only be used in those circumstances where the Contractor had no contractual responsibility, either directly or through its subcontractors, suppliers, or materialmen, for performance related to that Performance Category.

IV. OVERALL EVALUATION GUIDE

The Contractor’s Overall Evaluation can be determined by placing the Overall Percentage Score calculated on the Contractor Performance Evaluation Report within the numerical ranges of the following narrative ratings in the Overall Evaluation Guide:

A. SUPERIOR (Overall Percentage Score of 90% or above)

The Contractor exceeded the Contract requirements and expectations in most or all of the areas evaluated. The Contractor was extremely or completely knowledgeable regarding Contract requirements and applicable laws and regulations. A consistently high level of cooperation, project management, and job site control appreciably contributed to an unusually good result. The Contractor is commended for excellent performance.

B. GOOD (Overall Percentage Score of 70% to 89%)

The Contractor met Contract requirements evaluated, and exceeded them in some areas. The Contractor was generally cooperative, and performed his/her work with a minimum of prompting. The results of the performance were very good.

C. STANDARD (Overall Percentage Score of 50% to 69%)

The Contractor generally satisfied the minimum requirements of the Contract as evaluated. The Contractor occasionally had to be prompted or reminded of Contract requirements, but overall management of the Project was good, producing a good result.

D. DEFICIENT (Overall Percentage Score of 30% to 49%)

Even though the Project may have been accepted, the Contractor’s performance as evaluated was marginal overall. While the Contractor
performed some tasks satisfactorily, most elements evaluated reflected a less than satisfactory response to Contract requirements.

E. INADEQUATE (Overall Percentage Score of 29% or below)

The Contractor's performance as evaluated did not meet minimum Contract requirements, or so otherwise detracted from the Project as to seriously call it into jeopardy. While the Project may have been accepted by the Owner, the effort expended by the Owner's Representative in prompting the Contractor to perform was excessive. The Contractor's poor or uncooperative performance created serious unnecessary or avoidable difficulties in achieving contract completion.

A Contractor's Overall Evaluation, being based upon an averaged rate on a discrete number of Performance Categories, should not be read or interpreted as a measure of whether the Contractor did or did not breach the contract in question.

V. PERFORMANCE EVALUATION REPORTS

Each Contractor Performance Evaluation Report shall be prepared by, or at the direction of, the Owner's Representative who will include numerical ratings substantiated, when necessary, by one or more narratives which describe the Contractor's performance.

Every Contractor Performance Evaluation Report containing Performance Level evaluations of "Deficient" or "Inadequate", and all Overall Evaluations on projects the total cost of which is $500,000 or more, shall contain one or more narratives which provide details substantiating the evaluations. Narratives may be provided for other Performance Categories as the evaluator deems necessary.

Narratives provided with a Contractor Performance Evaluation Report shall be based upon documentation prepared during the life of the project, e.g., project diaries, inspectors' reports, and other pertinent documents. Such documentation shall constitute a major portion of the administrative record to be used for any review, appeal, or litigation that may arise from the evaluation process.

Every Contractor Performance Evaluation Report shall be signed by the Owner's Representative and the supervisor of the Owner's Representative before a copy of the Report shall be transmitted to the Contractor. The Report shall not be considered final until such time as the review/appeal periods described in Section VI herein have been completed.

Generally, only one Contractor Performance Evaluation Report shall be issued, following completion of the contract Work. However, in addition to a final Report, one or more interim Reports may be issued at the discretion of the Owner when:

° A contract is of long duration, particularly those in excess of one year.

° An individual charged with primary responsibility for administration of the Contract will cease his or her involvement with the Project prior to completion of the Work.

° Contractor's performance at 50% completion is deficient or inadequate.
Interim Contractor Performance Evaluation Reports shall be considered to be preliminary and shall be designated as such, and shall be processed administratively in the same manner as a Final Report. A Contractor may request review of an Interim Report by the applicable project Director in Capital Planning and Development; and appeal to the Owner’s Associate Vice President for Capital Planning and Development or his/her designee pursuant to the provisions of Section VI below. All Interim Reports shall be attached to, and considered when preparing, the Final Report.

If a Contractor Performance Evaluation Report is an Interim Report, the Report should indicate on its face that it is Interim, and shall contain the following language:

This Performance Evaluation Report is not the final report on this Contractor on this Project. The Contractor may dispute the Report or any part thereof, and need not seek review or appeal until completion and acceptance of the Project.

VI. NOTICE, REVIEW, AND APPEAL

A. Notice. Contractors shall be mailed a copy of their Contractor Performance Evaluation Report within a reasonable time after completion of the Report. A Contractor who is given an Overall Evaluation of "Deficient" or "Inadequate" in connection with a project shall be provided with a copy of the Contractor Performance Evaluation Report via certified mail (return receipt requested).

B. Review. A Contractor who disputes, or is otherwise dissatisfied with, his or her Contractor Performance Evaluation Report may request review of the Report by the applicable project Director in Capital Planning and Development. The request must be submitted in writing within thirty (30) calendar days of receipt by the Contractor of the Final Contractor Performance Evaluation Report. The request must also state, with specificity, all bases for the requested review.

The applicable project Director shall, upon receipt of a proper and timely request, review the Contractor Performance Evaluation Report and any documentation submitted by the Contractor with his or her request. The applicable project Director shall, on the basis of his or her review, issue findings which may affirm, correct, or modify all or any part of the Report. A copy of the findings shall be mailed to the Contractor via certified mail, return receipt requested.

C. Appeal. Within ten (10) calendar days of receipt by the Contractor of the applicable project Director’s findings on review, the Contractor may appeal therefrom to the Owner’s Associate Vice President for Capital Planning and Development or his/her designee. Any such appeal shall be in writing, and shall state with specificity the bases or grounds for the appeal.

The Associate Vice President for Capital Planning and Development or his/her designee shall review and consider the objectivity, accuracy, completeness, and fairness of the Contractor Performance Evaluation Report, together with the applicable project Director’s findings, engineers’ diaries, job records and other documentation, including such documentation as the Contractor may provide with the appeal.

Upon hearing and review of the applicable Director’s findings, the Associate Vice President for Capital Planning and Development or his/her designee shall issue a determination and findings which may affirm or modify the Contractor’s Contractor Performance Evaluation Report. The
Associate Vice President for Capital Planning and Development or his/her designee shall notify the Contractor of its determination and findings by certified mail (return receipt requested).

VII. NOT RESPONSIBLE DETERMINATION FOR WORK ON SPECIFIC PROJECT

The Owner's Associate Vice President for Capital Planning and Development may determine, from Contractor Performance Evaluation Reports and other public documents relating to the project in question, that a Contractor who has received one or more Overall Evaluations of "Deficient" or "Inadequate" is not a responsible bidder and not able to successfully perform a specific project of the Owner for which the Contractor submitted a bid, and is therefore ineligible for award of that contract.

When, on that basis, the Owner's Associate Vice President for Capital Planning and Development believes that the low bidder is not a responsible bidder and not able to successfully perform a project, the Owner shall notify the low bidder in writing of its determination that the bidder is not a responsible bidder. The bidder may appeal the determination within the time period specified in the Instructions to Bidders by presenting additional information to the Owner. The Owner shall consider the additional information before issuing its final determination. In evaluating the additional information, the Owner may or may not meet with the bidder to hear additional information. If the final determination affirms that the bidder is not responsible, the Owner will not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

VIII. DEBARMENT OF CONTRACTOR

The Owner's Associate Vice President for Capital Planning and Development or his/her designee, after conducting a hearing with the Contractor and evaluating the evidence, may debar a Contractor from contracting with the Owner for a period of up to two years if a Contractor has received overall evaluations of their performance of "Deficient" or "Inadequate" on three or more projects of the Owner physically completed during the preceding five (5) year period.

IX. RELEASE OF INFORMATION

Contractor Performance Evaluation Reports are public documents subject to disclosure to other governments and to the public. Because the Reports and the Overall Evaluations they contain may be used as a basis for contract award and may reflect upon the Contractor's reputation, care must be taken to assure that only accurate, complete, and current information is released.

A. Final Reports. Contractor Performance Evaluation Reports may be released when:

(1) The Report becomes final as set forth in Section V herein; or

(2) The Owner has relied upon the Report for the purpose of taking further action with respect to the Contractor; or

(3) A court has ordered release of the Report.

B. Interim Reports. Interim Contractor Performance Evaluation Reports may only be released when:

(1) The Contractor has consented in writing to the release; or
(2) The Contractor has requested and received final administrative review of an Interim Report; or

(3) The Owner has used or relied upon the Interim Report to take action with respect to the Contractor; or

(4) A court has ordered release of the Report.

C. Termination for Cause and Pending Litigation. In the event that the Contract is terminated by Owner for cause, this fact shall be noted on the Contractor's Contractor Performance Evaluation Report. In the event that a Contractor commences suit against the Owner, that Contractor's Performance Evaluation Report shall not be released without approval from the Washington State Attorney General's Office.

D. Intergovernmental Cooperation. All requests for Contractor references from agencies of foreign, federal, state, or local governments shall be referred to the Owner's applicable project Director or his/her designee. If such a request is honored, the requesting agency shall be provided with copies of all Contractor Performance Evaluation Reports on the Contractor, together with any written objections or refutations filed with the Owner by the Contractor in connection therewith.

X. INSTRUCTIONS FOR COMPLETING EVALUATION FORMS

The Owner's Representative shall complete Sections I (Contractor Data) and II (Project Data), and then evaluate the Contractor's performance in each of the Performance Categories listed in Section III (Performance Data) of the Contractor Performance Evaluation Report, and shall assign points for each category based on the Performance Level applicable for the Contractor's performance.

The descriptions provided on the Contractor Performance Evaluation Report form for each Performance Category will not necessarily match precisely with the Contractor's actual performance of the task(s) on a given portion of the project.

The Owner's Representative should consider the general character of the Contractor's performance for each Performance Category evaluated and select the Performance Level that most closely matches the actual performance.

If the Contractor was not responsible for any performance in connection with a given Performance Category, then the Contractor's evaluation in that Category should be "No Evaluation," and no points should be assigned.

When rating a Contractor, the Owner's Representative should consider all the work performed by the Contractor as well as work performed by all subcontractors, since the Contractor is contractually responsible to the Owner for all of the work under the Contract, whether or not the Contractor actually performs the work. Interim Reports, if issued, shall be attached to the Final Report.

Comments are always encouraged, and may be written on the Contractor Performance Evaluation Report or on an attachment to the Report.

However, for each Performance Category evaluated as "Deficient" or "Inadequate", the Owner's Representative must prepare a written narrative substantiating the facts and circumstances giving rise to the evaluation.
After evaluating the Contractor on Performance Categories listed in Section III of the Contractor Performance Evaluation Report, the Owner’s Representative shall total all of the points assigned and divide that into the total points possible (excluding those Performance Categories evaluated as "No Evaluation"). The evaluator will enter the resulting Overall Percentage Score on the Report, and will enter the appropriate Overall Evaluation on the basis of the following ranges:

- **Superior**: Overall percentage score of 90% or above
- **Good**: Overall percentage score of 70% to 89%
- **Standard**: Overall percentage score of 50% to 69%
- **Deficient**: Overall percentage score of 30% to 49%
- **Inadequate**: Overall percentage score of 29% or below

The Owner’s Representative shall sign the Report and forward it to his or her supervisor for concurrence signature and submission to the Owner’s Contracts Department. The Contracts Department staff shall then forward signed copies of the completed Report to the Contractor.

END OF SECTION 00 73 20