# LAKEHAVEN WATER AND SEWER DISTRICT

# GENERAL CONDITIONS/AGREEMENT

# SECTION

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**GENERAL CONDITIONS/AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____ , 2026, between **Lakehaven Water and Sewer District**, hereinafter called Owner, under and by virtue of the charter, laws, and resolutions of said Owner and the Laws of the State of Washington, and _ _____, hereinafter called Contractor.

WITNESSETH:

That in consideration of the payments, covenants, and agreements hereinafter mentioned, attached, and made a part of this agreement, to be made and performed by the parties hereto; the parties covenant and agree as follows:

**1. GENERAL PROVISIONS.**

1.1. The Contractor shall furnish the work in accordance with the Contract Documents and in full compliance with the terms, conditions, and stipulations herein set forth and attached, now referred to and by such reference incorporated herein and made a part hereof, for the total U.S. dollar price, including state sales tax, of **XXX** Dollars and **XXX** Cents **($XXX.XX)**, as detailed in the Bid Schedule included in the Proposal Documents attached hereto.

1.2. Owner hereby promises and agrees with Contractor to employ and does employ Contractor to provide the service according to the attached Specifications, Plans, and the price hereto attached, at the time and in the manner and upon the conditions provided for in this Contract and every part thereof.

1.3. Contractor, for itself and for its heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of Contractor.

1.4. It is further provided that no liability shall attach to the Owner or its officers, employees, or agents by reason of entering into this Contract, except as expressly provided herein.

**2. COMPLIANCE.** All work shall be completed in compliance with the Contract Documents and in compliance with all applicable City, County, State, and Federal Laws, as well as the resolutions of Lakehaven Water and Sewer District, including any protocols associated with COVID-19 or other such pandemic.

**3. DEFINITIONS.** To make clear the meaning and intent of the words "Owner," "Board of Commissioners," "General Manager," "Attorney," "Contractor," and "Project Manager," as utilized in these Contract Documents, the following definitions are given:

**OWNER** - Lakehaven Water and Sewer District, or Owner, existing under and by virtue of the laws of the State of Washington, herein designated as the "Owner." Actions designated as taken by the Owner are the acts of the Board of Commissioners acting through the General Manager.

**BOARD OF COMMISSIONERS -** The duly elected or appointed Board of Commissioners of the Owner.

**GENERAL MANAGER -** The duly appointed General Manager of the Owner.

**ATTORNEY -** The Attorney duly authorized to act for the Owner in matters pertaining to this Contract.

**CONTRACTOR -** The person, persons, firm, or corporation contracting to do the work under these Contract Documents. The term also includes the Contractor's agents or employees.

**PROJECT MANAGER -** The Project Manager employed by the Owner as identified in writing to the Contractor.

**ENGINEER –** The Owner's Consultant Engineer retained to perform design, construction management, contract administration, and other professional engineering service on the Project as delegated by the Project Manager.

**4. INTENT OF THE CONTRACT.** It is the intent and purpose of this Contract to have constructed complete facilities, as shown and described in these Contract Documents, in full working order, for the least practical cost to the Owner. The work will not be accepted until these results are obtained. Suggestions and recommendations, as well as inquiries from the Contractor that shall serve this purpose, are welcome and shall be given consideration by the Owner.

4.1. All materials and labor are to be furnished by the Contractor and all workmanship, equipment, and materials incorporated in the work covered by this Contract shall be new and of the best available grade or quality.

4.2. The Contractor shall perform, with its own organization and under its immediate supervision, work consisting of the production of materials, furnishing of equipment, tools, and labor, of a contract value not less than fifty percent (50%) of the total Project cost.

4.3. All parts of the Contract Documents are essential and complementary. A requirement occurring in one is binding as though occurring in all. Omissions from the Contract Documents or the discrepancy in description of details of work, which are manifestly necessary to carry out the intent of the Contract Documents or which are clearly implied or customarily performed, shall not relieve the Contractor from performing such omissions or discrepancy in described details of the work, but they shall be performed as if fully and correctly set forth and described in the Contract Documents.

4.4. In the event of any conflicting provisions or requirements between the component parts of the Contract Documents, the component parts shall take precedence in the following order: Addenda; Contract; Proposal; permits and regulations from other

governmental agencies as may be required by law; Specifications; Plans; Standard Plans; Supplemental Specifications; and Standard Specifications.

4.5. Change orders and supplemental agreements shall take precedence over the documents listed above.

4.6. The Contractor shall note that figure dimensions shall, in all cases, be used in preference to scaled dimensions.

**5. QUANTITIES FURNISHED BIDDERS.** The quantities shown in the Proposal are approximate only and are for the purpose of comparing bids. The Owner reserves the right to increase or decrease any of the quantities shown and the Contractor shall be paid only for the actual quantities installed.

**6. AUTHORITY OF THE PROJECT MANAGER.** The Project Manager is the agent of the Owner and is employed to act as advisor and consultant to the Owner in project management matters relating to the Contract. The Owner has delegated its authority under this Contract to the Project Manager to determine the amount, quality, acceptability, and fitness of the several kinds of work, material, and equipment that are to be paid for under the Contract; to decide for the Owner all questions relative to the true construction, meaning, and intent of the Contract documents; to decide all questions relative to the classification and measurements, and to reject or condemn all work or material that does not conform to the terms of this Contract.

6.1. Moreover, the Owner has not so delegated, and the Project Manager does not purport to be a safety expert, is not so engaged in that capacity under this Contract, and has neither the authority nor the responsibility to enforce construction safety laws, rules, regulations, or procedures or to order the stoppage of work for claimed violations thereof. The furnishing by the Project Manager of resident project representation and construction observation shall not make the Owner responsible for the enforcement of such laws, rules, regulations, or procedures, nor shall such make the Owner responsible for construction means, methods, techniques, sequences, procedures, or for the Contractor's failure to properly perform the work herein described.

6.2. No request or claim for extra compensation by the Contractor shall, without an authorized change order or amendment, excuse any obligation of the Contractor hereunder.

6.3. Nothing in these documents shall, in any way, be so construed as to require or place responsibility for the method, manner, direction, or superintendence of the performance of the work by the Contractor's forces under this Contract upon the Construction Observer and/or Project Manager of the Owner. Such responsibility rests solely with the Contractor.

6.4. It is expressly agreed that neither the Project Manager nor any of his/her assistants or agents shall have any power to waive the obligation of the Contract for the furnishing by the Contractor of good and suitable material and for its performing good work as herein described. Failure or omission on the part of the Project Manager or any of his/her assistants or agents to condemn defective or inferior work or materials shall not imply acceptance of the work or release of the Contractor or its bond, notwithstanding that such work or material may have been estimated for payment or payments may have been made on same. Neither shall such failure or omission, nor any acceptance by the Project Manager or by the Owner at any subsequent time, impede the Owner from the recovery of such a sum of money or damages as may be needed to remove and to build anew all portions of work in which fraud was practiced or improper or defective work or materials used.

6.5. No order, measurement, determination, or certificate by the Project Manager or order by the Owner for payment of money, or payment for or acceptance of the whole or of any part of the work by the Project Manager or the Owner, extension of time, or possession taken by the Owner or by the employees of the Owner, shall operate as a waiver of any portion of the Contract or of any power herein provided; nor shall any waiver of any breach of the Contract be held to be a waiver of any other similar or subsequent breach.

**7. AUTHORITY AND DUTIES OF CONSTRUCTION OBSERVERS.** Construction Observers are placed on the work to keep the Project Manager informed as to the progress of the work and the manner in which it is being done, to keep records, act as liaison between the Contractor and the Project Manager, and also to call the attention of the Contractor to any deviations from the Contract Documents, but failure of the Construction Observer to call the attention of the Contractor to faulty work or deviations from the Contract Documents shall not constitute acceptance of said work.

7.1. The Construction Observer may reject or accept materials and equipment to be incorporated in the work.

7.2. Since the Construction Observer cannot control how the material is used, the responsibility for its safe and proper use shall be the Contractor's. Until the job is finally completed, the Contractor might do work that changes or modifies work previously done and even though at any given time a piece of work might be well done and acceptable in quality, the responsibility for keeping it in that condition until the job is completed is the sole responsibility of the Contractor. For this reason, it is impossible to accept, finally, any portion of a project until the project as a whole is acceptable and control of said project is withdrawn from the Contractor by final official written acceptance by the Owner.

7.3. Since one of the Construction Observer's primary interests is to see that work on the project progresses expediently and in a workmanlike manner, the Construction Observer may, at various times, offer suggestions to the Contractor, which the

Contractor may or may not follow at Contractor's discretion. Such suggestions are never to be considered as anything but suggestions and involve no assumption of responsibility, financial or otherwise, by the Construction Observer, the Project Manager, or the Owner.

7.4. The presence or absence of a Construction Observer on any job shall be at the sole discretion of the Project Manager and such presence or absence of a Construction Observer shall not relieve the Contractor of its responsibility to obtain the construction results specified in the Contract Documents.

7.5. The Construction Observer shall not be authorized to approve or accept any portion of the work or to issue instructions contrary to the Contract Documents; such approvals, acceptances, or instruction, when given, must be in writing and signed by the Project Manager. The Construction Observer shall have the authority to reject defective material; however, the failure of the Construction Observer to reject defective material or any other work involving deviations from the Contract Documents shall not constitute acceptance of such work. Only the Owner can make final acceptance of the Contract.

**8. CONSTRUCTION OBSERVATION.** All work contemplated in this Contract and all subdivisions thereof, all materials and equipment furnished for the same and the manufacture and preparation thereof shall, throughout the performance of the Contract, in order to ascertain whether or not said work, materials, or equipment are in strict accordance therewith, be subject to construction observation by the Owner's authorized agents, who may, at any time in the performance of their duties, enter upon the work or the shops where any part of the work or equipment may be in preparation or the factories where any materials for use in the work are being or are to be manufactured. The Contractor shall provide proper facilities for construction observation and shall make arrangements with manufacturers to facilitate construction observation of their processes and products to such extent as the Owner's interests may require.

8.1. Construction observation shall not relieve the Contractor of its obligation to furnish satisfactory material and workmanship. Work or materials found unsatisfactory at any time during the life of the Contract shall be corrected or replaced immediately by the Contractor, at its own expense, on the written order of the Owner, notwithstanding that it may have been previously overlooked or approved by a Construction Observer.

8.2. When required, the Contractor shall furnish all tools and labor and material necessary to make an examination of any work under the Contract that may be completed or in progress, even to the extent of uncovering or taking down portions of finished work. The cost of making such examination and of reconstruction shall be borne by the Contractor.

8.3. The Contractor is entitled to construction observation upon application to the Owner, through the Project Manager; provided that should the Contractor request the special

observation of materials not yet delivered to the site of the work at time and place not contemplated in these Contract Documents or by the Project Manager; the Contractor shall, if such observation be granted, pay the reasonable keep and traveling expenses of the Owner's agent, be it the Project Manager or any other Construction Observer, agent, or agents making such observation, and the Contractor shall not require the continued presence of the Owner or agent at the place of manufacture or shipment, for the purpose of making intermittent or occasional observation.

8.4. All costs for overtime construction observation shall be paid each month by the Contractor to the Owner. Overtime construction observation shall include that which is required during holidays, Saturdays, Sundays, and any weekdays during non-regular working hours. The Contractor shall note that regular working hours are defined as any weekday (Monday through Friday) between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays. Such costs shall include, but not be limited to, project management, construction observation, general supervision, and other overhead expenses that are directly chargeable to the overtime work. In the event the Contractor fails to pay such costs in a timely manner, such payment shall be deducted from its monthly progress payments.

8.5. The Contractor shall regard and obey the directions and instructions of the Project Manager, or any authorized agent of the Owner, with reference to correcting any defective work or replacing any materials found to be not in accordance with the Contract Documents. In case of dispute, the Contractor may appeal to the Owner, whose decision shall be final; but pending such decision, the instruction of said Project Manager or agent shall be followed and the Contractor shall make no claim for damages or delay on this account.

8.6. The Contractor shall, whenever so requested, give the Owner access to the proper invoices, bills of lading and other records and shall, without charge therefore, provide measures and scales with adequate capacity for and assistance for measuring or weighing any of the materials.

**9. SUBCONTRACTORS.** For the purpose of this Contract, a subcontractor is a person or organization who has a direct Contract with the Contractor to perform any of the work at the site.

9.1. A second tier subcontractor is a person or organization who has a direct or indirect contract with a subcontractor to perform any of the work at the site.

9.2. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any subcontractor or second tier subcontractor, and no performance undertaken by any such subcontractor or second tier subcontractor, whether with or without the Owner's consent, shall relieve the Contractor of its obligation and responsibilities hereunder.

9.3. Subcontractor Responsibility Criteria: The Contractor shall include the language of the following 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 terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractors meet the subcontractor responsibility criteria set forth in the following paragraph. The requirements of the following 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 meet the following bidder responsibility criteria:

9.3.1. On a project subject to the apprenticeship utilization requirements in RCW 39.04.320, subcontractors shall not have been found out of compliance by the Washington State Apprenticeship and Training Council (WSATC) for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under RCW 49.04 for the one-year period immediately preceding the date of the Owner's first advertisement for the project.

9.4. Only skilled subcontractors shall be employed on work requiring special qualifications. When required in writing by the Owner, the Contractor(s) or any Subcontractor(s) shall discharge any subcontractor who is, in the opinion of the Owner, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, and shall not again employ such discharged subcontractor on the work, except with the consent of the Owner. Such discharge shall not be on the basis of any claim for compensation or damages against the Owner or its officers.

**10. APPRENTICE UTILIZATION REQUIREMENT (AUR).** The Contractor must ensure that no less than 15% of the total Contract Labor Hours used on the project are performed by apprentices registered in a State-approved training program. This requirement must be included in any subcontract at any tier. Total Contract Labor hours include additional hours worked due to change orders and exclude hours worked by forepersons, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements, unless subject to the criteria set forth in WAC 296-127-015.

10.1. Apprentice Utilization Plan: The Contractor has submitted a plan listing the subcontractors and apprentices to be used on the Project and how the AUR will be met based on total Contract Labor Hours, using the form provided by the Owner in Appendix A of these General Conditions. An updated plan is required when any new subcontractor is approved to the Project and when any Change Order proposal is submitted.

10.2. Good Faith Efforts (GFE) and Adjustments to the Apprentice Utilization Plan: If the Contractor determines that the AUR percentage will not be able to be achieved for the Project, the Contractor may make a written request to the Owner to adjust the

required AUR percentage as allowed under RCW 39.04.320(2). The request must include documentation of the Contractor's and subcontractor's **good faith efforts** to hire registered apprentices and attachment of an updated Apprentice Utilization Plan. Acceptable good faith efforts are outlined in the GFE Documentation and Processing Guidelines included in Appendix B of these General Conditions.

10.2.1. The Owner will evaluate the request and, if appropriate, prepare a Change Order reducing the required utilization percentage. If the Owner determines that a reduction of the required utilization percentage is not justified, the Owner will communicate the decision in writing to the Contractor and a monetary disincentive may be assessed.

10.3. Prevailing Wages for Apprentices: An apprentice is defined as a laborer, worker, or mechanic employed to perform the Work for whom an apprentice agreement is established through a training program that is registered and approved by the WSATC. Per RCW 39.12.021 and 49.04, apprentices must be paid the applicable prevailing hourly rate for an apprentice of a particular trade. Intents, Affidavits, and Certified Payrolls must contain the relevant apprentice information and be recorded in the Washington State Department of Labor and Industries' (L&I) Prevailing Wage Intents and Affidavits (PWIA) system.

10.4. Apprentice Utilization Reporting: The Contractor and every subcontractor must report all apprentices and wages paid as required by L&I. The Contractor must submit other information as requested by the Owner to verify compliance with the AUR of the Contract. The Owner may ad, delete, or change the information required by the Contractor, as necessary.

10.5. Monitoring Apprentice Utilization: The Owner will monitor the Contractor's and subcontractors' progress on apprentice utilization by reviewing and approving Apprentice Utilization Plan(s), Intents and Affidavits filed, and Certified Payrolls as part of the monthly Progress Payment reviews. The Owner reserves the right to withhold payment until appropriate documentation is loaded into PWIA.

10.6. Meeting AUR—Monetary Incentive: Should the Contractor, and/or subcontractors, achieve 15% AUR ***without adjustments for any good faith efforts***, a monetary assessment of $2,000.00 will be paid to the Contractor for proportional distribution to all employers of apprentices on the Project.

10.7. Failure to Comply with AUR—Penalty: Failure to comply with AUR, without a good faith effort, is a material breach of the Contract for which the Contractor, or its subcontractors, are subject to damages. If the Owner determines that the Contractor, or any of its subcontractors, are noncompliant, a penalty shall be assessed for every minimum apprentice hour not achieved in accordance with the following table:

| Percent of Goal | Penalty Per Hour of Unmet Goal |
|---|---|
| 100% | $ 0.00 |
| 90% to 99% | $ 4.00 |
| 75% to 89% | $ 7.00 |
| 50% to 74% | $10.00 |
| 10% to 49% | $15.00 |
| 0% to 9% | $20.00 |

The penalty will be subtracted from monies otherwise owed to the Contractor. If no additional monies are owed, an invoice will be sent for remittance prior to the filing of the Notice of Completion with the state. *In no event shall the penalty exceed 5% of the Total Contract Cost.*

**11. LAWS, PERMITS, AND LICENSES TO BE OBSERVED.** The Contractor shall comply with all applicable Federal, State, and local statutes, ordinances and regulations, specifically those related to the prevention of environmental pollution and preservation of natural and public human resources which affect or are affected by this Project, and which are hereby incorporated into this Contract, as if fully set forth herein. Any and all costs associated with compliance with the applicable Federal, State, and local statutes, ordinances, and regulations are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the unit or lump sum bid prices of the Contract.

11.1. It shall be the responsibility of the Contractor to fully comply with all permits obtained by the Owner or Contractor which pertain to this Project. Any and all costs associated with permit compliance are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the unit or lump sum bid prices of the Contract.

11.2. In accordance with generally accepted construction practices, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

11.3. The Contractor and all subcontractors shall adhere to the requirements of the Washington Industrial Safety and Health Act (W.I.S.H.A.), the Occupational Safety and Health Act (O.S.H.A.), as well as other Federal, State, and local safety and health statutes and regulations which may apply.

11.4. These Contract Documents and the joint and several phases of construction hereby contemplated shall be governed at all times by applicable provisions of the State and Federal laws, including, but not limited to, the latest amendments of the following:

11.4.1. William-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596;

11.4.2. Part 1910 - Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;

11.4.3. Part 1518 - Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

11.5. This Project, the Contractor, and its subcontractors shall at all times be governed by Chapter XIII of Title 29, Code of Federal Regulations, Part 1518 - Safety and Health Regulations for Construction (36 FR 75), as amended to date.

11.6. To implement the program and to provide safe and healthful working conditions for all persons, general project safety meetings shall be conducted at the site at least once each month during the course of construction by the Contractor's superintendent or its designated safety officer. Notice of such meetings shall be issued not less than three (3) days prior to such meeting, stating the exact time, location, and agenda to be addressed. Attendance by the general foreman, shop steward(s), and trades, or their designated representatives, witnessed in writing as such, shall be mandatory. Attendance by representatives of the Owner is optional.

11.7. To further implement the program, each trade shall conduct a short crew meeting, not less than once each week to review project safety requirements mandatory for all persons during the coming week. The crew foreman shall report the agenda and specific items addressed to the Resident Project Manager, who shall incorporate these items into his/her daily log report.

11.8. The Contractor and all subcontractors shall immediately report in writing all accidents, injuries, or health hazards to the Owner or its designated representative. This reporting requirement shall not obviate any mandatory reporting under the provisions of the Occupational Safety and Health Act of 1970.

11.9. This safety program shall become a part of the Contract Documents, the Contract between the Owner and the Contractor, and between the Contractor and all its subcontractors, as though fully set forth therein.

**12. TRAFFIC CONTROL.** The Contractor shall conduct its operations as to offer the least possible obstruction and inconvenience to Owner personnel and to the public and shall have under construction no greater amount of work than can be prosecuted properly with due regard to the rights and safety of the public. The Contractor shall not open up sections of the work and leave them unfinished, but shall finish or cover the work as it progresses insofar as practicable.

12.1. The Contractor shall make suitable, safe, and adequate provisions for necessary traffic around, over, or across the work in progress. The Owner shall, insofar as practical, reduce the number of such crossings or detours to be marked to a minimum. Should the work not be diligently prosecuted, the Contractor shall be

required by the Owner to provide additional facilities in the event of serious hindrance to normal business and residential traffic because of such delay.

12.2. As provided for within these Contract Documents, the Contractor shall provide a tentative schedule for construction to the Owner at the preconstruction conference. The schedule shall be revised by the Contractor to ensure that the necessary notifications can be made to the public and emergency services in regard to congestion, road closures, and detouring. All street closures, detours, or restrictive use shall be scheduled by the Contractor and coordinated with the City, County, or State governmental agency having jurisdiction over that portion of the work, and the Project Manager, forty-eight (48) hours prior to the commencement of work. The Contractor shall be responsible for traffic control in the immediate vicinity of the work being performed, which shall include barricading, flaggers, and detouring.

12.3. During the performance of the work, the Contractor, at its sole expense, shall erect and maintain temporary fences, bridges, railings, and barriers and shall take all other necessary precautions and place proper guards for the prevention of accidents; shall put up and keep suitable and sufficient lights and other signals; shall maintain sufficient warning lights and adequate barricades on all open trenches and excavations, recently closed trenches, and all excavations and trenches the surfaces of which have not been returned to full and safe operating condition acceptable for normal use. Contractor shall indemnify and save harmless the Owner and its officers, agents, and employees from all damages and costs to which they may be exposed by reason of injury to persons or property resulting from the Contractor's operations; its negligence or carelessness in the performance of the work or in guarding the same; or from any improper materials, implements, or appliances used in its construction; or by or on account of any act or omission of the Contractor or its agents. The duty of the Project Manager to conduct construction review and/or construction observation of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site(s) and the Contractor's insurance shall be provided accordingly.

12.4. All necessary flaggers, barricades, and detour signs shall be furnished by the Contractor, both during working hours and also when the work is suspended during the construction period. The Contractor shall provide such additional barricades and protective devices as shall be required to reasonably protect workers, other persons, and animals from open excavations during the construction period.

12.5. Upon failure of the Contractor to immediately provide and maintain adequate and suitable barricades, lights, and detour signs, when ordered to do so by the Owner and/or the City, County, or State governmental agency having jurisdiction, the Owner shall provide same without further notice to the Contractor or the Surety, and deduct the costs thereof from any monies or payments due or to become due the Contractor and the Owner assumes no liability connected therewith.

12.6. Signs used for posting shall be consistent with the provisions found in the U.S. Department of Transportation "Manual on Uniform Traffic Control Devices."

**13. PATENT ROYALTIES AND PROCESS FEES.** The Contractor hereby furnishes to the Owner a license or licenses for the use of any process, processes, or materials and equipment used or installed in connection with this Project. The Contractor shall include in the unit prices bid any such patent royalties or license fees for equipment installed or construction methods used.

**14. RISK OF LOSS.** The Contractor shall assume all risk of loss of materials, equipment, or other supplies through theft, vandalism, fire, acts of God, or any other cause, until the semi-final estimate has been submitted by the Project Manager and the project accepted as complete by the Owner, which approval shall constitute acceptance of the Project by the Owner and risk of loss of materials, equipment, or other supplies that have been installed shall thereafter transfer to the Owner.

**15. LIQUIDATED DAMAGES.**

15.1. Time of commencement shall be as indicated in the Notice to Proceed and completion shall be as stated in Section 61, "Contract Deadline." The Contractor shall prosecute the work diligently and without interruption from the date of commencement and shall fully complete the work required under this Contract.

15.2. Liquidated damages shall be assessed under the following conditions:

15.2.1. Should the contract expiration time, herein fixed for such completion, expire without the work being completed, the Owner shall assess the Contractor the sum of **$4,600.00** for each calendar day work is not completed as liquidated damages until the earlier of the date Contractor completes the work or the Owner, using reasonable efforts to mitigate its damages, acquires and accepts a substitute Contractor, and such substitute Contractor completes the work. In addition to the liquidated damage amount accruing for delay, in the event the Owner procures a replacement Contractor, Contractor shall be responsible for any increase in cost for the replacement Agreement above the price specified in this Agreement.

15.2.2. Should the Owner terminate the Agreement in whole or in part under Section 29 – TERMINATION FOR DEFAULT, DAMAGES, FOR DELAY, TIME EXTENSION, the Contractor is liable for liquidated damages accruing, at **$4,600.00** per calendar day, each and every day, until the Owner reasonably obtains a replacement Contractor. These liquidated damages are in addition to the excess costs of re-contracting under the Default clause.

15.2.3. The amount herein set forth for liquidated damages is hereby agreed upon by and between the Contractor and the Owner as a reasonable estimation

of actual damages and because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages that the Owner will suffer by the failure of the Contractor to complete the procurement within the time agreed upon.

15.3. The Contractor shall not be charged with liquidated damages when the delay in performance is beyond the control and without the fault, responsibility, or negligence of the Contractor as defined in Section 29 – TERMINATION FOR DEFAULT, DAMAGES, FOR DELAY, TIME EXTENSION in this Contract.

15.4. Where the Owner has granted an extension of time and has extended the liquidated damages date, no liquidated damages shall be payable for the period of that extension.

15.5. Where liquidated damages have been paid by the Contractor or deducted by the Owner, and an extension of the liquidated damages date is subsequently granted, the Owner shall repay to the Contractor any liquidated damages paid or deducted in respect of the period up to and including the extended liquidated damages date.

15.6. Assessment of liquidated damages shall not release the Contractor from any further obligations or liabilities pursuant to the Contract documents.

**16. PREVAILING WAGE REQUIREMENTS.** In compliance with State RCW 39.12, the Contractor shall pay prevailing wages to all workers employed on the Project at the rates established at time of Bid Opening as set forth in the "Invitation to Bid" that is a part of this Contract. Should award of the Contract be delayed for six (6) months or more, the prevailing wage rates shall be those in effect at the time of such award. No payments shall be made to the Contractor until all applicable forms have been submitted to the State and the Owner to this effect. The Owner shall not consider any claims for additional compensation made by the Contractor because of payment by the Contractor of any wage rate in excess of the applicable prevailing wage rate. All disputes in regard to the payment of wages shall be adjusted by the Contractor by submitting such disputes to the Industrial Statistician at the Department of Labor and Industries.

16.1. By definition: The prevailing rate of wage shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics in the same trade or occupation, as defined by the Department of Labor and Industries. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate as defined by the Department of Labor and Industries. If the wage paid by any Contractor or subcontractor to laborers, workers or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purpose of this statute shall be mathematically determined by the number of hours worked in such period of time.

16.2. By definition: The locality shall be the largest city in the county wherein the physical work is being performed.

16.3. By definition: The "usual benefits" for the purposes of this Section shall include the amount of:

16.3.1. The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

16.3.2. The rate of costs to the Contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the Contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

16.4. Prevailing rate to be paid on public works and under public building maintenance contracts. The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. This chapter shall not apply to workers or other persons regularly employed on monthly or per diem salary by the state, or any county, municipality, or political subdivision created by its laws.

16.5. Prevailing rate to be paid on public works-Apprentice workers. Apprentice workers employed upon public works projects, for whom an apprenticeship agreement has been registered and approved with the State Apprenticeship Council pursuant to RCW Chapter 49.04, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the State Apprenticeship Council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

16.6. Contract specifications must state minimum hourly rate-Stipulation for payment. The specifications for every contract for construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its law is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid

to laborers, workers or mechanics in each trade or occupation required for such public work employed in the performance of the Contract either by the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the Contract, and the Contract shall contain a stipulation that such laborers, workers or mechanics shall be paid not less than such specified hourly minimum rate of wage.

16.7. Statement of intent to pay prevailing wages. Before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, or any sum or sums due on account of a public works contract, it shall be the duty of the officer or persons charged with the custody and disbursement of public funds to require the Contractor and each and every subcontractor for the Contractor or a subcontractor to submit, with applicable fee, "Statement of Intent to Pay Prevailing Wages." Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer. Unless otherwise authorized by the Department of Labor and Industries, each voucher claim submitted by a Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the pre-filed statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds to require the Contractor and each and every subcontractor for the Contractor or a subcontractor to submit, with applicable fee, an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW Chapter 60.28.011 are released to the Contractor. Each Affidavit of Wages Paid must be certified by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer.

16.8. Penalty for false certificate-Unpaid wages lien against Contractor's bond-Prohibitions on bidding on future contracts-Hearing. (1) Any Contractor or subcontractor who shall upon oath verify any statement required to be filed under this chapter which is known by said person to be false, or is made without knowledge and in reckless disregard of the truth, shall, after a finding to that effect in a hearing held by the Director of the Department of Labor and Industries (hereinafter referred to as "Director"), subject to the provisions of RCW Chapter 34.05, be subject to a civil penalty not to exceed $5,000.00 and shall not be permitted to bid on any contract covered by the provisions of this chapter until such fine has been paid in full to the Director and until all wages due pursuant to the prevailing wage requirements of RCW Chapter 39.12.030 have been paid.

16.8.1. To the extent that a Contractor or subcontractor has not paid wages at the rate due pursuant to RCW Chapter 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages shall

constitute a lien of the first priority against such Contractor's or subcontractor's bond according to the provisions of RCW Chapter 18.27.040.

16.8.2. If a Contractor or subcontractor is found to have violated the provisions of subsection 16.8.1 of this section for a second or subsequent time within a five-year period, said Contractor or subcontractor shall be subject to the sanctions prescribed in subsection 16.8.1 of this section and shall, at the discretion of the Director, be prohibited from bidding on any contract covered by the provisions of this chapter for a period of one year from the date of notice by the Director of his/her findings that said Contractor or subcontractor has violated the provisions of subsection 16.8.1 of this section for a second or subsequent time within a five-year period, or during the period of any appeal thereof, in which event the one-year period shall commence from the date of the final determination from any appeal taken of the Director's findings, but in no event shall any Contractor or subcontractor be allowed to bid on any contract covered by the provisions of this chapter until the fine prescribed by subsection 16.8.1 of this section has been paid to the Director and until all wages due pursuant to the prevailing wage requirement of RCW Chapter 39.12.020 have been paid.

16.9. The Director shall issue his/her findings that a Contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of RCW Chapter 34.04.

16.10. In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director and his/her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

16.11. The current prevailing wage rates for journey level and apprentices in King County may be downloaded from the following URL:

***https://secure.lni.wa.gov/wagelookup/***

A copy of the effective rates schedule may be viewed at the Owner's office and will be mailed upon written request of the Contractor.

16.12. Any provision of this Section 16 that is in conflict with current Washington law with regard to prevailing wages is hereby replaced with provisions that comply with such current laws.

**17. STIPULATION OF VENUE.** It is agreed by the Contractor that the venue for any lawsuit arising out of this Contract shall be in Superior Court in King County, Washington. Contractors shall include a stipulation of venue in King County, Washington in all subcontracts hereunder.

**18. CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.** The Contractor shall obtain and keep in force during the term of the Contract, public liability and property damage insurance with insurance companies or through sources authorized by the State Insurance Commissioner pursuant to RCW Chapter 48 or issued as a surplus line by a Washington Surplus Lines broker. Insurer shall have a financial rating from A.M. Best Company of A-(VII) or better.

18.1. After Award, but prior to execution of the Contract, the Contractor shall purchase and file with the Owner an Acord Certificate of Insurance as evidence of the insurance required in this Contract. This Certificate of Insurance shall be subject to approval by the Owner as to company, terms, and coverage. Failure of the Contractor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of Contract and shall be cause for immediate termination of the Contract and of any and all Owner obligations, regarding the same.

18.2. The insurance shall specifically name the Owner and the Consultant Project Managers as additional insured hereunder. The insurance shall be maintained in full force and effect at the Contractor's expense throughout the term of the Contract and for not less than three (3) years after completion of the project. The Owner shall be given twenty (20) consecutive calendar days prior written notice by certified mail of any cancellation, reduction, modification, or suspension of the insurance.

18.3. The Contractor shall not begin work under the Contract or under any special condition until all required insurance has been obtained and until such insurance has been approved by the Owner. Said insurance shall provide coverage to the Contractor and the Owner. The coverage so provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages that may arise from any act or omission of the Contractor or the subcontractor, or by anyone directly or indirectly employed by either of them. Contractor shall require all subcontractors to maintain similar insurance as required in items 17.4.A.1, 2, 3, and 5 with limits not less than $1,000,000.00 each occurrence, $2,000,000.00 aggregate for General Liability, $1,000,000.00 each accident for Automobile Liability, and $1,000,000.00 for Employer's Liability.

18.4. The Contractor's insurance shall provide the minimum types of insurance coverage, liability limits, and endorsements as set forth below and shall be included in all applicable policies and on the Certificate of Insurance:

A. Type of Insurance:

1. Commercial General Liability using Insurance Services Office (ISO) Form CG0001 or the equivalent and shall include the following:

a. Explosion, Collapse & Underground Hazard (X.C.U.)

b. Products/Completed Operations
c. Blanket Contractual
d. Independent Contractors
e. Personal Injury
f. Separation of Insureds Clause
g. Per Project Aggregate Limit

2. Automobile Liability

a. All Owned Automobiles (If Any)
b. Hired Automobiles
c. Non-Owned Automobiles

3. Employer's Liability

4. Excess Liability or Umbrella Form

5. Workers Compensation as required by statute

6. Installation Floater

7. Pollution Liability—to include Environmental Resource Damage

B. Liability Limits:

1. Commercial General Liability

| | | |
|---|---|---|
| a. | General Aggregate: | $2,000,000 |
| b. | Products-Comp./Ops Aggregate: | $2,000,000 |
| c. | Personal and Advertising Injury: | $1,000,000 |
| d. | Each Occurrence: | $1,000,000 |
| e. | Fire Damage (Any One Fire): | $ 100,000 |

2. Employer’s Liability

a. Limit shall be not less than $1,000,000.00 each employee, $1,000,000.00 aggregate.

3. Automobile Liability

| | | |
|---|---|---|
| a. | Combined Single Limit: | $1,000,000 Each Accident |

4. Excess Liability or Umbrella Form providing coverage in excess of Commercial General Liability, Automobile Liability, and Employer's Liability:

   a. Limit shall be not less than $2,000,000.00 each occurrence and $2,000,000.00 aggregate.

5. Workers Compensation as required by statute.

6. Installation floater with a limit adequate to cover the cost to replace the Contractor's interest in materials and equipment at the site and in transit.

7. Pollution Liability limit of at least $1,000,000.00 each occurrence and $2,000,000.00 aggregate.

C. Special Provisions-Endorsements for Additional Insured:

1. The following shall be named as additional insured on Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability. For Commercial General Liability and Excess or Umbrella Liability, the following shall be included as additional insured for both ongoing and completed operations using ISO Forms CG2010(04-13) and CG2037(04-13) or the equivalent:

   -Lakehaven Water and Sewer District
   -Consultant Project Managers

2. The coverage provided by this policy is primary to any insurance maintained by the Owner and contains a Waiver of Subrogation in favor of Lakehaven Water and Sewer District.

18.5. Provision of coverage in these stated amounts shall not be construed to relieve the Contractor from liability in excess of such limits.

18.6. In addition to providing the Owner with a Certificate of Insurance, the Contractor shall have its Insurance Agent or Representative provide a copy of the additional insured endorsements and waiver of subrogation endorsement.

18.7. The Contractor shall forward to the Owner, at the Owner's option, the original policy or endorsement obtained to the Contractor's policy currently in force.

18.8. The Owner shall not pay any progress payments until the Contractor has fully complied with this Section. This remedy is not exclusive and the Owner may take such other action as is available under other provisions of this Contract, or otherwise in law. Coverage in the minimum amount set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage.

18.9. There shall be contractual coverage included in the liability insurance sufficiently broad to insure the provisions of that Section herein entitled "Hold Harmless Clause."

18.10. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations under this Contract.

18.11. In the event the Contractor is required to make corrections on the premises after the Project has been inspected and accepted, Contractor shall obtain, at its own expense and prior to commencement of any corrective work, full insurance coverage as specified herein.

**19. HOLD HARMLESS CLAUSE.** The Contractor agrees to defend, indemnify, and shall save harmless the Owner, its Commissioners, officers, employees, and agents, including the Consultant Project Managers, from all claims and liability arising from any negligence in the performance of this Contract, or by or on account of any omission in the performance of this Contract, and also from all claims of damage or infringement of any patent in fulfilling this Contract; provided, however, that in circumstances involving the concurrent negligence of the Owner and the Contractor, the parties agree that Contractor shall defend, indemnify, and save the Owner harmless from all claims and liabilities only to the extent of the negligent acts and conduct of the Contractor, its officers, agents, employees, subcontractors, and others acting for the Contractor doing work herein contracted for (does not extend to independent contractors and their employees), or by or on account of any omission in the performance of this Contract by the Contractor. The Contractor shall procure and maintain adequate public liability and property damage insurance to so protect the Owner, its Commissioners, officers, employees, and agents, and furnish proof of compliance. The Consultant Project Manager retained by the Owner for this project shall be considered agents of the Owner.

19.1. In any and all claims against the Owner or any of its agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under worker's compensation acts, disability benefit acts, or other employees benefit acts.

19.2. Subject to the indemnity limitation expressed above, the Contractor shall defend, indemnify, and save the Owner or the Owner's agents harmless from all claims and cost of defense thereof including by illustration but not limited to attorneys' fees incurred on such claims and in proving the right to indemnification, expert witness fees, and the cost of the services of Project Management and other personnel whose time is reasonably devoted to the preparation and attendance of depositions, hearings, arbitration proceedings, settlement conferences and trials growing out of the demands of subcontractors, other contractors, laborers, workers, mechanics,

materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.

19.3. The parties expressly agree that the Contractor shall waive its immunity as to the Owner under the Industrial Insurance Act, RCW Chapter 51. This waiver is mutually negotiated and agreed to by the parties. This waiver does not extend to any claims by Contractor's employees directly against Contractor.

19.4. Neither any Commissioner, the Secretary, the Project Manager, nor any other officer or employee of the Owner, shall be personally liable for any acts or failure to act in connection with the Contract, it being understood that in such matters, they are acting solely as agents of the Owner.

**20. PUBLIC WORKS CONTRACT BOND/RETAINAGE.** Unless the Contractor is eligible and has elected to proceed under the alternative performance guarantee provisions of RCW 39.08.010, in which case the Owner shall review the matter for eligibility thereunder and where such guarantee is deemed appropriate by the Owner it will replace the bond described herein, the Contractor shall furnish the Public Works Contract Bond, substantially in the form as provided in the Proposal, in the full amount of the Contract price which shall guarantee the faithful performance of the Contract and the payment of all labor, mechanics, subcontractors, and materialmen. This bond shall be in force until completion of the Project and acceptance by the Owner and also for such period thereafter during which the law allows liens to be filed and sued upon. Further, the bond shall cover for a period of one (1) year after acceptance by the Owner, as respects faulty workmanship and materials. This Public Works Contract Bond shall be furnished by a corporate surety company authorized to do business in the State of Washington and it shall be subject to the approval of the Attorney for the Owner.

20.1. The Contractor hereby guarantees that all of the work, materials, or equipment furnished by Contractor under these Contract Documents shall meet fully all requirements for quality of execution, materials, strength, and any and all other requirements whatsoever prescribed in these Contract Documents.

20.2. In case of failure of any part of the work, materials or equipment under test or otherwise to fulfill any of the requirements of the Contract, the Contractor, without delay and with the least practicable inconvenience to the Owner, shall make such changes, replacements, and renewals as may be necessary to meet fully all of the requirements and guarantees of the Contract Documents.

20.3. In the case of work, materials, or equipment for which tests are herein specified, and which fail to meet the required tests, complete new tests shall then, if required by the Project Manager or requested by the Contractor, be carried out upon the same terms and conditions as herein specified and upon payment by the Contractor to the

Owner of all reasonable expenses to which the Owner may have been put by the abortive tests.

20.4. If the Contractor fails to avail itself immediately of the above adjustment, the Owner shall have the right to either of the following options:

20.4.1. The Owner may replace the defective work or equipment by purchase from or contract with any other parties at the expense of the Contractor. In this event, the Owner shall be entitled to the free use of the defective work or equipment for such reasonable time as is necessary to enable it to replace such defective work or equipment.

20.4.2. The Owner may take over the faulty or defective work, making complete settlement therefore in a gross sum less than that computed under the terms of the Contract by an amount to be decided by the Owner.

20.5. The Contractor also shall guarantee that when put into service and with such attendance and care as is ordinarily given to work, structures, or equipment of the classes covered by the Contract, all parts of the said work, structures, or equipment furnished or constructed by Contractor shall perform their intended functions successfully and satisfactorily.

20.6. The Contractor further agrees that upon notice given by the Owner, Contractor shall promptly and with the least possible delay and inconvenience to the Owner, replace ready for operation and without expense to the Owner, any part or parts of same which may give evidence of undue strain or undue depreciation or which may prove defective in material or inefficient or otherwise satisfactory in operations, through faulty construction or workmanship or through any fault of design or detail arising with Contractor or Manufacturer. Such parts shall be replaced with parts constructed in accordance with designs and of material satisfactory to the Project Manager. Should the Contractor fail to act promptly in accordance with this agreement or should the exigencies of the case require repairs or replacements to be made before the Contractor can be notified or can respond to notification; the Owner reserves the right to make the necessary repairs or replacements at the expense of the Contractor.

20.7. The foregoing paragraph shall not be construed to apply to or to hold the Contractor responsible for structural sufficiency when the Owner's Contract Documents have been followed, but shall apply to all details of fabrication, manufacture, or construction and to all work, structures, or equipment in its entirety under alternative, or Contractor's, Plans and Specifications.

20.8. The Contractor shall be responsible for full expense incidental to making good any and all of the above guarantees and agreements, including transportation charges and cost of dismantling and reassembling equipment.

20.9. The above guarantees and agreements constitute essential parts of the Contract and are covenants of the performance of which are secured by the Bond filed at the time of signing the Contract. Said Bond shall be continued in force for a period of one (1) year after completion of the Contract and acceptance by the Owner and thereafter for such additional period as shall be required for performance by the Contractor under the guarantee provision or otherwise of the Owner.

20.10. In compliance with RCW 60.28.011, the Owner shall withhold five percent (5%) of the monies earned by the Contractor as retainage. Retainage shall be held for a period of sixty (60) days after the date of final acceptance by the Owner or receipt of all necessary releases from the Department of Revenue, the Department of Labor and Industries, and the Employment Security Department and settlement of any liens filed under RCW 60.28, whichever is later. In the event of any litigation over the deduction, release, or payment of retainage to the Contractor, the Owner shall be entitled to reimbursement of its attorneys' fees and costs.

**21. EXTRA, ADDITIONAL, OR OMITTED WORK.** The Owner may, at any time, without order (designated or indicated to be a change order), omit work or make any change in the work within the general scope of the Contract, including, but not limited to, changes:

1. in the Contract Documents;
2. in the method or manner of performance of the work;
3. in the Owner-furnished facilities, equipment, materials, services, or site; or
4. directing acceleration in the performance of the work.

21.1. Any other written order or an oral order (which terms as used in this paragraph shall include direction, instruction, interpretation or determination) from the Owner which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Owner written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

21.2. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly: Provided, however, that no claim for any change shall be allowed for any costs incurred more than ten (10) consecutive calendar days before the Contractor gives written notice of the existence of any such change.

21.3. Should the Contractor intend to assert a claim for an equitable adjustment under this clause, Contractor must, within ten (10) consecutive calendar days after receipt of a written change order or the furnishing of a written notice, submit to the Owner a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Owner. The statement of claim

hereunder shall be included in the written notice given within ten (10) consecutive calendar days.

21.4. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment of this Contract or after the time limits described above.

21.5. Any compensation paid in conjunction with the terms of a Change Order shall comprise total compensation due the Contractor for the work or alteration defined in the Change Order. By signing the Change Order, the Contractor acknowledges that the stipulated compensation includes payment for the work or alteration plus all payment for the interruption of schedules, extended overhead, delay, or any other impact claim or ripple effect, and by such signing specifically waives any reservation or claim for additional compensation in respect to the subject of the Change Order.

**22. CHANGED CONDITIONS (DIFFERING SITE CONDITIONS).** The Contractor shall promptly, and before such conditions are disturbed, notify the Project Manager in writing of: (1) preexisting subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (2) preexisting unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract. The Project Manager will promptly investigate the conditions. If the Project Manager finds that conditions are materially different and cause a material increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, the Project Manager will make an equitable adjustment in the payment or the time required for the performance of the work. Extensions of time will be evaluated in accordance with Section 29. The equitable adjustment will be by agreement with the Contractor. However, if the parties are unable to agree, the Project Manager will determine the amount of the equitable adjustment. If the Project Manager determines that changed conditions do not exist and no adjustment in costs or time is warranted, such determination shall be final. "Promptly" as used herein shall be defined as within seven (7) working days.

22.1. No claim of the Contractor, under this clause, shall be allowed unless the Contractor has given the notice required above; provided, however, the time for giving notice will be extended by the Project Manager for good cause shown in the Project Manager's sole discretion. The time for giving notice will not be extended beyond the time that the Contractor knew or should have known of the existence of the changed condition. If there is a decrease in the costs or time required to perform the work, failure of the Contractor to notify the Project Manager of the changed conditions shall not affect the Owner's right to make an adjustment in the costs or time.

22.2. Additionally, no claim by the Contractor shall be allowed unless the Contractor has followed the procedures provided in Section 21.

**23. COST/PAYMENT FOR EXTRA, ADDITIONAL, OR OMITTED WORK.** The cost, included in the equitable adjustment for any changes in accordance with the Section herein entitled "Extra, Additional, or Omitted Work," shall be determined by one or more of the following methods:

23.1. UNIT BID PRICES. Where the change involves unit bid prices previously established, such unit bid price shall be used.

23.2. LUMP SUM. Where no unit bid prices are involved in the change, an agreed upon lump sum shall be used.

23.3. FORCE ACCOUNT. Or if the amount of the equitable adjustment does not involve a unit bid price and a lump sum cannot be agreed upon in advance, the cost shall be determined as follows:

If the Contract calls for work or materials to be paid for by force account, payment amounts will be determined as shown below.

1. For Labor:

The Owner will reimburse the Contractor for labor and for supervision by foremen dedicated solely to the particular force account item of work (but not for supervision by general superintendents or general foremen). The Project Manager will compute the labor payment on the basis of these four (4) factors:

a. Weighted Wage Rate. The Weighted Wage Rate combines:

(1) The current basic wage and fringe benefits the Contractor is required and has agreed to pay,
(2) Federal Insurance Compensation (FICA),
(3) Federal Unemployment Tax Act (FUTA), and
(4) State Unemployment Compensation Act (SUCA).

A Weighted Wage Rate shall be computed for each classification of labor used. This rate shall reflect the Contractor's actual cost. It shall neither exceed what is normally paid to comparable labor nor fall below the minimum required by Section 16, "Prevailing Wage Requirements." If the Project Manager authorizes overtime, the Weighted Wage Rate shall be determined on the same basis.

b. Travel Allowance and Subsistence. This includes the actual costs of allowances for travel or subsistence paid to employees in the course of their work on the item. This reimbursement will be made only if such allowances are required by a regional labor agreement or are normally paid by the Contractor to comparable labor for performing other work.

c. Industrial Insurance and Medical Aid Premiums. The Owner will reimburse Contractor-paid premiums for Marine Industrial Insurance, State of Washington Industrial Insurance, and Medical Aid Premiums which become an obligation of the Contractor and are chargeable to the force account work. The Owner will not pay the Contractor for Medical Aid premiums that are paid by the employees.

d. Overhead and Profit. The Owner will pay the Contractor fifteen percent (15%) of the sum of the costs listed in a, b, and c above to cover project overhead, general company overhead, profit, and any other costs incurred.

2. For Materials:

The Owner will reimburse actual invoice cost for Contractor-supplied materials. This cost includes actual freight and express charges and taxes as described in Section 59, "State Taxes," provided that these costs have not been paid in some other manner under the Contract. A deduction will be made for any offered or available discounts or rebates if the Owner has provided the Contractor with the means to comply with the provisions allowing the discount. The Owner will than add ten percent (10%) of the balance to cover project overhead, general company overhead, profit, and any other cost of supplying materials.

To support charges for materials, the Contractor shall provide the Project Manager with valid copies of vendor invoices, including freight and express bills. If invoices are not available for materials from the Contractor stocks, the Contractor shall certify actual costs by affidavit.

If claims for materials costs are too high, inappropriate, or unsupported by satisfactory evidence, the Project Manager may determine the cost for all or part of the materials. When determined in this manner, the cost will be the lowest current wholesale price from a source that can supply the required quantity (including delivery costs).

The Owner reserves the right to provide materials. In this case, the Contractor will receive no payment for any costs, overhead, or profit.

3. For Equipment:

The approval of the Project Manager shall be required for the selection of machine-power tools or equipment prior to their use on force account.

The payment for any machine-power tools or equipment shall be the lesser of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized, or the equipment rates used in the preparation of the bid. The rates as set forth in the Rental Rate Blue Book (as modified by the current

AGC/WSDOT Equipment Rental Agreement) are the maximum rates allowable for equipment of modern design and in good working condition. These rates shall be full compensation for all fuel, oil, lubrication, repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

The Owner will add ten percent (10%) to equipment costs to cover project overhead, general company overhead (excluding equipment overhead included in the Rental Rate Blue Book), and profit.

Current copies of the Rental Rate Blue Book and the AGC/WSDOT Equipment Rental Agreement will be maintained at each Owner office of the Department of Transportation and at each of the offices of the Associated General Contractors of America (in Seattle, Spokane, Tacoma, and Wilsonville, Oregon) where they are available for inspection.

4. Force Account Mobilization:

   Force account mobilization is defined as the preparatory work performed by the Contractor, including transportation of tools, equipment, and personal travel time (when included in a bargaining agreement). The Owner may pay for mobilization of equipment and labor if the force account item is not an item included in the original contract proposal or such other contract items as may be included in the special provisions as being eligible for reimbursement for mobilization. Off-site work in preparation for the travel to the project, costing $300.00 or less will not be paid. The Owner will not pay for mobilization for off-site preparatory work for force account items under any circumstance unless the Contractor specifically makes a request in writing in advance of any such mobilization work. The written request shall include an estimate for mobilization costs involving off-site preparatory work and the basis for reimbursement. The approval of the Project Manager will be required prior to commencing the mobilization for all force account work. To the agreed final amount of mobilization for force account work shall be added an amount equal to fifteen percent (15%) of that sum for all other costs, including project overhead, general company overhead, and profit.

5. Subcontractors:

   The subcontractors will be allowed a five percent (5%) markup of the total cost computed from 1, 2, 3, and 4, for insurance, B&O tax, and bonding.

6. Contractor Markup on Subcontractors:

   When work is performed on a force account basis by approved subcontractors, the Contractor will be allowed an additional markup equal to five percent (5%) of the total cost computed for 1, 2, 3, 4, and 5 for all administrative costs.

7. Insurance, B&O Tax, and Bonding:

   The Contractor will be allowed an additional markup equal to five percent (5%) of the total cost computed for 1, 2, 3, 4, 5, and 6 for insurance, B&O tax, and bonding.

23.4. The payments provided above shall be full payment for all work done on a force account basis. The payment shall cover all expenses of every nature, kind, and description, including all overhead expenses, profit, occupational tax and any other Federal or State revenue acts, premiums on public liability and property damage insurance policies, and for the use of small tools and equipment for which no rental is allowed.

23.5. No claim for force account work shall be allowed, except upon written order by the Project Manager, prior to the performance of the work. No work shall be construed as force account work that can be measured under the specifications and paid for at the unit prices named in the Contract.

23.6. The amount and costs of any work to be paid by force account shall be computed by the Project Manager and the amount certified by the Project Manager shall be final as provided in Section 6., "Authority of the Project Manager."

23.7. The Contractor's wage, payroll, and cost records pertaining to work paid for on a force account basis shall be open to inspection or audit as provided in Section 58.4, "Disputes and Claims - Audits."

## 24. MONTHLY ESTIMATES.

24.1. Progress estimates, as prepared and submitted by the Contractor as an invoice on the Contractor's letterhead, shall be as accurate as the available information shall permit, but the only estimate that is binding shall be the final estimate, which shall be prepared upon completion of the work, but prior to acceptance by the Owner. Before the final estimate is prepared, all quantities shall be reviewed and rechecked. Progress payments for the work accomplished in this Contract shall be made by Owner warrant and shall be available to the Contractor on the last working day of the month following that in which the work was performed. The schedule for issuance of each monthly progress estimate shall be established by the Project Manager and the Contractor during the Preconstruction Conference so that payment shall be made to the Contractor as noted herein. Each of the progress payments shall be equal to the value of work performed during the preceding pay period, including allowance for the fair cost of materials stored on the site, less the retained percentage specified herein. The Owner shall retain a portion of the amount owing the Contractor, in conformance with the current statutes of the State of Washington, for a minimum of thirty (30) consecutive calendar days after the Contract has been accepted by the Owner. If no claims or liens have been filed within this thirty (30) consecutive calendar days period, the retained percentage shall be paid after all

State statutory requirements have been completed. Should any liens or claims be filed, the retained percentage shall be held until a satisfactory agreement is reached between the Owner, the Contractor, and the Contractor's Surety.

24.2. Before final payment or release of any retained percentage shall be made by the Owner, the Contractor shall file with the Owner a notarized certificate to the effect that all labor, material, and other costs have been paid in full, the acceptance of which certificate shall nevertheless not, even of itself, work to exonerate the Contractor's Surety. The Contractor shall furnish with each monthly estimate a certificate duly notarized as to wage rate paid per hour for each classification.

24.3. The Owner shall not pay interest on late monthly payments, which interest is otherwise provided by State law.

**25. OWNER'S RIGHT TO WITHHOLD AND DISBURSE CERTAIN AMOUNTS.** In addition to the retained percentage withheld from the Contractor in accordance with all applicable State Laws, the Owner may, at its sole discretion, withhold amounts sufficient to pay any property damage claim of which the Owner may have knowledge, and regardless of the informalities of notice of such claim, arising out of the performance of this Contract; provided that the total amount withheld for such purpose shall not exceed two percent (2%) of the Contract price. The term "property damage claim" shall not include any claim for personal injuries or any claim by persons furnishing supplies or materials or performing labor for the Contractor. The amount withheld shall not be paid to the claimant by the Owner, but shall be held until either the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment in favor of the claimant on such claim. The Owner reserves the right to make payment to the Contractor out of such amounts withheld, if the Owner is of the opinion that the claim or claims are without merit or foundation. The Owner may also withhold amounts for overtime construction project management and/or construction review.

**26. CONSTRUCTION TIME LIMIT.** The construction time allowed on this Contract shall be as shown in the Proposal form bound at the back of these Contract Documents and becomes a part of the Contractor's Proposal and Contract. The starting date of the Contract shall be as noted in the written Notice to Proceed.

26.1. The Contractor shall note that time is of the essence on the work to be performed in this Contract and that all work shall be completed within the time limit provided in the Proposal.

26.2. Failure to timely complete the Work shall result in the imposition of liquidated damages, as provided in these General Conditions of the Contract Documents, in the amount provided for in the Proposal.

26.3. A working day is defined as any day, not otherwise defined herein as a non-working day, during which the Contractor can proceed with sixty percent (60%) or more of

the normal labor and equipment forces engaged on the current controlling operation for five (5) hours or more.

26.4. A non-working day is defined as a Saturday, a Sunday, a recognized holiday, a day on which the Contractor is specifically required by the Project Manager to suspend construction operations, and a day during which the Contractor is prevented by inclement weather or by adverse conditions resulting therefrom, as determined by the Project Manager, from proceeding with more than sixty percent (60%) of the normal labor and equipment forces engaged on the current controlling operation for more than five (5) hours.

26.5. A recognized holiday shall be a day that is currently accepted as such by the trades or occupations in the locality where the work is being performed.

26.6. The Resident Project Manager shall furnish the Contractor a weekly statement showing the number of working days charged to the Contract for the preceding week, the number of working days specified for the completion of the Contract, the number of working days remaining to complete the Contract, and the revised date for completion. The Contractor shall be allowed ten (10) consecutive calendar days from the date of this report in which to file a written protest of any alleged discrepancies in said weekly statement; otherwise, the statement shall be deemed to have been accepted by the Contractor as correct.

**27. ORDER OF WORK.** The order of the work, unless specified herein, shall be at the Contractor's option, in keeping with good construction practices.

**28. DELAYS.** The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as may be determined to be appropriate for the convenience of the Owner.

28.1. If the performance of all or any part of the work is suspended, delayed, or interrupted by an act of the Owner or by its failure to act within a reasonable time, an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent: (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

28.2. No claim under this clause shall be allowed: (1) for any costs incurred more than fifteen (15) consecutive calendar days before the Contractor shall have notified the Owner in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of

such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

28.3. The Owner and Contractor recognize the difficulty of determining the amount of the adjustment to be made for any increase in cost of performance due to delays and agree that the Contractor shall be awarded an amount for each day of Owner-caused delay equal to the rate per day stipulated in this Contract as liquidated damages for failure of the Contractor to complete the Contract on time.

**29. TERMINATION FOR DEFAULT, DAMAGES, FOR DELAY, TIME EXTENSION.** Should the Contractor refuse or fail to prosecute the work or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within such time, or fails, in any other material manner, to abide by the Contract terms, the Owner may, by written notice to the Contractor, terminate Contractor's right to proceed with the work or such part of the work as to which there has been a delay. In such event the Owner may take over the work and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefore.

29.1. Whether or not the Contractor's right to proceed with the work is terminated, Contractor and its Sureties shall be liable for any damage to the Owner resulting from its refusal or failure to complete the work within the specified time.

29.2. If the Owner so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with all increased costs occasioned the Owner in completing the work.

29.3. If the Owner does not so terminate the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until the work is completed or accepted.

29.4. The Owner and the Contractor agree that the amount of liquidated damages shown on the Proposal form is not a penalty, but is an amount that is fixed and agreed upon by the Contractor and the Owner as a reasonable forecast of such damages because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. The said amount shall be retained from time to time by the Owner from current periodic estimates.

29.5. The Contractor's right to proceed shall not be terminated and the Contract time shall be extended if:

29.5.1. The delay in the completion of the work arises from causes not foreseeable to the Contractor at the time of execution of the Contract and beyond the

control and without the fault, responsibility, or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Owner, acts of another Contractor in the performance of the Contract with the Owner, fires, floods, epidemics, quarantine restriction, strikes, or freight embargoes; and

29.5.2. The Contractor, within ten (10) consecutive calendar days from the beginning of any such delay (unless the Owner grants a further period of time before the date of final payment under the Contract), notifies the Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the Owner's judgment, the findings of fact justify such an extension.

29.6. A delay caused the Contractor by any suit or other legal action against the Owner shall entitle the Contractor to an equivalent extension of time unless the period of such delay exceeds ninety (90) consecutive calendar days. When such period is exceeded, the Owner shall, upon request of the Contractor in writing, either negotiate a termination of the Contract, or grant further extension of time, whichever as may at the time appear most desirable to both parties.

29.7. Unless, and to the extent, concurrent with any delay caused by Contractor, time lost by abnormal inclement weather, earthquakes, floods, fires, epidemics, acts of war/ terrorism, strikes, or other circumstances beyond the control of the Contractor, shall entitle the Contractor to an extension of time equivalent to the total time lost, whether it be a single continuous period or the accumulated total of several periods. No other monetary allowance will be provided.

**30. TERMINATION FOR CONVENIENCE.** Owner may at any time and for any reason terminate this Contract at Owner's convenience. Upon receipt of written notice of such termination, Contractor shall, unless the notice directs otherwise, immediately discontinue providing work and ordering materials in connection with the performance of this Contract. Upon such termination, Contractor shall be entitled to payment for all work actually performed to the date of the termination notice, including work performed by subcontractors, and for all materials ordered prior to the receipt of such notification. Contractor hereby agrees that it shall not be entitled to any claim against Owner for additional compensation or damages in the event of such termination. Following notification of termination, Contractor shall assign its interest in all work, supplies and equipment furnished to date to Owner and shall take such action as necessary, or as directed by Owner, to preserve and protect the work, equipment, and supplies.

**31. ABANDONMENT OF THE WORK.** If the Contractor abandons the work for any cause other than failure of the Owner to make monthly progress payments or refuses to comply with the provisions of the Contract Documents, the Owner has the right to notify the Contractor's Surety and require said Surety to complete the work in accordance with the Contract Documents. In the event no liens or claims have been filed and the Owner fails to make

progress payments, the Contractor may then, at its option, cease operations until payments are resumed by notifying the Owner of its intention to cease operations for this cause.

31.1. Should the Contractor abandon the work, fail, or refuse to complete the work embraced in this Contract within the time period established within this Contract or fail to pay just claims for labor and materials, the Owner reserves the right to charge against the Contractor all extra Project Management, or other costs caused by such abandonment, failure, or refusal. The legal costs shall also include attorneys' fees and other costs to the Owner in defending or prosecuting any suits in connection with such abandonment, failure, or refusal, and non-payment of claims wherein the Owner is made a co-defender, and the Contractor agrees to pay all such costs.

**32. ASSIGNMENT OF CONTRACT.** No assignment by the Contractor of any principal construction contract, or any part thereof, or of the funds to be received thereunder, shall be recognized, unless such assignment has had the written approval of the Owner and the Contractor's Surety.

**33. WORKERS.** Only skilled workers shall be employed on work requiring special qualifications. When required in writing by the Owner, the Contractor(s) or any subcontractor(s) shall discharge any worker who is, in the opinion of the Owner, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, and shall not again employ such discharged worker on the work, except with the consent of the Owner. Such discharge shall not be on the basis of any claim for compensation or damages against the Owner or its officers.

**34. EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.** The Contractor and its subcontractor(s) shall perform their respective parts of their contract pertaining to equal opportunity in employment with the same amount of thought and action as they would on any other part of the contract. The provisions of Executive Order 11264, as amended, are specifically incorporated herein as if fully set forth, and this Contract is to be performed in compliance with the terms of said Executive Order 11264 and with the pertinent statutory provisions relating to public works of RCW 49.60.

**35. CONTRACTOR'S RESPONSIBILITIES FOR WORK.** The Contractor shall be responsible for reviewing the conditions of the rights-of-way with the various City, County, and State governmental agencies having jurisdiction and the Project Manager prior to construction.

35.1. The Contractor shall be responsible for all work until its acceptance by the Owner and the Contractor shall not be released from responsibility for any part of the work until one (1) year after the work has been accepted by the Owner.

**36. CONSTRUCTION METHODS AND EQUIPMENT.** If at any time the Contractor's working force, in the opinion of the Project Manager, shall be inadequate for securing the necessary progress as herein stipulated, the Contractor shall, if so required by the Project Manager, increase the force or equipment to such an extent as to give reasonable assurance of compliance with the schedule of progress; but the failure of the Project Manager to make

such demand shall not relieve the Contractor of its obligation to secure the quality, the safe conduct of the work, and the rate of progress required by the Contract and the Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods.

36.1. Except where otherwise directly specified in these Contract Documents, the Contractor shall design, lay out, and be responsible for the methods and equipment used in fulfilling the Contract.

**37. PERSONAL ATTENTION OF CONTRACTOR.** The Contractor shall give its personal attention constantly to the faithful prosecution of the work and shall be present on the site of the work either in person or by a duly authorized representative designated in writing to the Project Manager and shall at all times keep upon the project site a complete copy of the Contract Documents.

37.1. The duly authorized representative shall be fully responsible for decisions and if there is cause to be absent from the job for a period greater than four (4) hours, an assistant shall be designated and the Project Manager so informed.

**38. MUTUAL RESPONSIBILITY OF CONTRACTORS.** If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration, if such other Contractor or subcontractors shall so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

**39. RESPONSIBILITY FOR DAMAGE.** The Contractor shall be charged for expenses as may be incurred by the Owner to provide labor, equipment, and material to respond to an emergency related to the Project, if said emergency is not immediately rectified by the Contractor.

39.1. It shall be the further responsibility of the Contractor for any consequential damage that may arise out of the performance of the work on the Project.

39.2. The Contractor shall be held responsible for any damage to properties abutting the Project or claims for damages by the affected property owners located adjacent to the Project. No payment shall be made by the Owner to the Contractor for resolving such damages or claims.

**40. DAMAGE TO EXISTING IMPROVEMENTS.** All damage done to existing improvements during the progress of the work shall be repaired or restored by the Contractor to the satisfaction of the Project Manager, using for such repairs materials and methods conforming to the requirements of the Standard Specifications or standard practice of the Owner and any additional instruction issued therefore by the Project Manager with the intent that such

damaged improvements be restored to as good a condition as before being damaged. Should the Contractor fail to furnish the necessary labor and materials for such repairs when ordered, the Project Manager may cause said labor and materials for such repairs to be furnished by other parties and the cost thereof shall be deducted from such money as may be due to the Contractor by reason of work performed or material furnished under these Contract Documents. No payment shall be made for this repair or restorative work, unless noted elsewhere in the Contract Documents.

**41. DUST CONTROL.** The Contractor shall furnish all labor, equipment, and means required and shall carry out protective measures wherever and so often as necessary to prevent its operations from producing dust in amounts damaging to property or causing nuisance. The Contractor shall be responsible for any damage resulting from dust originating from its operations. The dust abatement measures shall be continued until all required resurfacing is complete or until the Contractor has completed arrangements with the proper authorities whereby Contractor is relieved of further responsibility. All compensation to be received for dust control shall be incidental to Contractor's bid.

**42. CONSTRUCTION SURVEYING.**

42.1. The Contractor shall be solely responsible for setting and maintaining all alignment stakes, slope stakes, grades, station, and offset construction markers necessary for the construction of all work as shown in the Contract Drawings and as described in the Specifications. The Contractor shall be solely responsible for retaining a licensed Professional Land Surveyor, with current registration in the State of Washington, to set all construction stakes and marks establishing lines, slopes, and grades as necessary to construct the work. The Contractor shall submit to the Owner prior to issuance of the Notice to Proceed, a certificate of insurance for the surveyor's Errors and Omissions policy. The Contractor shall also submit to the Owner prior to issuance of the Notice to Proceed, a certificate of insurance and a copy of an endorsement of the surveyor's General Liability policy, naming the Owner as an additional insured as respects the obligations set forth in this section. The limits for Errors and Omissions and General Liability Insurance of the surveyor shall not be less than $1,000,000.00 for each claim; $1,000,000.00 aggregate. The Owner shall have the right to approve any change in the retained surveyor during prosecution of the work and the Contractor agrees that the Owner may refuse any change in the retained surveyor. No approval of any new surveyors shall be unreasonably withheld by the Owner.

42.2. Prior to commencing work, the Contractor shall receive written approval of the layout from the Project Manager. The Contractor shall allow at least two (2) working days for the Project Manager to approve the layout. The Contractor shall assume full responsibility for detailed dimensions, elevations, and excavation slopes measured from these stakes and marks. Before starting any phase of construction, the

Contractor shall verify that the existing conditions shown on the Contract Drawings are valid.

42.3. Stakes, markers, and other reference points establishing horizontal and vertical control provided by the Owner and used to design the work, including existing monumentation, shall be carefully preserved by the Contractor. The Contractor shall be charged for the costs of replacing stakes, markers, and monumentation that were designated not to be disturbed, but were destroyed or damaged by the Contractor's operations. This charge shall be deducted from monies due or to become due to the Contractor.

42.4. Except for the survey control data provided by the Owner, the calculations, surveying, and measuring required for setting and maintaining the necessary lines and grades will be the Contractor's responsibility.

42.5. The Contractor shall be liable for any error in alignment or grade from the Contract Drawings. The Owner shall reserve the right to perform spot-checks of the accuracy of the alignment stakes, slope stakes, grades, station, and offset construction markers necessary for the construction of all work as shown in the Contract Drawings and as described in the Specifications. These spot-checks performed by the Owner shall not relieve the responsibility for routine checking and testing of the work product and services performed by the Contractor and the retained Professional Land Surveyor, and does not relieve the Contractor of the responsibility of producing a finished product that is in accordance with the Contract Drawings and Specifications.

42.6. In all disputes concerning the accuracy of lines, slopes, and grades, the Owner shall be assumed correct and the Contractor shall correct the discrepancies before additional construction work may proceed. No additional compensation will be paid for this corrective work.

42.7. The lump sum Contract price for "Construction Surveying" shall be full pay for furnishing all labor, materials, tools, land survey instruments, and other equipment necessary to perform the work specified herein.

**43. USE OF COMPLETED PORTION.** Notwithstanding the provisions of Section 51 below, the Owner reserves the right to use and occupy any portion of the improvements which it deems to have been completed sufficiently to permit use and occupancy and such use and occupancy shall not be construed as an acceptance of the work as a whole or any part thereof. Any claims which the Owner may have against the Contractor shall not be deemed to have been waived by such use and occupancy.

**44. STANDARDS OF QUALITY.**

44.1. All materials furnished by the Contractor and all equipment and materials incorporated into the work shall be new and of the best available grade and quality.

44.2. Where the Contract Documents specify certain material and equipment by catalog number and/or designate the desired performance, the Contractor and the manufacturer of the material and equipment shall furnish material and equipment designed to fulfill the stated desired performance requirements. If a conflict occurs between the desired performance requirement and the specified catalog number, the desired performance requirement shall govern. The Contractor and/or the manufacturer of the material and equipment shall notify the Project Manager in writing of the conflict and provide material and equipment conforming to the stated desired performance requirements.

**45. DEFECTIVE MATERIALS AND WORK.** Materials or work that, in the opinion of the Project Manager, do not conform to these Contract Documents, or fail to meet the tests herein described, or are not equal to the samples submitted to and approved by the Project Manager, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected. The Contractor shall remove from the work and its vicinity without delay all rejected materials.

45.1. Unsatisfactory materials and work may be rejected at any time, notwithstanding any previous testing, construction observation, or acceptance of such materials, equipment, or work or inclusion thereof in estimate for payments.

**46. CORRECTING DEFECTIVE WORK.** If the work or any portion thereof shall be damaged in any way or from any cause, or if defects shall develop before the final completion and acceptance of the whole work, as determined by the Project Manager, the Contractor shall forthwith make good, without compensation, such damage or defect, in accordance with the intent of the Contract Documents. All costs associated with the defective work including, but not limited to, the cost of the inspection, testing, correction, removal, replacement, repair, or reconstruction of the defective materials or work, or claims against the Owner related thereto, shall be borne by the Contractor.

**47. ACCEPTANCE OF FINAL PAYMENT AS RELEASE.** The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with the work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or its Sureties from any obligation under this Contract or the Public Works Contract Bond.

**48. CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT.** Contractor warrants its work to be free of defects and deficiencies and agrees that the making of the final payment by the Owner to the Contractor shall not relieve or release the Contractor, or its Surety, from any

obligation under the Contract and the Public Works Contract Bond. The Contractor and its Surety shall, for one (1) year after acceptance of the work by the Owner, be responsible for the repair or replacement of faulty materials and/or work arising from any cause, including, but not limited to: latent defects; deficiencies appearing after final payment; failure of the construction, materials, equipment, or fixtures to perform efficiently in accordance with the requirements of the Contract Documents that shall arise during such correction period.

48.1. The Contractor shall promptly repair and/or replace any such defects discovered. Unless the circumstances of an emergency requires earlier response, the Contractor shall have ten (10) consecutive calendar days in which to acknowledge receipt of notice of said defects and inform the Owner of proposed methods of repair and/or replacement and a schedule in which to perform the work.

48.2. Should the Contractor, or its Surety, fail to correct any faulty work discovered in a timely manner, or fail to respond to the Owner within the ten (10) consecutive calendar days noted herein, unless the circumstance of an emergency requires earlier response, the Owner shall correct said faulty work. All costs associated with this work, to include, but not be limited to, legal and project management fees, shall be borne by the Contractor or its Surety.

48.3. Nothing contained in this Section 48 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described above relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**49. PRECONSTRUCTION CONFERENCE.** The time, date and location of the preconstruction conference shall be set by the Owner through the Project Manager. Those persons required to be present are the Project Manager, General Contractor, such subcontractors as the General Contractor deems necessary, and the Contractor's Superintendent for the Project. In addition, the Owner shall invite representatives of all applicable utilities and local law enforcement agencies to attend.

49.1. The Contractor, at the preconstruction conference, shall designate and shall provide the Owner with names and telephone numbers of those persons who shall be available at all times in case of emergency. The Contractor shall be charged for such expenses as may be incurred by the Owner to provide such service, if said emergency is not immediately rectified.

**50. PROGRESS SCHEDULE.** The Contractor, upon receiving notification of award, shall furnish to the Project Manager, at the preconstruction conference, a construction plan or program

indicating thereon Contractor's best estimate for processing the work for review and approval. The Contractor's schedule shall comply with the following requirements:

50.1. The Contractor shall conduct all on-site work during regular working hours and shall obtain approval from the Owner before working outside these hours.

50.2. The schedule shall indicate completion within the days allocated for the project in the Proposal.

50.3. Work to be performed by subcontractors shall be incorporated into the schedule.

50.4. Provide schedule for proper sequence of construction, considering various crafts, purchasing time, shop drawing approval, material delivery, equipment fabrication, and similar time consuming factors.

50.5. Assign values to each item of work scheduled and utilize those values in development of the Contractor's cost breakdown.

50.6. No activity on the schedule shall have duration longer than twenty-one (21) days or an assigned value in excess of $25,000.00. The only exception to this is equipment fabrication activities which exceed these limits. The Contractor shall be fully responsible to expedite all long lead fabrication items.

50.7. The scheduled duration of each activity shall be based on the work being performed during a normal 40-hour week, with allowances made for legal holidays and equipment and material deliveries.

50.8. The schedule shall be evaluated not less than twice monthly. The Contractor shall update, correct, and submit the revised schedule to the Project Manager in triplicate, with pay application to show rescheduling necessary to reflect true job conditions. When shortening of various time intervals is necessary to correct for behind schedule conditions, indicate steps to implement to accomplish work in shortest schedule. Information shall be submitted to the Project Manager in writing with the revised schedule.

50.9. Contractor shall be required to evaluate the schedule with any contract change, if contract extensions are involved. Schedule evaluations associated with change shall be considered as part of the allowed overhead and profit.

50.10. The schedule may be of Critical Path Type "S" curve or any other system providing equal results.

50.11. The Contractor shall show on schedule, as a minimum, the earliest starting, earliest completion, latest starting, latest finish, and free and total float for each task or item.

50.12. Contractor shall submit a cost breakdown of each item shown in the Contractor's construction schedule for use in determining value completed each month for partial pay estimates. The cost breakdown shall be itemized by specification section. Where units, equipment, or other components are identified by a specific series or identification number, utilize said designation throughout cost breakdown. A separate breakdown shall be provided for ineligible items, change order items, or items requested. An additional breakdown sheet showing the tabulation format for stored materials shall be provided. This sheet is to be submitted with each Contractor's pay request breakdown. The detail and format of cost breakdown and stored materials tabulation sheet shall be fully approved by the Owner. The Owner may require back-up as necessary for verification of cost items outlined in the cost breakdown.

## 51. SUBSTANTIAL COMPLETION.

51.1. When Contractor considers the entire Work ready for its intended use, Contractor shall notify Project Manager in writing that the entire Work is substantially complete and request that Project Manager issue a certificate of Substantial Completion. Contractor shall at the same time submit to Project Manager an initial draft of punchlist items to be completed or corrected before final payment.

51.2. Promptly after Contractor's notification, Contractor and Project Manager shall make an inspection of the Work to determine the status of completion. If Project Manager does not consider the Work substantially complete, Project Manager will notify Contractor in writing giving the reasons therefor.

51.3. If Project Manager considers the Work substantially complete, Project Manager will deliver to Contractor a Certificate of Substantial Completion, which will fix the date of Substantial Completion. Project Manager shall attach to the certificate a punchlist of items to be completed or corrected before final payment. If Contractor objects to the punchlist, it shall so notify Project Manager within seven (7) days and Project Manager shall review the same and, within fourteen (14) days thereafter, issue the final punchlist.

51.4. At the time of receipt of the Certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

51.5. After Substantial Completion the Contractor shall promptly begin work on the punchlist of items to be completed or corrected prior to final payment. In

appropriate cases, Contractor may submit monthly Applications for Payment for completed punchlist items, following the progress payment procedures set forth in this Agreement.

51.6. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punchlist.

**52. COOPERATION WITH OWNER OPERATIONS AND OTHER CONTRACTORS.** Contractor agrees that it shall be responsible to coordinate, in a safe, non-obtrusive, and efficient manner, with Owner's Operations and the activities of any other contractors working on the site. Any and all costs associated with coordination with Owner Operations, as well as all other Contractors conducting construction activities, are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the unit or lump sum bid prices of the Contract.

**53. METHOD OF SERVING NOTICES.** The Contractor shall be responsible for proper notification to, and coordination with, all fire districts, school districts, police, commuter bus lines, utility districts, service districts, and all other persons and services which are affected by this Project at least one (1) week in advance of construction on any portion of the Project.

53.1. The area of construction falls within one or more fire districts. It shall be the Contractor's responsibility to keep the fire departments fully advised of its construction progress, any required detours, inoperable fire hydrants, and also the time of completion of the Project. Inoperable hydrants shall be covered at all times that they are not usable and thereby fully indicate their inactive status.

**54. WATER AND POWER.** The Contractor shall purchase and convey water from the Owner for the purpose of testing, disinfecting water mains, and general cleanup needs. The Contractor shall cooperate with the Owner in this work and restrict its use of water at such time as the Owner advises a critical shortage exists.

**55. SHOP (WORKING) DRAWINGS.** Shop (working) drawings shall be submitted to the Owner as one package, bound and indexed with a table of contents, of all equipment to be furnished for this Project and the Owner shall give a written review of the equipment as covered by the shop (working) drawings. Each submitted piece of equipment shall be fully defined by catalog number and reference made as to its applicable Specification Section. Such plan review of the Contractor's shop drawings shall not relieve the Contractor from its responsibility to comply with and conform to the Contract Documents. It shall be the responsibility of the Contractor to check all dimensions and to see that all items fit together and in place to assure a completed project in good working order. Only equipment properly installed and fully approved by the Project Manager shall be accepted in the final work. Shop (working) drawings furnished under this stipulation shall be great enough in number so that five (5) copies may be retained by the Owner.

55.1. Whenever materials and equipment are specified by catalog number to indicate the desired quality and performance, it shall be the Contractor's responsibility to fulfill the indicated requirements, regardless of the designated catalog number. The Contractor (or Manufacturer) shall notify the Owner in writing of the incorrect catalog number, and submit equipment and materials which shall produce the desired results.

**56. MOBILIZATION, CLEANUP, AND DEMOBILIZATION.** Mobilization, cleanup, and demobilization shall include all costs associated with moving in, cleanup, moving out, and any other "fixed" costs related to the project not materially affected by change in quantities of work performed.

56.1. All debris or rubbish caused by the Contractor's operations shall be removed and the entire work areas occupied during such operations cleaned and left in a neat, presentable, and workmanlike condition and appearance, to the satisfaction of the Owner, any affected private property owners, and any City, County, or State governmental agency having jurisdiction.

56.2. During construction and then upon completion of the work, the Contractor shall thoroughly search the surrounding area and remove and dispose of any construction material thrown or discarded amongst the trees or elsewhere, such as paint cans, cartons, broken pipe, bottles, rocks, logs, excess excavated material, and other deleterious matter. The general surrounding area shall be left neat in appearance. The Contractor shall also remove and dispose of debris not necessarily deposited by the Contractor while performing the work.

56.3. Paved surfaces, existing and new, shall be washed clean upon completion of work within the area, and may require daily washing and/or sweeping if mud or dust persists. Drainage ditches and other storm drain facilities shall be left free of any material or damage resulting from the Contractor's operations.

56.4. Prior to project acceptance, all paved surfaces and surface and subsurface facilities shall be checked and cleaned as required.

56.5. Cleanup work shall progress as closely behind the backfilling operation and other construction work as possible to allow return of the construction area to normal use.

56.6. Progress payment for the lump sum item "Mobilization, Cleanup, and Demobilization" shall be made as follows:

56.6.1. When five percent (5%) of the total original Contract amount is earned, less Mobilization, Cleanup ,and Demobilization, excluding amounts paid for Materials on Hand, fifty percent (50%) of the lump sum amount bid for Mobilization, Cleanup, and Demobilization, or five percent (5%) of the total original Contract amount, whichever is the least, shall be paid.

56.6.2. When ten percent (10%) of the total original Contract amount is earned, less Mobilization, Cleanup ,and Demobilization, excluding amounts paid for Materials on Hand, seventy-five percent (75%) of the lump sum amount bid for Mobilization, Cleanup, and Demobilization, or ten percent (10%) of the total original Contract amount, whichever is the least, shall be paid.

56.6.3. Upon completion of all work on this Project, payment for the remaining amount bid for Mobilization, Cleanup, and Demobilization in excess of ten percent (10%) of the total original Contract amount, shall be paid.

56.7. Nothing herein shall be construed to limit or preclude progress payments otherwise provided by this Contract.

## 57. POST-CONSTRUCTION SERVICES AND DOCUMENTATION.

57.1. START-UP SERVICES. The Contractor shall provide, when applicable and as called for in these Contract Documents, field services of qualified, factory-trained technicians sufficient to supervise, calibrate, test, and approve the installation of all pieces of equipment installed.

57.1.1. The Contractor and the Manufacturer(s) shall conduct any and all start-up procedures for each piece of equipment, operate each through each of its intended modes, cycles, etc., and correct any and all problems which occur during start-up. Upon completion of start-up, the Manufacturer(s) shall provide written confirmation that each piece of equipment was installed in accordance with the Manufacturer's requirements.

57.1.2. The Contractor shall provide one (1) set of recommended spare parts for each piece of equipment being installed, in addition to those spare parts specifically noted in these Contract Documents.

57.1.3. The Contractor shall notify the Owner, in writing, two (2) working days in advance of its schedule for the aforementioned start-up services, so that Owner representatives may witness the procedures.

57.2. OPERATIONS AND MAINTENANCE TRAINING. The Contractor shall conduct, when applicable and as called for in these Contract Documents, specially organized training session(s) to educate and train the Owner in the operation and maintenance of each piece of equipment to be installed. Each training session (for each piece of equipment) shall include, but not be limited to, preventative maintenance procedures, troubleshooting, calibration, testing, replacement of the various components, and the operation of all modes of each piece of equipment.

57.2.1. Each training session shall be at least eight (8) hours in duration, and be broken into two (2) sections. The first section shall be conducted in a

classroom setting (in the Owner's training facilities) and the second section shall be conducted at the site where each piece of equipment is installed.

57.2.2. The Contractor shall prepare and assemble specific instructional materials for each section of the training session(s) and shall supply said materials to the Owner a minimum of two (2) weeks prior to the actual training session(s).

57.2.3. The Contractor shall note that the Owner reserves the right to videotape both sections of the training session(s), for its future reference only, as an additional means of properly operating and maintaining each piece of equipment.

57.3. OPERATION AND MAINTENANCE MANUALS. The Contractor shall provide, when applicable and as called for in these Contract Documents, five (5) sets of Operation and Maintenance Manuals to the Owner for its approval and use, addressing each piece of equipment installed prior to Project acceptance.

57.3.1. Information contained in the Manuals shall consist of 8-1/2" by 11" size catalog data on each piece of equipment, together with parts lists, descriptions of operation and operating modes, maintenance information, assembly/disassembly instructions together with exploded views of the equipment, shop drawings, preventative maintenance procedures, information pertaining to troubleshooting, testing and calibration, and replacement of components, system schematics and wiring diagrams, any and all applicable lubrication lists, and a listing of recommended spare parts. In addition, all control schematics supplied by the various Manufacturer(s) shall include wiring tag numbers on the control schematics.

57.3.2. Catalogs and data in the Manuals shall be neat and clean copied. Drawings shall be accordion-folded to letter size and installed in an envelope within the Manual. In addition, a digital copy of all applicable drawings files shall be provided to the Owner. The drawing files shall be compatible with the most current AutoCAD Release and in a DWG format compatible with Windows-based operating system computers. A typed index shall be provided, which shall list equipment, supplier's name, address, telephone, and facsimile numbers. The Manual(s) shall indicate the local service organizations for each piece of equipment and the Manufacturer's recommended servicing instructions.

57.3.3. The Manuals shall have divider sheets with identifying tabs between each category and each copy of the Manuals shall be enclosed in a vinyl-covered, heavy-duty, three-“D” ring binder (Wilson Jones D-Ring Doublelock View Binder Model No. WJ385-XXW, or equal). The front and side of each of the Manuals shall be imprinted with the words "Lakehaven Water and Sewer

District," the name of the Project, "Operation and Maintenance Manual," the name of the applicable piece of equipment, the date (month/year), and the names of the Contractor, Manufacturer, and Supplier.

57.4. SPARE PARTS. The Contractor shall deliver in its entirety, directly to the Owner, when applicable and as called for in these Contract Documents, spare parts for identified equipment as specified in the Contract Drawings and Specifications. Where applicable, a receipt listing all required spare parts, signed by an authorized representative of the Owner, shall be included with the Operation and Maintenance Manuals.

57.5. RECORD DRAWINGS.

57.5.1. The Contractor shall be responsible for providing record drawings to the Owner presenting accurate and reliable information concerning the actual location of the facilities constructed. The Contractor shall be solely responsible for retaining a licensed Professional Land Surveyor or Professional Engineer, with current registration in the State of Washington, to collect accurate data during construction of the facilities to enable the Engineer/Surveyor to submit actual and reliable “as-built” locations in the form of record drawings to the Owner, based upon the information available to the Engineer/Surveyor during construction, and also by field survey of the constructed facilities that are accessible at the ground surface. The Contractor shall submit to the Owner prior to issuance of the Notice to Proceed, a certificate of insurance for the Engineer’s/Surveyor’s Errors and Omissions policy. The Contractor shall also submit to the Owner prior to issuance of the Notice to Proceed, a certificate of insurance and a copy of an endorsement of the Engineer’s/Surveyor’s General Liability policy, naming the Owner as an additional insured as respects the obligations set forth in this section. The limits for Errors and Omissions and General Liability Insurance of the Engineer/Surveyor shall be not less than $1,000,000.00 for each claim; $1,000,000.00 aggregate. The Owner shall have the right to approve any change in the retained Engineer or Surveyor during prosecution of the work, and the Contractor agrees that the Owner may refuse any change in the retained Engineer or Surveyor, or may condition the same on re-submittal of the certification of location described below. No approval of any new Engineer or Surveyor shall be unreasonably withheld by the Owner.

57.5.2. At the conclusion of construction, the Engineer/Surveyor shall deliver to the Owner its certification that it has made periodic field investigations and measurements during construction, and that the record drawings submitted to the Owner are accurate and reliable. The certification shall incorporate the following words, or other words of like import:

> "*The undersigned hereby states that the "as-constructed" measurements shown herein were performed by him/her or under his/her supervision, and to the best of his/her knowledge and belief are true and correct."*

57.5.3. The record drawings shall meet the following requirements:

1. If the Owner provides to the Contractor an electronic computer version of the Contract Drawings, such as files in the most current AutoCAD Release and in a DWG format compatible with Windows-based operating system computers, the record drawings shall be provided on a revised and updated version of this electronic drawing file.
2. The record drawings shall be provided on durable sheet material, such as Mylar, or a fixed-line, reverse-reading, photographic reproduction thereof.
3. All outdated or extraneous data, and/or data supplied to aid construction shall be removed from the Plans. This includes temporary easements or utility locations.
4. Current information shall be substituted for outdated or erroneous information. "Crossing-out" of information will not be accepted.
5. All plan and/or profile information will be shown to scale and in relationship to physical features as they exist at the completion of the Work.
6. Shading, half-tone patterns, or stipple adjacent to or upon the improvements (sewer lines, manholes or side sewers, water mains and valve clusters), or notations pertaining to the improvements, shall be erased or otherwise removed.
7. All intentionally buried facilities shall be noted as such on the record drawings.
8. The record drawings shall be certified as such by placing a note to incorporate the following words, or other words of like import:

   > "*The undersigned hereby states that the "as-constructed" measurements shown herein were performed by him/her or under his/her supervision, and to the best of his/her knowledge and belief are true and correct."*

9. The record drawings shall be stamped and signed by the retained Engineer/Surveyor, if different than the original design Engineer.

57.6. TABULATED DATA FOR THE OWNER'S COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM. The Contractor shall provide, when applicable and as called for in these Contract Documents, tabulated information about water service

connections, water valves, fire hydrant assemblies, air vacuum valve assemblies, and other similar facilities for its computerized maintenance management system. The Owner shall provide to the Contractor forms for the recording by the Contractor of information relative to these facilities. The completed forms shall be acceptable to the Owner.

57.7. MEASUREMENT AND PAYMENT. The lump sum Contract price for "Post-Construction Services and Documentation" shall be full pay for furnishing all labor, materials, tools, land survey instruments, and other equipment necessary to perform the work specified herein. Payment for "Post-Construction Services and Documentation" will be for the fixed price shown in the bid schedule. The payment will be made upon completion and acceptance of all other items of work. No partial or progress payments shall be made for "Post-Construction Services and Documentation." If the Contractor considers the fixed bid price for "Post-Construction Services and Documentation" too high or too low, the difference shall be made incidental to the other bid items.

**58. DISPUTES AND CLAIMS.**

58.1. DISPUTES. When disputes occur during the work, the Contractor is encouraged to pursue resolution through the Project Manager. If the negotiation fails to provide satisfactory resolution, the Contractor shall pursue the more formalized method outlined herein for submitting a claim.

58.2. CLAIMS. If the Contractor claims that additional payment is due and the Contractor has attempted to resolve such dispute, the Contractor may file a claim as provided in this section. The Contractor agrees to waive any claim for additional payment, if applicable written notification requirements are not met, or if the Project Manager is not afforded reasonable access by the Contractor to complete records of actual cost and additional time incurred, or if a claim is not filed as provided in this section. The fact that the Contractor has provided a proper notification, provided a properly filed claim, or provided the Project Manager access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by the Project Manager, is found to have merit, the Project Manager will make an equitable adjustment either in the amount of costs to be paid or in the time required for the work, or both. If the Project Manager finds the claim to be without merit, no adjustment will be made.

All claims filed by the Contractor shall be in writing and in sufficient detail to enable the Project Manager to ascertain the basis and amount of the claim. Claims must be submitted to the Project manager no later than twenty (20) calendar days from the date the Contractor became aware, or exercising reasonable diligence would have become aware, of the claim. As a minimum, the following information must accompany each claim submitted:

58.2.1. A detailed factual statement of the claim for additional compensation and time, if any, providing all necessary dates, locations, and items of work affected by the claim.

58.2.2. The date on which facts arose that gave rise to the claim.

58.2.3. The name of each individual, official, or employee of the Owner involved in or knowledgeable about the claim.

58.2.4. The specific provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim.

58.2.5. If the claim relates to a decision of the Project Manager, which is left to the Project Manager's discretion or as to which the Contract provides that the Project Manager's decision is final, the Contractor shall set out in detail all facts supporting its position relating to the decision of the Project Manager.

58.2.6. The identification of any documents and the substance of any oral communications that support the claim.

58.2.7. Copies of any identified documents, other than Owner documents and documents previously furnished to the Owner by the Contractor, that support the claim (manuals which are standard to the industry, used by the Contractor, may be included by reference).

58.2.8. If an extension of time is sought:

1. The specific days and dates for which it is sought,
2. The specific reasons the Contractor believes a time extension should be granted,
3. The specific provisions under which it is sought, and
4. The Contractor's analysis of its progress schedule to demonstrate the reasons for a time extension.

58.2.9. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:

1. Labor.
2. Materials.
3. Direct equipment. The lower of the actual cost for each piece of equipment for which a claim is made or the rates established by the AGC/WSDOT Equipment Rental Agreement which was in effect when the work was performed. In no case shall the amounts claimed for each piece of equipment exceed the rates established by that Equipment

Rental Agreement, even if the actual cost for such equipment is higher. The Owner may audit the Contractor's cost records to determine actual equipment cost. The following information shall be provided for each piece of equipment:

a. Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12 "G," Tractor Crawler ROPS & Dozer, Included Diesel, etc.),

b. The hours of use or standby, and

c. The specific day and dates of use or standby.

4. Job overhead.

5. Overhead (general and administrative).

6. Subcontractor's claims (in the same level of detail as specified herein is required for any subcontractor's claims).

7. Other categories as specified by the Contractor or the Owner.

58.2.10. A notarized statement shall be submitted to the Project Manager containing the following language:

Under the penalty of law for perjury or falsification, the undersigned,_____,
(name)
_____ of _____
(title) (company)
hereby certifies that the claim for extra compensation and time, if any, made herein for work on this Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between the parties.

_____
Signature

Subscribed and sworn to before me this _____ day of _____, 20____.

_____
Notary Public
My Commission Expires _____

It will be the responsibility of the Contractor to keep full and complete records of the costs and additional time incurred for any alleged claim. The Contractor shall permit the Project Manager to have access to and ability to copy those records, and any other records as may be required by the Project Manager, to determine the facts or contentions involved in the claim. The Contractor shall retain those records for a period of not less than three (3) years after final acceptance.

Failure to submit such information and details as described in this section for any claim shall operate as a waiver of the claims by the Contractor.

Provided that the Contractor is in full compliance with all the provisions of this section and after the formal claim document has been submitted, the Owner will respond, in writing, to the Contractor as follows:

1. Within forty-five (45) calendar days from the date the claim is received by the Owner if the claim amount is less than $100,000.00,

2. Within ninety (90) calendar days from the date the claim is received by the Owner if the claim amount is equal to or greater than $100,000.00, or

3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Contractor will be notified within fifteen (15) calendar days from the date the claim is received by the Owner as to the amount of time that will be necessary for the Owner to prepare its response.

Full compliance by the Contractor with the provisions of this section is a contractual condition precedent to the Contractor's right to seek judicial relief.

58.3. TIME LIMITATION AND JURISDICTION.

For the convenience of the parties to the Contract, it is mutually agreed by the parties that any claims or causes of action which the Contractor has against the Owner, arising from the Contract, shall be brought within 180 calendar days from the date of final acceptance of the Contract by the Owner and it is further agreed that any such claims or causes of action shall be brought only in the Superior Court of King County. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Contractor asserts against the Owner, arising from the Contract, are filed with the Owner or initiated in court, the Contractor shall permit the Owner to have timely access to any records deemed necessary by the Owner to assist in evaluating the claims or action.

58.4. AUDITS.

58.4.1. General.

The Contractor's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of the Owner during the life of the Contract and for a period of not less than three (3) years after the date of final

acceptance of the Contract. The Contractor shall retain these records for that period. The Contractor shall also guarantee that the wage, payroll, and cost records of all subcontractors and all lower tier subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of the Owner or by an auditor under contract with the Owner. The Contractor, subcontractors, or lower tier subcontractors shall provide adequate facilities, acceptable to the Project Manager, for the audit during normal business hours. The Contractor, subcontractors, or lower tier subcontractors shall make a good faith effort to cooperate with the auditors. If an audit is to be commenced more than sixty (60) calendar days after the final acceptance date of the Contract, the Contractor will be given twenty (20) calendar days' notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll and cost records shall be retained until such litigation, claim or audit involving the records is completed.

58.4.2. Claims.

All claims filed against the Owner shall be subject to audit at any time following the filing of the claim. Failure of the Contractor, subcontractors, or lower tier subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of the Contractor, subcontractors or lower tier subcontractors, shall constitute a waiver of a claim and shall bar any recovery thereunder.

58.4.3. Required Documents for Audits.

As a minimum, the auditors shall have available to them for copy and electronic copy the following documents:

1. Daily time sheets and supervisor's daily reports.
2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.

8. Material cost distribution worksheet.

9. Equipment records (list of company equipment, rates, etc.).

10. Vendors', rental agencies', subcontractors', and lower tier subcontractors' invoices.

11. Subcontractors' and lower tier subcontractors' payment certificates.

12. Canceled checks (payroll and vendors).

13. Job cost report.

14. Job payroll ledger.

15. General ledger.

16. Cash disbursements journal.

17. Financial statements for all years reflecting the operations on this Contract. In addition, the Owner may require, if it deems appropriate, additional financial statements for three (3) years preceding execution of the Contract and three (3) years following final acceptance of the Contract.

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

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

20. All documents which relate to each and every claim, together with all documents which support the amount of damages as to each claim.

21. Worksheets 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.

58.5. CLAIMS RESOLUTION.

58.5.1. General.

Prior to seeking claim resolution through non-binding alternative dispute resolution processes, binding arbitration, or litigation, the Contractor shall

proceed under the administrative procedures described in these General Conditions and any special provision provided in the Contract for resolution of disputes. The provisions of these sections must be complied with in full, as a condition precedent to the Contractor's right to seek claim resolution through any non-binding alternative dispute resolution process, binding arbitration or litigation.

58.5.2. Non-binding Alternative Disputes Resolution (ADR).

Non-binding alternative disputes resolution (ADR) processes are encouraged and available upon mutual agreement of the Contractor and the Owner for all claims submitted in accordance with these General Conditions, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;

2. The Owner has been given the time and opportunity to respond to the Contractor as provided herein; and

3. The Owner has determined that it has sufficient information concerning the Contractor's claims to participate in a non-binding ADR process.

The Owner and the Contractor mutually agree that for any such process used, the cost of the non-binding ADR process shall be shared equally by both parties with each party bearing its own preparation costs.

The type of non-binding ADR process shall be agreed upon by the parties and shall be conducted within the State of Washington at a location mutually acceptable to the parties.

The Contractor agrees that the participation in a non-binding ADR process does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180 calendar days of final acceptance of the Contract, the same as any other claim or causes of action as provided herein.

58.5.3. Claims of $500,000.00 or Less.

The Contractor and the Owner mutually agree that those claims which total $500,000.00 or less, submitted in accordance with these General Conditions and not resolved by non-binding ADR processes, shall be resolved through mandatory and binding arbitration as described herein.

58.5.4. Administration of Arbitration.

Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. The current version of the Northwest Region Expedited Commercial Arbitration Rules shall be used for claims with an amount less than $25,000.00.

2. The current version of the Expedited Procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $25,000.00 and less than $50,000.00.

3. The current version of the standard procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $50,000.00 and not greater than $100,000.00.

The Owner and the Contractor mutually agree the venue of any arbitration hearing shall be conducted within King County in the State of Washington.

The Owner and the Contractor mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of King County. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

58.5.5. Procedures to Pursue Arbitration.

If a qualified dispute cannot be resolved through administrative procedures provided herein for resolution of disputes or through a mutually agreed upon non-binding ADR process, and if the claim is for $100,000.00 or less, the Contractor shall advise the Project Manager, in writing, that mandatory and binding arbitration is desired. The parties may agree on an arbitration process or, if the parties cannot agree, a demand for arbitration shall be filed by the Contractor, in accordance with the AAA rules, with the Owner and with the AAA. Selection of the arbitrator and the administration of the arbitration shall proceed in accordance with AAA rules, using arbitrators from the list developed by the AAA, except that for claims under $25,000.00 using the Northwest Region Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited Procedure of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim as provided herein.

Unresolved disputes, which do not involve delays or impacts to unchanged work, may be brought to binding arbitration prior to physical completion of the project, provided that:

1. All the administrative remedies provided for in these General Conditions have been exhausted;

2. The dispute has been pursued to the claim status as provided herein; and

3. The Contractor certifies, in writing, that claims for delays or impacts to the work will not result from the dispute.

Unless the Owner and the Contractor agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from a Contract must be brought in a single arbitration hearing and only after physical completion of the Contract. The total of those unresolved claims cannot be greater than $100,000.00 to be eligible for arbitration.

In addition, the Contractor agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, within 180 calendar days of final acceptance of the Contract, the same as any other claim or causes of action as provided in these General Conditions.

58.5.6. Statement of Proof.

The scope and extent of discovery shall be determined by the arbitrator in accordance with AAA rules. In addition, each party, for claims greater than $25,000.00, shall serve upon the other party a "statement of proof." The statement of proof shall be served, with a copy to the AAA, no less than twenty (20) calendar days prior to the arbitration hearing and shall include:

1. The identity, current business address, and residential address of each witness who will testify at the hearing,

2. The identity of a witness as an expert, if an expert witness is to be called, a statement as to the subject matter and the substance of the facts and opinions on which the expert is expected to testify, a summary of the grounds for each opinion, and a resume of the expert's qualifications, and

3. A list of each document that the party intends to offer in evidence at the arbitration hearing. Either party may request from the other party a copy of any document listed. If such a request is made, a copy of the document shall be provided within five (5) calendar days from the date the request is received.

The arbitrator may permit a party to call a witness or offer a document not shown or included in the statement of proof only upon a showing of good cause.

58.5.7. Claims in Excess of $500,000.00.

The Contractor and the Owner mutually agree that those claims in excess of $500,000.00, submitted in accordance with the requirements herein and not resolved by non-binding ADR processes, shall be resolved through litigation in King County Superior Court, unless the parties mutually agree to resolve the claim through binding arbitration.

**59. STATE TAXES.** The Washington State Department of Revenue has issued special rules on the state sales tax. Subsections 59.2.1. through 59.2.3. are meant to clarify those rules. The Contractor should contact the Financial System Manager, Department of Transportation, Olympia, for answers to questions in this area. The Owner will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

59.1. The Contractor shall include all Contractor-paid taxes in the unit bid prices or other Contract amounts. In some cases, however, state retail sales tax will not be included. Subsection 59.2.2. describes this exception.

59.2. The Owner will pay the retained percentage only if the Contractor has obtained from the State Department of Revenue a certificate showing that all Contract-related taxes have been paid (RCW 60.28.051). The Owner may deduct from its payments to the Contractor any amount the Contractor may owe the State Department of Revenue, whether the amount owed relates to this Contract or not. Any amount so deducted will be paid into the proper State fund.

59.2.1. State Sales Tax: Work Performed on Non-State Land.

State Department of Revenue Rule 171 and its related rules apply for this section.

The special provisions of the Contract will identify those parts of the project that require work on land owned by:

a. A municipal corporation,

b. A political subdivision of the State, or

c. The United States of America.

For work performed on such land, the Contractor shall include Washington State retail sales taxes in the various unit bid prices or other Contract amounts. These retail sales taxes shall include those the Contractor pays on

purchases of materials, equipment, and supplies used or consumed in doing the work.

59.2.2. State Sales Tax: Work on State-Owned Land.

State Department of Revenue Rule 170 and its related rules apply for this section.

The special provisions of the Contract will identify those parts of the project that require work on State-owned land.

For work performed on State-owned land, the Contractor shall collect from the Owner, retail sales tax on the full Contract price. The Owner will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit bid prices or in any other Contract amount.

However, the Owner will not add sales tax the Contractor (prime or subcontractor) pays on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid prices or in any other Contract amount, whether the State owns the construction site or not.

59.2.3. Services.

The Contractor shall not collect retail sales tax from the Owner on any Contract wholly for professional or other services (as defined in State Department of Revenue Rules 138 and 224).

**60. ATTORNEY'S FEES.** Upon execution of this Agreement, the parties agree in the event either of them is required to enforce any provision or provisions of this Agreement against the other, that each party shall be responsible for its own attorneys' fees and costs, including those incurred on appeal, excepting only to the extend provided otherwise by statute or as specifically described in this Agreement.

**61. CONTRACT DEADLINE.** The Contractor shall, unless earlier terminated pursuant to Section 29 or Section 30, complete the project according to the attached Specifications on or before **667** calendar days from the Official Starting Date, as indicated in the Owner's "Notice to Proceed" letter.

***[signatures on next page]***

**GENERAL CONDITIONS/AGREEMENT**

IN WITNESS WHEREOF, the said Contractor has executed this instrument and the Board of Commissioners has caused this instrument to be executed in the name of Lakehaven Water and Sewer District the day and year first above written.

**Owner: Lakehaven Water and Sewer District**

General Manager Signature

John C. Bowman
Authorized Name (printed or typed)

Date

**Contractor:**

Authorized Signature

Authorized Name (printed or typed)

Authorized Title (printed or typed)

Date

**Address of Contractor:**

Federal Tax ID No.:

Telephone No.:

E-mail Address:

**Approved as to Form:**

Legal Counsel for the Owner

Peter Beckwith
Name (printed or typed)

Date

# APPENDIX A

## Apprentice Utilization Plan

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## LAKEHAVEN WATER AND SEWER DISTRICT

## APPRENTICE UTILIZATION PLAN

| | | | |
|---|---|---|---|
| **Project Name and Number:** | | **AUR [1]** | **15%** |
| **Prime Contractor Name:** | | | |
| **Initial Submittal Date:** | | **Revision No.:** | |
| **Submitted By:** | | **Revision Date:** | |

***Include labor hours and count for all trades including those performed by subcontractors. Mark all revisions in RED.***

### Part A

| | Program/Trade | Apprentice Name and Registration No. | | Estimated Labor Hours | Estimated Apprentice Hours |
|---|---|---|---|---|---|
| | | Name | No. | | |
| Prime | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | **Total Estimated Hours for Part A:** | | | | |

### Part B

| Subcontractor Business Name | Estimated Start Date | Program/Trade | Apprentice Name and Registration No. | | Estimated Labor Hours | Estimated Apprentice Hours |
|---|---|---|---|---|---|---|
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Name:** | | | |
| | | | **No.:** | | | |
| | | | **Total Estimated Labor Hours for Part B:** | | | |
| | | | **Total Estimated Hours for Part A (From Above):** | | | |
| | | | **Total Estimated Hours for Parts A and B:** | | | |
| | | | **Total apprentice utilization percentage based on planned values (Apprentice Hours/Total All Labor Hours):** | | | |

| **DISTRICT USE ONLY** | |
|---|---|
| **Reviewed By:** | |
| PRINT NAME AND TITLE | DATE |

**SEE PAGE 2 FOR ADDITIONAL INFORMATION AND INSTRUCTIONS**

[1] Apprenticeship Utilization Requirement

Good faith efforts (GFE) needed? ☐ Yes ☐ No

*If the estimated total apprentice utilization percentage is under 15%, **good faith efforts** must be made.*

Use a separate form to document GFE. A revised Apprentice Utilization Plan is to be attached to every good faith effort AUR adjustment request.

- The Owner reserves the right to request additional documentation or information to verify subcontractors, scope, trade, and/or hours of work.
- Those projects that do not meet the apprentice utilization goal (approved goal adjustments meet the goal) shall be assessed a penalty as set forth in the Contract Documents.

**REQUIREMENT FOR APPRENTICE UTILIZATION PLAN**

- An initial Apprentice Utilization Plan must be submitted by the apparent low bidder no later than five (5) business days following receipt of the Notice of Intent to Award, on the foregoing form provided by the Owner. Failure to provide the required Apprentice Utilization Plan may result in disqualification of the bid.
- The initial Apprentice Utilization Plan provides an estimate of all labor hours anticipated to be performed, a plan for utilization of state-registered apprentices by the prime contractor and any/all subcontractors performing trade scopes on the project, and as known at the time of bid.
- Estimated subcontractors, scopes, hours, and listed percentages need to be reasonable for the scope and duration of the project.
- The plan demonstrates that you, and the subcontractors, intend to meet the requirement or use **good faith efforts** to comply.
- The plan shall be revised as more information becomes available or changes are experienced in scopes, subcontracting, apprentice availability, or the project schedule.

**INSTRUCTIONS**

- Include all subcontractors and their trades on the list, regardless of whether apprentices will be used.
- Include an estimate from each subcontractor of how many hours they will perform on the project and how many of those hours are anticipated to be performed by apprentices.
- List all state-approved programs under which apprentices are enrolled or are going to enroll.
- Update the plan as the schedule changes, change orders are issued, and/or new subcontractors are subcontracted to verify that utilization requirements can still be met.
- **Upload certified payroll** for every contractor, subcontractor, and hourly employee **weekly** into the Washington State Department of Labor and Industries (L&I) prevailing wage intents and affidavits (PWIA) portal.
- If, or as discovered, the prime or any subcontractor believes that the AUR cannot be met, a good faith efforts approval process must be started (see Appendix B: Apprentice Utilization Good Faith Efforts Documentation form).

**Questions? Please contact the Owner's Project Manager as identified in the Notice to Proceed.**

# APPENDIX B

## Good Faith Efforts (GFE) Documentation

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**LAKEHAVEN WATER AND SEWER DISTRICT**

**APPRENTICE UTILIZATION GOOD FAITH EFFORTS (GFE) DOCUMENTATION**

Project: _____ Date: _____

Prime: _____

Prepared By (print name and title): _____

**Requested apprenticeship utilization requirement (AUR) percentage (goal adjustment):** _____

**Contractor Statement**

An adjustment to the AUR for the above named project is hereby requested. All contractors and subcontractors on the project understand the requirements, have performed the following documented good faith efforts, and have confirmed that the required apprentice utilization hours will not be able to be achieved for the **following rationale**. _____(initial)

**Rationale. Check all that apply.**

- ☐ Demonstrated lack of availability of apprentices (regionally or by trade). List trades.
- ☐ Disproportionately high ratio of material/product/equipment cost to labor.
- ☐ Not enough hours available on the job to accommodate the ratio, supervision, or work process required.
- ☐ State-approved apprentice programs unavailable for the specific work type.
- ☐ Warranty or specialty work requirements unable to accommodate apprentices.
- ☐ Funding required Federal, Native American, or other employee training program that conflicts with Washington State apprentice utilization requirements.
- ☐ Other (fill in) _____

_____

**Documentation must be attached to substantiate the request. Check all that apply and attach.**

- ☐ Emails, letters, or similar **communications with appropriate state apprenticeship program** conforming the assessment or denying apprentices or similar. Include dates, time, responses, names, titles, and similar information.
- ☐ **Manufacturer letter** or email statement of equipment, material, or product that substantiates the cost and/or the specialty nature of the item and the requirement for certified/specific installers or similar.
- ☐ **Specification section**, funding requirement, or similar precluding or hindering state apprentice utilization requirements.
- ☐ Other (fill in) _____

_____

**<u>Attach a revised Apprentice Utilization Plan showing where adjustments are requested.</u>**

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## GFE DOCUMENTATION AND PROCESSING GUIDELINES

**Good faith efforts documentation must include an updated Apprentice Utilization Plan.**

The Contractor, and trade subcontractors, must demonstrate that they have executed "best efforts" to recruit apprentices and were still unable to meet the AUR goal. **One or more of the following** rationales apply and are evidenced in the request for adjustment.

GFE documentation must be submitted to the Owner as soon as it is known that the apprenticeship utilization requirement (AUR) cannot be met. Waiting until completion or near completion of the project to submit information is not acceptable; time is of the essence.

The Owner will review the Contractor's GFE documentation to determine that:

- the situation/s documented by the Contractor represent a legitimate Good Faith Effort.
- the shortfall in apprentice participation is attributable to the situation/s documented by the Contractor.

## ACCEPTABLE GOOD FAITH EFFORTS

1. **NO APPRENTICES AVAILABLE**. The Contractor **will document** their prior participation or contact with State-approved apprenticeship training program/s (such as a letter from the program/s or a copy of their current agreement with the program/s) or their contacts with the apprenticeship program/s (such as copies of emails or letters requesting apprentices and the response from the program/s stating by letter or email stating that no apprentices are available). On longer duration projects it is expected that the Contractor document continued contact with the program/s as the project progresses.
2. **NO APPRENTICESHIP PROGRAM**. In situations where a **large portion of work** on a project is in an occupation without a State-approved apprenticeship program, the Contractor must document that fact [such as a letter from the Washington State Department of Labor and Industries (L&I) or the Washington State Apprentice Training Council (WSATC), a printout of the programs on L&I's website, or documentation from approved training programs that apprentice training for that **specific occupation is not available**].
3. **CONFLICTING FEDERAL TRAINING REQUIREMENT**. Federal training requirements take precedence over the State apprenticeship requirement. The Contractor must submit documentation demonstrating that Federal requirements are solely responsible for the relief being sought.
4. **APPRENTICE TO JOURNEYMEN RATIOS AND LACK OF AVAILABLE HOURS**. A Contractor can document the ratio of journey level to apprentice worker limitations, hours on the job, and total crew size on the project makes it impossible to meet AUR. The Contractor must submit documentation of their workforce by each occupation that can be apprenticed, total crew size, supervision level required, and the number of apprentices that could be utilized on the project in order to demonstrate that the requirement cannot be met.
5. **APPRENTICE/S GRADUATE DURING PROJECT**. If an apprentice graduates during a project, a Contractor can submit documentation from the apprentice program and evidence of change in worker status. Estimated hours on the project would not change overall—only the apprentice utilization percentage.
6. **WORK TOO TECHNICAL OR PRESCRIPTIVE WARRANTY WORK**. Work performed on the project is too critical or technical to be performed by apprentices, even when working under the supervision of a journey level worker. In these circumstances, the Contractor must document the critical or technical aspect of the work or equipment

by demonstrating how rare/uncommon it is, how few employees are sufficiently skilled to perform or operate the work/equipment, any special training needed to do so, and why it would not be reasonable to provide an apprentice in the required training. **The Contractor must also document the portion of the total project hours involved performing this work or operating equipment.** Any further documentation of concurrence from an approved apprenticeship program could supplement a waiver request. Further, if work by an apprentice will compromise or void the warranty provided by a manufacturer or surety, a Contractor should provide a letter or communication from the third party responsible for warranty or underwriting.

7. **ADDED OR DELETED APPRENTICE WORK**. If the Owner has made a significant change to the contract that alters the Contractor's plan for achieving the AUR, the Contractor is encouraged to make reasonable attempts to meet the requirement in a different way. The Contractor should document the change in total labor hours based on the change to the contract by occupation and demonstrate the effect on apprentice hiring needs as compared to the original utilization plan and efforts made to acquire the additional apprentices.

8. **APPRENTICE WORK CONDITION ISSUES**. If for any reason the Contractor has a difficult time finding apprentices that will work on their project due to specific issues (i.e., night work, short shifts, irregular work, etc.) or an apprentice quits (drops out of the program completely or finds a different opportunity), a time lag in getting a new apprentice may be a legitimate GFE reason. The Contractor will document the date the apprentice began work, the duration of their work, when they quit, when the Contractor contacted the apprenticeship program or began hiring a new apprentice, and when the replacement apprentice arrived at the job site.

9. **SMALL OR ESTABLISHED WORKFORCE**. It is not the intent of AUR for contractors to have to layoff journeymen or recently graduated apprentices to hire apprentices. In a small or established workforce with little turnover, apprentice opportunities may not exist. This can be a legitimate GFE reason, if the Contractor can demonstrate that when hiring opportunities do occur, they hire individuals in State-approved training programs. The Contractor must submit evidence showing the individuals on the crew for the project, their duration of employment, if they were hired as apprentices, and whether or not they graduated from a State-approved program. The Contractor should also submit a list of recent hires companywide and whether or not they are/were apprentices in a State-approved apprenticeship program.

10. **CLASSROOM TRAINING**. Apprentices must complete a certain amount ofclassroom training each year. Depending on the program, classroom training could last up to two (2) months. The training could be one continuous period or spread out. If an apprentice must leave the project to attend classroom training, the Owner may consider a reduction in apprentice utilization hours. The Contractor must document the number of hours missed by the apprentice due to classroom training. (This is not the number of classroom training hours, but the number of hours missed by the apprentice due to classroom training.) Documentation by the instructor or program administrator and its classroom duration/timing is also required.

11. **WORK TOO DANGEROUS. Generally, no work should be too dangerous for apprentices.** If a Contractor can demonstrate that work occurs in an area where an apprentice could not be supervised, it may qualify as a GFE. The situation must be documented appropriately with communication from the apprentice program, pictures, and other safety considerations.

The inability of a Contractor to get their own apprenticeship program approved by the State in time to meet contract requirements is **NOT A GOOD FAITH EFFORT**.