

**Request for Qualifications and Proposed Approach for
General Contractor/Construction Manager Services**

**MAINTENANCE AND OPERATIONS BASE
INFRASTRUCTURE IMPROVEMENT PROJECT**

RFQ/PA Number 109-18

**Division 00 Procurement and Contracting
Requirements**

DECEMBER 2018



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THIS PROCUREMENT MAY BE SUBJECT TO ONE OR MORE FINANCIAL ASSISTANCE CONTRACTS BETWEEN PIERCE TRANSIT AND THE U.S. DEPARTMENT OF TRANSPORTATION, WHICH INCORPORATE THE CURRENT FTA MASTER AGREEMENT AND CIRCULAR 4220.1F AS AMENDED.

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ARTICLE 1 INTRODUCTION

1.01 Request for Qualifications and Proposed Approach

Pierce Transit Public Transportation Benefit Area Corporation (Pierce Transit) is requesting a Statement of Qualifications and Proposed Approach (SOQ) from qualified general contractors to provide General Contractor/Construction Manager (GC/CM) Services for the construction of the Maintenance and Operations Base Infrastructure Improvement Project (Project). Firms interested in this GC/CM project may submit a SOQ in accordance with the requirements set forth in this RFQ/PA.

1.02 Determining of Reasons for Using GC/CM Method

Pierce Transit determined that GC/CM is the appropriate project delivery method for this contract based on the reasons listed below:

- A. Implementation of the Project involves complex scheduling, phasing or coordination.
- B. The Project involves construction at an occupied facility which must continue to operate during construction.
- C. The involvement of the GC/CM during the design stage is critical to the success of the Project.
- D. The Project encompasses a complex or technical work environment.

1.03 Heavy Civil Construction Project

- A. Pierce Transit has elected to procure this Project as a heavy civil construction contract.
- B. Self-Performed Work:
 - 1. Pierce Transit may negotiate directly with the Contractor to perform subcontract work. The minimum and maximum amounts established for this Project are specified in Section 00 72 00 General Conditions, subsection 2.05 Subcontracting. The range for the negotiated subcontract work with the Contractor is 0% to 50%, with a target of 30%.
 - 2. At the time of final proposal, the Contractor shall submit a separate fee applicable only to the negotiated portion of self-performed work.

1.04 Overview of GC/CM's Role

Pierce Transit seeks the services of a GC/CM to provide Pierce Transit and its design and construction management consultant teams, with expertise and experience that will assist in decision-making, constructability reviews, value engineering, budget control, cost estimating, and schedule control. The GC/CM shall ensure that the design allows for economical and efficient methods of construction with minimal disruption. It is also essential that the work is coordinated with other construction activities at the site. Pierce Transit intends to select a GC/CM who can best provide the services needed to achieve these goals.

1.05 RFQ/PA Documents

Free of charge access to Project bid documents is provided to Prime Bidders, Subcontractors, and Vendors by going to www.bxwa.com and clicking on "Posted Projects", "Public Works", and "Pierce Transit". This online plan room provides Bidders with fully usable online documents with the ability to: download, view, print, order full/partial plan sets from numerous reprographic sources, and a free online digitizer/take-off tool. It is recommended that Bidders "Register" in order to receive automatic e-mail notification of future addenda and to place themselves on the "Self-Registered Bidders List". Bidders that do not register will not be automatically notified of meeting notices, addenda and other

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Project information. Contact Builders Exchange of Washington at (425) 258-1303 should you require assistance with access or registration. Notification services offered through the site are not guaranteed and users of the notification system are ultimately responsible for reviewing postings to the site. Pierce Transit disclaims all liability for damages caused by the use of this site or the information it contains.

1.06 Communications with Pierce Transit and Requests for Information (RFI)

- A. Any inquiries concerning this solicitation, including RFIs, may be submitted to Linda Shilley, Procurement Manager, at lshilley@piercetransit.org.
- B. RFIs must be submitted no later than ten business days prior to the SOQ submittal date listed in Article 2, Schedule.
- C. Communications relating to this solicitation with Pierce Transit representatives other than the person listed below may result in the firm being disqualified from further participation in this procurement. Inquiries concerning this solicitation shall be directed only to:

Linda Shilley
Procurement Manager
Phone: (253) 581-8059
E-mail: lshilley@piercetransit.org

1.07 Cost of Responding to RFQ/PA and RFFP

All costs incurred by firms choosing to participate in this RFQ/PA and RFFP process shall be borne by the proposing firms.

1.08 Compliance with RFQ/PA

Failure by a Proposer to comply with the requirements of this RFQ/PA may result in Pierce Transit declaring the SOQ non-responsive. Pierce Transit reserves the right to reject any or all SOQs, and to waive as informality any non-material irregularities in the SOQs received.

ARTICLE 2 SCHEDULE

The following is the current anticipated schedule for the selection process.

A pre-proposal meeting is scheduled for January 9, 2019, from 1:00 pm to 3:00 pm, commencing at Pierce Transit's offices at 3701 96th St SW, Lakewood, WA. All bidders are highly encouraged to attend.

DATE	ACTIVITY
Dec 27, 2018	First Public Advertisement of Request for
Jan 9, 2019	Pre-Proposal Meeting January 9 th , 1 pm – 3 pm .
Feb 4, 2019	RFQ/PA Proposals Due on or before 2:00 p.m. PDT
Feb 7, 2019	Review/Score Proposals Complete
Feb 11, 2019	Shortlist Announced
Feb 14, 2019	Interviews

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DATE	ACTIVITY
Feb 19, 2019	Request for Final Fee Proposals Issued
Feb 25, 2019	Fee Proposals Due
Feb 27, 2019	Notice of Intent to Award Issued
Mar 4, 2019	Preconstruction Work Plan Due
Mar 15, 2019	Preconstruction Contract Negotiated
Mar 22, 2019	Preconstruction Contract Fact Sheet Provided to Board
Apr 8, 2019	Board Approval of Preconstruction Contract

ARTICLE 3 SCOPE OF GC/CM SERVICES

3.01 Preconstruction Services

- A. The GC/CM will work collaboratively with Pierce Transit and its design and construction management consultants as a member of the Project team to perform the tasks as identified in the Preconstruction Services Agreement and to review significant aspects of the Project.
- B. The sample Preconstruction Services Agreement is included in Attachment 1 of this RFQ/PA. This sample agreement is subject to further revision and negotiation with the successful GC/CM.

3.02 Construction Services

- A. If a MACC is agreed upon and a GC/CM Construction Agreement is entered into between Pierce Transit and the GC/CM, the GC/CM shall provide full general contracting services for construction of the Project in accordance with the requirements of the Contract Documents and RCW 39.10.340 through 39.10.410, except identified work that is specifically indicated in the Contract Documents to be the responsibility of others.
- B. A sample GC/CM Construction Agreement (including sample General Conditions and Special Conditions) are included as part of this RFQ/PA. This sample agreement is subject to further revision and negotiation.

ARTICLE 4 SELECTION PROCESS

4.01 Evaluation of SOQs

The first step in the selection process will consist of evaluation of the SOQs received in accordance with the evaluation criteria set forth herein. Pierce Transit will make such reviews, investigations and reference checks, as it considers necessary and appropriate for evaluation of the Proposals.

4.02 Interviews (Optional)

Based on the evaluation of the SOQs, Pierce Transit may invite qualified Proposers to one or more interviews. Each interview will be assigned points as listed in Section 00 11 53.2, subsection 1.02. Prior

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to each interview, Pierce Transit shall provide the firms with an agenda for the interview.

4.03 Most Qualified Firms

Each firm's SOQ and interview scores will be added together to determine a total score. Using the final scores for each firm, Pierce Transit will establish a list of the most qualified finalists and will invite those firms to submit a Final Proposal.

4.04 Final Proposals

The third step in the selection process consists of Pierce Transit issuing a Request for Final Proposals (RFFP) to each of the finalist firms. The form and format of the Final Proposals is included in Section 00 42 36 of this RFQ/PA. The RFFP will provide details on the form and format of Final Proposals to be submitted and will be scored in accordance with the RFFP. These scores will be added to the Proposal and Interview scores.

4.05 Final Selection

- A. The Proposer with the highest total score based on the Selection Committee's scoring of the SOQ, Interview and the Final Proposal scoring will be selected to enter into negotiations with Pierce Transit for Preconstruction Services Agreement. In the event of a tie in total score, the Proposer with the lowest conforming Final Proposal (price offer) will be selected.
- B. Prior to execution of the Preconstruction Services Agreement and the GC/CM Construction Agreement, Pierce Transit will verify that the selected contractor meets the mandatory proposer or bidder responsibility criteria as outlined in RCW 39.04.350.
- C. Pierce Transit reserves the right to perform a review of the selected contractor's financial status and capacity to perform the work. The selected contractor shall comply with requests for information that are deemed necessary by Pierce Transit to perform a reasonable review of the firm's financial status. Pierce Transit may request audited financial statements for the previous five years.

4.06 Preconstruction Services Negotiations and Award

Pierce Transit will enter into preconstruction services negotiation with the highest ranked Proposer. The Preconstruction Services Agreement will be negotiated based on the sample Preconstruction Services Agreement included in Attachment 1. If the parties agree on a form of Preconstruction Services Agreement, Pierce Transit shall award and enter into a Preconstruction Services Agreement with the Proposer. If the parties fail to agree on a form of Preconstruction Services Agreement within fourteen (14) calendar days of Pierce Transit's Notice of Award, Pierce Transit may, at its discretion, enter into preconstruction services negotiation with the next highest ranked Proposer.

4.07 MACC Negotiations and Contract Award

- A. Following successful negotiation of the MACC, Pierce Transit will finalize the GC/CM Construction Contract and request approval of the Pierce Transit Board to enter into a contract.
- B. Failure to Negotiate MACC:

Should the GC/CM Consultant and Pierce Transit not agree on a MACC that Pierce Transit determines to be fair and reasonable, Pierce Transit may cancel the negotiations and proceed as otherwise allowed by law. Should Pierce Transit choose to cancel the negotiations upon failure to successfully negotiate a MACC, such cancellation will be effective upon receipt of written notification to the GC/CM Consultant. If for any reason, Pierce Transit and the GC/CM Consultant

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do not enter into a construction contract, the GC/CM Consultant shall have no recourse whatsoever against Pierce Transit for such failure to enter into a construction contract.

ARTICLE 5 ADDENDA AND CLARIFICATIONS

5.01 Addenda and Clarifications

- A. Proposers shall not rely upon any oral statements or conversations they may have with Pierce Transit employees, agents, or representatives regarding this solicitation.
- B. Clarifications or interpretations by Pierce Transit will be in the form of a written Clarification.
- C. Changes or modifications to the solicitation documents will be made in the form of written Addendum. If an Addendum is issued, all provisions that are not modified remain unchanged.
- D. Pierce Transit will post Addenda and Clarifications to BXWA.com (Builder’s Exchange).
- E. It is the Proposer’s responsibility to obtain and acknowledge all Addenda on Proposal Form 1, Proposal Information and Signature.
- F. Failure to acknowledge addenda may result in Pierce Transit declaring the Proposal or Final Proposal non-responsive.

ARTICLE 6 SOQ SUBMITTAL REQUIREMENTS

6.01 Submittal Requirements

- A. Submit one original (unbound), seven bound copies and one electronic copy of the SOQ containing the information required by this RFQ/PA.
- B. Submit one electronic copy of your firm’s Accident Prevention Program.
- C. No oral, FAX, or telephonic Proposals or subsequent modifications to such Proposals will be considered.
- D. SOQs must be submitted on or before the date and time specified in Article 2, in a sealed box or envelope that includes the Proposer’s name to the following address:

Pierce Transit RFQ/PA No. 109-18
Maintenance and Operations Base Infrastructure Improvements
Attn: Linda Shilley, Procurement Manager
3701 96th St. SW
Lakewood, WA 98499-4431

6.02 Conflicts

In the event of any conflicts between the hard copy and electronic copy, the original (unbound) hard copy will prevail.

6.03 Late Submittals

SOQs may not be accepted by Pierce Transit after the date and time specified. Pierce Transit will not be liable for delays in delivery due to handling by the U.S. Postal Service or any other type of delivery service.

ARTICLE 7 CONTENTS OF SOQ

7.01 General Requirements

- A. Firms shall submit SOQs meeting the following content requirements. Pierce Transit reserves the

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right to request additional information from Proposers.

- B. Proposers are encouraged to provide the most comprehensive and competitive information possible in accordance with the format prescribed in Section 7.02. The SOQ should be prepared simply and economically, providing straightforward and concise information that will enable the selection committee to quickly access pertinent information. SOQs should avoid duplication of information.
- C. SOQs must address each of the evaluation criteria set forth in Section 00 11 53.2 in a clear, comprehensive, and concise manner. SOQs that do not respond completely or sufficiently to the evaluation criteria may be rejected as non-responsive or will receive correspondingly lower scores for those criteria.
- D. It is the Proposer's responsibility to provide accurate contact information for references.

7.02 General SOQ Format

- A. So that Pierce Transit may compare and evaluate qualifications efficiently, all SOQs must be submitted in the following order and in accordance with the following format, clearly separated with tabs, and labeled by response.
 - 1. Letter of Interest
 - 2. Evaluation Criteria (Section 00 11 53.2)
 - i. Evaluation Criterion 1 - Qualifications of the Proposer
 - ii. Evaluation Criterion 2 - Qualifications of the Proposer's Key and Supplemental Personnel
 - iii. Evaluation Criterion 3 - Proposer's Approach to Executing the Project
 - iv. Evaluation Criterion 4 - Outreach Efforts and Commitment to Small Businesses, Disadvantaged Business Enterprises (DBEs)
 - 3. Appendix
 - i. Copy of the joint venture agreement (If applicable)
 - ii. SOQ Submittal Forms (Section 00 11 53.3)
 - iii. Signed Bonding and Insurance Capacity Letters
 - iv. Resumes
 - v. Proposed Staffing Plan for Pre-Construction Services
 - vi. Labor Rates for Pre-Construction Services
- B. The SOQ shall be bound in an 8 ½" by 11" format. Proposers may use 11" by 17" format for the Organizational Charts and any other figures, drawing or tables used in responding to the RFQ/PA requirements. All 11" by 17" pages must be folded and bound in the SOQ.
- C. For the purpose of page limitations, one side of a printed page is considered one page. Information requested to be included in the Appendix is not included in the page limitations included in Section 00 11 53.2.
- D. Any pages that exceed the page limitation will be removed and will not be evaluated by Pierce Transit.
- E. Non-recyclable materials are strongly discouraged. Double-sided printing is strongly encouraged.

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7.03 Letter of Interest

- A. The Proposer shall include a Letter of Interest with the SOQ. The Letter of Interest is not an element of the Evaluation Criteria and should include the following:
- B. A summary of your firm’s relevant qualifications and why you believe your firm is the most highly qualified contractor for this Project;
- C. A summary of the capacity and capability of your firm to perform the GC/CM services for a Project of this size, scope, and complexity within the identified time frame;
- D. Identification of other proposed firms with a significant role in the Project, description of that role and special expertise or qualifications related to their proposed scope of work; and
- E. The name and contact information of the individual in your firm that Pierce Transit should contact regarding questions about your SOQ and scheduling a potential interview. The contact information should include the following: name and title of individual, firm name, address, telephone number, e-mail address.

7.04 Bonding and Insurance Capacity

- A. The Proposer shall include information to demonstrate the ability of the firm to provide a separate payment, performance, and warranty or maintenance bonds for this Project, each in the amount of 100% of the Total Contract Cost (as defined in Chapter 39.10.370, RCW) considering both this Project and the anticipated volume of work identified in Section 00 11 53.1 Scope of Work. For purposes of this Section, the Total Contract Cost for this Project shall be considered the MACC associated with the work identified in Section 00 11 53.1, Scope of Work. The Proposer shall demonstrate the ability of the firm to provide the Project’s insurance requirements. Firms that are unable to demonstrate their ability to meet the insurance and bonding requirements herein may be disqualified from further consideration.
- B. Bonding Capacity: Include in the Appendix a signed letter from your bonding agent committing to bond your firm for this Project in the event your firm is selected. The letter should also include contact information for your bonding agent. The bonding company (surety) must be registered with the Washington State Insurance Commissioner, appear on the current Authorized Insurance List in the State of Washington published by the Office of Insurance Commissioner, have a current rating of at least A-VII in A.M. Best’s Key Rating Guide, and be included in the US. Department of the Treasury’s Listing of Approved Sureties (Circular 570).
- C. Insurance Capacity: Include in the Appendix a signed letter from your insurance agent pertaining to your firm’s ability to meet the Project’s insurance requirements specified in Section 00 73 16 Insurance Requirements. The letter should also include contact information for your insurance agent.

ARTICLE 8 PUBLIC DISCLOSURE

8.01 Property of Pierce Transit

SOQs submitted in response to this RFQ/PA shall become the property of Pierce Transit.

8.02 Proposals Are Public Records

Pursuant to Chapter 42.56 RCW, SOQs submitted under this RFQ/PA shall be considered public records and with limited exceptions will be available for inspection and copying by the public. Except to the

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extent protected by state and or federal laws, proposals shall be considered public documents and may be made available for review and copying by the public upon request.

8.03 SOQs Not Marked as Confidential, Proprietary, or Trade Secret

If a SOQ does not clearly identify "confidential," "proprietary," or "trade secret" portions, Pierce Transit will not notify the Proposer that its SOQ will be made available for inspection and copying prior to release in response to a public records request. It is not sufficient to mark an entire submission as confidential, proprietary, or trade secreted.

8.04 Process for Disclosing Information

If a request is made for disclosure of material or any portion marked "confidential," Pierce Transit will determine whether the material should be made available under the law and will proceed to comply with Pierce Transit's disclosure obligations as Pierce Transit deems appropriate and as legally required. If portions of the SOQ are clearly identified as "confidential," "proprietary," or "trade secret," and such portions are within the scope of a public records request, Pierce Transit will notify the Proposer of the request to allow the Proposer ten (10) business days to either seek the requestor's withdrawal or revision of the public records request or to take appropriate action pursuant to RCW 42.56.540. If the Proposer fails or neglects to take such action within said period, Pierce Transit will release the portions of the SOQ deemed subject to disclosure.

8.05 Indemnification by Proposer

To the extent that Pierce Transit withholds from disclosure all or any portion of Proposer's documents at Proposer's request, the Proposer shall agree to fully indemnify, defend and hold harmless Pierce Transit from all damages, penalties, attorneys' fees and costs Pierce Transit incurs related to withholding information from public disclosure.

8.06 No Claim Against Pierce Transit

By submitting a SOQ, the Proposer consents to the procedure outlined in this section and shall have no claim against Pierce Transit because of actions taken under this procedure. Whether or not to disclose a record is solely within Pierce Transit's discretion.

ARTICLE 9 DEBRIEFING AND PROTEST PROCEDURES

9.01 Debriefing

Proposers may request a debriefing after being notified of Pierce Transit's intent to award a contract under this RFQ/PA to the top ranked firm. Debriefings may include a review of the debriefed Proposer's total score, overall ranking, the strengths and weaknesses of its SOQ and presentation in the Interview, and answers to questions regarding the selection process.

9.02 Protests and Appeals Process

Proposers may submit a protest of Pierce Transit's intent to award a contract under this RFQ/PA. Only Proposers that have requested and participated in a debriefing pursuant to Section 9.01 may submit a protest. In order to be considered, protests must be received by Pierce Transit no later than five (5) business days from the date of notification of the selection decision. Protests must be in writing, and addressed to:

Pierce Transit Procurement
Attn: Linda Shilley, Procurement Manager
3701 96th St SW

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Lakewood, WA 98499-4431

Protests shall include the name, email address, and phone number of the Proposer’s authorized representative, the specific grounds for the protest, all supporting documentation, and the specific relief requested.

Proposers protesting any decision made pursuant to this RFQ/PA must follow the procedures described below. Protests that do not follow these procedures will not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers under this RFQ/PA.

Protests may only allege an issue of fact concerning the following subjects:

1. A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
2. Errors in computing the score;
3. Non-compliance with procedures described in the RFQ/PA.

Protests that allege any error or irregularity in the RFP/PA documents (including ambiguity or vagueness of terms and conditions) that could have been clarified through submission as an RFI pursuant to the terms of this solicitation are not allowed and will not be considered as a valid basis for protest.

Upon receipt of a timely written protest, the Procurement Manager shall review the protest, consider all available facts, and issue via email a final protest decision.

ARTICLE 10 CANCELLATION AND REJECTION OF SOQS

Pierce Transit reserves the right to reject any and all SOQs at any time and to choose not to award and/or execute a contract(s) up to the time Pierce Transit signs the contract documents, even after a notice of selection has been issued. Proposers acknowledge that a notice of selection confers no right of contract. Pierce Transit may cancel the procurement and reject all SOQs for any reason. A decision by Pierce Transit to cancel the procurement and/or not enter into a contract will not result in any claims or causes of action for costs or damages by any Proposer against Pierce Transit.

ARTICLE 11 FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

11.01 Applicability of Federal Grant Contract

This procurement may be subject to one or more financial assistance contracts between Pierce Transit and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. The Proposer is required to comply with all terms and conditions prescribed for third party contracts in this solicitation.

11.02 Compliance with Current Requirements

Federal laws, regulations, policies, and administrative practices may be modified or codified after the date of any contract executed based on this RFQ/PA. To assure compliance with changing federal requirements, such contracts will require that the Proposer (Contractor) agree to accept all changed requirements that may apply to the contracts to be executed based on this RFQ/PA.

11.03 Incorporation of Federal Transit Administration Terms

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F as amended and the Master Grant agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this solicitation. The Proposer shall not perform any act, fail to perform

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any act, or refuse to comply with any Pierce Transit request that would cause Pierce Transit to be in violation of the FTA terms and conditions.

11.04 Federal Funding Limitation

The Proposer understands that funds to pay for certain phases of the Proposer's performance under the contracts to be executed based on this RFQ/PA are anticipated to be made available from the United States Department of Transportation through the FTA, Sound Transit or other unidentified funding sources. If funds are not allocated, or ultimately are disapproved by external funding sources, Pierce Transit may terminate or suspend Proposer's services without penalty. Pierce Transit will notify the Proposer promptly in writing of the non- allocation, delay or disapproval of funding.

11.05 FTA Requirements

The selected Proposer shall comply with the FTA requirements included in the contracts to be executed based on this RFQ/PA.

11.06 DBE Program

Pierce Transit has adopted a DBE program, which is included as a reference to this RFQ/PA and is located at the following website: [www.https://www.piercetransit.org/dbe/](http://www.piercetransit.org/dbe/). The DBE Program addresses the following subjects:

- A. Pierce Transit's Policies
- B. FTA Disadvantaged Business Enterprise (DBE) Program
- C. Pierce Transit's Equal Employment Opportunity (EEO) Goals
- D. Federal Equal Employment Opportunity (EEO) and Affirmative Action Requirements
- E. DBE Program Submittals After Notice of Award

11.06 Disadvantages Business Enterprise (DBE) Goals

Pierce Transit promotes and encourages small business participation, which by definition also includes Disadvantaged Business Enterprises and U.S. Small Business Administration (SBA) program participants and may include firms owned by persons with disabilities. In accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (DBE Regulations), Pierce Transit currently has an annual Agency DBE participation goal of 3%.

As part of the Preconstruction Services, the GC/CM will work with Pierce Transit to develop a Subcontracting Plan that will maximize the participation of DBE firms on the Project.

ARTICLE 12 PREVAILING WAGES

- A. The Proposers understand and acknowledge that the Project is a Public Works project (as that term is defined in RCW 39.04), and that the wage rates to be paid all laborers, workers, and mechanics who perform any part of the Work pursuant to any contract executed in connection with this RFQ/PA shall be not less than the prevailing wage rates as required by Chapter RCW 39.12. This requirement applies to laborers, workers, and mechanics whether they are employed by the GC/CM, Subcontractors, Sub-subcontractors, or any other person who performs a portion of the Work contemplated by the Contract Documents.
- B. The prevailing wage rates as provided to Pierce Transit by the Industrial Statistician of the Washington State Department of Labor and Industries is available for download at URL <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/>. A copy of the prevailing wage

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rates is available for viewing at Pierce Transit's offices or may be requested by contacting the Project Manager. In referencing such rates, Pierce Transit does not imply or warrant that the Contractor will find labor available at those rates. It is the Contractor's sole responsibility to determine the most current wage rates it will actually have to pay. These rates shall remain in effect for the duration throughout Contractor's performance of the Work.

- C. The Contractor shall, pursuant to R.C.W. 39.12.040, file with Pierce Transit, a "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid" for itself and all Subcontractors and Sub-subcontractors in performance of the Work. Such Statements require the approval of, and the Affidavits the certification of, the Industrial Statistician of the Department of Labor and Industries before such Statements or Affidavits are submitted to Pierce Transit. The Department of Labor and Industries charges a fee for such approval and certification, which fee shall be paid by the Contractor. Any change in the fee will not be grounds for revision in Contract Sum.
- D. If a State of Washington minimum wage rate conflicts with an applicable federal minimum wage rate, the higher of the two shall be used.
- E. Davis-Bacon Requirements

Proposers understand and acknowledge that any or all contracts procured in connection with this RFQ/PA may be subject to applicable federal wage and labor laws and/or regulations, including but not limited to the following Davis Bacon requirements:

- 1. Minimum Wages

All laborers and mechanics employed or working upon the site of work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to laborers or mechanics, subject to the provisions of subparagraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

The contracting officer shall require that any class of laborers or mechanics which is not listed

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in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determinations; and
- b. The classification is utilized in the area by the construction industry; and
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefits as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act has been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under plan or program (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Payrolls and Basic Records

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each worker, his or her correct classification, hourly rates of wages paid (including contributions for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b) (2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of the apprenticeship program and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

The Contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the sponsor, or owner, as the case may be. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 5.5(a)(3)(i) above. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- a. That the payroll for the payroll period contains the information required to be maintained under (3)(i) above and that such information is correct and complete;
- b. That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
- c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

The falsification of any of the above certifications may subject the Contractor or subcontractor

SECTION 00 11 53 – REQUEST FOR QUALIFICATIONS AND PROPOSED APPROACH

to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 or Title 31 of the United States Code.

The Contractor or subcontractor shall make the records required under paragraph c(1) of this section available for inspection, copying or transcription by authorized representatives of the Federal Transit Authority or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

3. Apprentices and Trainees

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with the State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of the apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

4. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than

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the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator for the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall conform with the EEO requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
6. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
7. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Transit Authority may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
8. Contract Termination: Debarment. A breach of the contract clauses in paragraphs (1) through (10) of this section and paragraphs (1) through (5) of the next section below may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.
9. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by reference in this contract.
10. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S.

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Department of Labor, or the employees or their representatives.

11. Certification of Eligibility. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(1). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

END OF SECTION 00 11 53

SECTION 00 11 53.1 – SCOPE OF WORK

1.01 Project Location

The Maintenance and Operations Base is located on 96th St SW in Lakewood, WA and serves the entire bus fleet of Pierce Transit, as well as over 100 Sound Transit vehicles that are operated and maintained alongside Pierce Transit buses.

1.02 Background

The recently updated Base Master Plan anticipates a phased development approach to address the aging infrastructure, unmet needs of the current fleet and to provide additional capacity for projected fleet growth through 2040. This will be accomplished through a series of phased projects that increase the vehicle parking, fuel and wash, and maintenance capacity of the existing base while also bringing these facilities up to contemporary safety and operation standards.

1.03 Project Goals

- A. This Project will potentially cover 14 sub-projects over four phases. Graphics depicting the existing Project site and expected project elements are shown in The Base Master Plan Final Draft dated 3-22-18, and the most recent proposed changes to the Plan, which are available at the following web address: <https://www.piercetransit.org/bmp/>.
- B. We expect that specific elements and timing of the phases and sub-phases will evolve with input from the project team (including the selected GC/CM) to better meet project goals including:
 - Optimize the use of existing assets, including land
 - Improve the efficiency, safety, and productivity of facilities in a cost-effective manner
 - Provide flexibility to adapt to industry changes and evolving partner agency needs
 - Be open to new and innovative business practices and work environments
 - Utilize green design principles in site and facility design
- C. Provide a safe and secure work environment for construction personnel and public.
- D. Establish a partnership and sustain a collaborative working environment with Pierce Transit, its contractors, and other Project stakeholders throughout the life of the Project.
- E. Deliver Project on time and within budget to the quality standards defined by the Contract Specifications.
- F. Minimize environmental impact through permit compliance and sustainable construction practices
- G. Minimize impacts to local residents and businesses and mitigate disruption to pedestrian and vehicular traffic
- H. Optimize required access for other Pierce Transit contractors through effective planning and coordination.
- I. Meet, if not exceed, Pierce Transit's goals and objectives for participation by Disadvantaged Business Enterprises (DBEs), Equal Employment Opportunity, and positive labor relations.

1.04 Phased Construction

Pierce Transit currently anticipates that design and construction of the Project will be accomplished in four separate phases. Pierce Transit is currently seeking proposals solely for Phase I of the Project,

SECTION 00 11 53.1 – SCOPE OF WORK

as identified in 1.07 table below, and intends to enter into preconstruction and construction agreements with the successful Proposer solely for Phase I. Pierce Transit reserves the right to execute contract amendments to include preconstruction and construction services for one or more phases of the Project, or (alternatively) to procure future Project phases under one or more separate RFQ processes.

1.05 Project Cost and Schedule

- A. The estimated Maximum Allowable Construction Cost (MACC) for Phase I of the Project is \$56 million. The estimated total construction cost for all phases of the Project is \$156 Million.
- B. Construction of Phase I of the Project is scheduled to begin in 2019 and be substantially complete in 2024.

1.06 Project Constraints

- A. The Project will be constructed in and around Pierce Transit’s existing facility, and during the course of Pierce Transit’s normal operations and maintenance activities. It is of utmost importance that the selected GC/CM fully consider, evaluate, plan and execute its Work during all phases of the Project (both to adequately ensure the safety and security of the general public, Pierce Transit customers, employees and personnel, and the construction workforce. This will be a continuous point of focus throughout the Project.
- B. The GC/CM will need to coordinate work with existing, businesses, bus operations, public and private service providers and active roadway operations.

1.07 Major Work Elements to be Potentially Performed During Phase 1:

Description	Initiate Design	Initiate Construction
Expand Parking Lot South of Building 5	2018	2019
Building 4 Visitor Parking Lot Expansion to Accommodate ADA Parking	2018	2019
Expand Bus Parking Lot North of Building 4 For Fuel, Wash, Shuttle, and Relief Vehicle Parking	2019	2019
Replace Existing Fuel and Wash and Fare Collection	2019	2020
Demolish Buildings 2 and 3	2019	2021
Restripe Bus Lot	2019	2021
Building 1 Addition for Articulated Buses	2019	2020
Building 1 Addition for Paint and Body Shop	2019	2020
Building 1 Addition For New Break Room	2020	2021
Convert Building 1 Existing Break Room to New Repair Bay	2020	2021
Relocate Tire Shop and Convert Space to New Repair Bay	2019	2020
Construct New Ramp Entrance to Bus Lot	2019	2020
Reconfigure Entrances to Bus Lot	2019	2021
Demolish Buildings 7 and 8	2020	2021
Construct New West Base Building	2020	2021

SECTION 00 11 53.1 – SCOPE OF WORK

Description	Initiate Design	Initiate Construction
Interior Renovations to Building 1	2019	2020
Construct Parking Lots at West Base	2020	2021
Raise Employee Parking Lot and Convert to Electric Bus Lot South of Building 1	2020	2023

* Project estimates have an escalation factor applied based on the projected schedule to calculate the total Project cost over time for all phases.

END OF SECTION 00 11 53.1

SECTION 00 11 53.2 – RFQ/PA EVALUATION CRITERIA

1.01 General

Evaluation Criteria and SOQ Requirements

- A. The criteria outlined below will be used to evaluate SOQs.
- B. In responding to the Evaluation Criteria, the Proposer should organize its SOQ so that the qualifications are clearly illustrated in each of the categories, using the submittal requirements listed below for each Evaluation Criterion.
- C. Page Limit: The proposal should be no more than 50 pages.

1.02 Summary Evaluation Criteria Matrix

No.	Evaluation Criteria for Proposals	Maximum Points
1	Qualifications of the Proposer	150
2	Qualifications of Proposer’s Key & Supplemental Personnel	150
3	Proposer’s Approach to Executing the Project	150
4	Outreach Efforts and Commitment to Disadvantaged Business Enterprises (DBEs)	50
	Total for Proposals:	500
5	Interview(s)	300
6	Final Proposal	200
	Total for Selection Process:	1,000

1.03 Evaluation Criteria

Evaluation Criterion 1	Qualifications of the Proposer	150 points
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- A. History and Structure of Firm
Provide a brief description of the history of the firm.
- B. Joint Venture
 - 1. If the firm is a joint venture or other similar entity, describe the component parts and identify projects where the joint venture partners have worked together in the past managing projects similar in size, scope, and complexity to this Project.
- C. Include a signed copy of the joint venture or teaming agreement as part of the Appendix.
- D. Location of the firm’s office
Provide the location of the firms’ current office or the planned local office should the firm decide to open one. Identify the distance from the office to the Project and the number of staff at this location.
- E. Historical Volume of Work
What was your firm’s annual volume (in dollars) of construction for the past five years (2013 through 2018)?

SECTION 00 11 53.2 – RFQ/PA EVALUATION CRITERIA

F. Anticipated Volume of Work

What is the anticipated construction volume (in dollars) and plan for the next four years (2019 through 2022)? If your firm's projected workload would affect the capacity and capability of your firm to manage and perform the work of this Project, how will you provide adequate resources for this Project?

G. Firm Experience

1. Submit a list of the five (5) most recent projects that are relevant to this Project in terms of complex negotiated projects (i.e. GC/CM, CM at Risk, CM/GC, GMP, etc.), size, complexity, scope, and project constraints. Three (3) of the five (5) projects should demonstrate preconstruction services provided by the Proposer. Provide the following information for each project:
 - i. Project name.
 - ii. Project Location.
 - iii. Name of the Owner and the Owner's contact person. The contact listed must have worked directly with your firm in completing the Project. Provide the contact's telephone number and e-mail address.
 - iv. Firm's role in the project, including whether the firm was the prime contractor or a subcontractor.
 - v. Work the firm self-performed on the project.
 - vi. If the Project delivery method is not GC/CM, describe the delivery method and how it is similar to GC/CM.
 - vii. Description of the project and the similarities to this Project including elements of the work, location, outside agency involvement, complex scheduling and coordination efforts with other projects.
 - viii. If preconstruction services were provided for the project, include the following:
 - 1) Description of the services provided and how they are similar to the draft preconstruction scope of work in Attachment 1, Preconstruction Services Agreement.
 - 2) Demonstrate how the experiences gained will benefit this Project.
 - ix. Identify Key Individuals proposed on this Project that participated in the representative project, firm employed by, and role the individual participated in as a team member on the representative Project.
 - x. Provide the project's baseline and actual construction durations. Explain any schedule variances, in particular overruns.
 - xi. Provide the award amount and final project amount and explain any differences.
 - xii. Briefly describe how the project demonstrates your firm's experience with:
 - 1) Controlling costs.
 - 2) Providing a safe environment for workers and the public.

SECTION 00 11 53.2 – RFQ/PA EVALUATION CRITERIA

- 3) Assuring quality of construction work.
 - 4) Facilitating cooperation with other members of the project team and third-party interests.
 - 5) Responsiveness to owner’s requests.
 - 6) Interfacing with other projects.
2. Describe any sustainable practices achieved on the listed projects.
 3. Include in the Appendix, a concise and accurate explanation of any litigation or major claims that your firm has been involved in on any project in the last five (5) years, including the reasons or basis for such litigation or major claims, the parties involved, and the outcome. For purposes of this item, “major claims” shall mean any dispute or claim which led to or resulted in submission of requests for change orders or claims collectively exceeding 5% of the total contract amount. For purposes of this item, “litigation” shall include any instance in which your firm has entered into some form of Alternative Dispute Resolution such as mediation, Dispute Review Board, or arbitration; filed a complaint; or been named as a defendant in a complaint. Such documentation will not count against any page count limitations.

Evaluation Criterion 2	Qualifications of Proposer’s Key and Supplemental Personnel	150 points
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Pierce Transit prefers that the GC/CM personnel have extensive experience managing and constructing all major elements of the Project work, and will give preference to those firms demonstrating this experience.

A. Experience of Personnel

Pierce Transit is interested in the abilities, specialized experience, technical competence, and qualifications of the firm’s Key Personnel that comprise the Contractor’s team being proposed.

1. The following Key Individuals are required, at a minimum. Identify the individuals assigned to each position and describe their responsibilities on this Project.
 - i. Corporate Executive dedicated to the Project
 - ii. Project Manager
 - iii. General Superintendent
 - iv. Project Engineer
 - v. Contractor Quality Manager (CQM)
 - vi. Lead Cost Estimator
 - vii. Lead Scheduler
 - viii. Safety and Security Manager
2. If individuals are proposed to supplement the Key Individuals, provide their name, title and responsibilities on this Project.
3. For each Key Individual or supplemental individual listed above, describe how the experience listed on their resume provides benefit to this project. In particular, please discuss the following:

SECTION 00 11 53.2 – RFQ/PA EVALUATION CRITERIA

- i. The benefits this project will gain from each individual's experience with alternative contracting methods, in particular, GC/CM, CM/GC, CM at Risk, or other similar contracting method. If any individual does not have specific GC/CM, CM/GC, CM at Risk, similar experience, provide an explanation on how their experience is relevant to this Project.
 - ii. An explanation of how their experience is similar to the management and administration requirements of this Project and how their experience benefits this Project.
 - iii. An explanation of their experience in managing and/or self-performing projects that include some or all of the following major elements of the work for this Project: life-cycle cost design considerations, scheduling, value engineering, constructability review, alternative construction options for cost savings, and to act as the construction manager and general contractor during construction activities such as: building demolition, building renovation, interior alterations, bus fuel and wash facility, equipment maintenance facility reconfiguration, and bus and vehicle parking lot expansion and reconfiguration. It is understood that each Key Individual may not have experience in every scope of work for this Project, however the combination of experience between the Key Individuals must cover all major elements of work for this Project.
 - iv. Describe the relevance of the listed project responsibilities to the proposed role and responsibilities for this Project.
4. The Proposer shall provide the labor rates for all staff listed on the firm's proposed Preconstruction Services Organization Chart provided in response to Evaluation Criterion 2, Organization Chart. The labor rate provided for each individual shall be their total compensation rate and include their direct labor rate, indirect and overhead costs, taxes, profit, and insurance. The Labor Rates for Pre-Construction Services Submittal shall be included in the appendix to the SOQ and will not count toward the page count.

B. Organizational Chart

Provide an organizational chart for both the preconstruction and construction phases of work. Each chart should be on its own 11x17 sheet and show the overall organizational structure of the Contractor's team. Include all Key Personnel (section A above) and other supplemental personnel necessary to successfully manage and administer the Work. Each position listed should be accompanied by an individuals' name and title.

C. Individuals Resumes

Resumes are to be included in an appendix to the SOQ and shall not exceed one (1) page for each individual. Resumes are not included in the page count. For each Key Individual and Supplemental Individual listed in Evaluation Criterion 2(1) above, provide the following information in the order listed:

1. Name.
2. Title.
3. Years employed by firm.
4. Years of professional experience.

SECTION 00 11 53.2 – RFQ/PA EVALUATION CRITERIA

- 5. Education: (name of institution/degree/year).
- 6. Professional registrations, certifications, and licenses (type/state/year).
- 7. Current and previous employment (firm/location/title/dates).
- 8. List, at a minimum, three recent past or current projects. Include the following for each project:
 - i. Project owner, name, location, delivery method and a brief description of the project including its size, scope, and complexity.
 - ii. Description of the individual’s position and responsibilities performed on the project, including whether the individual worked for the contractor, subcontractor, or other entity.
 - iii. Current contact information (phone number and e-mail address) for the owner of the project and the firm employing the individual.
 - iv. Key Personnel Availability
Discuss the availability and commitment of the key personnel identified for the entire project. Identify and discuss the impact of current assignments of key personnel and other potential projects on the availability for this Project of the key personnel identified in response to this RFQ/PA. Describe the extent of involvement of the individuals assigned during each phase of the project (preconstruction and construction phases) expressed as a percentage (100% = full time) in a table format. Identify other projects and commitments for key personnel.

Evaluation Criterion 3	Proposer’s Approach to Executing the Work	150 points
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A. Project

- 1. Describe the following issues and your firm’s approach to managing the following challenges on this Project:
 - i. Complex scheduling, phasing or coordination, including phased construction over anticipated project timeline, with phased funding.
 - ii. Construction at existing / occupied facilities, including construction during ongoing transit facility maintenance and operations.
 - iii. Start-up, testing and commissioning for major elements of the work, including mechanical, electrical, ventilation and fire suppression systems including consideration given to third party permit requirements and integration with Pierce Transit’s overall system start-up and testing requirements.

B. Partnering

- 1. Describe your firm’s experience working with public owners (including owners, engineer/design professionals and GC/CM consultants) in the context of a GC/CM project, including a detailed description of your firm’s approach to creation of a collaborative environment to achieve project goals.
- 2. Describe your firm’s approach to issue or dispute resolution, both with subcontractors and project owners.

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3. Describe your firm’s expectations of the A/E Consultant and the Owner during the preconstruction phase of the work.

C. Preconstruction

1. Identify the Preconstruction activities that you see as being most important to the success of the Project and why they are important.
2. Describe the process and the level of effort that will be made to review the plans and specifications during preconstruction to identify and resolve conflicts, errors, complications, and omissions, to eliminate or minimize the need for changes during construction. Identify the individuals that will review each component (civil, architectural, mechanical, electrical, track work, etc.) of the plans and specifications.
3. Describe your approach to assessing and recommending phasing and sequencing of work in preconstruction and development of a Project construction schedule.
4. Describe your approach to cost estimating and how your firm will work to meet project budgets.
5. Proposed Staffing Plan for Pre-Construction Services:
 - i. Provide a proposed staffing plan for Preconstruction Services. The staffing plan is only for Preconstruction Services and the intent is to provide a general idea of the level of effort the Proposer sees as necessary to perform the Preconstruction Services described in the draft Preconstruction Services Statement of Work, Attachment 1, Exhibit A.
 - ii. The Staffing Plan shall include all staff listed on the firm’s proposed Preconstruction Services Organization Chart provided in response to Evaluation Criterion 2, Organizational Chart.
 - iii. The Staffing Plan shall be included as part of the appendix and not count toward the SOQ page count.

D. Subcontracting

The subcontract package work is likely to consist of work by the GC/CM through negotiations, GC/CM self-performed subcontract packages won via a competitive low bid process and work won by other contractors through a competitive low bid process. Describe your firm’s approach to developing the Project subcontracting plan, including how many packages may be anticipated and how the plan will meet Pierce Transit goals. Explain the approach to determine what work will be packaged and bid together and why. Evaluate any risks associated with this approach and how your firm would manage those risks. Discuss the advantages and disadvantages of your approach and explain the reasons this approach provides value to Pierce Transit.

1. Discuss what subcontract packages, if any, should be bid early and how that benefits Pierce Transit and the Project.
2. Indicate if your approach proposes to utilize the early selection of the mechanical and/or electrical subcontractors as authorized by RCW 39.10.385 and why or why not.
3. Explain your firm’s approach to ensure quality subcontractors are selected, i.e. subcontractor bidder eligibility requirements, subcontractor responsibility criteria, etc. What processes does your firm use to ensure the process is fair and in compliance with all

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regulations, while allowing for maximum participation by subs. What are the advantages and disadvantages of your approach.

4. Identify what scopes of work, if any, your firm intends to bid upon and, if successful, self-perform.
5. Identify the work the GC/CM proposes to be included in the negotiated subcontract packages. Explain the reasons for your approach and how this proposed plan provides value to Pierce Transit.

E. Management

1. Describe your approach to ensuring effective coordination between you and your subcontractors, between your subcontractors and with other contractors that interface with your work and the management and planning tools your firm will use to ensure effective coordination.
2. Describe how your firm will monitor and ensure that the construction budget and schedule are met at every phase of the Project. What estimating, scheduling systems, and management techniques/tools will your firm employ to achieve success in these items?
3. Describe your firm's internal and external communication plan for this Project.
4. Identify the applicable state and local permitting and inspecting entities and how your firm intends on working with those entities.
5. Describe your firm's familiarity and approach towards working with the local labor and subcontracting market. If you don't have experience with the local labor and subcontracting market, explain how your firm will use its experience in similar labor and subcontracting markets for the benefit of this Project.
6. Discuss your firm's proposed use of sustainable construction practices that may be implemented on this Project.

F. Quality Control

1. Describe your firm's approach to quality control during construction, addressing, at a minimum, the following:
 - a. How the GC/CM will manage and perform the quality control inspection and testing requirements which are allocated between the subcontract packages.
 - b. The authority of the individuals to be assigned quality control responsibilities on this Project.
 - c. Quality control measures your firm plans to employ.
 - d. Coordination and management of subcontract work to ensure quality of work.
 - e. Coordination of commissioning.

G. Safety

1. Describe your proposed approach to ensure the safety of workers and the public on this Project.
2. Submit one copy of your firm's Accident Prevention Program (APP) with the SOQ. If the Proposer is a Joint Venture, please submit an APP for each firm in the Joint Venture. The

SECTION 00 11 53.2 – RFQ/PA EVALUATION CRITERIA

APP will not count towards the page count.

3. Safety and Health Qualifications Statement (Proposal Form 2), submitted as part of Section 00 11 53.3 Proposal Forms and included in the appendix.

H. Unique GC/CM Challenges

Address the following issues and how your firm would manage them:

1. Strategies to reduce cost, improve quality, manage the schedule and enhance the long-term operation and maintenance of the Project.
2. Approach towards managing, tracking and invoicing the separate cost categories that comprise the Total Contract Cost.
3. Strategies to successfully negotiate a MACC that is within Pierce Transit’s budget. Identify the risks and challenges that may impact this success.
4. Strategies to successfully phase the Project, including phasing and management of the Project over duration on anticipated timeline and yet-to-be determined funding for later phases.

Evaluation Criterion 4	Outreach Efforts and Commitment to Disadvantaged Businesses Enterprises (DBEs)	50 points
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A. Outreach Efforts

Describe the Proposer’s planned outreach efforts for ensuring DBEs have sufficient information about subcontract bid packages on this Project.

B. Strategies and Approach

Discuss your firm’s strategies and approach for arranging and packaging subcontract bid packages to encourage the participation of DBEs.

C. Managing Diversity

Describe the Proposer’s experience and approach in managing diverse teams on projects comparable to the scope of work, size and duration of this Project.

D. Assistance to Small Businesses and DBEs

Include an explanation about the assistance the Proposer has provided in the past to DBEs with expertise but limited resources. Such assistance may include, but not be limited to, resource sharing (e.g., office space, equipment, etc.), formal or informal mentoring, and other efforts undertaken to enhance the performance of the DBEs on previous projects of the Proposer.

E. Planned Approach to Support Small Businesses and DBEs

Describe the Proposer’s approach in monitoring, mentoring, and supporting DBEs, if awarded this Project.

F. Personnel Commitment

Provide the name and title of the individual on the Proposer’s team who will be responsible for overseeing efforts to reach out to and assist DBEs to compete for subcontract work and successfully perform as members of the Proposer’s team. Indicate who the individual reports to on the organization chart in Criterion 2. Include the percentage of time the individual will be dedicated to Small Business and DBE outreach and assistance issues.

SECTION 00 11 53.2 – RFQ/PA EVALUATION CRITERIA

G. Project Management Experience, Support and Commitment to Achieve Small Business and DBE Goals

Discuss the experience and involvement the Project Manager and the General Superintendent will have in support of meeting the Proposer's commitment to achieve the DBE Goals established for this Project.

END OF SECTION 00 11 53.2

SOQ SUBMITTAL FORM 1 – PROPOSER INFORMATION AND SIGNATURE

STATEMENT OF QUALIFICATIONS GENERAL CONTRACTOR/CONSTRUCTION MANAGER

Firm's Legal Name: _____ Date Prepared: _____

Address: _____ Principal to Contact: _____

_____ Business Telephone: _____

_____ Business Email: _____

Is this address the: Main Office Regional Office Branch Office Other: _____

Former Firm Name(s), if any. **Year Established** **Name/Address/Telephone of Parent Company, if any**

Corporate Structure: ___ Sole Proprietorship ___ Corporation ___ Joint Venture ___ Partnership ___ Other (specify): _____

State of Incorporation: _____ **Date Established:** _____

1. **State of Washington Contractor Registration #:** _____

2. **State of Washington Unified Business Identifier #:** _____

3. **Employment Security Department #:** _____

4. **Federal Tax Identification #:** _____

Acknowledge addendum(a) by listing each addendum(a) number: ____, ____, ____, ____, and ____.

Certification

The undersigned prime proposer certifies that, to the best of his/her knowledge, the information presented in this Statement of Qualifications is a statement of facts and that the firm has the financial capability to perform the work. The undersigned prime proposer further certifies that it knows of no

SECTION 00 11 53.3 – RFQ/PA SUBMITTAL CHECKLIST AND FORMS

personal and/or organizational conflict of interest prohibited under federal, state, and local law.

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

Signature

Name

Title

Date

City and State

SOQ SUBMITTAL FORM 2 – SAFETY AND HEALTH QUALIFICATIONS STATEMENT

INSTRUCTIONS:

1. Please do not leave blanks on any item except lists; use 'n/a' if a field does not apply.
2. You may neatly handwrite the information. We are more concerned about correct complete information than how it looks.

Firm's Legal Name:

3. Please list the trade(s) in which your company performs work:

CSI Division No.	Description

4. For work in Washington State (Intrastate), please list your Company's Workers' Compensation Experience Modification Rate (Experience Factor) for the most recent three years, using the Washington State Department of Labor and Industries ratings: <http://www.lni.wa.gov/ORLI/LoGon.asp>.

Year	Rate	Year	Rate	Year	Rate
2018		2017		2016	

5. For work in other states (Interstate), please list your Company's Workers' Compensation Experience Modification Rate (Experience Factor) for the most recent three years.

State Name	Year	Rate	Year	Rate	Year	Rate
	2018		2017		2016	
	2018		2017		2016	
	2018		2017		2016	
	2018		2017		2016	

6. Using the three most recent year's OSHA No. 300 Logs, please fill in the number of cases for each of the following categories: (attach a copy of your last three years of OSHA No. 300 Logs)

	2018	2017	2016
Number of deaths (Total column G) <i>Attach a description of the circumstances surrounding and employee death(s)</i>			
Number of days away from work and job transfer or restricted workday cases (Total Column H & I)			
Number of other recordable cases (Total Columns J)			
Number of days away from work cases (Total Column H)			
Employee Hours Worked			
OSHA Recordable Incidence Rate (See formula below)			
OSHA Lost Workday Incidence Rate (See formula below)			

SECTION 00 11 53.3 – RFQ/PA SUBMITTAL CHECKLIST AND FORMS

Notes:

- Items in parenthesis above come from your OSHA No. 300 Log
 - Employee Hours Worked = total number of hours worked during the year by all employees
 - OSHA Recordable Incidence Rate= [(A+B+C) ×200,000/Employee Hours Worked]
 - OSHA Lost Workday Incidence Rate= [(D) × 200,000/Employee Hours Worked]
7. Please provide the following safety information for three public construction projects of your Company in which the General Superintendent proposed for this Project was the superintendent. The Incidence Rates reported below must include incidences for the contractor and subcontractors of any tier.

Project Name and Owner	Superintendent's Name	Recordable Incidence Rate for the Project	Lost Workday Incidence Rate for the Project

8. How many OSHA violation(s) has your Company received in the last three years?

Year	# of Violations	Year	# of Violations	Year	# of Violations
2018		2017		2016	

- A. Were any of the OSHA violations considered willful violations: YES NO
- B. Please attached a brief description of all willful violation(s):

The undersigned warrants and represents the data provided is accurate in all respects. Prepared by:

Signature

Name

Title

Date

END OF SECTION 00 11 53.3

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

PART 1 PROPOSAL FORM

1.01 Submittal Schedule

Activity	Date
Due Date for Final Proposal Form and public opening	By 10:00 AM local time on February 25, 2019

1.02 Submission and Withdrawal of Final Proposals

- A. Final Proposal Forms shall be submitted in a sealed envelope or package that is labeled with the Proposer’s name and labeled as follows:
Pierce Transit RFP No. 109-18
Maintenance and Operations Base Infrastructure Improvements
Attn: Linda Shilley, Procurement Manager
- B. Proposals must be submitted by the time and date specified in Section 1.01 above to the following address:
3701 96th Street SW
Lakewood, WA 98499-4431
- C. A Proposer may withdraw its Final Price Offer by submitting a written request to the address noted in paragraph above before the submittal deadline. Pierce Transit will return the Proposal Form unopened.
- D. Any Final Proposal Form, proposal modification, or request to withdraw a Proposal that is received after the deadline set forth herein will not be considered.

1.03 Late Submissions

- A. The only acceptable evidence to establish the time of receipt at the office designated in this RFP is the time/date stamped or printed by Pierce Transit on the bid envelope or package.
- B. Pierce Transit will not accept Proposals after the time specified in Section 1.01 above. In the event that the bid submittal is delivered after the time specified, the Proposal will not be accepted, nor will the submittal envelope be opened.
- C. Pierce Transit will not be liable for delays in delivery of Proposals to Pierce Transit Reception due to handling by the U.S. Postal Service, or any other service.

1.04 Preparation of Final Price Offer

- A. Each Proposer is required to submit the following on the Final Proposal Form included in this RFP:
 - 1. Fixed GC/CM Fee:
The proposer will include the GC/CM Fee as a percentage of the Total Estimated MAAC. This percentage is multiplied by the Total Estimated MACC in order to determine the GC/CM Fee Subtotal.

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

2. Negotiated Self-Performed Work Fee:

The proposer will provide the Negotiated Subcontract Fee Percentage. This percentage will be multiplied by the Estimated Negotiated Self-Performed Work in order to determine the Negotiated Self-Performed Work Fee Subtotal.

3. Key Individuals Specified General Conditions:

The proposer will include the monthly rate and time commitment for the key individuals identified in the Bid Form Table 1 to fulfill the requirements of the contract.

For the purposes of bidding, the proposer shall assume a duration of 48 months. The total rate for positions 2, 3 and 4 shall be sum of all the hourly rates at 174 hours, multiplied by the estimated contract duration of 48 months. The estimated level of effort at 174 hours per month and the estimated duration is provided for bidding purposes only and may be adjusted as part of MACC negotiations.

The proposer shall also include the monthly rate and time commitment for the Supplemental Staff identified in the Bid Form Table 1, positions 1, 5, 6, 7, 8, and 9. The proposer shall base the monthly rate on the proposer's estimated level of effort and time for each individual as determined by the proposer. The actual level of effort for each key individual and the actual duration may be adjusted during MACC negotiations; however, the rate for each individual will remain the same for the duration of the construction period.

4. Other Specified General Conditions Work:

The proposer will include a lump sum amount for all work identified as Specified General Condition costs in Section 00 43 73 GC/CM Cost Allocation Matrix. This amount is part of the Specified General Conditions Work Subtotal.

5. Specified General Conditions Work Subtotal:

This amount is determined by adding items 3 and 4 above.

6. Final Price Offer Amount:

This amount is determined by adding items 1 through 5 above.

B. Proposer shall comply with the following instructions in preparing its Final Proposal:

1. Proposer shall submit its price offer on the Final Proposal Form provided by Pierce Transit. Only the amounts and information required on the Final Proposal Form will be considered. Proposer must enter a number for each amount requested on the Final Proposal Form.
2. No other entries, modifications, or qualifications shall be made to the Final Proposal Form. Failure to comply in full with these requirements shall be grounds for a Final Proposal being declared nonresponsive.
3. The Proposer's business name, address, other contact information, Contractor's Registration Number, UBI Number, and Employment Security Department number shall be typed or printed on the Final Price Offer Form in the space provided.
4. Final Proposals must be manually signed in ink by an authorized representative of the

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

Proposer.

5. Receipt of all addenda to this RFP must be acknowledged by identifying the addendum number in the space provided in the Final Proposal Form.
6. In submitting a Final Proposal, all Proposers agree that the prices included in the Final Proposal Form shall be valid until completion of all Preconstruction Services and through completion of negotiation of the MACC.

1.05 Final Price Offer Evaluation

A. After Final Proposals have been opened and the price offer amounts read, the calculation of the Fixed GC/CM Fee, Negotiated Subcontract Fee, and the Specified General Conditions Amount will be checked for correctness.

1. A discrepancy between the GC/CM Fee Percentage and the Fixed GC/CM Fee shall be resolved by accepting the percentage as correct and making any necessary adjustment in the Fixed GC/CM Fee.
2. A discrepancy between the Negotiated Subcontract Fee Percentage and the Negotiated Self- Performed Work Fee Subtotal shall be resolved by accepting the percentage as correct and making any necessary adjustment in the Negotiated Self-Performed Work Fee Subtotal.
3. A discrepancy between the Monthly Rate and the Key Individuals Specified General Conditions Amount shall be resolved by accepting the Monthly Rate as correct and making any necessary adjustment in the Key Individuals Specified General Conditions Amount.
4. Pierce Transit shall mathematically correct, where necessary, the summation of the Final Price Offer Amount.

B. Cost/Price Analysis and Rejection of Unreasonable Price Offers:

Pierce Transit may, at its sole discretion, perform a cost and/or price analysis of any or all components of the price offer. Should the analysis reveal any unacceptable or unreasonable costs or pricing in any component of the price offer, Pierce Transit reserves the right, at its sole discretion, to seek clarification of the pricing and/or to reject the Proposal. If requested by Pierce Transit, a proposer must submit supporting pricing information, including, but not limited to, anticipated level of effort, personnel cost elements such as direct salary rates by position and overhead rates (expressed as a verifiable rate), and other direct and indirect costs. Cost/price information may be evaluated to determine allowability, reasonableness, consistency with SOQ/PA, and proper allocability according to federal cost/price principles.

C. Pierce Transit reserves the right to reject any or all Final Proposals and/or cancel the procurement. Pierce Transit also reserves the right to waive, as informality, any non-material irregularities in the Final Proposal Forms received.

1.06 Final Selection

A. Final Proposals will be evaluated as follows:

1. Low Conforming Final Proposal shall score the full 200 points.
2. Other Final Proposals will receive points based on the following formula:

Low Conforming Final Price Offer Amount ÷ Contractor's Final Price Offer Amount x 200

SECTION 00 42 36 Addendum 1 – RFFP AND FINAL PROPOSAL FORM

- B. Final selection of a GC/CM for performing Preconstruction Services and for MACC negotiations will be made consistent with the requirements set forth in the RFQ/PA.

1.07 Site Investigation and Conditions Affecting the Work

- A. Proposer acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself to the general and local conditions which can affect the Work or its cost.
- B. Proposer acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory and geotechnical report(s) made available by Pierce Transit as reference documents, and any other information made available by Pierce Transit in connection with this Project.
- C. Proposer acknowledges that technical specifications and drawings made a part of this RFFP are for information only and shall not be used for construction.
- D. Proposer acknowledges normal operations and other construction will be conducted in adjoining areas to the Project site during the Work. Proposer should anticipate pedestrian and traffic congestion, limited parking, and the requirement that the Work be coordinated with ongoing operations.
- E. Proposer acknowledges that its price offer is based upon a schedule and assumptions which incorporate the conditions set forth above, and in the draft Contract Documents, including, but not limited to, the Draft GC/CM Construction Contract and the GC/CM General Conditions, all of which were included in the RFQ/PA.
- F. Pierce Transit assumes no responsibility for any conclusions or interpretations made by Proposer based on the information made available by Pierce Transit. Should a Proposer find discrepancies or omissions in the drawings or specifications, or should Proposer be in doubt as to their meaning, Proposer shall at once notify Pierce Transit. If appropriate, Pierce Transit will send written instructions to all finalist Proposers by addenda. All addenda issued shall be incorporated into these Contract Documents.

1.08 Taxes

A. Retail Sales Tax:

Pierce Transit has determined that portions of this Project may be exempt from retail sales tax on labor pursuant to RCW 82.04.050(8) and WAC 458-20-171 (Rule 171). Pierce Transit will attempt to seek pre-determination by the Washington State Department of Revenue of whether certain work is eligible for the Rule 171 exemption. Pursuant to Rule 171 and for that portion of the Project that is eligible for Rule 171 treatment, Proposer will be considered the consumer of all materials, equipment and supplies, including prefabricated and pre-cast items, purchased, used or consumed by them in performing the Work; and Proposers must pay the applicable sales/use tax on all taxable items. All amounts entered by the Proposer on the Final Proposal Form shall include all retail sales tax applicable to the preconstruction services work and the Specified General Conditions Work. However, retail sales tax to be paid by subcontractors performing the work covered by the MACC will be included in the negotiated MACC.

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

1.10 Preconstruction Services Agreement and Negotiations

A. Scope of Work:

Pierce Transit intends to negotiate and execute a Preconstruction Services Agreement with the highest ranked firm. Pierce Transit has included a draft Preconstruction Services Agreement, Attachment 1 of the RFQ/PA. The highest ranked firm’s preconstruction services level of effort, cost proposal, Preconstruction Services Scope of Work (including proposed revisions), and the preconstruction services schedule will serve as the basis for negotiating the final scope of work and contract amount for preconstruction services. Scope of work may include: life-cycle cost design considerations, scheduling, value engineering, constructability review, alternative construction options for cost savings, and to act as the construction manager and general contractor during construction activities such as: building demolition, building renovation, interior alterations, bus fuel and wash facility, equipment maintenance facility reconfiguration, and bus and vehicle parking lot expansion and reconfiguration.

B. Submittals:

The following items are due to Pierce Transit upon request:

1. Proposed revisions to the Preconstruction Services Scope of Work
2. Cost Proposal:
 - i. The cost proposal shall be based on the proposer’s Proposed Preconstruction Level of Effort submitted in the SOQ. The Proposer shall ensure the cost proposal includes the necessary staff to perform the preconstruction services work, including any change to the Scope of Work as agreed between Pierce Transit and the Proposer. The Proposal shall use Attachment 2 – Project Controls Baseline forms as a guide.
 - ii. The cost proposal shall assume a schedule as identified in Attachment 1, Preconstruction Services Agreement.
 - iii. Pierce Transit shall have access to and reserves the right to audit any directly pertinent financial documents and records reflecting direct and indirect cost data used in the Cost Proposal.
 - iv. The proposed costs shall be segregated by cost element for each proposed task as described below:
 - 1) Labor Hours:
Provide labor hours by task and include the name and job title for each proposed individual.
 - 2) Burdened Labor Rates:
Provide the burdened labor rates for each individual, as submitted in the SOQ.
 - 3) Other Direct Costs (ODCs):
 - (a) If proposing direct costs other than labor, then provide a description for each additional cost.
 - (b) Travel costs shall be segregated by individual and include the estimated number of trips.

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

(c) Any proposed ODCs must be task or job specific costs that are normally charged directly to a contract and have been included in the burdened rate. ODCs, if approved, will be reimbursed at cost only, with no markup added.

v. Provide the same level of detail and support for subconsultants, if any.

3. Preconstruction Services Schedule:

Provide a more detailed preconstruction services schedule including each task and deliverable as outlined in Attachment 1, Preconstruction Services Agreement.

4. Attachment 3 - Certification Regarding Lobbying, Buy America Certification, and Non-Segregated Facilities Certification.

1.11 MACC Negotiations and GC/CM Construction Contract

- A. Pierce Transit and the GC/CM Contractor shall enter into negotiations to establish a MACC when the construction documents and specifications are at least ninety percent complete. Upon successful negotiation, if a MACC is successfully negotiated with the successful Proposer, and subject to Pierce Transit Board approval, the successful GC/CM Contractor and Pierce Transit will enter into a GC/CM Construction Contract in substantially the same form as the draft GC/CM Construction Agreement included with this RFQ.
- B. The proposed MACC Risk Contingency percentage for this contract is 2.5% of the Maximum Total Subcontract Package Cost at the time of execution of the Construction Contract.
- C. Should the GC/CM Contractor and Pierce Transit not agree on a MACC, Pierce Transit may cancel the negotiations and begin negotiations with the next highest ranked Proposer. Should Pierce Transit choose to cancel the negotiations upon failure to agree upon a MACC, such cancellation will be effective upon receipt of written notification by the GC/CM Contractor. GC/CM Contractor shall not be reimbursed for the MACC negotiations; however, the GC/CM Contractor will be paid in accordance with the Preconstruction Services Agreement for any preconstruction work performed prior to the date the Preconstruction Services Agreement is terminated. GC/CM Contractor shall not be entitled to any other compensation, damages, loss of profits, or payment of any kind.
- D. If a MACC is agreed to between Pierce Transit and Proposer, a Total Contract Cost (TCC) will be established by Pierce Transit consisting of the negotiated MACC, the Fixed GC/CM Fee based on the GC/CM Fee Percentage entered above multiplied by the negotiated MACC, and the fixed dollar amount offered for Specified General Conditions Work. The undersigned agrees to execute a contract for the work for the TCC on the GC/CM Construction Contract form, and to furnish Payment and Performance Bonds and evidence of insurance as required by the Contract Documents.

1.12 Time of Completion and Liquidated Damages

The undersigned agrees, if awarded the Preconstruction Services Contract and upon successful negotiation and execution of the GC/CM Construction Contract, to complete the Work of such contracts within the number of calendar days, and to the amounts to be specified for Liquidated Damages as agreed to in the negotiated Services Contract.

PART 2 FINAL PROPOSAL FORM

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

TO:
 Pierce Transit RFP No. 109-18
 Maintenance and Operations Base Infrastructure Improvements
 Attn: Linda Shilley, Procurement Manager
 3701 96th St. SW
 Lakewood WA 98499-4431

The undersigned submits the following Final Price Offer Amount:

2.01 Final Price Offer

Pursuant to and in compliance with the Request for Final Proposals (RFP), the undersigned certifies, having carefully examined the Contract Documents and conditions affecting the work, and being familiar with the Project and site; proposes to furnish all labor, materials, equipment and services necessary to complete the work as specified in the contract documents.

TABLE 1 – BID FORM

Specified General Conditions				
Project Staff Positions	Hours per Month	Rate per Month	Months	Total Cost
(1) Project Executive		\$	48	\$
(2) Project Manager (full time commitment)	174	\$	48	\$
(3) Superintendent (full time commitment)	174	\$	48	\$
(4) Project Engineer (full time commitment)	174	\$	48	\$
(5) Contractor Quality Manager (CQM)		\$	48	\$
(6) Lead Cost Estimator		\$	48	\$
(7) Lead Scheduler		\$	48	\$
(8) Safety and Security Manager		\$	48	\$
(9) All other supporting staff		\$	48	\$
(10) All other SGC Costs required by the Contract Documents. Lump Sum				\$
(11) Total SGC Cost (Add rows 1 through 10 and enter in row 11.)				\$
Fixed GC/CM Fee				\$
(12) Fixed GC/CM Fee <i>(Total Estimated GC/CM MACC* x Percentage)</i>	Total Estimated GC/CM MACC*: \$56,000,000.00	Percentage: _____ %		\$
Negotiated Self-Performed Work Fee				
(13) Negotiated Subcontract Fee Percentage	Estimated Negotiated Self-Performed Work (30% of MACC)		Negotiated Self-Performed Work Fee Subtotal	
_____ %	\$16,800,000.00		\$	
(13) Final Price Offer Amount (add rows 11, 12, and 13)				\$

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

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* Note that the GC/CM MACC for purposes of calculating the GC/CM Fee does not include GC/CM Fee, Negotiated Support Services, Specified General Conditions, Construction Managers Contingency (GCCM Risk Contingency), Owners Contingencies, Pre-Construction Services Fees or WA State Sales Tax.

SECTION 00 42 36 Addendum 1 – RFP AND FINAL PROPOSAL FORM

AUTHORIZED SIGNATURE

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature:		Date:	
Print Name and Title			
Business Name:		Phone #	Email Address:
Business Address:		City:	State: Zip Code:
UBI #	ESD #		Contractors Registration #

END OF SECTION 00 42 36

SECTION 00 43 73 – GC/CM COST ALLOCATION MATRIX

In the event of a conflict or inconsistency with the GC/CM Summary of Cost Allocation Matrix and the provisions of the Contract Documents, the Contract Documents shall take precedence over the GC/CM Summary Cost Allocation Matrix. Reference to the General Conditions include any applicable Special Conditions.

Item	Description	Contract Document	Section/Article Reference	TOTAL COST OF CONSTRUCTION (TCC)			
				Specified General Conditions	Percent Fee	MACC	
						Subcontract Package	Negotiated Support Services
1	Division 00 - All sections except as noted below or elsewhere in the Contract Documents			*			
2	Accounting System & Record Retention	General Conditions	Section 00 72 00, Article 3.03		*		
3	Taxes - Subcontractor	General Conditions	Section 00 72 00, Article 7.19			*	
4	Subcontract Bonds	General Conditions	Section 00 72 00, Article 7.26			*	
5	CPARB Reporting - GC/CM	General Conditions	Section 00 72 00, Article 7.29	*			
6	CPARB Reporting - Subcontractor	General Conditions	Section 00 72 00, Article 7.29			*	
7	Fixed GC/CM Fee	General Conditions	Section 00 72 00, Article 9.08.F		*		
8	Permits	General Conditions	Section 00 72 00, Article 7.08				*
9	Insurance Requirements - GC/CM	Insurance	Section 00 73 16				*
10	Insurance Requirements - Subcontractor	Insurance	Section 00 73 16			*	
12	Division 01 - All sections except as noted below or elsewhere in the Contract Documents			*			
13	Photographic Documentation	Division 01	01 32 33				*
14	Submittal Procedures, excluding Sections 1.03 and 3.01	Division 01	01 33 00			*	
15	Health, Safety, Security and Emergency Response Procedures	Division 01	01 35 29.10				*
16	Unknown Hazardous and Contaminated Substance Health and Safety Program	Division 01	01 35 43.13				*
17	Hazardous and Contaminated Substance Air Monitoring	Division 01	01 35 45				*
18	Quality Assurance/Quality Control, Inspection and Testing	Division 01	01 45 00.10-3.08				*
19	Systems Safety & Assurance - Civil/Architectural	Division 01	01 46 00.16				*
20	System Assurance - Ventilation Equipment	Division 01	01 46 01				*
21	System Assurance - Static UPS	Division 01	01 46 02			*	
22	Temporary Facilities and Controls	Division 01	01 50 00				*
23	Temporary Electrical Power	Division 01	01 51 15				*
24	Vehicular Access and Parking	Division 01	01 55 00				*
25	Traffic Control	Division 01	01 55 26				*
26	Temporary Tree and Plant Protection	Division 01	01 56 39			*	
27	Temporary Erosion and Sediment Control	Division 01	01 57 13				*
28	Temporary Construction Noise and Vibration Control	Division 01	01 57 15				*
29	Temporary Environmental Controls	Division 01	01 57 19				*
30	Temporary Site Water Discharge	Division 01	01 57 24				*
31	Product Requirements	Division 01	01 60 00			*	
32	Owner Furnished Materials and Equipment	Division 01	01 64 00				*
33	Field Engineering	Division 01	01 71 23				*
34	Protection and Maintenance of Property and Work	Division 01	01 71 30			*	

SECTION 00 43 73 – GC/CM COST ALLOCATION MATRIX

35	Cutting, Fitting, and Patching	Division 01	01 73 29			*	
36	Cleaning and Waste Management	Division 01	01 74 00				*
38	Operation and Maintenance Data	Division 01	01 78 23			*	
39	Training, excluding Sections 1.01 through 1.04	Division 01	01 79 00			*	
40	General Commissioning Requirements	Division 01	01 91 13				*

END OF SECTION 00 43 73

SECTION 00 52 33 – GC/CM CONSTRUCTION AGREEMENT

THIS AGREEMENT, by and between PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION ("Pierce Transit"), and _____ hereinafter called the "GC/CM Contractor" agree as follows:

The GC/CM Contractor, for the consideration specified in the Contract Documents, shall in strict accordance therewith perform all the activities required by the Contract Documents for the following project:

Maintenance and Operations Base Infrastructure Improvement Project Contract No. 109-18

Pierce Transit agrees to pay the GC/CM Contractor for fulfillment of the Work and performance of the covenants as set forth in the Contract Documents.

The Contract Documents consist of the documents listed below issued prior to execution of this Contract Agreement and all Change Orders issued subsequent to execution of this Contract Agreement. The following is an enumeration of the Contract Documents, not in their order of precedence:

- A. Change Orders
- B. GC/CM Construction Agreement with Attachment(s)
- C. Special Conditions, dated _____
- D. GC/CM General Conditions, dated _____
- E. Contract Specifications, dated _____
- F. Contract Drawings, dated _____
- G. All other Division 00 Sections, dated _____, including forms submitted by Contractor
- H. The documents the GC/CM Consultant submitted in response to the Request for Qualifications and Proposed Approach (RFQ/PA) and the Final Proposal submitted in response to the Request for Final Proposals (RFFP).
- I. The RFQ/PA and RFFP and any addenda related to the Project.

The GC/CM Contractor agrees to complete all general contractor and construction management services and the Work, furnish all tools, materials and equipment necessary on the terms and conditions specified in the Contract Documents. The GC/CM Contractor further agrees to assume and perform all of the covenants and conditions required of the GC/CM Contractor pursuant to these Contract Documents, for a Total Contract Cost of

\$ _____.

This Agreement is separate and distinct from any agreement entered into for Preconstruction Services.

IN WITNESS WHEREOF, the parties have caused this Contract Agreement to be executed as the date below.

GC/CM Contractor:

Signature	Print Name & Title	Date
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SECTION 00 52 33 – GC/CM CONSTRUCTION AGREEMENT

Pierce Transit:

Sue Dreier, Chief Executive Officer

Date

Approved as to Form:

Pierce Transit Legal Council

Print Name

SECTION 00 52 33 – GC/CM CONSTRUCTION AGREEMENT

CONTRACT PRICE SCHEDULE

CONTRACT NO. 109-18

Item	Item Description	Unit of Measure	Est. Quantity	Amount	Total Amount
1	GCCM FIXED FEE	LS	1		\$
2	SPECIFIED GENERAL CONDITIONS	LS	1		\$
MAXIMUM ALLOWABLE CONSTRUCTION COST ITEMS 3 THROUGH 16					
3	SUBCONTRACT BID PACKAGE COST	LS	1	\$	
4	ECCM / MCCM SUBCONTRACT COST	LS	1	\$	
5	MAXIMUM ALLOWABLE SUBCONTRACT COST (MASC) RISK CONTINGENCY	LS	1	\$	
6	MAXIMUM ALLOWABLE CONSTRUCTION COST (MACC) RISK CONTINGENCY ACCOUNT	LS	1	\$	
7	NEGOTIATED SUPPORT SERVICES	LS	1	\$	
8	PROVISIONAL SUM for UNIDENTIFIED UTILITY CONFLICTS	PS		\$	
9	PROVISIONAL SUM for PARTNERING FACILITATOR AND FACILITIES	PS		\$	
10	PROVISIONAL SUM for CONTRACTOR SUPPORT for ARCHAEOLOGICAL INVESTIGATIONS	PS		\$	
11	PROVISIONAL SUM for ADDITIONAL COMMUNITY CONSTRUCTON IMPACT	PS		\$	
12	PROVISIONAL SUM for REIMBURSEMENT of DUAL BENEFITS COSTS	PS		\$	
14	PROVISIONAL SUM for SOUND TRANSIT COORDINATION	PS		\$	
15	PROVISIONAL SUM for UNKNOWN HAZARDOUS & CONTAMINATED SUBSTANCES	PS		\$	
MAXIMUM ALLOWABLE CONSTRUCTION COST (MACC)				\$	
TOTAL CONTRACT COST				\$	

END OF SECTION 00 52 33

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ARTICLE 1 GENERAL

1.01 DEFINITIONS

- A. **Acceptance** – The full and satisfactory physical completion of all or part of the Work including all physical Punch List work.
- B. **Addenda/Addendum** – Written modifications issued by Pierce Transit to the Request for Qualifications and Proposed Approach and Request for Final Proposal that make changes to the Request for Proposal, Request for Qualifications and Proposed Approach and Request for Final Proposal and /or Contract Documents.
- C. **As-Built Drawings** – Neatly and legibly marked set of Contract Drawings, maintained by the Contractor with up to date information, showing all Changes in the Work, including final locations of all items of Work.
- D. **Change** – An alteration that modifies the scope of Work, equipment, materials, facilities, services, site, performance, schedule, or other material provision of the Contract.
- E. **Change Notice** – Request for Proposal (CN-RFP) - A written request by Pierce Transit to the Contractor for a Cost and Schedule proposal for a Change to the Contract. A CN-RFP does not authorize the Contractor to commence performance of the changed Work
- F. **Change Notice** – Work Directive (CN-WD) - A written directive by Pierce Transit to the Contractor to immediately proceed with a Change in the Work. Work Directives are incorporated into the Contract by a subsequent Change Orders.
- G. **Change Order** – A written document signed by Pierce Transit that alters the scope of the Work, the Contract Time, the Total Contract Cost, or makes any other change to the Contract.
- H. **Claim** – A written demand by the Contractor seeking (1) the payment of money or adjustment to the Total Contract Cost; (2) an extension of Contract Time; (3) an adjustment of Contract terms; and/or, (4) other relief arising under or relating to this Contract.
- I. **Construction Schedule** – The schedule, prepared by the Contractor in accordance with the requirements of the Contract and accepted by Pierce Transit, setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with the Contract and specifically to meet the specified Contract Milestones.
- J. **Contract (aka "Agreement")** – Written agreement executed by Pierce Transit and the Contractor which sets forth the rights and obligations of the parties in connection with the Work.
- K. **Contract Documents** – The Documents enumerated as Contract Documents on the first page of this Contract.
- L. **Contract Drawings – Plans, profiles, typical cross sections, general cross sections, elevations, schedules, and details listed or included in the Contract Documents.**
- M. **Contract Milestone** – A date specified in the Contract by which the Contractor is required to complete a designated portion or segment of the Work.
- N. **Contract Specifications** – The part of the Contract Documents containing written directions or requirements that specify the requirements which have to be fulfilled for the completion of the Work.
- O. **Contract Time** – The time allotted in the Contract Documents for completion of the Work. The

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- Contract Time begins upon the effective date of the Notice to Proceed and ends on the date of Final Acceptance. Contract Time incorporates the Contract Milestones established for the Contract.
- P. **Contractor** – The person, persons, partnership, joint venture, company or corporation which enters into this Contract with Pierce Transit for the performance of Work required by this Contract.
- Q. **Contractor's Project Manager** – Contractor's authorized representative that is charged with the professional execution of this Contract, as designated in writing to Pierce Transit.
- R. **Cost and Schedule Proposal** – A document prepared by the Contractor at the request of Pierce Transit, which proposes in detail changes to the Work and/or adjustments to the Total Contract Cost and/or Contract Time.
- S. **Critical Path** – The longest, continuous sequence of activities that begins at the start of the Contract (effective date of the Notice to Proceed) and concludes with the completion of the Contract Milestone(s). This path represents the longest chain of interrelated activities throughout the network from beginning to end. These activities are critical because delay to an activity on this path will extend the Contractor's attainment of one or more Contract Milestone(s).
- T. **Days or days** – Calendar days, unless otherwise specified.
- U. **Defective Work** – Specific elements of the Work that do not conform to the requirements of the Contract and that will not be accepted by Pierce Transit, at Pierce Transit's discretion.
- V. **Differing Site Condition** – (1) An actual subsurface or latent physical condition at the Project Site that is materially different from a condition indicated in the Contract Documents; or (2) an unknown physical condition at the Project Site that is of an unusual nature, differing materially from that ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and that could not have been reasonably anticipated as potentially present by an experienced civil works contractor.
- W. **Equitable Adjustment** – An adjustment to the Total Contract Cost and / or Contract Time to compensate the Contractor for Extra Work, as part of a negotiated Change Order.
- X. **Equivalent** – Equal or better quality and performance to that specified in the Contract Documents.
- Y. **Extra Work** – Furnishing of materials and equipment and the performance of Work neither directly nor by implication called for in the Contract Documents that is necessary for the Contractor's timely completion of the Work through no fault, error, omission, negligence, neglect, lack of planning, or lack of diligence of the Contractor.
- Z. **Field Clarification** – a document prepared by Pierce Transit and issued to the Contractor that clarifies and/or corrects minor discrepancies in the Contract Documents that do not affect the cost or schedule of the Work.
- AA. **Final Acceptance** – Written notice from Pierce Transit acknowledging that the Contractor has fulfilled all of its obligations under the Contract and that Pierce Transit has accepted the Work as of the date stated in the Notice. Final Acceptance is a condition precedent to Final Payment.
- BB. **Fixed Amount for Specified General Conditions Work** – The total amount to be paid to the Contractor, as indicated on the Construction Agreement Form, for performance of the Specified General Conditions Work.

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- CC. **Fixed GC/CM Fee** – The fixed fee to be earned by the Contractor as overhead and profit. The fee is determined by multiplying the GC/CM Fee Percentage, indicated on the Construction Agreement Form, by the negotiated Maximum Allowable Construction Cost (MACC).
- DD. **GC/CM Fee Percentage** – The percentage amount indicated on the Construction Agreement Form to be earned as overhead and profit. The proposed percentage amount is used to calculate the GC/CM Fixed Fee upon successful negotiation of the Maximum Allowable Construction Cost. DD. General Conditions – Pierce Transit's general contractual provisions for GC/CM construction contracts which, as augmented and supplemented by other Contract Documents, describe the contractual relationship of the parties and their rights and responsibilities to each other. DD.
- EE. **GC/CM Fee Percentage Handover** - The receiving from or transferring to another contractor of a complete operational system with all related equipment, controls, accessories, meters, protections, structures, manuals and warranties. The handover will include transfer of ownership, title and continuing obligations for the system from the prior contractor to the Contractor as specified in the Contract Documents. For any appurtenances that are the property of a third-party public or private utility integral to the operating system being transferred, the transferring contractor will apply to that agency to initiate the transferring of all legal and commercial obligations to the follow-on contractor. The receiving follow-on Contractor shall then be responsible for the proper maintenance and operation of the entire system including the complete removal and/or disposal of the entire system for the full term of its contract.
- FF. **Hazardous or Contaminated Substance** – (a) any substance, product, waste, or material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq.; the Clean Water Act, 33 U.S.C. Sections 1251, et seq.; or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or any time thereafter in effect; (b) any substance, product, waste, or other material of any nature whatsoever that may give rise to liability under any of the above statutes or under any reported decision of a state or federal court; (c) petroleum or crude oil, excluding de minimus amounts; and (d) asbestos.
- GG. **Industry Standards** – Drawings and specifications or portions thereof published by industry organizations, which are not Contract Documents unless specifically listed as such in a Specification.
- HH. **Maximum Allowable Construction Cost (MACC)** – The maximum cost to construct the Work. Subcomponents of the MACC include the (a) Maximum Total Subcontract Package Cost, (b) Negotiated Support Services (if any), (c) Provisional Sums (if any), and (d) MACC Risk Contingency Account (if any).
- II. **Maximum Allowable Subcontract Cost (MASC)** – The maximum cost to construct the Work of an EC/CM or MC/CM subcontract package, when the Contractor, with Pierce Transit's approval, contracts with an EC/CM or MC/CM consistent with RCW 39.10.385. Subcomponents of the MASC include (a) the cost of all Work to be performed by the subcontractor's own forces and any subcontractors and suppliers, (b) Negotiated Support Services (if any), (c) Provisional Sums (if any), and (d) MASC Risk Contingency Account. Final agreement on the MASC is subject to the

SECTION 00 72 00 – GENERAL CONDITIONS

- approval of Pierce Transit.
- JJ. **MACC Risk Contingency** – A fixed amount specified on the GC/CM Construction Contract for use as set forth in Article 9.11 of these GC/CM General Conditions. It is calculated by multiplying the MACC Risk Contingency percentage specified on the Construction Agreement Form with the Maximum Total Subcontract Package Cost at the time of execution of the Construction Contract. The MACC Risk Contingency Account will only increase when RCW 39.10.385(9) is used to select a mechanical or electrical subcontractor and the work of that subcontractor is completed for less than the negotiated maximum allowable subcontract cost; in that case, any savings accrued will become part of the MACC Risk Contingency.
- KK. **Maximum Total Subcontract Package Cost** – The maximum total amount to be paid by Pierce Transit for all subcontract package Work, including any subcontract package Work successfully bid on by the Contractor and any negotiated subcontract package Work, plus the MASC.
- LL. **Maximum Allowable Subcontract Cost (MASC) Risk Contingency** - The MASC Risk Contingency Account will be established when RCW 39.10.385(9) is used to select a mechanical or electrical subcontractor. A fixed amount specified on the GC/CM Construction Contract for use as set forth in Article 9.11 of these GC/CM General Conditions. It is calculated by multiplying the MACC Risk Contingency percentage specified on the Construction Agreement Form with each of the EC/CM and MC/CM subcontract package costs at the time of execution of the Construction Contract. Any savings accrued in the MASC Risk Contingency Account will become part of the MACC Risk Contingency.
- MM. **Negotiated Subcontract Fee Percentage** - The percentage amount indicated on the Construction Agreement Form to be earned as overhead and profit on the Negotiated Subcontract Work. The percentage amount is used to calculate the total value of the Negotiated Subcontract Work for inclusion in the Maximum Total Subcontract Package Cost (MTSPC) - Subcontract Bid Package Cost.
- NN. **Negotiated Support Services** - Tasks and services that would otherwise fall within the definition of Specified General Conditions Work but for their being specifically identified in the Contract Documents (as summarized in the GC/CM Summary Cost Allocation Matrix) as Negotiated Support Services.
- OO. **Non-Conforming Work** – Specific elements of the Work that do not conform to the requirements of the Contract but that otherwise may be acceptable to Pierce Transit, at Pierce Transit's discretion.
- PP. **Notice** – Communication in writing, unless otherwise specified, which complies with the notice requirements of the Contract Documents, to provide or issue any information, warning, announcement, instruction, consent, approval, certificate or determination by any person or party to the Contract.
- QQ. **Notice of Intent to Claim** - A written notice of a potential claim submitted by the Contractor to Pierce Transit within the time limits and in accordance with the conditions specified in the Contract Documents.
- RR. **Notice to Proceed** – Written notice issued by Pierce Transit which establishes the date on which the Contractor may commence Work and directs the Contractor to proceed with all or a portion of the Work.
- SS. **Product Data** – Information furnished by the Contractor to describe materials used for some

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- portion of the Work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.
- TT. **Project** – Pierce Transit's Project, of which this Contract is a part.
- UU. **Proposal Documentation** – Any and all work papers, spreadsheets, takeoffs, material lists, subcontractor quotes, vendor or material quotes, lists of wage rates and equipment rates (both rented and owned) and any and all papers, documents and electronic information or computer files created or used by Contractor when preparing its Proposal.
- VV. **Proposer** – An individual, firm, partnership, corporation, joint venture, or other legal entity submitting a proposal for the Work.
- WW. **Provisional Sum or Allowance** - An amount established in the Contract Documents for inclusion in the MACC to cover Work which may or may not be carried out by Contractor and which cannot be accurately quantified at the time of MACC negotiations, with provision that variations between such amount and the finally determined cost of the prescribed items will be reflected in Change Orders appropriately adjusting the Total Contract Cost. Any amount included as a Provisional Sum but not used in the course of the Work and the associated GC/CM Fee shall be returned to Pierce Transit by way of deductive Change Order. If the actual amount of Provisional Sum work exceeds the Provisional Sum included in the MACC, adjustment to the Total Contract Cost shall be in accordance with Article 4 (Changes).
- XX. **Punch List** – The list(s) of elements of the Work that remain to be completed or corrected after achievement of Substantial Completion of the Work or portions of the Work which must be completed as a condition of Acceptance.
- YY. **Reference Documents** – Drawings, specifications, and other documents that do not specify Work required by the Contract, but which provide supplemental information regarding the Contract.
- ZZ. **Reference Drawings** – Drawings prepared by or belonging to Utilities or other third parties (including but not limited to other governmental bodies in whose rights-of-way, easements or properties all or part of the Work is to be executed).
- AAA. **Reference Specifications** – Specifications prepared by or belonging to Utilities or third parties (including but not limited to other governmental bodies) in whose rights-of-way, easements or properties all or part of the Work is to be executed.
- BBB. **Request for Information (RFI)** – The document by which the Contractor requests clarification, verification or information on a portion of the Work
- CCC. **Project Manager** – Pierce Transit's authorized representative designated to perform technical and administrative functions of this Contract.
- DDD. **Responsible Subcontractor**– A Subcontractor who complies with all requirements of federal and state law, including without limitation, RCW 39.04.010, 39.04.350, and 39.06.020. Nothing in this definition precludes the Contractor and Pierce Transit from including supplemental Subcontractor Responsibility criteria in subcontract bid packages as allowed under applicable law and regulations.
- EEE. **Safety Certification** – A formal process implemented to ensure that all of Pierce Transit's facilities, equipment, and training programs conform to the established requirements. This includes reviewing and certifying items for compliance with operational safety requirements prior to the start of revenue service to ensure a safe operating Transit System.

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- FFF. **Safety Critical Item** – Any submittal, installation, inspection, or test identified in the Specification Conformance Checklist that has been determined by Pierce Transit to have an impact on the safe operation of its Rail Transit System.
- GGG. **Samples** – 1) Representative quantities of materials taken in specified amounts and frequencies for subsequent testing in accordance with specified procedures; or 2) physical examples of materials to be supplied or workmanship, which shall, when approved by Pierce Transit, establish standards by which the Work shall be compared and evaluated.
- HHH. **Schedule of Values** – The breakdown of the Total Contract Cost into specific components of the Work used as the basis for progress payments.
- III. **Self-Performed Work** – The work within the subcontract bid package or equipment or materials that is customarily performed or supplied by the general contractor/construction manager.
- JJJ. **Site (aka Project Site)** – The areas that are occupied by or used by the Contractor, Subcontractors, Consultants, Subconsultants during performance of the construction of the Work in the Pierce Transit operational area of Washington, and are indicated in the Contract Documents as being within the project limits. This includes any areas outside the project limits, which are designated in writing by Pierce Transit as being part of the Project Site. For purposes of the Contract Documents, and not for prevailing wage determinations, off-site precast factories/facilities will not be considered part of the Site.
- KKK. **Pierce Transit** –Pierce County Public Transportation Benefit Area Corporation
- LLL. **Pierce Transit Controlled Float** – If specified in the Special Conditions, an activity or activities that the Contractor shall enter into its Construction Schedule in a specified location(s) with a specified duration(s) that is under the sole control of Pierce Transit.
- MMM. **Special Conditions** – A part of the Contract Documents, which modify the General Conditions and provide information specific to this Contract.
- NNN. **Specification Conformance Checklist** – A document that provides evidence that the Pierce Transit’s System will operate safely in accordance with safety critical requirements for documentation, installation, inspection and testing referenced in the Contract Specifications.
- OOO. **Specified General Conditions Work** – All tasks and services (except those specifically identified as Negotiated Support Services) required to execute the Work as well as the requirements of the Contract contained in (1) these GC/CM General Conditions, (2) Special Conditions (if any), (3) the Division 01 specifications, and as further set forth in Article 9.11 (F).
- PPP. **Subcontract** – Any Contract between the Contractor and a Subcontractor, or between Subcontractors of any tier, to perform a portion of the Work.
- QQQ. **Subcontractor** – An individual, firm, partnership, or corporation that has a contractual obligation with a Consultant, Contractor or other Subcontractor to perform some part of the Work required for the completion of the Contract, and whose principals or employees are actively performing such Work at the Project Site.
- RRR. **Submittal** – Written or graphic document or sample that is required by the Contract Documents and is prepared for the Work by the Contractor, a Subcontractor or Supplier, and submitted to Pierce Transit by the Contractor, including shop drawings, product data, samples, certificates, schedules of material or other data. Submittals are not Contract Documents.

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- SSS. **Substantial Completion** – The time at which the Work or a portion thereof has progressed to the point where it is sufficiently complete in accordance with the Contract Documents, so that the Work, or a specified portion thereof, can be utilized for the purpose for which it is intended.
- TTT. **Substitution** – An item of significant difference in material, equipment or configuration which functionally meets the requirements of the Contract Documents but does not meet the Specifications and is equivalent to the specified item.
- UUU. **Suppliers** – Any person, firm, partnership, corporation, joint venture, or combination thereof, other than a Subcontractor, contracting with the Contractor, either directly or through a lower-tiered contractual relationship, to furnish goods or services in connection with the Contract.
- VVV. **Total Contract Cost** - The total amount payable to the Contractor under the terms and conditions of the Contract, comprised of the following, which are defined elsewhere in these General Conditions.
1. Fixed GC/CM Fee
 2. Fixed Amount for Specified General Conditions Work
 3. Maximum Allowable Construction Cost (MACC), which includes:
 - a. Maximum Total Subcontract Package Cost (MTSPC), which includes
 1. Subcontract Bid Package Cost, which is defined as (A) all subcontract costs for subcontract packages obtained through competitive bidding, including subcontracts performed by the Contractor, plus (B) any negotiated subcontract bid package Work performed by the Contractor or its affiliated companies, and
 2. If used pursuant to RCW 39.10.385, EC/CM and/or MC/CM Maximum Allowable Subcontract Costs (MASC), including MASC Risk Contingency
 - b. Negotiated Support Services
 - c. Provisional Sums or Allowances
 - d. MACC Risk Contingency
 4. Award Fee Incentives (if any are used and earned)
- WWW. **Total Contract Cost Documentation** -- Any and all work papers, spreadsheets, takeoffs, materialists, subcontractor quotes, vendor or material quotes, lists of wage rates and equipment rates (both rented and owned) and any and all papers, documents and electronic information or computer files created or used by Contractor when preparing each component of the Total Contract Cost (including the fixed amount for the detailed Specified General Conditions Work, Negotiated Support Services, the Maximum Total Subcontract Package Cost, the negotiated Maximum Allowable Construction Cost, and the Fixed GC/CM Fee), together with an itemized list of said documents and files. The same level of documentation is required for each Subcontract that has a value that is equal to or greater than (i) 5% of the MACC or (ii) \$5,000,000, whichever is less.
- XXX. **Technical Data** - Any plans, drawings, designs, specifications, technical reports, operating manuals, notes, data, documentation, and computer software (in source code and object code form), not specifically designated as existing proprietary know-how of the Contractor, its Subcontractors or Suppliers, which are required to be supplied as part of the Work.
- YYY. **Unknown Hazardous and Contaminated Substances** – Hazardous or Contaminated Substances that were not indicated in the Contract Documents, that were present on the Site prior to construction, and that are unexpectedly encountered by the Contractor during the performance

of the Work.

ZZZ. Utility or Utilities – All public and private facilities, other than the Pierce Transit system facilities, which relate to 1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations; or 2) electrical energy, telephone, telegraph communications, radio, television, and public transit installations.

AAAA. Utility Standards – Drawings and specifications for Utilities published or issued by municipalities or utility companies.

BBBB. Work – The requirements of the Contract as specified, shown, indicated or implied in the Contract Documents, including all alterations, amendments or extensions thereto made by Change Orders.

1.02 INTENT AND INTERPRETATION OF CONTRACT DOCUMENTS

The intent of the Contract Documents is to describe the construction and completion of the Work. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, the best practice shall be followed and only materials and workmanship of best quality shall be used. Unless otherwise specifically stated in the Contract, the Contractor shall furnish, deliver, provide, and pay for all materials, labor, professional services, tools, equipment, water, light, power, heat, transportation, supervision, temporary construction of any nature, consumables, and other services and facilities of any nature, whatsoever necessary, to execute, complete and deliver the Work within the Contract Time. The Work shall be executed in strict conformance to the Contract requirements.

The Contract Documents set forth the requirements as to the nature of the completed Work and do not purport to control the means and methods of performing Work, unless specifically set forth in the Contract Documents. The Contractor is wholly responsible for making its own decisions about the means and methods of performing the Work. If any references have been made in the Contract Documents to responsibilities of work by crafts and specialty or trade contractors, these references were made for the convenience of preparing the Contract Documents and are not intended to limit any responsibility of the Contractor to provide a complete installation under the Contract.

1.03 CONTRACT IS SUBJECT TO FTA PROVISIONS

The Contract may be wholly or partially funded by the Federal Transit Administration ("FTA") therefore subject to certain federal provisions. Further, the FTA requires that certain terms and conditions of the Contract Documents be included in all Subcontracts. The Contractor shall be responsible for ensuring all applicable mandatory FTA provisions are included in all Subcontracts. These mandatory FTA provisions are set forth in Section 00 73 73 Federal Provisions.

1.04 CONFORMITY TO CONTRACT DOCUMENTS

The Work in all cases shall conform to the lines, grades, cross sections, and dimensions shown on the Contract Documents or approved modifications thereto, and shall be within the tolerances specified, or, if no tolerance is specified, as determined by the Project Manager.

1.05 ORDER OF PRECEDENCE

- A. Each Contract Document is an essential part of the Contract between Pierce Transit and the Contractor, and a requirement present in one Contract Document is binding as though it was present in all. The Contract Documents are intended to be complementary and prescribe and provide for all Work required by the Contract Documents. Anything mentioned in the Specifications and not shown in the Drawings, or shown in the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in

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- both. Any Work, materials or equipment that has not been specifically included in the Contract Documents but which is reasonably required to produce the intended result shall be provided by the Contractor as though it had been specifically included.
- B. Conditions or Work not covered by the specifications may be described in other Contract Documents and shall be performed by the Contractor in accordance therewith and in accordance with the Specifications insofar as applicable. Work required by the Contract Documents for which a separate price is not provided in the Contract Documents shall nevertheless be considered as a part of the Work and all costs of the same are deemed to be included in the Contract Sum.
- C. The drawings indicate only such details as are necessary to give a comprehensive idea of the Work. The Engineer may furnish to the Contractor such additional drawings and clarifications, consistent with the purpose and intent of the Contract Documents, as the Engineer may deem necessary to detail and illustrate the Work. The Contractor shall conform its Work to such drawings and explanations. The furnishing of such additional drawings or clarifications shall not entitle the Contractor to an increase in the Contract Time or Contract Sum.
- D. Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:
1. Change Orders to signed GC/CM Contract.
 2. Signed GC/CM Construction Agreement
 3. Supplemental Conditions to GC/CM General Conditions.
 4. Modifications to GC/CM General Conditions.
 5. GC/CM General Conditions.
 6. Contract Specifications—provisions in Division 01 shall take precedence over provisions of any other Division.
 7. Contract Drawings—in case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings and computed dimensions shall govern over scaled dimensions.
 8. Documents the GC/CM submitted in response to the Request for Qualifications and Proposed Approach (RFQ/PA) and the Final Proposal submitted in response to the Request for Final Proposals (RFFP).
 - 1) RFFP
 - 2) RFQ/PA
- E. In the event of a conflict between the Contract Documents and applicable laws, codes, ordinances, regulations or orders of governmental authorities having jurisdiction over the Work or any portion thereof, or in the event of any conflict between such applicable laws, codes, ordinances, regulations, or orders, the most stringent requirements of any of the above shall govern and be considered as a part of this Contract in order to afford Pierce Transit the maximum benefits thereof.
- F. The organization of the Specifications and arrangement of Drawings shall not control the

Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. Pierce Transit assumes no responsibility to act as arbiter in the division and proper coordination of Work between particular Subcontractors or workers.

1.06 REQUESTS FOR INFORMATION / FIELD CLARIFICATIONS

A. Request for Information

1. If the Contractor discovers, or in the exercise of reasonable diligence should have discovered, that the Work to be performed is not sufficiently detailed or explained in the Contract Documents, or that there is an apparent conflict or inconsistency between any part of the Contract Documents, the Contractor shall promptly apply to the Project Manager for such further written explanations as may be necessary using a Request for Information (RFI) form to be provided or approved by the Project Manager. The Project Manager will address the RFI in writing. Before submitting a RFI, the Contractor shall diligently and thoroughly examine the Contract Documents. Costs incurred by Pierce Transit to respond to RFIs which could have been avoided had the Contractor examined the Contract Documents shall be the responsibility of the Contractor. The Contractor shall also plan its Work in an efficient manner so as to allow for timely responses to RFIs. If requested by the Project Manager, the Contractor shall prioritize its RFIs and explain the reasons for such priority. The Contractor's submission of an RFI shall be a condition precedent to a Contractor submitting a Request for Change related to any conflict or inconsistency, and the Contractor's failure to apply to the Project Manager for interpretation or clarification of any known conflict or inconsistency shall bar any subsequent claim related to the conflict or inconsistency. The Contractor's submission of an RFI does not fulfill the requirements of Articles 4 and 10 and shall not constitute a Claim.
2. Pierce Transit will reply to the RFI with reasonable promptness. If Contractor submits an RFI on an activity less than twenty (20) days prior to the commencement of that activity, Contractor shall not be entitled to any time extension or adjustment to the Total Contract Cost due to the time it takes Pierce Transit to respond to the RFI.
3. Responses by Pierce Transit to RFIs are not changes to the Contract. If Contractor believes a response to an RFI constitutes changed work or causes an adverse impact to performance of the Work or schedule, the Contractor is required to submit a Request for Change in accordance with the requirements of Article 4.02.

B. Field Clarification

If Pierce Transit identifies minor discrepancies in or a need to clarify information contained in the Contract Documents, Pierce Transit may issue a Field Clarification to so correct the minor discrepancies or provide the clarification. Because Field Clarifications should not have any effect on the cost or time of performance of the Work, they do not provide for either a time extension or a change in the Total Contract Cost. If Contractor believes that a Field Clarification constitutes changed work for which a time extension or additional compensation is necessary, the Contractor is required to submit a Request for Change in accordance with the requirements of Article 4.02.

1.07 SITE INVESTIGATION AND CONDITIONS AFFECTING WORK

- A. By executing the Contract, the Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the condition of the Site itself, including without limitation the general and local conditions which can affect the work or its costs, including but not limited to local weather, geotechnical conditions, traffic patterns, availability of labor, available utilities, local requirements, adequacy and accuracy of Contract Documents, the character of equipment and materials required to perform the Work, and conditions bearing upon utilities as relates to temporary or permanent relocation or installation thereof.
- B. The Contractor acknowledges that any geotechnical, soils or subsurface reports, including core sample reports, referenced in the Contract Documents are only intended to describe the conditions at those particular locations at a particular point in time, and are not guaranteed to represent the actual conditions the Contractor will encounter during the course of the Work. The Contractor acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site and information available to the Contractor in the Contract Documents or Reference Documents.
- C. The Contractor must make its own judgments regarding (1) the character, quality, and quantities of surface and subsurface materials or obstacles to be encountered using the information in the Contract Documents or Reference Documents, and (2) information that is reasonably ascertainable from an inspection of the Site.
- D. Any failure of the Contractor to take actions described and acknowledged in this Article will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Pierce Transit.
- E. By executing the Contract, the Contractor certifies that it has carefully reviewed, has had clarified, and understands all of the Contract Documents; has inspected the Site as needed to evaluate and assess all pertinent existing conditions applicable to the Work, and is satisfied as to its ability and intention to conduct and complete the Work required in the Contract Documents on the terms and conditions stated in the Contract. In particular, the Contractor certifies that it has reviewed the requirements for the format and detail of records to be maintained at all times during the performance of Work, and that it has instituted or will implement the preparation and maintenance of all such records. In particular, the Contractor represents as follows:
 - 1. It is familiar with and is satisfied as to all Federal, state and local laws and regulations that may affect the cost, progress, performance and furnishing of the Work;
 - 2. It has correlated with the Contract Documents the information known to the Contractor, information and observations obtained from visits to the site, and reports and drawings identified in the Contract Documents; and
 - 3. It has given Pierce Transit written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 2 AUTHORITY AND RESPONSIBILITY

2.01 CONTRACT IS BETWEEN CONTRACTOR AND PIERCE TRANSIT

The Contractor is an independent contractor with respect to the performance of all Work hereunder, retaining control over the detail of its own operations and the Contractor shall not be considered the agent, partner, fiduciary or trustee of Pierce Transit. The Contractor shall not conduct itself as nor claim to be an officer or employee of Pierce Transit. The Contractor will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of Pierce Transit, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit. No employee of the Contractor or any Subcontractor is or shall be deemed to be an officer or employee of Pierce Transit. Subcontractors to the Contractor will not be recognized as having a direct relationship with Pierce Transit, nor are Subcontractors intended or incidental third-party beneficiaries to this Contract.

2.02 DUTY OF CONTRACTOR

- A. The Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other persons that the Contractor or any Subcontractor hired to perform or assist in performing the Work.
- B. The Contractor shall enforce strict discipline and good order among its employees at all times and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him or her. Any person employed on the project by the Contractor or any of its Subcontractors who, in the opinion of Pierce Transit, does not perform his or her work in a proper and skillful manner or is intemperate, disorderly, reckless, or engages in any abuse or harassment, shall, at the written request of Pierce Transit, be removed forthwith by his or her employer, shall not again be employed on the project without the approval of Pierce Transit, and shall at the Contractor's own expense be replaced by a suitably qualified person.

2.03 AUTHORITY OF PROJECT MANAGER

- A. Pierce Transit will designate a Project Manager prior to or concurrent with Pierce Transit's issuance of the Notice to Proceed. The Project Manager is Pierce Transit's point of contact for the Contractor. The Project Manager shall have the authority to administer the Contract so that the completion thereof may be accomplished in accordance with the contractual requirements.
- B. The Project Manager may designate technical support staff to perform functions under the Contract, such as inspection of the Work, review and/or inspection and acceptance of materials, supplies, services, including construction, witness of functional testing, and other functions of a technical or administrative nature.
- C. Pierce Transit and the Project Manager shall have access to the Site and the Work at all times. Should the performance of the Contractor, or the quality of the Contractor's work or materials furnished, not meet the standards specified, the Project Manager may take or require such measures as the Project Manager deems necessary to ensure compliance with contractual requirements. Any failure by the Project Manager to take these actions shall not relieve Contractor from performing its Contract obligations. The Contractor shall carry

out the instructions of the Project Manager or any person to whom the Project Manager delegates authority and gives the Contractor written notice of said delegation, concerning the Work.

2.04 CONTRACTOR'S PROJECT MANAGEMENT AND SUPERVISION

- A. As part of the proposal submitted by the Contractor in response to Pierce Transit's Request for Qualifications and Proposed Approach (RFQ/PA), the Contractor provided in writing to Pierce Transit the name, qualifications and experience of the Contractor's proposed Key Personnel. The Project Manager shall have complete authority to represent and to act for the Contractor.
- B. If for any reason and at any time any of the Key Personnel become unacceptable to Pierce Transit, the Contractor shall propose additional candidates within ten (10) days of receiving written notice from Pierce Transit. If the Contractor wishes to replace any of the Key Personnel at any time during the performance of this Contract, it first shall submit the résumé of its new candidate to Pierce Transit for Pierce Transit's approval, which shall not be unreasonably withheld. The Contractor shall not make the substitution without Pierce Transit's prior written approval. Pierce Transit in its sole discretion, may require the Contractor to remove the Project Manager, General Superintendent, or any other employee from the Site in the event such person fails to uphold or meet the requirements of the Contract, including without limitation, compliance with non- discrimination laws and regulations, or fails to perform in a competent, qualified or professional manner. Failure by Pierce Transit to require the Contractor to remove such personnel shall not relieve Contractor of its Contract obligations.
- C. The Contractor's Project Manager, or a designee, shall be present at the site of the Work at all times while the Work is actually in progress. The Contractor's Project Manager shall notify the Project Manager of the name(s) and means to contact the individual(s) who have the authority to act for the Contractor's Project Manager at such times that the Contractor's Project Manager is not present on any particular part of the Work. In the absence of such notification, the Project Manager may give direction to the superintendent or, in the absence of the superintendent, the foreman in charge of the particular part of the Work in reference to which the directions are given so long as said directions are confirmed by the Project Manager in writing to the Contractor's Project Manager.
- D. The Contractor was awarded the Contract due in part to the Contractor's submittal of qualifications for key personnel under the requirements of RCW 39.10.360. Contractor's failure to use such key personnel after award of the Contract shall (subject to the exception in Part 2.04E) constitute a breach of Contract entitling Pierce Transit at its option to any and all remedies, including but not limited to specific performance, revocation of the Contract Award, refusal to authorize Notice to Proceed, suspension of Work for such time period as is necessary for Contractor comply with the Contract by mobilizing the specific individuals, and/or termination of the Contract.

2.05 SUBCONTRACTING

- A. Subcontract Buy Out
 - 1. Competitive Bidding Required. Other than (a) the Specified General Conditions Work, (b) Negotiated Support Services, and (c) subcontract package Work negotiated directly with the Contractor, all Work must be competitively bid with public bid openings. When

subcontract bid packages are awarded, they must be awarded to the responsible bidder with the lowest responsive bid that has met any eligibility requirements established pursuant to RCW 39.10.400.

2. The buyout of major subcontracts shall be completed within six months of execution of the Contract, unless approved in writing by Pierce Transit.
3. Updated Subcontract Packaging Plan and Other Requirements. Before soliciting subcontract bids, the Contractor must submit, for review by Pierce Transit: (1) an update of the Subcontract Packaging Plan, that was developed under the separately executed Preconstruction Services Agreement, outlining the subcontract packages the Contractor intends to negotiate with Pierce Transit and those it will solicit with bid package estimates and a procurement schedule for each package; (2) an updated DBE Plan outlining the outreach and voluntary goal achievement strategies the Contractor intends to implement, and addressing the Contractor's proposed actions to comply with the requirements of the Diversity Program Provisions; (3) bidding instructions; and (4) standard subcontractor agreements; and (5) an updated Construction Schedule.
4. Modification of Subcontract Packaging Plan. During subcontract buyout, the Contractor may request a change for Pierce Transit's approval in its Subcontract Packaging Plan. In no event shall the sum of all final bid package estimates in the Subcontract Packaging Plan as revised exceed the Maximum Total Subcontract Package Cost.
5. Self-Performance by GC/CM.
 - a. Negotiated Subcontract Package Work. Consistent with RCW 39.10.370, Pierce Transit may negotiate with the Contractor to perform certain subcontract package Work. The negotiation of such work will be open-book and consistent with the following:
 - i. At the beginning (and again upon completion) of negotiations, Contractor must provide to Pierce Transit a detailed description and breakdown of the subcontract scope of work proposed to be performed, along with certified Cost or Pricing Data (consistent with and as defined in FAR 2.101) so that Pierce Transit may perform a cost analysis as part of the negotiation.
 1. The certified Cost or Pricing Data must include all (A) material and equipment costs; (B) direct labor costs; (C) subcontract-specific general conditions costs (e.g., [i] any superintendents, foremen, project managers, project engineers, and all other on-site and off-site personnel [whether supervisory, administrative, or otherwise] supporting or working directly on the project, [ii] field office requirements, supplies, and equipment, [iii] vehicles, and [iv] any utility requirements beyond those required to be provided by the Contractor in its capacity as the GC/CM); and (D) any and all other direct costs (including applicable taxes and any additional bonding or insurance costs above and beyond that required to be provided as the GC/CM); associated with the subcontract scope of work proposed to be performed.
 2. If Pierce Transit and the Contractor agree on a cost for the subcontract scope of work proposed to be performed, the total lump-sum subcontract package cost will be the sum of (A) the agreed cost, and (B) the agreed cost

- multiplied by the Negotiated Subcontract Fee Percentage.
- ii. The minimum value of negotiated subcontract work to be performed by the Contractor or its affiliated companies is zero percentage (0%) of the Maximum Total Subcontract Package Cost plus Provisional Sums or Allowances.
 - iii. In no event may the total value of all negotiated subcontract work performed by the Contractor and its affiliated companies exceed fifty percentage (50%) of the Maximum Total Subcontract Package Cost plus Provisional Sums or Allowances.
 - iv. If Pierce Transit and the Contractor cannot agree on the price for the negotiated subcontract Work, Contractor must competitively procure the subcontract Work. Contractor may compete for such work, consistent with the limitations and requirements of subsection (b), below.
- b. Competitively Procured Subcontract Package Work. The Contractor may bid on subcontract work and/or supply of equipment and materials, which it customarily performs or supplies. The Contractor’s interest in the Work must not diminish its duty to aggressively seek competition for bid packages.
- i. In the event the Contractor will be bidding on subcontract work, Pierce Transit will manage, with the Contractor’s assistance, the following steps in the bidding process: issuing the request for bids, distribution of the Contractor’s bidding documents as necessary, receipt of requests for information, distribution of clarifications/addendum, public bid opening, and review of any responsible bidder requirements.
 - ii. Notice of the Contractor’s intention to bid must be included in the public solicitation for bids for that package.
 - iii. The Contractor must provide staff to superintend and manage subcontract packages it self-performs that it obtains by competitive bid that is separate and distinct from the staff involved in the management of the Contract. In no event may the Contractor or its subsidiaries purchase equipment or materials for assignment to Subcontractors for installation or warranty.
- c. In no event may the value of the subcontract work performed by the Contractor and its affiliated companies, whether competitively procured or negotiated, exceed 70% of the Maximum Total Subcontract Package Cost plus Provisional Sums or Allowances.
6. Pre-Bid Determination of Subcontractor Eligibility. Pierce Transit and the Contractor may determine subcontractor eligibility to bid on certain bid packages based on the process set forth in RCW 39.10.400. Subcontract bid packages will be awarded to the responsible pre- qualified bidder submitting the lowest responsive bid.
7. Alternative Subcontractor Selection Process. The Contractor may choose to select a mechanical, an electrical Subcontractor, or both, using the alternative selection process set forth in RCW 39.10.385 for subcontracts with an anticipated value that will exceed \$3 Million. Upon recommendation by the Contractor, Pierce Transit and the Contractor must determine that it is in the best interest of the project and the public to use this selection method. Pierce Transit’s decision to not approve alternative subcontractor

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selection shall be final and shall not constitute delay. In the event the Contractor elects to select a mechanical, an electrical subcontractor, or both, using the alternative selection process all costs associated with the selection process shall be negotiated as support services under this Contract. If Pierce Transit allows the Contractor or an affiliated company to compete for the electrical and/or mechanical Work using the alternative selection process set forth in RCW 39.10.385, Pierce Transit will manage the solicitation and selection process. The Contractor shall provide assistance as requested by Pierce Transit.

8. Subcontractor Bid Packages. The Contractor:
 - a. Shall not use any Allowances, unless approved in advance by Pierce Transit;
 - b. May use Provisional Sums with prior approval by Pierce Transit.
 - c. May not use any Alternates without prior approval from Pierce Transit, unless such Alternates were specified in the Contract;
 - d. Shall ensure subcontract agreements are in compliance with the provisions of RCW
 - e. 39.10 and include applicable FTA requirements; and
 - f. Shall not make changes to the final bid package documents without prior Pierce Transit review.
9. Cost of Subcontract Buy Out Process. The Contractor is responsible for all subcontracting procurement process costs, to be paid for as Specified General Conditions work, which will include, but are not limited to, all labor costs associated with developing solicitations for subcontract packages, pre-qualification and subcontract procurement, site tours, responding to questions from bidders, bidding of packages, contract award, bid protests, and all costs associated with negotiating subcontract packages proposed to be performed by Contractor. Costs for advertising, printing, and website posting are also included as Specified General Conditions costs.
10. Solicitation of Subcontractors. Solicitation of subcontractors by the Contractor must be made as follows:
 - a. Solicitation of Subcontractor bid packages must be in compliance with RCW 39.10.
 - b. A Pierce Transit representative must be present at each bid opening to observe the procedure.
 - c. Solicitations for bids shall be advertised at least two weeks in advance of the bid submittal deadline, and again one week in advance, in the Tacoma Daily Index.
 - d. Bidders may obtain the bid results by telephone from the Contractor. All such calls will be referred to the Contractor.
 - e. Solicitation documents shall include responsiveness requirements, Subcontractor Responsibility criteria, and bidding and protest procedures.

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11. Single Subcontract Bid. If the Contractor receives a single bid for a subcontract bid package, the Contractor will perform a cost / price analysis to verify the reasonableness of the bid received and submit that analysis to Pierce Transit for review and concurrence, which concurrence will not be unreasonably withheld.
 12. Bid Protest. Contractor is responsible for reviewing and responding to bid protests and shall adhere to the requirements of RCW 39.10.380 in such event. Contractor will also provide notice of any protests to Pierce Transit, including copies of the protests and any proposed responses to the protesting entity, at least 48 hours prior to granting or denying the protest.
- B. The Contractor shall be responsible for obtaining from its Subcontractors and submitting to Pierce Transit all required certifications, documentation, and submittals, including but not limited to technical submittals, federal certificates, small business compliance forms, or other documentation that is required to be submitted under the terms of this Contract. The Contractor shall be responsible for ensuring that all Contract requirements provided for in the Contract Documents that are specific to subcontracting will be included in Subcontracts, including but not limited to all reporting requirements and mandatory FTA provisions set forth in Section 00 73 73.
- C. The Contractor is responsible for evaluating each of its Subcontractors under this Contract and shall award subcontracts only to Subcontractors who meet the Responsibility criteria of RCW 39.04.350. All Subcontractors shall be properly licensed, registered, or certified, as applicable, to perform the assigned Work. If requested by Pierce Transit, the Contractor shall provide documentation regarding the Contractor's evaluation of any Subcontractor's responsibility and that the Subcontractor is properly licensed, registered or certified, as applicable. The Contractor shall require all Subcontractors to comply with all provisions of this Contract and shall pass down the requirements of this Contract to its Subcontractors so that all the provisions of this Contract are fully effective.
- D. Within thirty (30) days of the signing of each subcontract, the Contractor shall submit to Pierce Transit a Business Participation Plan. The Business Participation Plan shall identify the Subcontractor, provide the data on which the responsibility determination was based, provide the socio-economic profile data of the Subcontractor, and a listing of the sub-tier subcontractors (including socio-economic profile data for each) that the Subcontractor intends to utilize in performing their Work. The Contractor shall include a copy of the subcontract (or at least that portion of the subcontract that demonstrates that all required federal clauses were included in the subcontract) with the Business Participation Plan. The copy of the subcontract that is submitted to Pierce Transit shall have been signed by both the Contractor and the Subcontractor.
- E. Contractor shall submit a Monthly Report on Subcontractors, as part of its monthly progress payment request. Submission of a completed Monthly Report of Subcontractors shall be a condition precedent to Pierce Transit processing progress payment requests.
- F. If the Contractor believes that a Small Business / Disadvantage Business Enterprise (SB/DBE) Subcontractor that was listed at any tier to fulfill the Contractor's SB/DBE commitment may not be able to successfully complete any portion of the subcontracted Work, the Contractor shall immediately identify to the Project Manager the Subcontractor at issue, the reason for believing such subcontractor may not be able to perform the subcontracted Work, and any

actions being taken by the Contractor to mitigate such possibility.

- G. No Work shall be subcontracted to new Subcontractors without written notification to Pierce Transit. No substitutions shall be made for any Small Business/ Disadvantaged Business Enterprise Subcontractor that was listed to fulfill the Contractor's SB/DBE commitment without written notification to, and approval by, Pierce Transit.
- H. Subcontracting shall create no contract between Pierce Transit and the Subcontractor, nor shall the Subcontractor have any rights against Pierce Transit by reason of its Subcontract with the Contractor. The Contractor shall be responsible for all Work furnished, and no Subcontract shall relieve the Contractor of any of the Contractor's obligations or liabilities under the Contract.
- I. The Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers including persons directly or indirectly employed by them, their guests, and invitees. The Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or between them.
- J. If a Subcontractor's work fails to meet Contract requirements or demonstrates careless or unacceptable workmanship and the Subcontractor fails to respond to notice of such defective work or to improve workmanship, the Project Manager may direct the Contractor to replace the Subcontractor by rebidding or negotiating the performance of the work or perform the work itself.
- K. The Contractor bears all the risk and responsibility for cost overruns and delay resulting from a subcontractor's inability to perform and the Subcontractor shall not again be employed on the Work. The Contractor shall not be entitled to additional compensation for replacement of Subcontractors.
- L. The on-site production of materials produced by other than the Contractor's forces shall be considered as subcontracted. The erection, establishment, or reopening of on-site plants for production of materials and the operation thereof in the production of said materials for use on the Work shall conform to the requirements relating to labor and insurance set forth in the Contract Documents.
- M. Contractor must perform all work required to subcontract the installation of Owner Furnished Equipment, if any.
- N. Savings
 - 1. If the Contractor completes all Work of the subcontract bid packages, including subcontract bid package Work for which the Contractor is the successful bidder, in a total amount less than the negotiated Maximum Total Subcontract Package Cost, any remaining savings and the associated Fixed GC/CM Fee will be returned to Pierce Transit, as a deductive change order.
 - 2. Pierce Transit and the Contractor shall meet within six months of Contract execution and, thereafter, at Pierce Transit's request, to review any potential cost savings from the Maximum Total Subcontract Package Cost realized by the award of subcontracts. The parties will come to a mutual agreement regarding how much of the savings should be retained pending performance of the Work by the Subcontractors and how much can be returned, including the associated Fixed GC/CM Fee amount as a

deductive change order to Pierce Transit.

2.06 CONTRACTOR'S PLANT AND EQUIPMENT

The Contractor shall furnish plant and equipment that shall be of adequate number, size, and condition to produce satisfactory quality of Work, including without limitation all applicable federal requirements. All plant and equipment used by the Contractor shall meet all applicable safety, noise, and emission regulations and permit requirements as well as other requirements of the Work. Plant and equipment that fails to meet the requirements of the Contract or to produce a satisfactory product or result shall, upon written order by Pierce Transit, be removed immediately and not used again on the Project without Pierce Transit's prior written approval. All additional costs, delay or impact resulting from Contractor's use of plant or equipment failing to meet Contract requirements shall be at Contractor's expense.

2.07 ACCEPTANCE OF EXISTING CONDITIONS

If any part of the Contractor's Work depends on proper execution of the work of other forces or existing conditions, the Contractor shall report to the Project Manager, before using the work, all defects found in such work that render it unsuitable for the Contractor's Work. Such report shall be in writing and shall be submitted within thirty (30) days of being granted access to the work. Failure of the Contractor to report such defects shall constitute an acceptance of the other forces' work or existing conditions as fit and proper for the execution of the Contractor's Work and shall preclude any claim for additional compensation or schedule extension for uncovering the Work or correcting defects, except for defects in the other force's work which are latent and not reasonably discernible. Any request for additional compensation based on defective work of others or existing conditions shall be governed by the procedures of Article 4, Changes and Change Order Process.

ARTICLE 3 CONTROL OF THE WORK

3.01 NOTICES AND COMMUNICATIONS

A. Pierce Transit's Web-based Project Management Information System (PMIS)

Pierce Transit will utilize a web-based Project Management Information System (PMIS). The PMIS provides a number of benefits to project participants, including timely communications and responses, automated tracking of time sensitive items, common document storage and management, audit trail of information, and secure, real-time 24/7 access and exchange of information. All document transmittals from the Contractor to Pierce Transit shall be made electronically via the PMIS. Private or company confidential information should not be posted to the PMIS. The Web-based PMIS shall be used to submit and track all project documentation, including, but not limited to, meeting minutes, scheduling, submittals, shop drawings, product data, and other submittals, substitution requests, application for payments, construction field reports and other reports, photographs, change orders, RFIs, non-compliance reports, project schedules, etc. All contract related documents will be posted to the PMIS. All Contractor employees who will use PMIS shall complete the training provided by Pierce Transit prior to having access to the system. Training on the use of the PMIS will be scheduled by Pierce Transit at no cost to the Contractor. Sharing of user accounts is prohibited. Training time for Contractor staff shall be at the sole expense of the Contractor. The participation of the Contractor's Subcontractors, vendors, and Suppliers is available but not required, however, it is the

responsibility of the Contractor to coordinate between the PMIS and all Subcontractors, Suppliers, or vendors, at any tier. Pierce Transit will provide the Contractor, and any subcontractors, suppliers, or vendors with individual user licenses to access the PMS at Pierce Transit's cost.

3.02 COORDINATION WITH OTHERS

- A. Pierce Transit reserves the right to perform work not included in the Contract or let other contracts to third parties to perform other work in the vicinity of, or relating to, this Contract. Other government agencies may also be performing other work in the vicinity of or relating to this Contract such as inspections, utility maintenance / relocation / construction, road maintenance / construction and other activities. Private developers or businesses may be engaged in activities in the vicinity of, or relating to, this Contract. The Contractor shall cooperate with Pierce Transit, other agencies, and other contractors or developers in scheduling and coordinating the Contractor's Work with the work of others in order to minimize conflicts, avoid interruptions or delays to others and promote the orderly completion of the Work as a whole. The Contractor shall not commit or permit any act that will interfere with the performance of work by any government agency, contractor, developer, or Pierce Transit.
- B. Unless specifically identified otherwise, the Contractor may not have exclusive access to or use of work areas. Unless the Contractor has exclusive access to a work area, the Contractor may be required to use facilities and areas concurrently with others. When other forces are employed on related or adjacent work, the Contractor shall conduct its operations in such manner as to cause the least possible delay and hindrance to the other forces. The Contractor shall be responsible to Pierce Transit for all damage to the Work, persons, and property caused to other forces by Contractor's operations and for loss to other forces caused by the Contractor's unnecessary delays and for failure to finish the Work within the time specified for completion.
- C. If the Contractor is unreasonably delayed by others, immediate notification shall be made in writing to the Project Manager. Any request for a time extension or additional compensation allegedly resulting from such delay shall be made in accordance with the procedures of Article 4, Changes and Change Order Process and Article 10.02 B, Delays. The Contractor shall mitigate and minimize any such delay by other forces.

3.03 CONTRACT RECORDS

- A. The Contractor shall keep and maintain comprehensive records and documentation relating to the Work under this Contract, as well as documents related to the Contractor's proposal and contract cost accounting records for this Contract in Pierce Transit's PMIS. The Contract Records shall include, but are not limited to, Proposal Documentation, Contract Documents, subcontracts, purchase orders, employment records, payrolls, project cost accounting records, prevailing wage records, plans, specifications, addenda, shop drawings, Change Orders, and all working documents leading to Change Orders, field test records, quality control documents, daily construction logs by all field supervisors and contract management personnel, correspondence relating to the Contract, and drawings labeled as as-built. Contract records shall be maintained and retained by the Contractor for the audit period required under Article 3.04 below.
- B. Contractor and its Subcontractors shall segregate and separately record at the time

incurred all costs resulting in any way from any event, act, omission or condition for which Contractor or its Subcontractors seek an adjustment to the Total Contract Cost, Contract Time and/or monetary compensation of any kind. Any costs claimed to be delay or impact costs, acceleration costs, loss of productivity or inefficiency costs, increased costs of onsite or home office overhead or any similar costs shall be separately recorded at the time and shall be fairly and accurately allocated to each such event, act, omission or condition and to other causes of such costs. The Contractor shall be entitled to make Claim or obtain extra compensation for any such event, act, omission or condition only to the extent the Contract Records are kept in full compliance with all Contract requirements, the cost allocations support entitlement to such compensation, and are otherwise permitted in the Contract Documents.

- C. EEO/Non-Discrimination Documentation. The purpose of this sub-section is to ensure that the Contractor and all of its subcontractors at every tier maintain sufficient written documentation so that Pierce Transit can easily and quickly verify that all hiring and termination decisions related to workers fully complies with applicable Title VI, equal employment opportunity and non- discrimination laws, regulations, and policies.
- D. Cost records shall be kept in accordance with generally accepted accounting principles and the Contract Documents and shall include all records reasonably necessary, as determined by Pierce Transit, to verify all costs incurred and any schedule revision required.
- E. The Contractor shall ensure each of its Subcontractors maintains and retains for said audit period all Contract Records pertaining to the performance of the Subcontractor's Work under this Contract in full compliance with Article 3.03A through D. In the event this Contract is funded in part with federal funds, and the federal grant requires different reporting or retention periods, the more stringent requirement will apply.

3.04 AUDIT ACCESS TO RECORDS

- A. The Contractor acknowledges that it shall fully comply with any request by Pierce Transit to perform an audit of all costs incurred in connection with the Project, including the audit and verification required by RCW 39.10.350(5).
- B. The Contractor shall permit, and shall require Subcontracts to permit, authorized representatives of Pierce Transit, the U.S. Department of Transportation, and the Comptroller General of the United States to audit, inspect, examine, and copy the Contract Records that are maintained by Contractor, any affiliated company or any Subcontractor involved in the Contract at any reasonable time and shall provide such assistance as may be reasonably required in the course of such inspection, including the right to interview personnel. Pierce Transit further reserves the right to examine and re-examine the Contract Records during the six (6) year period following the Final Payment and until all pending matters are closed. Such audit(s) may include examination of the Contract Records for evaluation of any Change Order or Claim, or any issue related to performance of the Work. The Contractor shall in no event dispose of, destroy, alter, or mutilate said Contract Records in any manner whatsoever for six (6) years after Final Payment and until all pending matters are closed. No additional compensation will be provided to the Contractor for compliance with the requirements of this Article.

3.05 SUBMITTALS AND SHOP DRAWINGS

- A. Where required by the Contract Documents, the Contractor shall submit specified

information that will demonstrate that the Contractor's proposed materials, equipment, or methods of Work are in compliance with the Contract Documents. Pierce Transit will not be obligated to accept or pay for materials, equipment or Work for which submittals are required herein, unless and until all submittals have been submitted and reviewed in accordance with the Contract Documents.

- B. Review and other appropriate action with regard to Submittals by Pierce Transit shall be for general conformance with the Contract requirements and shall not relieve the Contractor of responsibility for any errors or omissions in such Submittals, nor from compliance with the requirements of the Contract Documents; and further, the Contractor shall have no claim under the Contract on account of the failure, or partial failure, of the method of work, material, or equipment so reviewed. Review by Pierce Transit shall not constitute approval of the safety precautions employed by the Contractor during construction, or constitute approval of the Contractor's means or methods of construction. The Contractor shall not deviate from shop drawings, product data, samples, or similar submittals that have been reviewed with a finding of "No Exception Taken" without submitting the proposed deviation for Pierce Transit's review and appropriate action.
- C. Pierce Transit reserves the right to charge the Contractor for all, or some portion of, the costs of excessive or unreasonable costs of reviewing submittals repeatedly rejected for being incomplete or inadequate.
- D. Submittals offered to demonstrate methods, procedures, sequences, or duration for performing the Work or to detail temporary elements such as shoring or formwork, shall be reviewed by Pierce Transit for general compliance with applicable requirements of the Contract. Such review will not include a detailed analysis of the design or an evaluation of the adequacy of the method, procedure, resource commitments, or time allocated for performance.
- E. Contractor shall make Submittals to Pierce Transit only after (1) reviewing all Contractor and Subcontractor Submittals for accuracy and compliance with the Contract and (2) coordinating all Submittals with all Work by other trades.

3.06 CUTTING AND PATCHING

The Contractor shall be responsible for all cutting, fitting, and patching required to complete the Work or to make its parts fit together properly. The appearance following any cutting, fitting, or patching shall conform to the appearance of adjacent like materials or surfaces and be consistent with the overall appearance of the Project. The Contractor shall be responsible for any damages caused by its cutting, fitting, and patching, whether of its own Work or of other work affected by the cutting, fitting or patching. The Contractor may not alter any work other than its own except by permission by Pierce Transit. Such permission by Pierce Transit shall not relieve the Contractor from responsibility for the Work affected by the cutting, fitting, or patching.

3.07 INSPECTION, SAMPLING, AND TESTING

- A. Contractor Testing
 - I. It is the Contractor's responsibility to provide materials, supplies, equipment and workmanship that conforms to the Contract Documents. Unless specifically provided otherwise in the Contract Documents, the Contractor shall be responsible for demonstrating and documenting that the materials or equipment to be incorporated

into the Work comply with the Contract Documents. Materials testing shall be performed by an Independent Testing Laboratory in accordance with the Contract Documents. The Contractor shall bear all costs of said tests.

- II. In the event that a third-party public agency has authority over materials or equipment, approval must be obtained from said third-party public agency prior to Pierce Transit's approval. Approval by a third-party public agency does not constitute approval by Pierce Transit. The Contractor shall provide Pierce Transit, and any applicable third-party public agency, with a schedule by which any testing will be conducted as well as timely notice of the time and place of any such tests. The Contractor shall maintain complete test records and submit them to Pierce Transit upon request or as required elsewhere by the Contract Documents.
- III. Any mechanical, electrical and instrumentation systems which function as a completed system must be tested or inspected as a complete system in addition to any tests or inspections conducted for the component parts.
- IV. If conformance of materials or equipment to the requirements in the Contract is not determinable through inspection and tests, the Contractor shall provide properly authenticated documents, certificates, or other satisfactory proof of conformance. Such documents, certifications, and evidence shall include performance characteristics, materials of construction, and the physical and chemical characteristics of materials. All costs associated with such certification shall be paid by the Contractor.

B. Pierce Transit Inspection and Testing

- I. Pierce Transit reserves the right to sample, inspect, or test the materials, equipment, and Work, as it deems necessary at any reasonable time during the Work. Said testing and inspection may occur on or off the site. Pierce Transit shall conduct such tests or inspections in a manner that will cause no undue delay in the Work. The Contractor shall provide Pierce Transit with sufficient notice, access, and assistance to allow Pierce Transit's representative to inspect, sample, and test materials and equipment prior to their incorporation into the Work or to inspect, sample, or test Work prior to covering the Work. Re-inspection or re-testing required because of non-conformance to specified requirements will be charged to the Contractor.
- II. Pierce Transit, at any time prior to Final Acceptance, may require the Contractor to uncover either portions of or all of the Work for inspection, sampling, and testing. The Contractor shall restore these portions of Work to the standard required by the Contract. The uncovering and restoration shall be done at the Contractor's expense, if the Work uncovered does not comply with the Contract, if it complies but was done without required documentation, or if Pierce Transit was given insufficient notice to allow adequate time for inspection, sampling, or testing. If the Work uncovered meets the Contract requirements and was done with sufficient notice to Pierce Transit, the costs of uncovering and restoration shall be paid by Pierce Transit in accordance with Article 4, Changes and Change Order Process.
- III. The Project Manager may inspect the production of material or the manufacture of products at the source of supply. Plant inspection, however, will be undertaken with the cooperation and assistance of both the Contractor and the material producer. The

Project Manager or the Project Manager's authorized representative shall have reasonable entry at all times to such parts of the plant as concern the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The Project Manager assumes no obligation to inspect materials at the source of supply. The responsibility for incorporating satisfactory materials in the Work rests entirely with the Contractor, notwithstanding any prior inspections or tests.

- IV. The Project Manager's inspection is conducted to verify that the Contractor has performed its work properly. Any observation, verification, inspection, or approval of the Work or materials by Pierce Transit shall not relieve the Contractor of any of the Contractor's obligations to fulfill the Contract as prescribed. Work and materials not meeting Contract requirements shall be made acceptable to Pierce Transit. Unsuitable work or materials may be rejected, notwithstanding that payment for such Work or materials may have been previously authorized and included in a progress payment.
- V. Unless the subject items are expressly accepted by Pierce Transit in writing, any inspection and testing done by Pierce Transit is for the sole benefit of Pierce Transit only and does not constitute or imply acceptance; relieve the Contractor of responsibility for providing adequate quality control measures; relieve the Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment; relieve the Contractor of its responsibility to comply with the requirements of the Contract Documents; or impair Pierce Transit's authority to reject defective or non-conforming Work or invoke any remedy to which it may be entitled.

3.08 NON-CONFORMING WORK AND DEFECTIVE WORK

- A. Defective Work - If Pierce Transit determines that material, equipment, or workmanship proposed for or incorporated in the Work does not fully comply with the requirements of the Contract and will not be accepted by Pierce Transit (Defective Work), Pierce Transit may reject such Work upon written notice to the Contractor. In such event, Pierce Transit may, at its discretion, (1) require the Contractor to promptly repair, replace or correct all Work not performed in accordance with the Contract; (2) require the Contractor to provide a suitable corrective action plan, which shall only be performed if approved by Pierce Transit; or (3) provide a suitable corrective action plan and direct the Contractor to execute it, and in such case Contractor shall have the option of (i) implementing the Pierce Transit plan or (ii) promptly repairing, replacing or correcting all Work not performed in accordance with the Contract. Regardless of the option chosen by Pierce Transit, the Contractor shall implement such plan with no delay to the Construction Schedule, at no additional cost to Pierce Transit, and within a period provided by Pierce Transit. If the corrective action plan as accepted or directed by Pierce Transit does not remedy the Defective Work, the Contractor shall remain responsible for remedying the Defective Work to Pierce Transit's satisfaction and at no additional cost or schedule delay to Pierce Transit. The Contractor shall also be responsible for repairing all property and work damaged by the Contractor at no cost or schedule delay to Pierce Transit.
- B. Non-Conforming Work - Pierce Transit may at its option retain Work that does not fully comply with the requirements of the Contract. A reasonable value for such Non-Conforming Work will be determined by Pierce Transit, and appropriate deductions will be

made in the payments due or to become due to the Contractor. Final Acceptance will not act as a waiver of Pierce Transit's right to recover from the Contractor an amount representing the deduction for retention of Non- Conforming Work.

- C. Pierce Transit's inspection of the Work or right to reject Work that does not fully comply with the Contract shall not relieve the Contractor of its responsibility for performing the Work in full conformance with the Contract Documents. No failure or forbearance of Pierce Transit in notifying the Contractor of Work that does not fully comply with the Contract shall relieve the Contractor of its Contract responsibility to ensure that the Work is performed in accordance with the Contract Documents.

3.09 ACCEPTANCE OF WORK

- A. Inspection - When the Contractor has concluded the Work or a designated portion thereof, the Contractor shall notify Pierce Transit in writing that the work is complete and ready for inspection. Upon receipt of the notification, Pierce Transit will promptly by inspection determine the actual status of the Work in accordance with the terms of the Contract. If Pierce Transit finds materials, equipment, or workmanship not in conformance with the Contract, Pierce Transit will prepare a Punch List of such corrective items and submit the list to the Contractor. At any time prior to Acceptance, Pierce Transit may add Punch List items. The Contractor shall complete all Punch List items and notify Pierce Transit that the Work is ready for Acceptance. Upon such notice, Pierce Transit will verify that the Work has been completed. If such Work has not been completed and additional inspections become necessary because of the acts or omissions of the Contractor, the Contractor shall reimburse Pierce Transit for its costs related to such inspections. Following completion of the corrective Work and inspection by Pierce Transit, Pierce Transit shall issue a Notice of Acceptance of the Work or a designated portion thereof.
- B. Substantial Completion - At the Contractor's request or as determined by Pierce Transit, Pierce Transit will conduct an inspection and review of required documents to determine Substantial Completion of all or a designated portion of the Work. If upon inspection and document review, Pierce Transit determines that the Contractor has in fact achieved Substantial Completion, Pierce Transit will issue to the Contractor a Notice of Substantial Completion. The Notice of Substantial Completion will provide the Contractor with a Punch List of corrective actions or other work to be completed for Acceptance. The Contractor shall complete all Punch List work within thirty (30) days after receiving the Substantial Completion Notice. Failure to do so may result in a determination by Pierce Transit to have the work done by others. The Contractor will be responsible for all costs associated with completing the Punch List work. Further, Pierce Transit reserves the right to commence use of any portion of Work that has been substantially completed. In such event, Pierce Transit will assume care, custody and control of said portion of the Work, including responsibility for operation and maintenance costs associated with use of said Work. In no case shall the Notice of Substantial Completion be construed as relieving the Contractor from liquidated damages due to delay for any portion(s) of the Work not specifically referenced therein, or any other requirement under the Contract Documents. Such Notice shall not constitute Acceptance or Final Acceptance.
- C. Prior to Pierce Transit granting Substantial Completion for any Contract Milestone, the Contractor is required to have submitted acceptable copies of all as-built drawings, operation and maintenance manuals, test report and warranties, and Contractor must

have provided and completed all training of operations and maintenance personnel required by the Contract that are associated with the Milestone for which Substantial Completion is being requested.

- D. Acceptance - A written Notice of Acceptance issued by Pierce Transit shall constitute Acceptance of a designated portion of the Work. A Notice of Acceptance shall not waive claims by or rights of Pierce Transit to revoke acceptance or for any unauthorized, Non-Conforming or Defective Work, nor shall the making of any progress payment be deemed a waiver of claims or rights of Pierce Transit under this Contract. Pierce Transit shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized, Non-Conforming or Defective Work or from recovering damages for any such Work. Contractor shall remain responsible for site security through the date of Acceptance. Pierce Transit's rights hereunder shall exist and remain to the full extent permitted by law and as set forth in this Contract. The Contract Warranty shall commence upon Acceptance.
- E. Final Acceptance - Written Notice of Final Acceptance shall constitute Pierce Transit's acknowledgement that the Contractor has fulfilled all of its obligations under the Contract and that Pierce Transit has accepted the Work as of the date stated in the Notice. The Contractor may request Final Acceptance from Pierce Transit upon full and satisfactory completion of all Contract Work and fulfillment of all obligations under this Contract.

3.10 USE OF COMPLETED OR PARTIALLY COMPLETED PORTIONS OF THE WORK

- A. Pierce Transit shall have the right to take possession of or use completed or partially completed portions of the Work notwithstanding that the time for completing such portions may not have expired. Such use by Pierce Transit shall in no case be construed as Substantial Completion, Acceptance or Final Acceptance of the Work, and shall neither relieve the Contractor of any of its responsibilities under the Contract, nor act as a waiver by Pierce Transit of any of the conditions thereof. Such use shall not trigger the commencement of Warranty provisions under this Contract or as provided by manufacturers, unless specifically provided otherwise in writing by Pierce Transit. Operations and maintenance costs incurred as a result of Pierce Transit's use of such portions will be borne by Pierce Transit.
- B. If such use increases the cost or delays the completion of remaining portions of the Work for which Contractor seeks payment and/or additional time, the Contractor must notify Pierce Transit of its Request for Change in writing as required by the Contract and may be entitled to such additional compensation or extension of time, or both, as determined in accordance with Article 4, Changes and Change Order Process. Any disputes regarding such entitlement shall be resolved in accordance with the provisions of Article 10, Delays and Claims. The Contractor shall not be entitled to extra compensation for Pierce Transit's possession of portions of Work that are specifically required in the Contract to be placed into use and operation or that are required to be turned over to Pierce Transit upon a given Contract Milestone date before completion of the entirety of the Work.
- C. In the course of such use, if the Work proves to not be in compliance with the Contract, Pierce Transit shall have the right to continue such use until such portion of the Work can be taken out of service so that the Contractor can, at no additional cost to Pierce Transit, correct defects, errors, omissions, or replace unsatisfactory materials, as necessary for

such portions of the Work to comply with the Contract. Upon notice and opportunity to cure by the Contractor, Pierce Transit at its option, may perform or have another entity perform the corrective work. The Contractor shall remain responsible for the cost of the corrective work.

3.11 LOSS OR DAMAGE TO WORK AND MATERIAL

Until Pierce Transit's Acceptance of any completed or partially completed Work, the Contractor shall have the responsibility for care, custody and control of the Work and of the materials to be used therein, including materials for which the Contractor has received partial payment, materials in transit, and materials which have been furnished by Pierce Transit, and shall bear the risk of injury, loss or damage to any part thereof by the action of the elements or from any other cause. The Contractor shall replace, rebuild, repair or restore all damage to any portion of the Work and materials occasioned by any cause before its completion and Acceptance, at no additional cost to Pierce Transit. Contractor shall, at the Contractor's expense, provide suitable drainage and erect such temporary structures as are necessary to protect the Work and materials as herein specified. A suspension of Work shall not relieve the Contractor of responsibility for the Work and materials as herein specified. The Contractor shall properly store materials for which partial payments have been made by Pierce Transit or which have been furnished by Pierce Transit. Such storage by the Contractor shall be on behalf of Pierce Transit and Pierce Transit shall at all times be entitled to possession of such materials, and the Contractor shall promptly return the same to the site of the Work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Project Manager.

3.12 WARRANTY OF WORK

- A. The Contractor warrants that the Work and any portion thereof: (a) shall meet the requirements of the Contract, (b) shall be free of defects in material and workmanship, and (c) shall be free of defects in design(s) where such design(s) is performed or provided by the Contractor, Subcontractors or Suppliers. This Warranty shall apply to Defective Work and Non-Conforming Work that is discovered within twelve (12) months after the date of Acceptance. If corrective work is performed by the Contractor under this Warranty, the Warranty shall also apply to discrepancies and defects in the corrective work that are discovered within twelve (12) months after the corrected work is again placed in operation. These warranty terms shall be extended for any period that a portion of the Work cannot be used for the purpose intended as a result of discrepancies or defects. This Warranty shall apply whether or not designs, data or information have been reviewed or approved by Pierce Transit or the Project Manager, but shall not apply to defects caused by misuse and/or improper operation or maintenance of the Work by Pierce Transit.
- B. Pierce Transit will notify the Contractor in writing, by email or facsimile confirmed in writing, on discovery of Defective Work or Non-Conforming Work covered by this Warranty in accordance with the provisions of Article 3.08, Non-Conforming Work and Defective Work. The Contractor shall commence to remedy the Defective Work or Non-Conforming work in accordance with the provisions of Article 3.08, Non-Conforming Work and Defective Work.
- C. The Warranty provided under this Article shall be in addition to those specific warranty requirements for particular equipment or work items indicated in the Contract Documents, and in addition to other rights or remedies available to Pierce Transit under this Contract

or at law. Warranties shall be secured by the Performance Bond, or in Pierce Transit's sole discretion, other financial security acceptable to Pierce Transit, such as a warranty bond or letter of credit.

1. In circumstances in which Pierce Transit determines that it would be inefficient or impracticable for the Contractor to perform the corrective work, Pierce Transit reserves the right to select another firm to perform the corrective work or to perform the corrective work itself upon notice to the Contractor. Such corrective work by another firm, or by Pierce Transit, shall be at Contractor's expense, provided that Contractor is kept fully informed as to the details and costs of any such corrective work. If the Contractor performs work at the Site under these guaranty provisions, the Contractor shall furnish insurance coverage therefore as specified in the Section 00 73 16 Insurance Requirements. Prior to beginning such work the Contractor shall furnish certification of insurance satisfactory to Pierce Transit.
 2. Unless otherwise required by Pierce Transit, the Contractor shall commence to perform the corrective work required to satisfy this warranty within fifteen (15) days from the date of written notification. The Contractor shall at its sole expense perform the corrective work on an overtime and/or shift work basis, and shall procure required materials using the fastest means available when necessary to minimize the impact to other Pierce Transit contractors or Pierce Transit's loss of operating time. The Contractor shall diligently prosecute the corrective work and shall complete such corrective work within the time frame stipulated by Pierce Transit.
 3. If the Contractor fails to make or undertake the corrections or removal/replacement with due diligence within the time periods specified above, Pierce Transit is hereby authorized to make such corrections. In case of an emergency, whereby delay could cause serious loss or damage in the opinion of Pierce Transit, corrections or replacement may be made prior to or concurrent with notice being sent to the Contractor. All expenses in connection with such corrections or replacement by Pierce Transit, including the cost for professional services, will be charged to the Contractor.
- D. Nothing in this warranty is intended to limit any manufacturer's warranty, which provides Pierce Transit with greater warranty rights than set forth in the Contract Documents.

3.13 WARRANTY OF TITLE

- A. The Contractor shall have no property right in the materials and equipment used after they have been attached or affixed to the Work or existing real property, or after any payment has been made by Pierce Transit towards the value of materials delivered to the site of the Work, or stored subject to or under the control of Pierce Transit. Title to all such materials shall become the property of Pierce Transit upon being so attached or affixed or after any payment towards the value of materials stored off site or delivered to the site of the Work or stored subject to or under the control of Pierce Transit, whichever occurs earlier.
- B. No material, supplies, equipment, or items for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein, or in any part thereof is retained by the seller or Supplier. The Contractor shall warrant good title to all materials, supplies, equipment, and items installed or

incorporated in the Work. Upon completion of all the Work, the Contractor shall deliver the same together with all improvements and appurtenances constructed or placed thereon by the Contractor to Pierce Transit free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any Work covered by this Contract shall have any right to lien upon any improvement or appurtenance thereon. This Article shall not defeat or impair the right of the persons furnishing materials or labor to recover under any payment bond given by the Contractor for their protection, or any rights under state law permitting such persons to look to retained funds due the Contractor in the hands of Pierce Transit.

- C. The provisions of this Article shall be inserted or referenced in or otherwise made a part of all subcontracts and material contracts, and notice of its provisions shall be given to all persons furnishing materials for the Work whenever no formal contract is entered into for such materials. Additionally, as a part of the subcontract, material contract, or notice, the Contractor shall provide to such Subcontractors and Suppliers the name, address, and phone number of the Contractor's bonding company and the bond number applicable to the Contract under which the Subcontractor or Supplier would make its claim.

3.14 MANUFACTURER'S WARRANTIES

The Contractor shall furnish to Pierce Transit any manufacturer's or Supplier's guarantee or warranty furnished in connection with the purchase by the Contractor or any Subcontractor of any equipment, materials, or items required, provided such guarantee or warranty shall be in addition to those specific guarantee or warranty requirements for particular equipment or Work items indicated in the Specifications and shall not relieve the Contractor of its obligations under Article 3.12, Warranty of Work.

ARTICLE 4 CHANGES AND CHANGE ORDER PROCESS

4.01 CHANGES

- A. Pierce Transit reserves the right to make by written order, designated or indicated to be a Change Order, alterations to, deviations from, additions to, or deletions from the Contract Documents. Such changes may be made without notice to any surety(ies) or guarantors. Within the Performance and Payment Bonds and any financial guarantees, the surety(ies) and guarantors must waive notice of any Change Orders and agree to be bound in all ways to Pierce Transit for any such Change Orders as if it (they) had received notice of the same. Change Orders are required to make any changes to the Total Contract Cost, Contract Documents, or Contract Time. All additions, deductions, or changes to the Work as directed by Change Orders shall be executed under the conditions of the Contract.
- B. Pending resolution of any issue or dispute related to a Change Order, RFC, CN-RFP and/or CN-WD, Contractor shall continue to perform all Work, including the Contract Work associated with the pending change unless Pierce Transit explicitly waives this requirement in writing. Contractor shall also be governed by all applicable provisions of the Contract related to compensation and/or additional time for changed work, inclusive of Article 10.
- C. Adjustments in the Total Contract Cost - One of the following methods shall be used to determine the cost and/or value of any work covered by a Change Order, RFC, CN-RFP, CN-WD or Claim. Pierce Transit and the Contractor shall negotiate in good faith to determine an equitable adjustment of the Total Contract Cost. The available methods are:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed Work;
 2. Where Provisional Sums are provided for work items, the provisional sums shall be applied to changes for those work items;
 3. By establishment of new unit prices and related quantities for the changed work;
 4. By reference to catalog prices or other published prices offered to the public in the open marketplace;
 5. By mutual acceptance of a firm fixed price (also referred to as lump sum);
 6. On a time and materials basis in accordance with Article 9.08, Payment on Time and Material Basis.
- D. In the event of disagreement, Pierce Transit shall determine the method for calculating the adjustment to increase or decrease the Total Contract Cost.
- E. All Change Orders (CO) and Change Notices (CN) shall be issued through the Project Manager. No other order, statement, act of omission or conduct of any representative of Pierce Transit or third party will be treated as a change hereunder. Nothing in this Article shall be construed to bind Pierce Transit for acts of its employees or agents exceeding their authority.
- F. Nothing in this Article shall be deemed to require a change in Total Contract Cost or Contract Time when additional, extra, or changed work is the result of actual conditions or performance differing from that assumed by the Contractor (except for Differing Site Conditions) or as a result of the Contractor's error in judgment or mistake in designing, estimating, contracting, constructing or otherwise performing the Work. The Contractor shall not be entitled to a change in the Total Contract Cost or Contract Time for delays caused by the Contractor or its Subcontractors, employees, or agents or for any non-compliance with any Contract provisions, applicable law, regulations, or permit requirements affecting the Work.
- G. The Contractor's records pertaining to Changes pursuant to this Article are subject to audit as set forth in Article 3.04, Audit Access to Records.
- H. Where the firm fixed price/lump sum method is used, the Contractor shall provide a detailed cost breakdown supporting its requested compensation and any additional cost documentation requested by Pierce Transit. Any adjustment to the Total Contract Cost made under the firm fixed price/lump sum method shall include all applicable costs for labor, equipment, material, overhead and profit.
- I. Where the firm fixed price/lump sum method is used and the cost of the Change is negotiated after completion of the Work, the allowed profit and overhead markup shall not exceed that for work performed on a time and material basis as permitted in Article 4.08.
- J. Where the firm fixed price/lump sum method is used and the cost of the Change is negotiated before completion of the Extra Work, the negotiated profit and overhead markup is not subject to a fixed maximum and is to be based on a reasonable calculation of direct and indirect costs incurred in executing the Extra Work, including any delays,

impacts or inefficiencies.

- K. Where any unit price method is used, the applicable unit price shall include reimbursement for all direct and indirect, onsite and offsite, costs of the changed Work, including profit and overhead.

4.02 REQUEST FOR CHANGE

- A. If the Contractor believes it is entitled to an adjustment of the Total Contract Cost or Contract Time for any reason, Contractor shall submit a Request for Change (RFC) to Pierce Transit in writing (in a format acceptable to Pierce Transit) in accordance with the provisions of the Contract. The Contractor in the RFC must specify the reasons for such change, including relevant facts and any impacts on the cost and / or schedule.
- B. The Contractor may request additional compensation and/or time through a RFC, but only in the event Contractor provides a written Notice to Pierce Transit no later than fourteen (14) days after the onset or occurrence of the event or condition giving rise to the RFC.
- C. The Contractor in its RFC shall provide Pierce Transit with a reasonably detailed explanation of the nature and cause of the event or condition giving rise to the RFC, a reasonably accurate calculation of the adjustment to the Total Contract Cost and/or Contract Time, and the reasons why Pierce Transit is responsible for the relief sought. Pierce Transit shall review the RFC and may require additional information or cost documentation from Contractor to help determine the validity and / or value of the requested change.
- D. Any RFC that is approved by Pierce Transit will be incorporated into a Change Notice or a Change Order. If the RFC is denied, but the Contractor believes that it does have merit, the Contractor must submit a Notice of Intent to Claim in accordance with Paragraph 10.01, Notice of Intent to Claim, if it wishes to preserve its right to seek any adjustment to the Total Contract Cost and/or Contract Time.

4.03 CHANGE NOTICE

- A. Change Notice - Request for Proposal (CN-RFP).
 - 1. Pierce Transit may issue a Change Notice – Request for Proposal to the Contractor describing a proposed change and requesting the Contractor to submit a Cost and Schedule Proposal (in a format acceptable to Pierce Transit). A CN-RFP does not authorize a Contractor to commence performance of the changed Work. After receipt of the Cost and Schedule Proposal, Pierce Transit may:
 - a. Proceed no further with the proposed change,
 - b. Issue a Change Notice - Work Directive incorporating part or all of the proposed change, or
 - c. Issue a Change Order incorporating part or all of the proposed change.
- B. Change Notice - Work Directive (CN-WD).
 - 1. Pierce Transit may issue a Change Notice - Work Directive ordering the Contractor to proceed with a change in the Work. A CN-WD may be issued under one of the following circumstances:

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- a. to execute changes in the Work covered by the unit prices or a lump sum price contained in the Contract;
 - b. to execute changes in the Work on a Time and Material basis, in accordance with Article 4.08A.
 2. The Contractor shall not commence performance of the Work described in the CN-WD, until the CN-WD is issued by Pierce Transit. The CN-WD shall expressly specify the:
 - a. intention to treat such items as changes in the Work;
 - b. scope of the changes in the Work; and
 - c. basis under which changes to the Total Contract Cost and/or Contract Time will be determined.
 3. When the Contractor receives a CN-WD, the Contractor shall promptly proceed with the Work as indicated in the CN-WD. The Contractor shall carry on the Work and adhere to the schedule. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as Pierce Transit and the Contractor may otherwise agree in writing.
 4. Until such time as resolution of an equitable adjustment is reached, the Contractor shall maintain its records in accordance with Article 9.08, Payment on Time and Material Basis. The CN-WD shall become the basis for a Change Order when the amount of the adjustment to the Total Contract Cost and/or Contract Time can be determined. The issuance of a CN-WD is sufficient authority for a Change Order, but only within the stated limits of the value of the CN- WD.
 5. The CN-WD shall contain a Not to Exceed (NTE) amount. Contractor may invoice Pierce Transit for changed work performed under the CN-WD but only up to and not in excess of the NTE amount. The Contractor is required to notify Pierce Transit at the point at which 80 percent of the NTE amount has been expended, and provide an estimate of the cost to complete the changed Work. If Pierce Transit agrees that costs in excess of the NTE amount are justified, Pierce Transit may issue a revised CN-WD increasing the NTE amount or negotiate a lump sum amount for the changed Work.
- C. Contractor's Cost and Schedule Proposal - If directed by Pierce Transit in the Change Notice, the Contractor shall submit a Cost and Schedule Proposal to Pierce Transit within fifteen (15) days (or more, if Pierce Transit at its option so determines) after receipt of the Change Notice. The Cost and Schedule Proposal shall detail price and scheduling information, showing all of the impacts on the Total Contract Cost and Construction Schedule, and the changes in the level of commitment for Small Business and Disadvantaged Business Enterprises as a result of the changes identified in the Change Notice. If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its Cost and Schedule Proposal. The cost breakdown shall have separate estimates of the costs of added Work and any deleted Work and shall be prepared using one or more of the cost methods described in Article 4.01C as directed by Pierce Transit, and shall be presented in a manner such that all phases of work can be easily

identified. The Contractor shall submit detailed cost breakdowns as described above for any Subcontractor proposed to perform Work under the change. The Contractor shall also provide detailed scheduling analysis demonstrating the effect of the changed work on the Contract Milestones.

4.04 CHANGE ORDER

- A. The Change Order shall expressly state that it is Pierce Transit's intention to treat the items described therein as changes in the Work; identify scheduling requirements, time extensions, prices, and all costs of any nature arising out of the; and shall contain a statement that the adjustment to the Total Contract Cost, if any, includes all amounts to which the Contractor is entitled as a result of the events giving rise to the Change Order. The execution of a Change Order by both parties shall be deemed to be an agreement to all costs and time of performance related to the change, including full and complete payment and final settlement of all extensions of time, changes, Claims, damages and costs for all time, direct or indirect overhead costs, profit and any and all other costs associated with delay, disruption, impact, inefficiency, acceleration, stand-by or any other costs related to the Work covered by or affected by the change.
- B. **Bilateral Change Order:** Pierce Transit will issue a Change Order as soon as practicable following agreement with Contractor's Cost and Schedule Proposal, if Pierce Transit decides to proceed with the changed work. If the Contractor agrees with the terms and conditions of a Change Order, the Contractor shall sign the Change Order and return it to the Project Manager for execution by Pierce Transit. There will be no reservation of rights by either party on a bilateral Change Order.
- C. **Unilateral Change Order:** Pierce Transit may unilaterally issue a Change Order at any time making changes within the general scope of the Contract, without invalidating the Contract and without providing notice to sureties. In addition, in the event that the Contractor and Pierce Transit are unable to agree on the terms and conditions, the amount of any change or adjustment to be made to the Total Contract Cost or Contract Time, Pierce Transit may execute a Unilateral Change Order. If Contractor disagrees with the adjustment to Total Contract Cost or Contract Time as stated in the Unilateral Change Order, Contractor must file a claim in accordance with the requirements of Article 10, Delays and Claims. If the Contractor fails to follow the claim procedures in Article 10, the Contractor shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to the Unilateral Change Order other than that specified in the Unilateral Change Order. The Contractor is required to continue with performance of all work associated with the Unilateral Change Order pending resolution of any Claim under Article 10.
- D. When a Change Order has been executed by Pierce Transit, the Contractor shall promptly proceed with the Work as indicated in the Change Order. The Contractor shall carry on the Work and adhere to the schedule during all disputes or disagreements with Pierce Transit. No work shall be delayed or postponed pending resolution of any dispute or disagreement, except as Pierce Transit and the Contractor may otherwise agree in writing.
- E. **Special Rules When Pricing Change Orders**
 - 1. Premium increase(s)/decrease(s) for Performance and Payment Bonds:
 - a. Premium increase(s) / decrease(s) for Performance and Payment Bonds shall be included in the Change Order total. Verification of increased / decreased

payment, from the surety, must be provided.

4.05 SCHEDULE EXTENSIONS

If the Contractor is delayed in completion of the critical path of the Work either by reason of changes made under this Article, or by a delay for which the Contractor is entitled to additional time as specified in Article 10, Delays and Claims, and if Contractor meets all Contract requirements for seeking an increase in time to complete the Work associated with a Contract Milestone(s), the Contractor shall submit a Request for Change within the time allowed by the Contract Documents specifying the number of days of time requested. The Contractor shall demonstrate the schedule impact of changes and delays in order to justify any schedule extensions.

4.06 CONSTRUCTIVE CHANGE ORDER

Except as herein expressly stated, no order, statement, act, or omission of Pierce Transit unless provided in writing shall be treated as a change or Change Order under the Contract or entitle the Contractor to an adjustment under the Contract. If the Contractor considers that an act, omission, order or statement by the Project Manager or Pierce Transit deviates from the Contract requirements or may entitle the Contractor to extra compensation or a time extension, the Contractor shall submit a Request for Change as provided above. Failure to submit a timely and documented RFC shall constitute a waiver of any Claim associated with the subject of such alleged constructive change. The Contractor shall not proceed with the Work until appropriate directions are received from Pierce Transit.

4.07 EXCLUSIVE REMEDIES

The procedures specified herein and in Article 10, Delays and Claims, of these General Conditions are the Contractor's exclusive remedy for any claim against Pierce Transit, whether for extension of the Contract Time, an increase in the Total Contract Cost, actual or constructive changes, delays, impacts, inefficiencies, equitable adjustments or otherwise. The requirements of Article 10 cannot be waived except by explicit written waiver signed by Pierce Transit and Contractor. No course of conduct or dealings between the parties, no express or implied acceptance of change or alterations to the Work, and no claim that Pierce Transit has been unjustly enriched by an alteration or Change to the work, shall be the basis of any other claim for an increase in Total Contract Cost or extension in the Contract Time for completion of the Work.

4.08 CHANGES IN QUANTITIES

UNIT PRICE WORK

- A. Changes in the quantity of unit price Work. Where the nature of the changed Work does not differ materially from Work which is unit price Work, the change shall be measured and paid for (or credited) at the established unit prices, subject to the following exceptions:
 - 1. Where quantity is less than 75%. If the quantity of an item or unit price Work actually performed or to be performed is less than 75% of the bid quantity for that item, the Contractor or Pierce Transit may request a Change Order revising the unit price for the item. Such request shall be accompanied by evidence to support the requested revision. The proposed revision will be evaluated by Pierce Transit considering such factors as the changes, if any, to the Contractor of the item, and the share, if any, of fixed expenses properly chargeable to the change in quantity of that item. If Pierce Transit and the Contractor agree on the change, a Change Order will be executed.

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2. Where quantity is more than 125%. If the quantity of an item of unit price Work actually performed or to be performed is more than 125% of the bid quantity for that item, the Contractor or Pierce Transit may request a change order revising the unit price for that portion of the Work which exceeds 125% of the bid quantity. Such request shall be accompanied by evidence to support the requested revision. The proposed revision will be evaluated considering such factors as the change in actual cost, if any, to the Contractor of that portion of the Work exceeding 125% of the bid quantity, and the share, if any, of fixed expenses properly chargeable to that portion of change in quantity which exceeds 125% of the bid quantity. If Pierce Transit and Contractor agree on the change, a change order shall be executed.

LUMP SUM

Lump sum as agreed, provided that the Contractor may be required to provide a detailed cost estimate for the proposed change;

TIME AND MATERIALS

- A. Time and materials basis at rates set forth in the Contract Documents or, if not specified, as follows:
 1. Labor not to exceed applicable Prevailing Rates of Wage, plus 22% for overhead, profit and all other costs incurred in supplying labor;
 2. Materials and supplies incorporated in and necessary for the work, plus 15% for overhead, profit and all other costs incurred in supplying the materials and supplies;
 3. Equipment, excluding small hand tools, at up to the maximum hourly rates submitted by the Contractor and approved by the Engineer, plus 22% for overhead, profit and all other costs incurred in supplying such equipment;
 4. "Overhead" shall include, but not be limited to: field and office engineering, estimating, general superintendence, purchasing, office expense, small hand tools, all applicable taxes (except state and local retail sales tax), bonding and insurance costs, delay, acceleration or other impact and any other costs of doing business;
 5. Subcontractor's work costs shall be calculated in accordance with subparagraphs 1 through 4 above. To the total (excluding all markups for overhead and profit) shall be added 15% for the Contractor's supervision and overhead support;
 6. All costs of the Contractor and any subcontractor attributable to a change in the work are either specifically listed or covered by the multipliers specified in paragraphs 1 through 5 above. This Article applies to unit price items on the Contract Price Schedule with an estimated quantity of four (4) or more and the measured quantities required to complete the Work.
- B. Time and Material Records and Invoices
 1. All charges related to Time and Material Work authorized by the Project Manager shall be tracked on a daily basis. The Contractor shall complete a comprehensive Time and Material work report form, furnished by Pierce Transit or alternate approved by Pierce Transit, which details all the labor, services, material and equipment utilized in the course of completing the Time and Material Work. The report shall itemize the materials used, and shall cover the direct cost of labor and materials, and the charges

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for equipment rental and operation, whether furnished by the Contractor, Subcontractor or other force. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked; quantity, type and cost of materials used; and also the size, type, and identification number of equipment; the hours operated, and the hours of Pierce Transit authorized standby.

2. All charges related to Time and Material Work shall be verified in the field by Pierce Transit at the end of each Work shift. The Contractor shall complete a field report at the end of each shift that itemizes and summarizes all the charges. The report shall be signed by the Contractor's Representative and, upon verification by Pierce Transit, copies of the signed report shall be provided immediately to Pierce Transit's representative. The signature of Pierce Transit's Inspector shall not be construed as acceptance of the Work or approval of the value invoiced by the Contractor. The Project Manager shall have the authority to review the charges related to Time and Material Work for reasonableness and efficiency, and to determine if the work for which the Time and Material reports have been submitted is in fact extra work. In the event that certain charges are deemed unreasonable or unnecessary for the Time and Material Work being performed by the Contractor, the Project Manager shall direct the Contractor to delete such charges from the Time and Material Work Records. Evidence of Pierce Transit's verification of all field reports shall be submitted by the Contractor with its draft invoice.
3. Invoices for Time and Material Work shall show, in payroll form, the dates, names, hours worked each day, rates of pay, and amounts paid for each individual employed on such Work and shall give in detail the nature of the Work performed by each employee.
4. Invoices for materials and services shall be fully itemized showing dates of delivery, quantities, unit prices, amounts, and discounts, and shall be accompanied by photocopies of vendor invoices covering each item. Such invoices shall be submitted with the daily report sheets. If invoices are not available, they shall be submitted with subsequent daily report sheets; however, except as provided by law, no payment shall be made for material charges until valid copies of vendor's invoices are submitted. Should said vendor's invoices not be submitted within sixty (60) days after the date of delivery of the material or fifteen (15) days after completion and acceptance of the Work, whichever comes first, the Project Manager reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available in the quantities concerned delivered to the location of the Work, less any discounts provided in these General Conditions.
5. Invoices for Owned or Rented Equipment charges shall be fully itemized showing a complete description including size and capacity of equipment, number of hours operated and/or number of hours at Pierce Transit ordered standby for each day, the hourly rates being charged to Pierce Transit for both ownership and operating elements, and the total amount charged, for each individual piece of equipment used. If rates were not pre-approved by Pierce Transit as specified herein, the Contractor shall also include the rate computation and appropriate back- up materials as described herein.

6. Invoices for Time and Material Work shall be prepared and submitted in accordance with the payment procedures outlined in this Contract. All invoices, payrolls, and other documents which support the invoice for the Time and Material work shall be submitted with the progress payment request, shall state the Contract number, and Contract Item under which the Work was performed.
7. Failure to present complete Time and Material records and invoicing in proper form after the close of the month in which the time and materials Work was performed shall constitute a waiver by the Contractor of its right to present such a billing or invoice thereafter or to receive payment therefore, unless the Contractor promptly corrects and resubmits the Time and Material Records and Pierce Transit approves the re-submittal.
8. The Project Manager will compare the Project Manager's records with the daily report sheets furnished by the Contractor, make any necessary adjustment, and adjust the costs of work paid for on a Time and Material basis on the Time and Material Work forms. When these daily reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.
9. Payment as provided in this Article shall constitute full compensation to the Contractor for performance of work paid for on a Time and Material basis and no additional compensation will be allowed therefore.
10. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work paid for or required to be paid for on a Time and Material basis and the costs of other operations.

4.09 ELIMINATED WORK

- A. Pierce Transit may, by written order to the Contractor, omit work, equipment and/or material to be provided under this Contract, and the value of the omitted work, equipment and/or material (inclusive of associated profit and overhead) will be deducted from the appropriate component(s) of the MACC and an equitable adjustment to the fixed amount for Specified General Conditions and the Fixed GC/CM Fee will be negotiated and credited to Pierce Transit. The deducted value for the MACC and Specified General Conditions Work will be based upon the applicable unit price or lump sum, or if there is no such price, the deducted value will be a lump sum agreed upon in writing by the Contractor and Pierce Transit based on the Schedule of Values and other cost information submitted by the Contractor or obtained otherwise by Pierce Transit. In the event that no agreement can be reached on a lump sum basis, Pierce Transit shall be entitled to a deduction based on the value as if the work were to be paid for on a Time and Material basis as provided in Article 4.08, Payment on Time and Material Basis.
- B. Should any Contract item of the Work be eliminated in its entirety, in the absence of an executed Change Order covering such elimination, payment will be made to the Contractor for actual costs incurred in connection with such eliminated Contract item if incurred prior to the date of notification in writing by the Project Manager of such elimination.
- C. If acceptable material is ordered by the Contractor for the eliminated work prior to the date of notification of such elimination by the Project Manager, and if orders for such

material cannot be canceled, it will be paid for by Pierce Transit at the actual cost to the Contractor. In such case, the material paid for shall become the property of Pierce Transit and the actual cost of any further handling will be paid for by Pierce Transit. If the material is returnable to the vendor and if the Project Manager so directs, the material shall be returned and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid for by Pierce Transit.

4.10 DIFFERING SITE CONDITIONS

- A. In the event Contractor encounters: (a) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, (b) unknown physical conditions of an unusual nature at the site differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents, and such conditions cause an increase in Contractor's cost or time of performance, Contractor may be entitled to an equitable adjustment in Contract Time. The Contractor shall notify the Project Manager promptly orally and in writing in accordance with of such changed conditions or other conditions for which an equitable adjustment in Contract Sum or Contract Time is desired. If such notice is not given prior to the condition being disturbed (or other action being taken by the Contractor which may result in a claim for an increase in the Contract Time or the Contract Sum), or such condition is disturbed before the Project Manager directs the Contractor to proceed with the Work despite the condition, the Contractor will be deemed to have waived any claim for extra compensation or extension of the Contract Time on account of any additional or different work (including labor, material and equipment) required because of such condition. Oral notice alone by the Contractor regarding such condition shall not be adequate to avoid such waiver.
- B. If the Project Manager determines that conditions exist which entitle the Contractor to equitable adjustment in the Contract Sum to account for the performance of the work involved, and the additional Contract Time, if any, required to perform such work, Project Manager will determine such adjustment. If the Project Manager and the Contractor agree on such adjustment, the same shall be set forth in a Change Order to be executed by the parties. If the parties are unable to so agree, the Project Manager may nevertheless issue a Change Order directing the Contractor to perform the changed Work pursuant to paragraph 4.04.C.
- C. If the Project Manager determines that the Contractor's request does not warrant an equitable adjustment in the Contract Sum and/or Contract Time, the Contractor shall diligently pursue the Work in accordance with the Project Manager's direction while retaining the right to protest the decision in accordance with Article 10.

4.11 VALUE ENGINEERING CHANGE PROPOSALS (VECPs)

- A. The following Article on Value Engineering Change Proposals will apply only to Subcontractors who are not selected through the EC/CM or MC/CM process.
- B. Pierce Transit encourages the Subcontractors to submit Value Engineering Change Proposals (VECPs) in order to avail Pierce Transit of potential cost or time savings or increased safety during construction. The Subcontractor and Pierce Transit will share any savings in accordance with this Article. VECPs may be submitted at any time after Notice

to Proceed. A proposal merely to delete or reduce scope of Work does not constitute a VECP.

- C. The Contractor shall submit any Subcontractor VECPs directly to the Project Manager. As a minimum, the following information shall be submitted by the Contractor with each Subcontractor VECP:
 - 1. Description of the existing Contract requirements that are involved in the proposed change;
 - 2. Description of the proposed change;
 - 3. Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages;
 - 4. Itemization of the Contract requirements that shall be changed if the VECP is accepted (e.g., drawing numbers and specification);
 - 5. Justification for changes in function or characteristics of each affected item, and effect of the change on performance of the end item;
 - 6. Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs, and life expectancy;
 - 7. Date or time by which a Change Order adopting the VECP shall be issued in order to obtain the maximum cost reduction, noting any effect on contract completion time or delivery schedule; and
 - 8. Cost estimate for existing Contract requirements correlated to the Contractor's unit price or lump sum breakdown and the proposed changes in those requirements.
 - 9. Costs of development and implementation by the Contractor shall be provided.
 - 10. Additional costs to Pierce Transit (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.
- D. Pierce Transit retains the right to reject a VECP without review, without recourse by the Contractor or Subcontractor if a similar change is already under review; or if in Pierce Transit's sole opinion, the potential savings are unlikely to justify the cost of the review; or if the proposed change is otherwise unacceptable to Pierce Transit.
- E. Pierce Transit shall expeditiously process VECPs accepted for review but shall not be liable for any delay in acting upon any VECP submitted pursuant to this Article. Pierce Transit may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this Article. Until an order to proceed is issued on a VECP, the Contractor shall remain obligated to perform in accordance with this Contract. Change Orders made pursuant to this Article will so state. Pierce Transit's decisions as to acceptance or rejection of any VECP shall be at Pierce Transit's sole discretion and shall be final and not subject to review by a dispute resolution process or otherwise.
- F. The Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$100,000 or greater, and may include those provisions in any subcontract.
- G. Pierce Transit is subject to public disclosure of records in accordance with Washington

State Law. Material and information, which may be submitted as part of any VECP, will be subject to such public disclosure pursuant to State law.

- H. In the event Pierce Transit and Contractor/Subcontractor cannot agree on the Estimated Net Savings, Pierce Transit may at its option (i) terminate the proposed VECP or (ii) unilaterally determine the Estimated Net Savings. If Contractor/Subcontractor disagrees with such unilateral determination and seeks to assert a Claim, Contractor/Subcontractor shall comply with the Claim requirements of the Contract Documents.

ARTICLE 5 MATERIALS AND EQUIPMENT

5.01 GENERAL

All materials and equipment required to be incorporated into the Work shall be new, unless specifically provided otherwise in the Contract Documents. All such materials and equipment shall be applied, installed, connected, erected, used, cleaned, maintained and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processor, unless specifically provided otherwise in the Contract Documents. Upon the request of the Engineer, the Contractor shall furnish satisfactory evidence as to the kind, quality, and manufacturer of materials and equipment. The Contractor shall furnish all materials, including without limitations, equipment and completely or partially assembled items, required to complete the Work, except materials that are designated in the Contract Documents to be furnished by Pierce Transit.

5.02 MATERIALS CERTIFICATIONS

All materials except materials specified by brand name or mark or manufacturer, furnished for use or incorporation in the Work, shall be covered by quality certifications, test results or other documentation as required by the Contract to establish compliance of the products with Contract requirements. Unless specific tests are required by the specifications, the Contractor may provide certifications to establish acceptability of the products furnished. Materials or products which require certification or other documentation shall not be incorporated until certifications have been delivered and the product approved by Pierce Transit for incorporation.

5.03 SUBSTITUTIONS

The product, equipment, materials, or methods described or noted within the Contract Documents are to establish a standard of quality, function, appearance, dimension, and shall be deemed to be followed by the words "or equal". By proposing a substitute, Contractor represents that the proposed substitution has equal attributes in all material respects to that specified and no such substitutions shall be allowed if Pierce Transit rejects in its sole discretion such product, equipment, materials, or methods offered in the substitution. If material or equipment is specified as a sole source, Pierce Transit will not consider substitutions.

5.04 MANUFACTURER'S DIRECTIONS

Manufactured articles, materials, solvents, and equipment or other goods shall be transported, stored, applied, installed, connected, erected, adjusted, tested, operated, and maintained as recommended by the manufacturer, unless otherwise specified herein. Items shall be installed by the manufacturer where recommended or directed; however, the Contractor shall not be relieved of responsibility for such installation and costs.

ARTICLE 6 PROSECUTION AND PROGRESS OF THE WORK

6.01 CONTRACT TIME

- A. All time requirements set forth in the Contract Documents are of the essence in the performance of this Contract. Unless specifically authorized in writing by Pierce Transit, the Contractor is not allowed to perform Work or incur costs under this Contract until the effective date of the Notice to Proceed. The Contractor shall proceed with performance of the Work under this Contract immediately after the effective date of Notice to Proceed and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in this Contract. Any work performed by the Contractor prior to the effective date of Notice to Proceed shall be at the Contractor's risk. The Contract Time shall not be extended or reduced except by Change Order. The Contractor shall not be entitled to receive delay damages or costs for non-realization of anticipated early completion of the Work before a Contract specified Milestone date.
- B. The Contractor shall work such hours including overtime operations and/or extra shifts, within the parameters of permitted working days and hours, as may be necessary to meet its performance obligations under the Contract.
- C. The Contractor shall comply with all local requirements and permit conditions relating to acceptable hours of operation for construction sites, and to noise control and abatement. If the Contractor deems that a waiver of any local requirements is necessary to enable the Contractor to perform the Work in accordance with the Contract requirements, it is the Contractor's responsibility to obtain said waivers, at no additional cost to Pierce Transit.
- D. All time periods measured in days for Contract Milestones and Notices shall be based upon calendar days, unless specified otherwise. Time periods measured in days for each Contract Milestone and notice shall be computed by excluding the day upon which the period begins to run and including the last day of the period unless the last day is Saturday, Sunday or a legal holiday as defined in RCW 1.16.050. If the last day of the period is a Saturday, Sunday or legal holiday, the period shall run until, and shall include, the next day that is not a Saturday, Sunday, or legal holiday.
- E. When an extension of time for completion of a Milestone is granted, the extended date for completion of that Milestone shall be calculated using the sum of the number of days originally allowed plus the number of days extension of time, commencing on the effective date of the Notice to Proceed, unless otherwise noted in the Special Conditions.
- F. **SITE ACCESS AND WORK AREA POSSESSION**
- The NTP may be issued up to six (6) months prior to Site Access. Contractor shall use the time between NTP and Site Access to perform services including but not limited to; planning, scheduling, advance construction submittal preparation and approvals, materials procurement, procurement of required permits.
- Site Access: Date on which the Contractor may commence mobilization, including delivery of equipment and materials and construction of the initial Work Areas. This date will be formally advised by Pierce Transit.

6.02 CONSTRUCTION SCHEDULES

A. Preparation and Submittal of Schedules

1. The Contractor shall submit to Pierce Transit a Construction Schedule in accordance with the Contract Documents and as agreed to during the negotiation of the MACC showing the sequence in which Contractor proposes to perform the Work, including all significant work activities, indicating the Critical Path, identifying the dates on which Contractor proposes to start and finish the scheduled activities, and meeting all requirements as are set forth in the Contract Documents including the dates of the Contract Milestones.
2. The Contractor shall develop and deliver, in accordance with the Contract Documents, the various schedules and progress reports to Pierce Transit for review and acceptance. Pierce Transit's review shall not constitute approval or acceptance of the schedules' sequencing or time of completion, nor of the Contractor's means and methods of construction.
3. The Contractor shall not be entitled to payment, nor shall Pierce Transit be required to make payment for any Contract Work, until the Construction Schedule complies with the Contract requirements.

B. Float

1. Float is defined as the number of days by which a Work activity identified in the construction schedules could be delayed from its "early start date" until the date upon which the Work activity would become a Critical Path Activity.
2. Any float (other than Pierce Transit Controlled Float), slack time, or contingency within the Construction Schedules (i.e., the difference in time between the Contract's early completion date and the Contract Milestone(s)) is not for the exclusive use of either Pierce Transit or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract Milestones. Use of such jointly owned float shall be on a first come, first served basis and may be applied to delays caused (without limitation) by unmarked utility interferences or third parties.
3. The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time, other than Pierce Transit Controlled Float, within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the Contract Milestone(s). Since float time within the construction schedule is jointly owned, it is acknowledged that Pierce Transit- caused delays on the Contract may be offset by Pierce Transit-caused time-savings. In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all Pierce Transit-caused time-savings are exceeded.
4. The Contractor shall have no right to Pierce Transit Controlled Float and no right for additional compensation of any kind for Pierce Transit's use of this float. Contractor's costs and time for the Pierce Transit Controlled Float shall be included in the Contractor's Total Contract Cost and Construction Schedule. In the event Pierce

Transit does not use all of its controlled float, there will be no reduction in the Total Contract Cost at the completion of the Work.

6.03 FAILURE TO MAINTAIN PROGRESS

If, in the opinion of the Project Manager, the Contractor is not maintaining its anticipated progress towards the completion of the Milestones and / or falls behind the approved construction schedules, the Contractor shall take any and all steps necessary to improve its progress. If the Contractor fails to implement appropriate remedial actions, the Project Manager may require the Contractor to increase the number of shifts, increase the number of crews and/or operations, initiate or increase overtime operations, increase days of work in the work week, increase the amount of construction plant, or all of the foregoing. Pierce Transit may also require the Contractor to submit for approval supplemental progress schedules that detail specific operation changes to be instituted to regain the approved schedule. The cost of the actions necessary to improve the Contractor's progress will be the responsibility of the Contractor and will not be reimbursed by Pierce Transit.

6.04 PROTECTION OF PROPERTY

- A. In addition to the requirements set forth elsewhere in the Contract Documents, the Contractor shall comply with the following general requirements:
1. Protect all public and private property, insofar as it may be endangered by the Contractor's operations, and take every reasonable precaution to avoid damage to such property.
 2. Restore and bear the cost of restoration of any public or private improvement, facility, structure or land and landscaping inside or outside of the right-of-way or easement, which is damaged or injured directly or indirectly by or on account of an act, omission, or neglect in the execution of the Work; restore to a condition substantially equivalent to that existing before such damage or injury occurred, by repairing, replacing, rebuilding, or otherwise affecting restoration thereof, or if this is not feasible, make a suitable settlement with the owner of the damaged property. All restoration shall be governed by the requirements of local authorities, including but not limited to local codes, standards, and permit conditions.
 3. Give reasonable notice through the Project Manager to occupants of buildings on property adjacent to the Work to permit the occupants to remove vehicles, trailers and other possessions as well as salvage or relocate plants, trees, fences, sprinkler systems, or other improvements in the right-of-way which are designated for removal or which might be destroyed or damaged by work operations.
 4. Protect all trees, lawns, and planted areas within the Right-of-Way or Easements that are designated for preservation.
 5. Not operate tracked equipment on the streets that are not scheduled for demolition and repaving under this Contract. In the event tracked equipment is used, the streets shall be fully protected.

6.05 RIGHTS-OF-WAY, EASEMENTS, AND PREMISES

- A. The Contractor shall confine construction activities within property lines, right-of-way, limits of easement, and limits of Construction Permits as shown or specified in the Contract

Documents unless arrangements are made with owner(s) of adjacent private property. If additional space or property is needed to accommodate the Contractor's method of construction of the Work or for additional staging area or for the convenience of the Contractor, the Contractor shall acquire the right to use such additional space and shall bear all related costs and responsibilities. Prior to the use of any private property outside the specified limits, the Contractor shall file with the Project Manager written permission from the property owner(s) and provide copies of all applicable documents.

- B. The Contractor shall make no arrangements with any person or entity to permit occupancy or use of any land, structure, or building within the limits of the Site, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between Pierce Transit and any owner, former owner, or tenant of such land, structure, or building.
- C. Pierce Transit does not assert that the staging areas shown on the drawings are sufficient to perform the work efficiently, and the Contractor shall procure, at its own expense, any additional staging area it requires to perform the work, and such costs for additional staging shall have been included in its Total Contract Cost. The Contractor shall be responsible for obtaining all necessary permits for additional staging areas and for the cost of additional NEPA/SEPA or any other environmental review. All Contractor-proposed staging areas must be authorized by Pierce Transit, who will conduct or direct the appropriate environmental review. The Contractor shall reimburse Pierce Transit for any costs incurred by Pierce Transit for such reviews.

6.06 PUBLIC SAFETY AND CONVENIENCE

The Contractor shall conduct its operations to ensure the least possible obstruction and inconvenience to the public, and the Contractor shall have under construction no greater length or amount of work than the Contractor can prosecute properly with due regard to the rights of the public.

6.07 EMERGENCY WORK

- A. In an emergency affecting the safety of persons, the Work, or adjoining property, the Contractor, without special instructions or authorization from the Project Manager, shall act to prevent such threatened loss or injury. In such an emergency, the Contractor shall perform such additional work as required. Any compensation claimed by the Contractor on account of emergency work shall be governed by Article 4, Changes and Change Order Process, or as deemed appropriate by the Project Manager.
- B. If, during the Warranty period or during the progress of the Contract, the Contractor is absent from the locations of the Work at the time when a failure or faulty condition of the Contractor's work requires emergency action in the public interest, Pierce Transit shall have the right to make repairs or corrections by itself or with other forces, as required, and Pierce Transit may withhold from monies due the Contractor any costs which Pierce Transit incurs from such emergency work.

6.08 PROTECTION OF UTILITIES

- A. Facilities and installations of various utilities may be present in the area of Work. In general, the locations of existing major utilities, whether aboveground or underground, are indicated on the Contract Drawings. This information has been obtained from utility maps and field surveys. Pierce Transit does not guarantee the accuracy or completeness of the

information. It is understood that other facilities not shown on the Contract Drawings may be encountered during the course of the work. In any case, most minor lines such as water, gas, electric power and communication, sewer services, and sprinkler irrigation lines may not be indicated. The Contractor shall protect any utility property that is on or adjacent to the Site or affected by the Work. Existing utilities, whether shown on the Contract Drawings or not, shall be maintained, relocated, rerouted, removed, repaired, and restored as may be necessary by the Contractor in a manner satisfactory to owners and operators of the utilities and to Pierce Transit. The Contractor shall contact the utility owners and arrange construction operations and schedules to minimize any interruption of utility services. The Contractor shall provide utility owners with notice as may be required by said utilities for location of utility services, scheduling of outages, or other utility activities needed to accommodate the Contractor's operations.

- B. The Contractor shall comply with the requirements of RCW 19.122, Underground Utilities, and take steps to ascertain the exact location of all facilities prior to doing work which may damage such facilities or interfere with their service. Where the location of a facility is not indicated, or is, in the opinion of the Project Manager, doubtful, the Contractor may be directed to make such excavations and explorations as are necessary to ascertain the correct location.
- C. When performing work in streets and easements, the Contractor shall notify all affected utilities and local agencies of its proposed operations and properly coordinate and expedite the Work in such a manner as to cause the least amount of conflict and interference between the work and operations of other agencies. In the event of disruption or threat of disruption to utility services as a result of construction-related activities, regardless of cause, the Contractor shall notify Pierce Transit immediately and shall notify and cooperate with the utility as well as any fire, police, or other public authority which may be affected by the disruption, as required by said utility, agency, or authority.
- D. The Contractor shall document all incidents of damage or impacts to utilities that are the result of Work activity, and report all such incidents to Pierce Transit immediately with the date, time, place and type of property damage.
- E. The Contractor shall ensure that unauthorized personnel are strictly prohibited from the operation of utility or agency water valves and hydrants and shall obtain written permission from the applicable proper utility or agency prior to using any water hydrant or operating any water valve. No Work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority.

6.09 TEMPORARY CONSTRUCTION FACILITIES AND UTILITIES

- A. Temporary facilities and utilities shall be installed in compliance with federal, state, and local codes and statutes, at the Contractor's expense. The installation and maintenance of all temporary facilities will be subject to the approval of Pierce Transit, and unless otherwise authorized in writing by Pierce Transit, all such facilities shall be removed before Acceptance of the Work.
- B. Before proceeding with the erection of any construction facilities, including temporary structures, machinery, offices, and warehouses, the Contractor shall, at its expense, notify and furnish Pierce Transit with such information and drawings as Pierce Transit may request showing locations of such facilities, capacities and capabilities of the machinery and

equipment, and projected utility requirements. Such construction facilities shall be fully adequate for the uses intended and fully comply with the requirements of the Contract.

6.10 TEMPORARY REARRANGEMENT OF UTILITIES

The Contractor may desire to rearrange utilities temporarily for Contractor's convenience. In this case, the Contractor shall make whatever arrangements are necessary with the owners of such utility or other facility for such rearrangement and bear all expenses in connection therewith. Further, the Contractor shall maintain all utility facilities placed by the Contractor in temporary locations, and all utilities within the construction area not required to be permanently rearranged but which are required to be shored or supported during the construction period. Unless otherwise indicated, the cost of such temporary rearrangement and maintenance shall be borne by the Contractor and no other compensation shall be due the Contractor for this work.

6.11 REARRANGEMENT OF UTILITIES BY OTHERS

Some or all of the utilities and other facilities, both above ground and below ground, which are required to be rearranged to accommodate the specified work, may be rearranged by other forces. In the event that rearrangement will be performed prior to the start of the Contractor's operations, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities which are to be rearranged by others will be indicated in the Contract Documents. Where such a rearrangement by others is indicated in the Contract Documents, the Contractor will have no liability for the cost of performing the work; however, the Contractor shall cooperate with those involved in such rearrangement. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other facilities, and the Contractor shall make arrangements with the owner of such facilities for the coordination of the work. The Contractor shall anticipate potential delays by the utility owners and such reasonable delays shall not be the basis for additional compensation or time extensions. Only in the event that the utility owners fail or refuse to relocate or do so in a manner causing unreasonable delays to the critical path of the Work, may the Contractor request a time extension as provided in Article 4, Changes and Change Order Process.

6.12 EXPLORATION FOR UTILITIES

Where excavations or explorations to determine the location of utilities are directed by the Project Manager and where it is determined by the Project Manager that the rearrangement of an underground facility, which is not shown in the Contract Documents, is essential in order to accommodate the Work, the Project Manager will provide for the rearrangement of such facility by other forces or, when so ordered by a CN-WD or CO, such rearrangement shall be performed by the Contractor and will be paid for as provided in Article 4, Changes and Change Order Process. In the event of unscheduled or unanticipated disruption(s) or threat of disruption(s) to utility services as a result of construction-related activities, regardless of cause, the Contractor shall promptly notify Pierce Transit, the affected utility, and fire and/or police agencies as necessary, and shall cooperate with those authorities. If temporary disruption(s) of utility service(s) is (are) unavoidable pursuant to the Work, the Contractor shall immediately notify the Project Manager and secure authorization from Pierce Transit before disrupting the utility service(s). Operation of utility or agency water valves and hydrants by unauthorized personnel is strictly prohibited without obtaining written permission from the applicable authority prior to using any water hydrant or operating any water valve. No work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority.

6.13 SAFETY, FIRST AID AND SECURITY

- A. The Contractor shall be solely and completely responsible for conditions of the Site and the safety of all persons and property twenty-four (24) hours per day during the performance of the Work of this Contract. The Contractor shall:
 - 1. Maintain the site and perform the work in a manner that meets statutory, regulatory and common law requirements for the provision of a safe place to work and that does not pose unreasonable safety risks to employees of Pierce Transit or the public;
 - 2. Initiate, maintain, and supervise all safety precautions and programs in connection with the performance of the Work;
 - 3. Protect the lives and health of employees performing the work and other persons who may be affected by the Work, and
 - 4. Prevent damage to and theft of materials, supplies, and equipment whether on-Site or stored off-Site.

- B. The Contractor shall comply with all applicable local, state and federal laws, ordinances, rules, regulations and orders of any public authority building and construction codes, and safety regulations bearing on the safety of people and property and their protection from damage, injury or loss. In the case of conflict, the more stringent requirement shall apply. Any review of the Contractor's performance conducted by Pierce Transit or its consultants does not and shall not be intended to include review of the adequacy of the Contractor's safety measures in, on or near the Site.

- C. The minimum safety requirements and procedures for accident prevention, safety and loss prevention, accident and incident reporting, and control for the Work are contained in other Contract Documents. Failure to comply with these minimum requirements may result in a material breach of contract. The minimum safety requirements contained in the Contract are intended to supplement, and not replace the Contractor's Safety and Security Program or Site Safety and Security Plan.

- D. Prior to construction, the Contractor shall have in place a Contractor's Safety and Security Program (CSSP). From this Program the Contractor shall prepare a Contractor's Site Specific Safety and Security Plan (SSSP) identifying the methods by which all applicable safety and security requirements of this Contract and the applicable Federal, state and local requirements will be met. The Contractor shall ensure its Subcontractors have either a written safety program that conforms to the applicable requirements or formally adopt the Contractor's Safety and Security Program and Site Specific Safety and Security Plan. The Contractor shall designate a Safety and Security Officer who shall be responsible for proper implementation of the CSSP and the SSSP. The Contractor shall submit a copy of its CSSP and SSSP to Pierce Transit in accordance with the Contract Documents. Pierce Transit's review of the CSSP or SSSP shall not be deemed to constitute approval or acceptance thereof and shall not transfer any responsibility for the safety of the Work site from the Contractor to Pierce Transit.

- E. The Contractor shall conduct a monthly safety meeting with all on-site Subcontractors and supervisors to discuss general and specific safety matters. The Contractor shall keep a log of such monthly safety meetings and provide it upon request by Pierce Transit, including a sheet on which each attendee signed in and a description of the safety topics discussed at

the meeting. The Contractor also shall conduct weekly safety or "tool box" meetings with employees of the Contractor and Subcontractors. The Contractor shall keep a log of such weekly safety meetings and provide it upon request by Pierce Transit.

- F. As the property owner, Pierce Transit retains the right to grant consent to inspections pursuant to State and Federal law. This includes all accident and criminal investigations and general schedule, complaint, and follow-up safety and health inspections conducted by the State of Washington Department of Labor and Industries (WISHA) and the Federal Occupational and Health Administration (OSHA).

6.14 ORDER OF WORK

When required by the Contract Documents, the Contractor shall follow the sequence of operations set forth therein. Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of the Work and no additional compensation will be allowed therefore.

6.15 LIABILITY FOR EXPENSES

The Contractor shall be liable to Pierce Transit for expenses incurred due to the Contractor's failure to perform tasks in accordance with the Contract requirements. Such expenses may include costs to Pierce Transit for providing personnel to perform tasks on behalf of the Contractor and shall be subject to an advance notice to the Contractor that such expenses are expected to be incurred. These expenses may be deducted as unilateral credit Change Orders or as part of the Change Orders issued in accordance with Article 4, Changes and Change Order Process.

ARTICLE 7 LEGAL REQUIREMENTS

7.01 HEADINGS

The parties agree that Article and Section headings and other titles used in this Contract are for convenience only, and are not to be used to interpret this Contract.

7.02 WAIVER OF CONTRACT TERMS

No act or failure to act on the part of Pierce Transit with respect to the exercise or enforcement of any provision of this Contract (including but not limited to rights or remedies conferred upon Pierce Transit under this Contract, performance, or construction standards) shall be deemed to be a waiver on the part of Pierce Transit of any provision of this Contract. No waiver of one provision by Pierce Transit shall act as a waiver of any other provision or as a subsequent waiver of the same provision. No waiver shall be effective against Pierce Transit except an express waiver in writing.

7.03 PROHIBITED INTEREST

The Contractor shall not offer or confer any interest, direct or indirect, in this Agreement or the proceeds thereof (or hire or retain in any way, directly or indirectly) to or on any member, officer, or employee of Pierce Transit or its governing body, or of any of its component agencies during such person's tenure or one year thereafter, unless such interest has been disclosed in writing to Pierce Transit and Pierce Transit has determined that no prohibited conflict of interest or ethical violation exists in the circumstances.

7.04 SUCCESSOR'S OBLIGATIONS

The grants, covenants, provisos and claims, rights, powers, privileges and liabilities contained in

the Contract shall be read and held as made by and with, and granted to and imposed upon, the Contractor and Pierce Transit and their respective heirs, executors, administrators, successors and assigns. A Surety under the Performance Bond allowed by Pierce Transit to complete the Work in the event of a default, termination, or other failure of the Contractor to perform the Work, shall comply fully with all Contract requirements and shall not use the defaulted or terminated Contractor for continuation or completion of the Work unless Pierce Transit consents.

7.05 ASSIGNMENT OF CONTRACT

The Contract shall not be assigned in whole or in part by the Contractor without the prior written consent of Pierce Transit. To the maximum extent permitted by law, involuntary assignment of the Contract caused by the Contractor being adjudged bankrupt, assignment of the Contract for the benefit of the Contractor's creditors, or appointment of a receiver on account of the Contractor's insolvency shall be considered as a failure to comply with the provisions of the Contract and subject to the termination provisions contained herein.

7.06 JOINT VENTURE CONTRACTOR

- A. In the event the Contractor is a joint venture of two or more partners, the grants, covenants, provisos and claims, rights, power, privileges, and liabilities of the Contract shall be construed and held to be several as well as joint. Any notice, order, direction, request, or any communication given by Pierce Transit to the Contractor under this Contract shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such joint venture partners. Any notice, request or other communication given by any one of such joint venture partners to Pierce Transit under this Contract shall be deemed to have been given by and shall bind all joint venture partners being the Contractor.
- B. In the event of the dissolution of the joint venture Contractor, Pierce Transit shall have the unqualified right to select which joint venture partner(s), if any, shall continue with the Work under this Contract. Such selected partner(s) shall assume all liabilities, obligations, rights, and benefits of the Contractor under this Contract. Dissolution of the joint venture shall not be effected without prior consultation with Pierce Transit. In the event of failure or inability of any joint venture partner(s) to continue performance under this Contract, the remaining joint venture partner(s) shall perform all services and Work and assume all liabilities, obligations, rights, and benefits to the Contractor under this Contract. Nothing in this Article shall be construed or interpreted to limit Pierce Transit's rights under this Contract or by law to determine whether the Contractor or any joint venture partner thereof has performed within the terms of this Contract.

7.07 CONFLICT OF INTEREST

By submission of its Proposal, the Contractor covenants that it has no direct or indirect or current or potential pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts or could appear or be construed to conflict in any manner or degree with the Work, materials to be provided or services required to be performed under this Contract. Furthermore, the Contractor shall not employ any person or agent having any such conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest or potential conflict, it shall immediately disclose in writing such interest to Pierce Transit and take action immediately to eliminate the conflict or to withdraw from this Contract, as Pierce Transit requests. The Contractor shall not employ any consultant who is concurrently employed by Pierce Transit or by Pierce Transit's consultants (including, but not

limited to, surveyors, engineers, architects, and testing laboratories), without first obtaining Pierce Transit's approval in writing.

7.08 PERMITS, FEES, AND NOTICES

- A. Except as otherwise indicated, the Contractor shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit conditions and give all notices necessary and incident to the due and lawful prosecution of the Work. Failure of the Contractor to perform any of the requirements specified herein shall result in the Contractor's liability as set forth herein. Upon written request, the Contractor shall furnish Pierce Transit with satisfactory documentation evidencing compliance with the applicable requirements.
- B. The Contractor shall be fully liable to Pierce Transit and any permit issuing authority for any costs and damages arising out of or relating to Contractor's failure to obtain a permit or for any failure to comply with the terms of any permit, including (1) costs associated with completing the Work authorized and/or required by any government permit within the time or times, if any, , stipulated in such permit and any fees or penalties assessed by the permit issuing authority, (2) any damages or costs assessed under Article 7.14, and (3) delays to the Work solely caused by the Contractor's failure to timely complete Work, or any separate part thereof. As used herein, the term "permit issuing authority" includes any authority whose permit or license is necessary and incident to the due and lawful prosecution of the Work.
- C. The Contractor shall be responsible for identifying, securing, and paying for all necessary licenses, fees, inspections, waivers, utility connection fees, building and other permits, and similar authorizations from governmental and utility authorities required to fulfill the Contract requirements and the Contractor's obligations except for those identified in the Contract as being furnished or paid for by Pierce Transit.
- D. The Contractor shall maintain at the Work Site copies of all permits, licenses, certificates, or other documentation demonstrating compliance with any applicable statute, regulation, ordinance, or rule or other requirements of this Contract. The Contractor shall provide copies of such documentation to Pierce Transit promptly upon request.
- E. The Contractor shall be liable for and shall pay all fines, assessments, and other costs resulting from the Contractor's violation of any applicable federal, state, or local statute, regulation, ordinance, or other restriction.
- F. The Contractor shall not be entitled to any additional compensation or extension of time as a result of the Contractor's violation of applicable regulatory requirements. If a delay results from such a violation, the Contractor shall be responsible for all costs including, but not limited to, overtime premium associated with regaining the time lost as a result of such delay, and any damages, including liquidated damages, which may result from Contractor's failure to comply with the construction schedule as a result of such delay.

7.09 PUBLICITY AND ADVERTISING

The Contractor, its Subcontractors, and Suppliers shall not publish nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the subject matter of this Contract at any time without the prior written authorization of Pierce Transit. The Contractor shall not display any signs, posters, or any other advertising matter in or

on the Work or on or around the site other than those prescribed by the Contract or by law without the prior written authorization of Pierce Transit. In addition, advertising or other copy mentioning Pierce Transit or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by Pierce Transit. Any material proposed for publication shall be factual and shall not state or imply endorsement by Pierce Transit of any firm, service or product.

7.10 LIABILITY AND INDEMNIFICATION

- A. The Contractor shall comply, and require its subcontractors to comply, with all Pierce Transit resolutions, policies, motions and federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.
- B. Insurance Coverage, whether owner-provided, contractor-provided, or otherwise, shall not relieve the Contractor, Subcontractors or Suppliers of their responsibility for liability or damages to Pierce Transit.
- C. The Contractor shall be solely responsible for any claims for wages or compensation by the Contractor's employees, agents, and representatives, including subcontractors, and save and hold Pierce Transit harmless therefrom.
- D. The Contractor shall indemnify, defend and hold Pierce Transit harmless for any costs and pay any damages or judgments related to any claim brought by any person employed in any capacity by the Contractor, Subcontractors, or any agency on the Work, with respect to the payment of wages, salaries, or other compensation or benefits, including but not limited to benefits such as medical, health, retirement, vacation, sick leave, etc. To the maximum extent permitted by law, the Contractor agrees to defend, release, indemnify and save harmless Pierce Transit, its Commissioners, successors and assigns, and its and their shareholders, officers, officials, directors, contractors, and employees, (collectively "the Indemnified Parties") from and against any liability including any and all suits, claims, actions, losses, costs, penalties, response costs, and damages of whatsoever kind or nature to the extent arising out of, in connection with, or incident to the Contractor's performance or failure to perform this Contract or the Work; provided, however, that if the provisions of RCW 4.24.115 apply to the Work and any injuries to persons or property arising out of performance of this Agreement are caused by or result from the concurrent negligence of the Contractor or its Subcontractors, agents or employees, and an Indemnified Party, the indemnification applies only to the extent of the negligence of the Contractor, its Subcontractors, agents or employees.

THE CONTRACTOR SPECIFICALLY ASSUMES POTENTIAL LIABILITY FOR ACTIONS BROUGHT BY THE CONTRACTOR'S OWN EMPLOYEES OR FORMER EMPLOYEES AGAINST ANY INDEMNIFIED PARTY, AND FOR THAT PURPOSE THE CONTRACTOR SPECIFICALLY WAIVES ALL IMMUNITY AND LIMITATIONS ON LIABILITY UNDER THE WORKERS COMPENSATION ACT, RCW TITLE 51, OR ANY INDUSTRIAL INSURANCE ACT, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION THAT WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH CLAIM. THIS INDEMNITY OBLIGATION SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR A SUBCONTRACTOR UNDER WORKERS' COMPENSATION, DISABILITY BENEFIT OR OTHER EMPLOYEE BENEFITS LAWS. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO

AND WAS THE SUBJECT OF MUTUAL NEGOTIATION. PROVIDED, HOWEVER, THE CONTRACTOR'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST THE CONTRACTOR BY PIERCE TRANSIT, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONTRACTOR'S EMPLOYEE DIRECTLY AGAINST THE CONTRACTOR.

- E. The Contractor further agrees to assume the defense of the Indemnified Parties with legal counsel approved by Pierce Transit, which approval shall not be unreasonably withheld, in all legal or claim proceedings arising out of, in connection with, or incidental to the performance of this Agreement or the Work. The Contractor shall pay all defense expenses, including attorneys' fees, expert fees, and costs (collectively "defense costs") incurred directly or indirectly on account of such litigation or claims, and the Contractor shall satisfy any judgment rendered in connection therewith. In the event that any lien is placed upon the property of any of the Indemnified Parties as a result of such suits or legal proceedings, the Contractor agrees to immediately cause the same to be dissolved and discharged by giving bond or otherwise. The Contractor may settle any suit, claim, action, loss, cost, penalty, or damages, subject to the approval of Pierce Transit, whose approval shall not be unreasonably withheld, if such settlement completely and forever extinguishes any and all liability of the Indemnified Parties. In the event of litigation between the parties to enforce the rights under this Article, reasonable attorney fees shall be allowed to the prevailing party.
- F. The Contractor further agrees that any review and/or approval by Pierce Transit and/or others hereunder shall not relieve the Contractor of any of its obligations to perform to generally accepted professional standards applicable to the types of services and work provided hereunder or in any way diminish its liability for the performance of such obligations or its obligations to provide the indemnities hereunder.
- G. The foregoing indemnities and duties to defend shall survive the termination of this Agreement and final payment hereunder, and are in addition to any other rights or remedies which Pierce Transit and/or any of the Indemnified Parties may have by law or under this Agreement. In the event of any claim or demand made against any Indemnified Party hereunder, Pierce Transit may, in its sole discretion, reserve, retain or apply any monies due to the Contractor under the Agreement for the purpose of resolving such claims; provided, however, that Pierce Transit may release such funds if the Contractor provides Pierce Transit with adequate assurance of the protection of Pierce Transit's and the other Indemnified Parties' interests.
- H. The Contractor shall not assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by Pierce Transit; provided, however, that claims for money due or to become due to the Contractor from Pierce Transit under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such claim assignment shall be furnished promptly to Pierce Transit.
- I. Pierce Transit's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

7.11 OWNERSHIP OF WORK PRODUCT

All information, including drawings, specifications and other data, prepared or developed by the

Contractor in performance of the Work, whether or not required to be furnished to Pierce Transit, shall be the property of Pierce Transit and may be used by Pierce Transit without restriction. The Contractor hereby assigns and transfers to Pierce Transit any and all copyrights for such materials. Prior to the completion of the Work, the Contractor shall provide Pierce Transit with a list of all such information which has not previously been furnished to Pierce Transit. Pierce Transit will then have thirty (30) days to advise the Contractor which information shall constitute Pierce Transit property. Before requesting Acceptance, the Contractor shall deliver to Pierce Transit the information that has been identified to constitute Pierce Transit property.

7.12 RIGHTS IN TECHNICAL DATA

- A. The Contractor shall assume all risks arising from the use of patented or copyrighted materials, equipment, devices or processes not furnished by Pierce Transit, used on or incorporated in the Work, and shall indemnify, defend and hold harmless Pierce Transit, and all of its directors, officers, employees and agents to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorney's fees and related costs), whether direct or indirect, arising out of or relating to the ownership, possession or use of any patented materials, equipment, devices or processes. In case such material, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor at the Contractor's expense shall:
 - 1. secure for Pierce Transit the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license, or licenses, or
 - 2. replace such materials, equipment, devices or processes, or
 - 3. modify them so that they become non-infringing or
 - 4. remove the enjoined materials, equipment, devices or processes and refund the sums paid therefore without prejudice to any other rights of Pierce Transit or the Project Manager.

- B. The preceding Paragraph A shall not apply to any materials or processes specified by Pierce Transit or its Contractors, or manufactured to the design of Pierce Transit or its Contractor in accordance with the details contained in the Contract Documents, if authorized by Pierce Transit; and for such materials and processes the Contractor assumes no liability whatsoever for infringement, except to the extent that the Contractor knew, or should have known of the infringement and failed to promptly notify Pierce Transit thereof.

- C. If any invention, improvement, or discovery of the Contractor is conceived or first reduced to practice in the course of Work or under this Contract, and such invention, improvement, or discovery may be patented under the laws of the United States of America or any foreign country, the Contractor shall immediately notify Pierce Transit and provide a detailed report. The rights and responsibilities of Pierce Transit, the Contractor, and the federal government with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies and any grant agreements. Except for Contractor's use in conjunction with the Work required by this Contract, the Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of Pierce Transit.

D. This Article shall survive any expiration or termination of this Contract.

7.13 SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be unenforceable, the validity and enforceability of the remaining provisions shall remain unaffected, and the parties shall negotiate an equitable adjustment of this Contract so that the purposes of this Contract are affected.

7.14 COMPLIANCE WITH LAWS AND REGULATIONS

- A. The Contractor shall keep fully informed concerning all governmental requirements, including but not limited to all State, federal, county and municipal laws, ordinances and regulations which in any manner affect the performance of the Work, or the materials and equipment used in the Work, or which in any way affect those engaged or employed to work in connection with the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same including the specific legal requirements referenced in the Contract Documents. The Contractor shall at all times comply with, and shall cause all the Contractor's agents, employees and Subcontractors to comply with all such governmental requirements, and shall indemnify, defend and hold harmless Pierce Transit and all of its directors, officers, agents, and employees against all claims, liabilities, losses, damages and expenses (including attorney's fees and related costs) arising from or based on the violation of any such governmental requirement whether by the Contractor or contractor's agents, employees or Subcontractors. If any discrepancy or inconsistency is discovered in the Contract Documents for the work in relation to any such governmental requirements, the Contractor shall immediately report the same to the Project Manager in writing.
- B. The Contractor shall comply and, to the best of its ability, shall require its subcontractors to comply with all Pierce Transit policies applicable to the Work to be performed under this Agreement (for example Pierce Transit's policy on equal employment opportunity and harassment). Copies of Pierce Transit policies are available upon request.
- C. The Contractor shall exercise reasonable efforts to stay apprised of changes to said governmental requirements. The Contractor shall bring any such changes to the attention of the Project Manager and identify with particularity the effect of such changes on the Work. Impacts of time or cost from such change will be investigated and managed through the Change Order process. Any such changed law, ordinance, resolution, or regulation supersedes any conflicting provisions of this Contract.
- D. Suspected Violation of Governmental Requirements - If the Contractor knows or has reason to know of any suspected violation of Governmental Requirement by itself or any Subcontractor under the Contract, the Contractor must promptly and fully investigate and immediately report the existence of such investigation to Pierce Transit. The Contractor shall fully report, in writing, to Pierce Transit the facts and information ascertained in the investigation and shall allow Pierce Transit to examine all of Contractor's documentation related to the investigation. If Pierce Transit reasonably believes access to any individual worker is necessary for a Pierce Transit investigation, whether such worker is an employee of Contractor or a Subcontractor of any tier, Contractor must make available, within 1 day of a written request, such worker for interview by Pierce Transit's representative who has been designated in the written request. The Contractor may withhold communications

properly considered attorney-client privileged.

- E. The Contractor is liable for all actual costs reasonably incurred by Pierce Transit directly related to Pierce Transit’s response to or necessary actions required for the violation of any Governmental Requirement or a settlement by Contractor associated with such alleged violation, including the total personnel costs of Pierce Transit employees and other Pierce Transit costs, outside attorneys’ fees and costs, and outside consultants’ fees and costs. Pierce Transit may withhold such amounts from sums otherwise payable to Contractor under the Contract. For purposes of this Article 7.14:
 - 1. Environmental Violation occurs when any federal, state, or local governmental entity or other applicable environmental permitting authority has found any portion of the Work or Contractor’s performance thereof to be in violation of any environmental permit or other applicable federal, state, or local environmental law, regulation, or requirement.
 - 2. Safety Violation occurs when any federal, state, or local governmental entity or other applicable authority has found any portion of the Work or Contractor’s performance thereof to be in violation of any applicable federal, state, or local safety law, regulation, or requirement.
 - 3. Violations of Title VI, equal employment opportunity laws, or non-discrimination laws occur (a) when any federal, state, or local governmental entity or other applicable authority has found the Contractor or any subcontractor to have been in violation of Title VI, equal employment opportunity law or non-discrimination law, or (b) when Pierce Transit or an investigator hired by Pierce Transit determines that sufficient facts exist to support a prima facie violation of Title VI, equal employment opportunity law or non-discrimination law regulation or policy applicable to this Contract.

7.15 PREVAILING WAGE

- A. The wage rates to be paid all laborers, workers, and mechanics who perform any part of this Contract shall be not less than the prevailing wage rates as required by Chapter 39.12 R.C.W. This requirement applies to laborers, workers, and mechanics whether they are employed by the Contractor, Subcontractors, Sub-subcontractors, or any other person who performs a portion of the Work contemplated by the Contract Documents.
- B. The prevailing wage rates as provided to Pierce Transit by the Industrial Statistician of the Washington State Department of Labor and Industries is available for download at URL <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/>. A copy of the prevailing wage rates is available for viewing at Pierce Transit’s offices or may be requested by contacting the Project Manager. In referencing such rates, Pierce Transit does not imply or warrant that the Contractor will find labor available at those rates. It is the Contractor’s sole responsibility to determine the most current wage rates it will actually have to pay. These rates shall remain in effect for the duration throughout Contractor’s performance of the Work.
- C. 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 resolved by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries and the Director's decision therein shall be final

and conclusive and binding on all parties involved in the dispute, as provided for by R.C.W. 39.12.060.

- D. The Contractor shall, pursuant to R.C.W. 39.12.040, file with Pierce Transit, a "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid" for itself and all Subcontractors and Sub-subcontractors in performance of the Work. Such Statements require the approval of, and the Affidavits the certification of, the Industrial Statistician of the Department of Labor and Industries before such Statements or Affidavits are submitted to Pierce Transit. The Department of Labor and Industries charges a fee for such approval and certification, which fee shall be paid by the Contractor. Any change in the fee will not be grounds for revision in Contract Sum.
- E. If a State of Washington minimum wage rate conflicts with an applicable federal minimum wage rate for the same labor classification, the higher of the two shall govern.
- F. In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

7.16 DAVIS BACON – ONLY APPLICABLE TO FEDERAL TRANSIT AUTHORITY FUNDED WORK PACKAGES

- A. **Minimum Wages.** All laborers and mechanics employed or working upon the site of work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to laborers or mechanics, subject to the provisions of subparagraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.
- B. The contracting officer shall require that any class of laborers or mechanics which is not

listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determinations; and
- b. The classification is utilized in the area by the construction industry; and
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefits as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act has been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under plan or program (Approved by the Office of Management and Budget

under OMB Control Number 1215-0140.)

C. Payrolls and Basic Records

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each worker, his or her correct classification, hourly rates of wages paid (including contributions for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b) (2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of the apprenticeship program and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

The Contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the sponsor, or owner, as the case may be. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 5.5(a)(3)(i) above. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under (3)(i) above and that such information is correct and complete;
2. That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of

Compliance” required by paragraph (3)(ii)(B) of this section.

The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 or Title 31 of the United States Code.

The Contractor or subcontractor shall make the records required under paragraph c(1) of this section available for inspection, copying or transcription by authorized representatives of the Federal Transit Authority or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with the State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of the apprenticeship program, the Contractor will no longer

be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator for the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall conform with the EEO requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- E. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
- F. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Transit Authority may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- G. Contract Termination: Debarment. A breach of the contract clauses in paragraphs (1) through (10) of this section and paragraphs (1) through (5) of the next section below may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.
- H. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by reference in this contract.

I. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility.

By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(1).

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

7.17 TEMPORARY EROSION AND SEDIMENTATION CONTROL

The Contractor shall plan for and implement all necessary temporary measures shown on the Contract Documents, or as required to prevent pollution of soil and water, and control, respond to, and dispose of potential pollutants or hazardous materials until Acceptance. The Contractor shall comply with requirements set forth in all state, and local permits issued for the project. The Contractor shall meet or exceed all requirements of the permits.

7.18 ENVIRONMENTAL COMPLIANCE AND SUSTAINABILITY

Pierce Transit is committed to protecting the environment for present and future generations and expects contractor to be similarly is committed to meeting or exceeding all environmental commitments during all phases of the project. The purpose is to prevent environmental degradation, reduce work delays and cost increases, minimize negative publicity, and reduce the number of upset citizens, landowners, and regulating agencies.

Within thirty (30) days of effective date of the Notice to Proceed, Contractor shall provide to the Pierce Transit a copy of Contractor's plan for promoting environmental sustainability, energy efficiency and conservation, green design and technologies throughout the Project.

7.19 TAXES

A. Retail Sales Taxes

Pierce Transit has determined that portions of the work to be performed under this Contract may be exempt from the retail sales tax on labor pursuant to RCW 82.04.050(7) and WAC 458-20-171 ("Rule 171"). Pierce Transit will attempt to seek pre-determination by the Washington State Department of Revenue of whether certain work is eligible for the Rule 171 exemption. Pursuant to Rule 171 and for that portion of the Project that is eligible for Rule 171 treatment, Contractor will be considered the consumer of all materials, equipment and supplies, including prefabricated and pre-cast items, purchased, used or consumed by them in performing the Work; and Contractor must pay the applicable sales/use tax on all taxable items. For those portions of the work that are eligible for the exemption under Rule 171, no retail sales tax shall be invoiced to or collected from Pierce

Transit.

In the event that the Washington State Department of Revenue should determine, on audit or otherwise, that all or any portion of the work does not qualify for exemption under Rule 171, or that Pierce Transit is otherwise obligated to pay sales/use tax on the Contract, the Contract and any subsequent invoices will be amended to add and separately state any applicable retail sales tax to the Total Contract Cost. In this event, the Total Contract Cost will be adjusted to eliminate any duplication of retail sales tax for retail sales tax amounts already included in the Contractor's Total Contract Cost.

If a Contractor has questions regarding the application of Rule 171, the Contractor should contact the Washington State Department of Revenue

- B. Federal Excise Taxes - Pierce Transit is exempt from Federal Excise Taxes and an exemption certification will be furnished upon request.
- C. Other Taxes - The Total Contract Cost includes all other taxes applicable to the Contractor's completion of the Work, including without limitation, B&O taxes applicable to all tiers performing the Work.
- D. No increase will be made to the amount to be paid by Pierce Transit under this Contract because of any misunderstanding by or lack of knowledge of the Contractor as to liability for, or the amount of, any taxes for which the Contractor is liable or responsible by law or under this Contract.

7.20 LIENS PROHIBITED

The Contractor shall not permit any lien or claim to be filed or prosecuted against Pierce Transit, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, the Contractor shall satisfy, discharge and extinguish or cause such lien to be satisfied, discharged and extinguished immediately, including at Pierce Transit's option obtaining a court order extinguishing the lien, as a condition precedent to final payment

7.21 ARCHAEOLOGICAL FINDS

The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW-- Archaeological Sites and Resources. The Contractor shall immediately notify Pierce Transit if any artifacts, skeletal remains, or other archaeological resources (as defined under RCW 27.53.040) are unearthed during excavation or otherwise discovered on the Site. If directed by the Project Manager, the Contractor shall immediately suspend any construction activity that would be in violation of Chapter 27.53 RCW. The suspension of Work shall remain in effect until permission to proceed has been obtained by Pierce Transit from the State Historic Preservation Officer or private landowner, as applicable. If this should occur, Pierce Transit will work with the Contractor to develop a work-around plan to minimize disruption to the Contractor's work and schedule. Such suspension and/or work-around plan may allow the Contractor an adjustment in Contract Time or Total Contract Cost, in accordance with Article 4, Changes and Change Order Process. Pierce Transit shall have sole and exclusive title to any discovered articles.

7.22 HAZARDOUS OR CONTAMINATED SUBSTANCES

- A. The Contractor shall conduct its Work to meet the requirements set forth in the Contract Documents and any applicable laws or regulations regarding Hazardous or Contaminated

Substances encountered on the site or during performance of the Work, regardless of whether the presence of such materials was anticipated in the Contract Documents.

- B. If the Contractor encounters suspected Unknown Hazardous or Contaminated Substances, the Contractor shall give immediate oral notice to Pierce Transit, followed by written notice in accordance with Article 4.11, Differing Site Conditions. The Contractor shall comply with the requirements contained in the Specifications regarding Unknown Hazardous and Contaminated Substances. If any materials prove, through investigation, to contain hazardous or contaminated substances, Pierce Transit may direct that the materials be removed (1) by requiring the Contractor to perform the Work in accordance with all applicable laws and regulations, or (2) by making arrangements with third parties to do the Work, in which case the Contractor must cooperate with any such third parties. Except as provided below, the Contractor will be entitled to an equitable adjustment for extra work performed under this provision. Such compensation will be made under the Provisional Sum Item for Unknown Hazardous and Contaminated Substances. If a Provisional Sum Item for Unknown Hazardous and Contaminated Substances is not provided in the Contract, compensation and time adjustments will be made in accordance with Article 4, Changes and Change Order Process and Article 10, Delays and Claims.
- C. Contractor's Operations - Throughout the performance of this Contract, the Contractor shall be responsible for preventing a release or the spread of hazardous and/or contaminated substances as a result of the Contractor's operations.
 - 1. Any Hazardous or Contaminated Substances generated by or used by the Contractor during the course of performance of the Work or otherwise resulting from the Contractor's Work shall be the sole responsibility of the Contractor. The Contractor shall be responsible for properly handling, storing, using, and disposing of any and all such Hazardous or Contaminated Substances in accordance with all applicable federal, state, and local laws, regulations, or permit requirements.
 - 2. In the event of release of Hazardous or Contaminated Substances, the Contractor shall immediately notify Pierce Transit and shall take all appropriate measures, consistent with protecting the health and safety of Contractor personnel, Pierce Transit personnel, and the public, to stop the spread of any hazardous and/or contaminated substances.
 - 3. The Contractor shall promptly clean up and dispose of materials containing Hazardous or Contaminated Substances resulting from the release to the satisfaction of Pierce Transit and in accordance with the governing regulatory agencies and all applicable federal, state, and local laws, regulations, and permits. Pierce Transit shall be responsible for the reporting of all reportable releases to federal, state, and local regulatory and emergency response agencies.
 - 4. The cost of cleanup and disposal of hazardous or contaminated material that is negligently released by the Contractor during performance of the Work shall be borne by the Contractor.
 - 5. Except as provided in Article 7.10, Liability and Indemnification, the Contractor shall indemnify and hold Pierce Transit harmless for any and all negligent releases of hazardous or contaminated materials brought onto the site by the Contractor during the performance of this Contract.

- D. Records of Remediation Activities - The Contractor shall keep separate cost records of its clean-up activities on sites where hazardous substances are found. Such records shall include invoices and back up documentation of the costs for investigative, sampling, testing and monitoring activities related to the hazardous substances. The Contractor's records will also include all invoices and back up documentation for the excavation, hauling and disposal of hazardous substances and all other costs related to the Contractor's remediation of hazardous substances. The Contractor's remediation cost records shall be segregated by the parcel number of the site or identified by some other acceptable method for identifying the location of the contamination. The Contractor's system for maintaining cost records for its remediation activities shall be subject to Pierce Transit's review and approval. The Contractor shall make its remediation cost records available to Pierce Transit to review and copy at any time.

7.23 RESPONSIBILITY FOR PRE-EXISTING HAZARDOUS AND CONTAMINATED SUBSTANCES

- A. The parties recognize that Pierce Transit may assert that third parties rightfully bear the ultimate legal responsibility for any or all hazardous and contaminated substances which may currently be present on the Site. The parties further recognize that certain state or federal statutes or regulations provide that individuals or firms may be held liable for damages or claims related to hazardous and contaminated substances under such doctrines as joint and several liability and/or strict liability. The parties do not intend for the Contractor to be exposed to any such liability arising solely out of pre-existing Site contamination, whether known or unknown, except for any release or threatened release of a hazardous and contaminated substance which was negligently or recklessly disturbed, removed, or handled by the Contractor, its employees, agents, officers, or Subcontractors, or any other Persons for whom the Contractor may be contractually or legally responsible, in the handling of such hazardous and contaminated substances regardless of the source, origin, or method of deposit of the hazardous substance.
- B. For purposes of this Contract only, Pierce Transit shall reimburse the Contractor for, and otherwise indemnify, defend, and save the Contractor harmless from claims, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, arising out of the presence, release, or threatened release of hazardous and contaminated substances on or from the Site, irrespective of whether such substances were generated or introduced on the Site before or after execution of this Contract and irrespective of whether Pierce Transit was aware of, or directly involved in, the generation or introduction of such materials, but specifically excluding from this obligation those conditions for which Contractor has agreed to be responsible as described in this Article.
- C. Except for hazardous and contaminated substances for which the Contractor is responsible as described in this Article without contradiction of any assertion by Pierce Transit of third-party liability, and for purposes of this Contract only:
 - 1. The Contractor shall not be required to execute any dangerous waste manifests as a "generator," and
 - 2. Hazardous and contaminated substances encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by, and carried in the name of, Pierce Transit or a person designated by Pierce Transit.

- D. The obligations set forth in this Article shall not be construed to negate, abridge, or reduce other rights or obligations, which would otherwise exist in favor of a party indemnified thereunder.
- E. Without limiting their generality, the indemnities set forth in this Article are intended to operate as agreements pursuant to Section 107(3) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e).

7.24 REMEDIATION OF KNOWN AND UNKNOWN HAZARDOUS AND CONTAMINATED SUBSTANCES

Contractor Qualifications - The Contractor shall comply with applicable laws and regulations regarding the presence of known or unknown hazardous and/or contaminated substances encountered on the Site or during performance of the Work. This obligation shall require Contractor to conduct appropriate site clean-up activities, in compliance with the Contract Documents. Pierce Transit reserves the right to request and review the qualifications of proposed personnel, Subcontractor(s), equipment or facilities to be used in the performance of this work and to approve or reject them.

7.25 USE OF EXPLOSIVES

- A. The use of explosives will not be permitted without the written approval of the Project Manager. Such approval will be granted only after the Contractor has satisfied the Project Manager on the safety of the Contractor's proposed operation, protection of the public and compliance with applicable laws and regulations, and the Contractor has obtained the written consent of the authority having jurisdiction.
- B. All explosives shall be stored in a secure manner, in compliance with all governmental requirements.
- C. The Contractor shall notify each public utility and property owner having structures near the site of the Work of the Contractor's intention to use explosives, sufficiently in advance to enable them to take such steps as they deem necessary to protect their property from injury. Such notice will not relieve the Contractor of responsibility for any damage resulting from the Contractor's blasting operations.

7.26 SUBCONTRACT BONDS

For subcontract bid packages with a bid estimate over \$300,000, the Contractor must require a bid bond in the amount of 5% of the amount bid from Subcontractors who bid. The Contractor must require acceptable Performance and Payment Bonds from all Subcontractors that are awarded a contract over \$300,000, in the amount of the subcontract, including applicable Washington state sales tax. The Contractor may, at its discretion, require Performance and Payment Bonds from any other Subcontractor, provided that such requirement is set forth in the subcontract bid documents. All costs of subcontractor bonding are included in the negotiated MACC.

7.27 CONTRACTOR ACQUISITION AND / OR MERGER

If the Contractor executing this Agreement ceases to exist as an independent business entity by means of acquisition by and / or merger with a successor or otherwise, the Contractor shall notify Pierce Transit in writing not less than thirty (30) days prior to the effective date of the circumstance causing the cessation of the independent business status. Pierce Transit reserves the right to take steps to ensure it has contractual privity with the successor. The Contractor shall

cooperate with this effort by agreeing to an assignment, a novation, or other document required to transfer the rights and responsibilities of the Contractor to the successor.

7.28 APPLICABLE LAWS AND JURISDICTION

This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington and, to the extent incorporated into (or made applicable to the Work by) the Contract Documents, the laws of the United States of America. Subject to the provisions herein regarding exhaustion of administrative remedies, the Superior Court of Pierce County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

7.29 CPARB REPORTING

The Contractor shall provide Pierce Transit, and require all subcontractors to provide, any project information required to be submitted by the Contractor in accordance with the provisions of chapter 39.10 RCW and the requirements of the Capital Projects Advisory Review Board (CPARB).

ARTICLE 8 INSURANCE

Contractor shall comply with Section 00 73 16 Insurance Requirements.

ARTICLE 9 PAYMENT

9.01 COMPLIANCE PREREQUISITE TO PAYMENT

- A. Pierce Transit shall pay the Contractor for the Work in accordance with the Schedule of Values as described in Article 9.02, Schedule of Values. Payment to the Contractor shall be based upon approval of the payment request by Pierce Transit and the Work performed in conformance with the Contract. Pierce Transit will not approve payments for portions of the Work not performed in full compliance with provisions of the Contract, and applicable laws, ordinances, resolutions, regulations, permits and/or easements, and may withhold such payments to the Contractor in accordance with Article 9.06, Withholding Payments.
- B. The Contractor shall be responsible, and have no claim whatsoever against Pierce Transit, for all costs and effects of delays resulting or arising from suspension and/or Stop Work orders issued by Pierce Transit and/or any governmental authority as a result of incidents of non-compliance with the Contract or any laws, ordinances, or regulations by the Contractor and/or its Subcontractors and Suppliers.

9.02 SCHEDULE OF VALUES

The Contractor shall submit to Pierce Transit within 30 days after issuance of the Notice to Proceed, a Schedule of Values for every component of the Total Contract Cost, in accordance with the Contract Documents and as agreed to during the negotiation of the MACC. The Contractor warrants that such values are accurate representations and allocations of the value of each activity on which Pierce Transit may rely. Failure to submit a Schedule of Values that is acceptable to Pierce Transit will delay the processing of progress payments.

9.03 PROGRESS PAYMENTS

- A. General - By the 5th day of each month, the Contractor shall submit to Pierce Transit a progress payment request as instructed by the Project Manager covering acceptable Work performed and materials received during the previous payment period, or since the last progress payment estimate was submitted. Payment periods shall end on the last day of each month. If requested by Pierce Transit, the Contractor shall provide such additional data as may be reasonably required to support the payment for materials and labor, including payments to Subcontractors and Suppliers. The term "materials", as used herein, shall be considered to include those items which are fabricated and manufactured material and equipment. Only those materials for which the Contractor can transfer clear title to Pierce Transit will be qualified for progress payment, except as specifically provided below.
- B. Progress Payment Requests - The first progress payment request shall include (1) the value of the Work performed, including Specified General Conditions work, (2) the cost (as determined below) of materials delivered but not yet incorporated in the Work, and (3) an amount of the Fixed GC/CM Fee that is proportionate to the percentage of the MACC and Fixed Amount for Specified General Conditions Work being requested and any bonding costs, all of which shall have been incurred since the effective date of Notice to Proceed. Every subsequent progress payment request, except the final payment request, shall include (1) the value of the Work performed including Specified General Conditions work, (2) the cost (as determined below) of materials delivered but not yet incorporated in the Work, and (3) an amount of the Fixed GC/CM Fee that is proportionate to the percentage of the MACC and Fixed Amount for Specified General Conditions Work being requested, all of which shall have been incurred since the last progress payment request was submitted, less the value of materials installed for which previous payment had been made by Pierce Transit.
- C. On-site Materials: At the Engineer's sole option, a progress payment may include payment for permanent materials or equipment to be incorporated into the Work if approved in advance by the Engineer and properly stored and safeguarded on the site.
- D. Off-site Materials: At the Engineer's sole option, a progress payment may also include payment for permanent prefabricated materials or specifically designed equipment to be incorporated into the Work if approved in advance by the Engineer and properly stored, even though off-site. The maximum allowable payment for such off-site material will be eighty-five percent of the invoice price for the material.
- E. Any payment for materials or equipment stored on or off the site but not yet incorporated into the Work shall be based upon the cost of the materials or equipment as determined by Pierce Transit considering invoices to the Contractor, bills of sale, or by such other means satisfactory to the Engineer and which will establish Pierce Transit's title to such materials or equipment and otherwise protect Pierce Transit's interest. This shall include provisions for insurance and transportation to the site in the case of materials and equipment stored off the site.
- F. Progress Payment Based on Unit Prices - If the Total Contract Cost for this Contract included unit price items, then progress payments for such items will be based on the actual quantities performed or provided under such unit price items. For Work performed or

provided under such unit price items, the Contractor shall not be entitled to any payment beyond those unit prices, except as may be provided herein.

- G. Progress Payment for Subcontracted Work - In its payment requests, the Contractor shall include payments for Subcontractors whose work was satisfactorily performed and part of the completed Work covered by the payment request. The Contractor shall not request payment from Pierce Transit of amounts for Subcontractors until the Contractor has determined that the Subcontractors are entitled to the payment of such amounts for Work satisfactorily completed.
- H. Review of Payment Request - Within ten (10) days after receipt of the progress payment request and the required documentation, Pierce Transit will review the request and either indicate approval in writing or indicate in writing to the Contractor specific reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount. Any amounts approved by Pierce Transit for payment will, within thirty (30) days of acceptance of the Contractor's properly completed invoice or receipt of the goods or services, whichever is later, pay the Contractor a progress payment on the basis of the approved progress payment request.
- I. In the event Pierce Transit does not concur with the request, the Contractor may make the changes necessary to obtain Pierce Transit's concurrence and resubmit the progress payment request. Pierce Transit will, within thirty (30) days of acceptance of the Contractor's properly completed payment request, or receipt of the goods or services, whichever is later, and after the Contractor satisfactorily completes the remedial actions identified in Pierce Transit's rejection of the payment request, pay the Contractor a progress payment on the basis of the approved progress payment request.
- J. The Contractor shall receive a payment from Pierce Transit no more than once per calendar month unless otherwise approved by Pierce Transit, at its sole discretion.

9.04 RETAINAGE

Pursuant to RCW 60.28.011(1)(b) no retainage will be withheld from Contractor's payments for work packages that are funded wholly or in part by federal transportation funds. In these cases, the Contractor may not withhold retainage from subcontractor payments. For all work not funded by federal transportation funds, retainage of 5% will be withheld from every payment made to the Contractor.

9.05 WITHHOLDING PAYMENTS

- A. The Contractor shall only be paid monies earned by fulfilling its responsibilities under this Contract. Monies shall not be considered earned if any of the following conditions applies:
 - 1. The Work for which the Contractor is claiming payment was not performed in accordance with the Contract;
 - 2. The Contractor's pay request does not contain all the required documentation or is otherwise not in conformance with the requirements of this Contract;
 - 3. There is a good faith dispute over all or a portion of the amount due, in accordance with 39.04.250 RCW;
 - 4. Failure of the Contractor to make payments owed to Subcontractors, or for labor, materials, or equipment;

5. Failure of Contractor to submit Construction Schedule, schedule(s) of value or updated Construction Schedules that are acceptable to Pierce Transit and timely in accordance with the Contract;
 6. Failure to maintain progress of the Work in accordance with the accepted Construction Schedule unless such failure is solely caused by Pierce Transit or by Unavoidable Delays, or failure to take necessary steps to regain time or deliver the Work in the prescribed Contract Time;
 7. Failure to comply with Contract safety requirements;
 8. Imposition of any liquidated damages under the Contract;
 9. Defective or Non-Conforming Work;
 10. Failure to comply with Governmental Requirements;
 11. Third party claims filed or reasonable evidence that third party claims will be filed; and/or
 12. Failure to comply with Title VI, Equal Employment Opportunity laws and regulations, or non- discrimination laws and regulations after written notice and direction, in the form of an NCR, from Pierce Transit to comply.
- B. In the event Pierce Transit withholds all or a part of a payment for deficiencies in either performance, or in a payment request, Pierce Transit will notify the Contractor in accordance with RCW 39.76. The Contractor shall have the right to correct all deficiencies that are the basis for the withholding and resubmit the pay request at any time for reconsideration.
- C. In the event Pierce Transit withholds all or part of a payment because of a dispute, the Contractor may receive the payment by resolving the dispute, or by agreeing to accept the payment tendered by Pierce Transit as full and final resolution as between Pierce Transit and the Contractor to all claims arising from the dispute.

9.06 PROMPT PAYMENT TO SUBCONTRACTORS AND RELEASE OF AMOUNTS WITHHELD FROM SUBCONTRACTORS

- A. When the Contractor receives a payment under this Contract, the Contractor shall comply with the following provisions:
1. The Contractor shall pay to each Subcontractor not later than ten (10) days after the receipt of the payment, amounts paid to the Contractor on account of the work performed by the Subcontractor in accordance with the provisions of RCW 39.04.250, unless payment is otherwise excused under the provisions of RCW 39.04.250.
 2. If the Contractor fails or neglects to make such payment within ten (10) days, the Contractor shall pay to the Subcontractor interest computed at one percent per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount due is made.
 3. The Contractor shall include in each of its Subcontracts a provision setting forth the payment and interest penalty clause set forth in this Article 9.07. In addition, the Contractor shall require its Subcontractors to include such a payment and interest clause in each of their Subcontracts and to require each of their Subcontractors to

include such clauses in their Subcontracts with each lower tier Subcontractor or Supplier. The time limit for payment under all Subcontracts below the first tier shall be ten (10) days.

4. The payment and interest clauses in this Article 9.07 shall not be construed to impair the right of the Contractor or a Subcontractor at any tier to negotiate and include in their Subcontracts provisions related withholding of part or all of progress payments without incurring any obligation to pay a late payment interest penalty thereon in accordance with the Subcontract agreement.
- B. If the Contractor withholds any portion of payments to a Subcontractor during performance of the Subcontractor's work, whether under Washington State law or otherwise, the Contractor shall comply with the provisions in this Paragraph 9.07B to release such withheld monies following satisfactory completion of the Subcontractor's work.
1. The Contractor shall monitor the work of each Subcontractor to ensure such work is consistent with the terms of the subcontract between the Contractor and Subcontractor.
 2. The Contractor shall determine that a Subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required in the subcontract and the Contract between Pierce Transit and the Contractor. Upon making such determination, the Contractor shall provide a written notice of such determination to the Subcontractor and submit a copy of the notice to the Project Manager.
 3. As required by 49 CFR § 26.29, Contractor shall implement regular and incremental acceptances of portions of the Work as completed by Subcontractors covered by said regulation.

9.07 FINAL PAYMENT

- A. Pierce Transit will make Final Payment to the Contractor following Final Acceptance of Work, including (i) receipt of releases from owners of property affected by the Contractor's performance under this Contract, (ii) submittal of a final Affidavit of Amounts Paid to all businesses participating under the Contract, and (iii) submittal of "Affidavits of Wages Paid" for the Contractor and each Subcontractor approved by the Industrial Statistician of the Washington State Department of Labor and Industries. Final Payment shall include the entire sum found to be due hereunder after deducting therefrom such amounts as the terms of this Contract permit. Prior estimates and payments, including those relating to extra work or work omitted, shall be subject to correction by the Final Payment. Final Payment will be made only for materials actually incorporated in the Work; and, all materials remaining for which progress payments have been made shall revert to the Contractor, unless otherwise agreed, and progress payments made for these items shall be deducted from the Final Payment for the Work.
- B. By accepting Final Payment, the Contractor shall be deemed thereby to have released Pierce Transit from all claims of Contractor and all liability to the Contractor for things done or furnished in connection with the Work and for every act and neglect of Pierce Transit and others relating to or arising out of the Work. Payment by Pierce Transit shall not release the Contractor or its surety from any obligation under the Contract or under the Performance and Payment Bonds, which obligations shall continue through the Contract Warranty

period.

9.08 TOTAL CONTRACT COST (TCC)

- A. The components of the MACC have been mutually negotiated and agreed to. The Contractor agrees that the Work is adequately defined; that the Contract Drawings, Contract Specifications, and any other documents defining the Work are at least 90% complete; and based thereon, the Contractor has determined that the Work is sufficiently clear and understandable for the Contractor to agree to the MACC.
- B. The Contract is entered into pursuant to the GC/CM provisions of Chapter 39.10 RCW (Alternative Public Works Contracting Procedures). Contractor agrees that if the Work of all subcontract bid packages, including any bid package for which the Contractor submits the successful bid or negotiates the price directly with Pierce Transit, cannot be completed for a total amount less than or equal to the agreed Maximum Total Subcontract Package Cost, any additional costs, except as provided below, will be the responsibility of the Contractor, and the Contractor hereby assumes liability for such costs without reimbursement by Pierce Transit. Pierce Transit agrees that cost increases due to Pierce Transit-directed changes, regulatory changes, design errors and omissions, and differing site conditions are Pierce Transit's responsibility, but only to the extent set forth elsewhere in the Contract Documents.
- C. The components of the MACC were negotiated prior to execution of the Contract. The Contractor will not be compensated for work associated with the MACC negotiation.
- D. Maximum Allowable Construction Cost (MACC)
 - 1. The MACC includes all costs through Final Acceptance of the Work, including applicable sales tax.
 - 2. MACC Risk Contingency Account. The Contractor is responsible for (a) all costs related to Subcontractor claims or charges that result from mistakes or omissions in the subcontract buyout; (b) coordination errors and omissions related to the Contractor's shop drawing coordination obligations; (c) interference between any subcontractor and the Contractor; (d) interference between any subcontractor and any other subcontractor; and (e) the Contractor's failure to coordinate the Work it self-performs with work of other subcontractors. The Risk Contingency Account may be used to offset any such costs, up to the limit of the Risk Contingency Account. The Risk Contingency Account cannot be used for Specified General Conditions costs or Negotiated Support Services. Use of the Risk Contingency Account requires prior approval by Pierce Transit, which will not be provided until Contractor submits sufficient and adequate supporting information to Pierce Transit that justifies the use of the contingency funds. Contractor may request the usage of MACC Risk Contingency Accounts, but only in the event Contractor provides written Notice to Pierce Transit by no later than fourteen (14) days after the onset or occurrence of the event or condition giving rise to the request. When all funds in the Risk Contingency Account are expended, the Contractor shall cover any additional costs. Any funds remaining in the Risk Contingency Account and the associated GC/CM Fee shall be returned to Pierce Transit.

3. Negotiated Support Services. The tasks and services identified as Negotiated Support Services in the Contract Documents and summarized in the GC/CM Summary Cost Allocation Matrix have been negotiated and included as a separate component of the MACC. Negotiated Support Services costs will be paid by Pierce Transit based on Attachment A (Negotiated Support Services – Basis of Understanding Document) to the Construction Agreement Form. The costs for management required to administer the Negotiated Support Services Work is included in the fixed amount for Specified General Conditions, and all profit and overhead is included in the Fixed GC/CM Fee. If Contractor's total cost to perform the Negotiated Support Services exceeds the negotiated amount for Negotiated Support Services, the Contractor shall be responsible for such costs.
 4. Maximum Allowable Subcontract Cost (MASC) Risk Contingency Accounts. The Contractor is responsible for ensuring compliance with Electrical Contractor/Construction Manager (EC/CM) and Mechanical Contractor/Construction Manager (MC/CM) Risk Contingency Accounts. EC/CMs and MC/CMs are responsible for (a) all costs related to lower-tier Subcontractor claims or charges that result from mistakes or omissions in lower-tier Subcontract buyouts; (b) coordination errors and omissions related to Subcontractor shop drawing coordination obligations; and (c) Subcontractor failure to coordinate the Work it self-performs with work of other lower-tier Subcontractors. MASC Risk Contingency Accounts, if any, may be used to offset any such costs, up to the limits of MASC Risk Contingency Accounts. MASC Risk Contingency Accounts cannot be used for Contractor nor EC/CM and/or MC/CM Subcontractor Specified General Conditions costs or Negotiated Support Services. Use of MASC Risk Contingency Accounts requires prior approval by Pierce Transit, which will not be provided until Contractor submits sufficient and adequate supporting information to Pierce Transit that justifies the use of the contingency funds. Contractor may request the usage of MASC Risk Contingency Accounts, but only in the event Contractor provides written Notice to Pierce Transit by no later than fourteen (14) days after the onset or occurrence of the event or condition giving rise to the request. When all funds in MASC Risk Contingency Accounts are expended, the Contractor shall cover any additional costs. Any funds remaining in MASC Risk Contingency Accounts shall be credited to the MACC Risk Contingency Account per RCW 39.10.385.
- E. Negotiated Subcontract Fee Percentage. Below is the non-exclusive list of costs covered by the Negotiated Subcontract Fee Percentage:
1. All profit of the Contractor for the Negotiated Subcontract Work;
 2. All regional and home office overhead expenses, including labor and materials, travel, phone, facsimile, postage, and other incidental office expenses attributed to Negotiated Subcontract Work; Including all Regional and Home office personnel not specifically assigned to the project and associated with the Negotiated Subcontract Work.
- F. Fixed GC/CM Fee. Below is the non-exclusive list of costs covered by the Fixed GC/CM Fee:
1. All profit of the Contractor for the Work;

2. All regional and home office overhead expenses, including labor and materials, travel, phone, facsimile, postage, and other incidental office expenses attributed to work of the Contract that is not specifically identified in the Specified General Conditions Work; Including all Regional and Home office personnel not specifically assigned to the project and approved as such.
 3. All Business and Occupation Taxes
 4. Contractor's Payment and Performance Bonds
- G. Specified General Conditions Work. The Contract identifies the fixed amount for Specified General Conditions Work. The Specified General Conditions Work consists of all requirements of the Contract contained in (1) Section 00 72 00 GC/CM General Conditions; (2) Section 00 73 00 Special Conditions (if any); (3) the Division 01 specifications, (4) Section 00 73 16 Insurance, (6) Section 00 73 73 FTA Provisions, but does not include those tasks or services that are specifically identified as Negotiated Support Services in the Contract Documents, and as summarized in the GC/CM Summary Cost Allocation Matrix. Any cost that is not specifically identified in the Contract Documents as a Negotiated Support Service is included in the fixed amount for Specified General Conditions Work, unless otherwise specified in the Contract Documents. Specified General Conditions Work must be performed at the expense of the Contractor and may not be made part of a subcontract bid except when so required by the Contract Documents and approved by Pierce Transit.

ARTICLE 10 DELAYS AND CLAIMS

10.01 CLAIMS

Procedure for Protest by the Contractor

- A. If the Contractor accepts the terms of a change order by the Contractor's endorsement thereon, or by failure to protest as provided in this paragraph, payment by Pierce Transit in accordance with the terms of the Change Order shall constitute full compensation, including but not limited to that for labor, material, equipment, overhead, fee (including profit), and damages (direct or indirect) or any other claim for damages of any kind or nature, if any, and for all changes to the Work and to the Contract Time.
- B. If the Contractor disagrees with any of the terms of a Change Order issued by Pierce Transit, the Contractor shall give immediate oral notice of protest to the Engineer prior to performing the Work and shall submit a written protest to the Engineer within ten (10) calendar days of the Contractor's receipt of the Change Order. The protest shall identify the point of disagreement, those portions of the Contract Documents believed to be applicable, and an estimate of quantities and costs involved in the change. When protest of a Change Order relates to compensation, the Contractor shall keep full and complete records of the cost of such changed Work and shall permit Pierce Transit to have access to those records as requested by Pierce Transit to enable Pierce Transit to evaluate the merits of the protest.
- C. A protest shall not relieve the Contractor of its obligation to proceed without delay with the Work as directed in the Change Order. No adjustment to the Contract Sum or Contract Time will be made on account of Work performed preceding the Contractor giving oral notice of protest to the Engineer (to be followed by written protest as required in subparagraph B of this paragraph).

- D. Within 30 calendar days of Pierce Transit’s receipt of written notice above, the Contractor shall provide Pierce Transit with the following details:
1. A detailed factual statement of the claim for a change in Contract Sum and Contract Time, if any, providing all necessary dates, locations and items of Work affected by the claim;
 2. The date on which facts arose which gave rise to the claim;
 3. The name of each employee or agent or consultant of Pierce Transit, knowledgeable about the claim;
 4. The specific provisions of the Contract Documents which support the claim,
 5. The identification of any documents and the substance of any oral communications that support the claim;
 6. Copies of any identified documents, other than the Contract Documents, that support the claim;
 7. If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor’s analysis of its progress schedule to demonstrate the reason for the extension in Contract Time (time impact analysis);
 8. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in article, G-09.02;
 9. A statement certifying, under penalty of perjury, that the claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor’s knowledge and belief, that the claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Pierce Transit is liable. The individual signing such certification shall be a duly authorized representative of the Contractor who has the necessary and appropriate authority and responsibility to commit the Contractor to the truthfulness of the certification; and
 10. A statement that the claim covers all changes in cost and in time (direct, indirect, impact, consequential, and otherwise) to which the Contractor (and Subcontractors and Suppliers of any tier) is entitled.
- E. Pierce Transit shall be entitled to recover its costs incurred for analysis/administration of processing and evaluating a claim to the extent a portion of the claim that is determined to be not recoverable from Pierce Transit. The cost of reimbursement will be the percentage of the original claim that is determined to be not recoverable times the cost of analysis/administration.
- F. Dispute Resolution Process
1. Level I. Within seven (7) days of receipt of the Contractor’s documentation, the senior site representative of the Contractor and the Project Manager shall meet, confer, and set a schedule for resolving the claim.
 2. Level II. Within seven (7) days of the close of the Level I meetings, the general manager (or equivalent) of the Contractor and the Engineer for Pierce Transit, (none

of whom attended the Level I meeting) shall be jointly briefed by both Pierce Transit and Contractor Level I representatives on the results of the Level I meetings, their respective positions, and remaining areas of disagreement. Pierce Transit and Contractor Level II representatives shall then establish a schedule for resolving the claim. Pierce Transit shall have the right to request additional information from the Contractor and its Subcontractors, Suppliers, etc. at any time prior to or during the Level II meeting. If an adjustment to the Level II meeting schedule is necessary to accommodate such requests for additional information, such adjustment shall be as mutually agreed by the representatives. If agreement on the schedule cannot be reached, the Level II meetings shall be terminated and the matter referred to the following Level III.

3. Level III: Within seven (7) days of the close of the Level II meeting, the owner or corporate officer of the Contractor (who did not attend the Level I or II meetings) and Pierce Transit's Executive Director (who did not attend the Level I or II meetings) shall be jointly briefed by both Pierce Transit and Contractor Level II representatives on the results of the Level II meetings, their respective positions, and remaining areas of disagreement. Pierce Transit and Contractor Level III representatives shall then establish a schedule for resolving the claim. Pierce Transit shall have the right to request additional information from the Contractor and its Subcontractors, Suppliers, etc. at any time prior to or during the Level III meeting. If an adjustment to the Level III meeting schedule is necessary to accommodate such requests for additional information, such adjustment shall be as mutually agreed by the representatives. If agreement on the schedule cannot be reached, the Level III meetings shall be terminated and the matter referred to the next level in this Dispute Resolution Process.
4. The terms of the resolution of all claims concluded in Level I, II or III meetings shall be documented in writing and signed by each party.
5. Dispute Review Board. When a Dispute Review Board is required by Supplemental Conditions, and the claim is not resolved within seven (7) days of completion of the Level III meeting, the claim shall be submitted to the Dispute Review Board as provided for in the Supplementary Conditions.
6. Mediation. If the claim is not resolved in the Level III meeting and no Dispute Review Board is required, the Contractor may bring no claim against Pierce Transit in litigation unless the claim is first subject to non-binding mediation or non-binding arbitration as mutually agreed upon by Pierce Transit and Contractor. If no agreement is reached, then Port has the sole right to determine which method is utilized. Mediation shall be conducted before a single mediator under the Voluntary Construction Mediation Rules of the American Arbitration Association. The parties shall schedule mediation sessions at the earliest possible date(s), subject to the schedule of the selected (or appointed) mediator. The parties shall cooperate with the mediator and assure timely and full access to such personnel and documents as the mediator may request. The costs of mediation and/or arbitration shall be equally divided between the parties. Payment to the mediator shall be by Pierce Transit who, after payment, shall deduct 50% of the cost (less 50% of any costs that may have been paid directly by the Contractor) from monies due the Contractor.

7. Litigation. The Contractor may bring no litigation on claims unless such claims have been properly raised and considered in the procedures above. All unresolved claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and a lawsuit is served and filed within the limits stated in Paragraph G 04.31. This requirement cannot be waived except by an explicit written waiver signed by Pierce Transit.
- G. Claims Audits. All claims filed against Pierce Transit shall be subject to audit at any time following the filing of the claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Pierce Transit to verify all or a portion of the claim or to permit Pierce Transit access to the books and records of the Contractor, or Subcontractors of any tier, shall constitute a waiver of the claim and shall bar any recovery. The audit may be performed by employees of Pierce Transit or a representative of Pierce Transit. The Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Pierce Transit for the audit during normal business hours. The Contractor, and all Subcontractors, shall make a good-faith effort to cooperate with Pierce Transit’s auditors.
- H. Joinder. At Pierce Transit’s sole discretion, Pierce Transit may require all claims or controversies arising out of this Contract may be consolidated in mediation between Pierce Transit and Contractor and its Subcontractors or Sub-subcontractors.

10.02 DELAYS

- A. Liquidated Damages
 1. For each and every day that Contractor fails to achieve a designated Contract Milestone, as specified in the Special Conditions, damage will be sustained by Pierce Transit. These damages may include, but are not necessarily limited to the following:
 - a. Delays in completion and operation of the transit system;
 - b. Increased costs of Contract administration, engineering, inspection, and other Pierce Transit functions related to the design and construction of the Project;
 - c. Costs resulting from delays to interfacing Contractors;
 - d. Costs relating from impacts to businesses along the alignment or adjacent to the Project,
 - e. Costs resulting from impacts to public utilities; and
 - f. Costs of maintaining temporary facilities.
 2. Because of the difficulty in computing the actual material loss and damages to Pierce Transit, it is determined in advance and agreed by the parties hereto that the Contractor will pay Pierce Transit the amount(s) set forth in the Special Conditions for each day of delay as representing a reasonable forecast of the actual damages that Pierce Transit will suffer by the failure of the Contractor to complete such Work, or portion thereof, within said time(s). The execution of this Contract shall constitute acknowledgement by the Contractor that it has ascertained and agreed that Pierce Transit will actually suffer damages in the amount herein fixed for each and every day during which the completion of the Work or portions thereof is avoidably delayed

beyond the specified time(s).

3. Pierce Transit may deduct assessed liquidated damages from any monies due or that may become due to the Contractor under the Contract. If such deducted monies are insufficient to recover the liquidated damages owing, the Contractor or the Contractor's surety or sureties shall pay to Pierce Transit any deficiency within thirty (30) days after completion of the Work.
4. Where liquidated damages for contractor-caused delays are applicable, Pierce Transit shall not seek actual damages for delay; however, to the extent liquidated damages are not applicable, Pierce Transit reserves all other rights and remedies provided by law or under this Contract.

B. Extension of Time for Certain Delays

1. Notice of Delay or Potential Delay. Immediately, but in any event no more than five (5) days, after the Contractor foresees or should foresee a delay or a potential delay in the prosecution of the Work or upon the occurrence of a delay or potential delay that the Contractor regards as Unavoidable or compensable, the Contractor shall provide notice to Pierce Transit of such delay or potential delay. Within five (5) days of such notice the Contractor shall provide in writing the extent of the delay, the specific impacts and effects of the delay on critical path activities and the Construction Schedule, and its cause. The notice requirement in this Paragraph 10.02B.1 is in addition to notice required by other parts of this Contract, inclusive of Article 4.02. At a minimum, the written notice under this Paragraph shall include:
 - a. The facts underlying the potential delay;
 - b. The nature of any additional costs which may be caused by the potential delay;
 - c. The nature of any additional time which may be needed;
 - d. The Contractor's plan for mitigating such costs and delay; and
 - e. An estimate of the cost impacts due to the delay or the potential delay and an estimate of the time extension required for mitigation, along with all substantiating facts and supporting data.
2. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. If this cannot be done, the Contractor and Pierce Transit will determine how long the delay will continue and to what extent the prosecution and completion of the Work are being or will be delayed thereby. Pierce Transit will also determine whether the delay is to be considered Avoidable or Unavoidable and notify the Contractor of Pierce Transit's determination.
3. Compliance with the notice requirements of this Article shall be a condition precedent to the Contractor's claim for delay. The Contractor agrees that no claim shall be made for delays for which timely written notice, as specified above, is not made to Pierce Transit.

C. Avoidable Delays

1. Avoidable Delays in the prosecution of the Work shall include delays to the critical path of the Work that could have been avoided by the exercise of due care, prudence,

coordination, foresight and diligence on the part of the Contractor, its Subcontractors, or its Suppliers at any tier. Examples of Avoidable Delays include, but are not limited to:

- a. Delays that may in themselves be unavoidable but do not necessarily prevent or delay the prosecution of parts of the Work or the completion of the Work within the Contract Time (e.g., fit within the Float time shown on the Construction Schedule(s).)
- b. Time associated with the reasonable activities of Pierce Transit, third party stakeholders or other contractors employed by Pierce Transit that do not necessarily prevent the completion of the Contract within the Contract Time.
- c. Individualized labor actions or strikes within Contractor's control, normal weather conditions, mechanical breakdown, equipment failure, and acts of negligence by the Contractor's forces, including Subcontractors and Suppliers.
- d. Delays in the prosecution of the Work due to:
 - a. The Contractor's failure to provide sufficient resources, including, but not limited to: personnel, equipment, material, or plant;
 - b. The Contractor's failure to submit required work products in a timely manner;
 - c. The Contractor's failure to procure and/or deliver materials and/or equipment in a timely manner.

2. Contractor shall not be entitled to any time extension or additional compensation for any Avoidable Delay. However, Pierce Transit may in its sole discretion grant an extension of time for Avoidable Delay, if Pierce Transit determines that an extension is in Pierce Transit's best interest. Any such discretionary time extension shall be issued through a Change Order.

D. Unavoidable Delay

1. An Unavoidable Delay means a delay to the critical path of the prosecution of the Work that results from causes beyond the control of the Contractor and that could not have been avoided by the exercise of care, prudence, coordination, foresight, and diligence on the part of the Contractor, its Subcontractors or its Suppliers at any tier, and for which no provision is specifically provided in the Contract Documents for managing or mitigating such delay.
2. Examples of Unavoidable Delays include, but are not limited to:
 - a. Acts of God.
 - b. Fire or other casualty for which Contractor is not responsible.
 - c. War.
 - d. Riot.
 - e. Unusually Severe Weather.
 - f. Epidemic.

- g. Earthquake.
 - h. Terrorism.
 - i. General industry strikes or labor disputes beyond the reasonable control of the Contractor.
- 3. Extension of Time - For delays that the Contractor has given notice as required by the Contract and considers to be an Unavoidable Delay, the Contractor shall submit to Pierce Transit complete written information demonstrating the effect of the delay on the critical path on the accepted Construction Schedule. The submission shall be made within ten (10) days after the end of the occurrence that is claimed to be responsible for the Unavoidable Delay. Pierce Transit will review the Contractor's submission and determine the number of days of Unavoidable Delay and the effect of such Unavoidable Delay on such critical path. Pierce Transit may grant an extension of time to the extent that Unavoidable Delays necessarily affect the critical path(s) in the Construction Schedule. During such extension of time, liquidated damages will not be charged to the Contractor. It is understood and agreed by the Contractor and Pierce Transit that time extensions due to Unavoidable Delays necessarily involve critical path operations that would prevent completion of the Work, or portion thereof, within the Contract Time. Time extensions shall be issued via a Change Order. Contractor shall not be entitled to any additional compensation or Equitable Adjustment for any Unavoidable Delay.

E. Concurrent Delay

If Pierce Transit determines that there are delays to the project as a result of concurrent delays, Pierce Transit may grant a time extension. However, no compensation will be due to the Contractor for this time extension due to the concurrent nature of delays. Concurrent delay means a situation where both Contractor and Pierce Transit are responsible for delays affecting the critical path where none of the delay events are utilizing available project float. If a delay for which Contractor seeks compensation under Article 10.02F is caused concurrently with either Avoidable Delay or Unavoidable Delay, then Pierce Transit is only responsible for that portion of any compensable delay which it caused in excess of such Avoidable Delay or Unavoidable Delay, provided Contractor is able to prove such apportionment.

F. Compensation for Certain Delays

To the extent that the Contractor proves (a) that the Contractor has been delayed in completion of the Work by reason of changes made by Pierce Transit under these General Conditions, or a Stop Work Order, or a failure by Pierce Transit to comply with its obligations under the Contract; (b) that the Contractor was not concurrently responsible for the delay; (c) that the Contractor has suffered actual losses as a result of the delay; (d) that but for Pierce Transit's actions, the Contractor could not have suffered such actual losses; (e) that the Contractor could not have mitigated such actual losses despite taking all precautionary and remedial actions; and (f) that the delay was not within the contemplation of the Contract; then Pierce Transit shall pay to the Contractor as full compensation for any such delay, and for any actual and real disruption which may have been associated with any such delay which the Contractor can clearly quantify and calculate, the amount of the actual loss as computed in accordance with the Contract Documents, provided that the Contractor

shall strictly comply with the notice and other claims procedures set forth in Article 10.01, Claims. Unless the Contractor satisfies the provisions of this Article, the Contractor's sole remedy for Pierce Transit-caused delay shall be an extension of time under Paragraph 10.02B, Extension of Time for Certain Delays.

- G. In no event may Contractor or any of its Subcontractors at any tier recover compensation for unabsorbed home office overhead unless (1) Pierce Transit directs a suspension of indefinite duration due to Pierce-Transit-caused circumstances and (2) Contractor and/or its Subcontractors were unable, in the exercise of reasonable care, to reallocate resources so as to mitigate losses or damages.

ARTICLE 12 SUSPENSION AND TERMINATION

12.01 STOP WORK ORDER

- A. Pierce Transit may at any time and for any reason within its sole discretion issue a written order to the Contractor thereby suspending, delaying, or interrupting all or any part of the Work for a specified period of time (“Stop Work Order”). A Stop Work Order must be in the form of an explicit written Notice and will not be inferred from any oral statement, course of conduct or informal field communication, except in the case of an emergency or exigent safety concern.
- B. In the event that it becomes necessary for Pierce Transit to suspend all, or a part, of the Work, Pierce Transit will deliver a written Stop Work Order to the Contractor, which shall describe the following:
 - 1. Identification of the work to be suspended;
 - 2. The date and time upon which the Stop Work Order shall be effective;
 - 3. The period of time during which Work will be suspended, if known;
 - 4. Directions to be taken regarding subcontracts; and
 - 5. Other instructions required to safeguard the Work and to prevent property damage and personal injury.
- C. The Contractor shall comply immediately with any written order it receives from Pierce Transit suspending the Work and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction of Pierce Transit.
- D. Within the period specified by the Stop Work Order, or within any extension of that period, Pierce Transit may:
 - 1. Terminate the work covered by the Stop Work Order;
 - 2. Cancel the Stop Work Order; or
 - 3. Allow the period of the Stop Work Order to expire.
- E. Costs Associated with a Stop Work Order
 - 1. If a Stop Work Order is canceled or the period of the Stop Work Order expires, the Contractor shall resume work.

2. The Contractor may be allowed an increase in the Total Contract Cost or an extension of time, or both, directly attributable to any suspension, provided that:
 - a. The Contractor submits a Request for Change in accordance with the requirements of the Contract Documents;
 - b. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - c. The Stop Work Order was not caused by Contractor's default or other act or omission within the control or responsibility of Contractor.
 3. No adjustment shall be made under this Paragraph for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment or extension of time is provided or excluded under any other term or condition of this Contract.
- F. The provisions of this Paragraph shall only apply if a written Stop Work Order is issued by Pierce Transit.
- G. During a suspension of work, Contractor shall take appropriate action to prevent damage to or deterioration of the Work. Contractor shall repair or replace, at no additional cost to Pierce Transit Work that is damaged or deteriorated during a Work stoppage due to Contractor's failure to comply with this Paragraph. If Pierce Transit finds that the Contractor is not taking appropriate action and the Contractor fails to take the appropriate action within the time frame specified by Pierce Transit in written notice to the Contractor, Pierce Transit may take appropriate action and recover from the Contractor the reasonable costs of such action.
- H. In the event that a suspension of the work is ordered, the Contractor shall do all the work necessary to provide any safe, smooth, and unobstructed passageway through construction as deemed necessary by the Project Manager for use by Pierce Transit, other Pierce Transit contractors, public agencies or their contractors, and/or public traffic during the period of such suspension as specified in the Contract Documents. In the event that the Contractor fails to perform the work above specified, Pierce Transit will perform such work and the cost thereof shall be deducted from payments due the Contractor. If the suspension is due to some failure on the part of the Contractor, all costs and delays shall be at no additional expense to Pierce Transit.
- I. In the event of a suspension of the Work, the Contractor shall not be relieved of the Contractor's responsibilities as set forth in Article 7, Legal Requirements.

12.02 TERMINATION FOR DEFAULT

- A. Pierce Transit will have the right to terminate the Contract in whole or in part, for default, under any of the following circumstances:
1. If the Contractor refuses or fails to prosecute the Work with such diligence as will ensure its completion within the Contract Time and any extension thereof;
 2. Material failure of the Contractor to perform any obligation required under the Contract or violation of any duty required of the Contractor, including but not limited

to the following:

- a. Violation of an authorized order or requirement of Pierce Transit by the Contractor;
 - b. Abandonment of the Contract;
 - c. Failure of the Contractor to pay its debts owing to any parties performing Work on the Contract, provided that such failure continues for a period of fourteen (14) days after written notice to the Contractor by Pierce Transit;
 - d. Failure to comply with any law, ordinance, rule, regulation, or order of a legal authority applicable to the Contractor, the Work, the Contract, or the Project;
 - e. Failure to indemnify any party that the Contractor is obligated to indemnify under the General Conditions and other provisions of the Contract;
 - f. Failure to replace rejected Work or correct rejected workmanship when directed by Pierce Transit;
 - g. Failure to provide required insurance and/or bonds, or proceeds thereof;
 - h. Submittal of false or misleading information or Claims to Pierce Transit; or
 - i. Disregard of laws, ordinances, rules, codes, regulations, orders, or similar requirements of any public entity having jurisdiction.
3. If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within fifteen (15) days of receipt of a request for assurance from Pierce Transit.
- B. If, in the opinion of Pierce Transit, the Contractor is in default of the Contract, Pierce Transit will issue a Notice of Default to the Contractor and its Surety. If the Contractor fails to remedy or provide assurance acceptable to Pierce Transit of its specific plan and timetable to remedy the default within fourteen (14) days after receipt of such notice, Pierce Transit may terminate the Contractor's right to proceed under all or such part of the Contract as Pierce Transit deems to be in its best interest. Pierce Transit shall furnish written Notice of Termination for Default to the Contractor, upon which date the Termination for Default shall be effective. The Contractor and its Surety shall be liable for any damage to Pierce Transit resulting from the Contractor's refusal or failure to complete the Work in the specified time.
- C. Upon receipt of a Notice of Termination for Default from Pierce Transit, the Contractor shall, except as otherwise directed by Pierce Transit:
1. Stop all Work under the Contract on the date and to the extent specified in the Notice of Termination for Default.
 2. Place no further orders or Subcontracts for materials, equipment, or services except as may be necessary for completion of such portions of the Work expressly excluded from the Notice of Termination.

3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties at any tier, and take reasonable steps to minimize cancellation charges and other costs arising from termination.
 4. Terminate all orders and Subcontracts to the extent that they relate to the performance of Work covered by the Notice of Termination or, at the option of Pierce Transit, assign to the Surety or any replacement contractor all such Subcontracts and purchase orders.
 5. Comply with all other requirements of Pierce Transit as may be specified in the Notice of Termination.
- D. Upon Pierce Transit's termination of the Contractor's right to proceed with the Work because of the Contractor's default under the Contract, Pierce Transit shall have the right to complete the Work by whatever means and methods it deems advisable, including transfer of performance of the work from the Contractor to the Surety. Pierce Transit shall have the right to take possession of and use any or all the Contractor's design, goods, plant, tools, equipment, and property of any kind, at the Project, or related thereto, provided by or on behalf of the Contractor to complete the Work or any portion thereof, without being responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by Pierce Transit. Pierce Transit may complete the Work by obtaining the services of another Contractor, or by any other means that Pierce Transit deems in its best interest. Pierce Transit shall have the right to exercise its sole discretion as to the manner, method and reasonableness of the costs of completing the work subject to a reasonable duty to mitigate costs. Materials and equipment for which Pierce Transit has paid any amount to the Contractor may be incorporated in the Work regardless of whether they are stored at the site or elsewhere.
- E. The expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services arising from the default shall be charged to the Contractor. Pierce Transit shall deduct said amount out of any monies that may be due or may at any time thereafter become due the Contractor. In case such expense is in excess of the sum that would otherwise have been payable to the Contractor under the Contract, the Contractor or its Surety shall promptly pay the amount of said excess to Pierce Transit upon notice thereof. Pierce Transit may, at its sole discretion, withhold all or any part of any progress payments or other monies otherwise due the Contractor until completion and final settlement of the Work covered by the Notice of Termination for Default.
- F. If Pierce Transit terminates the Contractor for default, the resulting damage shall include, but not be limited to, actual and liquidated damages, any increased costs incurred by Pierce Transit in completing the Work, and amounts paid to third parties by Pierce Transit on account of any claims made against Pierce Transit relating to the Work.
- G. If the Contract is terminated for default, Pierce Transit may require that the Contractor transfer title to and deliver the following items to Pierce Transit as directed: any goods, work in progress, tools, dies, jigs, fixtures, plans, drawings, information, contract rights, and other items that the Contractor has specifically produced or acquired for the terminated portion of the Contract and that would have been required to be furnished to Pierce Transit if the Contract had been completed. The Contractor shall also protect and preserve property in its possession at its sole expense in which Pierce Transit has an interest.

- H. If, after Notice of Termination for Default, it is determined for any reason that the Contractor was not in default under the provisions of the Contract, or that the Contractor was properly entitled to an extension of time under the provisions of the Contract, the rights, obligations, and remedies of the parties shall be the same as if the Notice of Termination for Default had been issued pursuant to the Article entitled Termination for Convenience.

12.03 TERMINATION FOR CONVENIENCE

- A. Upon written notice to Contractor Pierce Transit may terminate the Work under this Contract, in whole or in part, at any time, for the convenience of Pierce Transit.
- B. After receipt of a Notice of Termination for Convenience, and unless directed otherwise by Pierce Transit, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - 1. Stop performance of Work and meet with Pierce Transit to develop a Termination Work Plan, including a scope, schedule and budget to safely terminate the Contractor's progress of Work.
 - 2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
 - 3. Terminate all Subcontracts or orders to the extent they relate to the work terminated or, at the option of Pierce Transit, assign to the Surety or any replacement contractor all such Subcontracts and purchase orders. Assign to Pierce Transit, as directed by Pierce Transit, all right, title, and interest of the Contractor under the Subcontract(s) terminated, in which case Pierce Transit shall have the right to settle or to pay any termination settlements proposal arising out of those terminations.
 - 4. With approval or ratification to the extent required by Pierce Transit, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontract; the approval or ratification will be final for purposes of this clause.
 - 5. As directed by Pierce Transit, transfer title and deliver to Pierce Transit (1) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (2) the completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to Pierce Transit.
 - 6. Complete performance of any Work not terminated.
 - 7. Take any action that may be necessary, or that Pierce Transit may direct, for the protection and preservation of the property related to this Contract that is in possession of the Contractor and in which Pierce Transit has or may acquire an interest.
 - 8. Use its best efforts to sell, as directed or authorized by Pierce Transit, any property of the types referred to in Sub-paragraph 12.03B.5 above; provided, however, that the Contractor (1) is not required to extend credit to any purchaser and (2) may acquire the property under the conditions prescribed by, and at prices approved by, Pierce

Transit. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Pierce Transit under this Contract, credited to the price or cost of the work, or paid in any other manner directed by Pierce Transit.

C. Payment

In the event of a Termination for Convenience, if such termination occurs after the effective date of the Notice to Proceed, Pierce Transit will pay the reasonable, verifiable direct costs incurred by the Contractor and the Fixed GC/CM Fee on Work satisfactorily completed, plus an allowance for profit on Work not executed. Reimbursable costs incurred by the Contractor will be determined by taking into consideration the following facts, circumstances and limitations:

1. The budget established for the Termination Work Plan,
2. The physical progress of the Work satisfactorily completed to the effective date of the termination, evaluated against the approved Schedule of Values,
3. Costs of removing equipment and materials and otherwise demobilizing,
4. Costs reasonably incurred in anticipation of performing the Work; provided, said amounts are reasonable, verifiable and directly attributed to the Contractor's performance of the Work,
5. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory,
6. The Fixed GC/CM Fee on Work satisfactorily completed
7. An allowance for profit on Work not executed in a sum (i) not to exceed three percent (3%) of the value of the Work remaining, as determined by the Contract Price Schedule, if the termination occurs prior to the time ten percent or less of the Work is completed, (ii) not to exceed two percent (2%) of the value of the Work remaining, as determined by the Contract Price Schedule, if the termination occurs after ten percent of the Work but less than fifty percent of the Work has been completed or (iii) not to exceed one percent (1%) of the value of the Work remaining, as determined by the Contract Price Schedule, if the termination occurs after fifty percent of the Work has been completed. The payment by Pierce Transit shall constitute full and complete satisfaction and settlement for the Contractor's overhead, anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever. Termination for Convenience notwithstanding anything to the contrary set forth herein, the Contractor shall not be entitled to, and Pierce Transit shall not be liable for, any consequential losses or damages incurred by the Contractor including, but not limited to: loss of profits, business opportunity, reputation or financing.

12.04 PIERCE TRANSIT'S RIGHTS UPON TERMINATION

Upon any termination contemplated herein, Pierce Transit may take over the Work and prosecute the same to completion by agreement with another party or otherwise complete the Work.

12.05 CONTRACTOR'S OBLIGATIONS UPON TERMINATION

Upon receipt of Notice of Termination, the Contractor shall immediately discontinue Work,

but shall do such Extra Work as may be ordered by Pierce Transit to safeguard the Work then completed, to safeguard the materials and equipment then delivered to the site and to leave the Work in a safe and useful condition. The Contractor shall promptly deliver, or otherwise make available to Pierce Transit, all Contract Records reasonably necessary for Pierce Transit to complete the Work with its own forces, including but not limited to data, drawings, specifications, as-built drawings, calculations, reports, estimates, summaries, and other such information as the Contractor or Subcontractors may have accumulated in performing this Contract, whether completed or in progress, and all materials and equipment purchased specifically for the Contract where Pierce Transit has reimbursed the Contractor for such costs. The Contractor shall also take all reasonable steps with its Suppliers and Subcontractors to minimize cancellation charges and other costs.

12.06 OWNERSHIP OF EQUIPMENT, MATERIALS AND SUPPLIES UPON TERMINATION

As of the date of termination, all the Contractor's right, title and interest in and to equipment, materials, and supplies ordered by the Contractor prior to the termination (including placement or priority in production runs of materials, equipment, or supplies), whether or not they have been delivered to the site, shall be vested in Pierce Transit and the Contractor shall, upon demand of Pierce Transit, execute and deliver to Pierce Transit all requisite bills of sale, assignments, and other documents of transfer that may be necessary to give effect to the intention of the termination procedures set forth in this Article.

END OF SECTION 00 72 00 - GENERAL CONDITIONS

SECTION 00 73 00 – SPECIAL CONDITIONS

Note: Special Conditions SC-1.01 through SC-10.02 are numbered to correspond to the General Conditions.

SC-6.01 CONTRACT TIME

Supplement General Conditions Article 6.01, Contract Time, with the following:

F. SITE ACCESS AND WORK AREA POSSESSION

1. The NTP may be issued up to six (6) months prior to Site Access. Contractor shall use the time between NTP and Site Access to perform services including but not limited to; planning, scheduling, advance construction submittal preparation and approvals, materials procurement, procurement of required permits.
2. Site Access: Date on which the Contractor may commence mobilization, including delivery of equipment and materials and construction of the initial Work Areas. This date will be formally advised by Pierce Transit.

G. CONTRACT MILESTONES

1. The Contract Milestones stated are required to facilitate access to the Work and worksites by other contractors, minimize construction impacts to the municipalities and utilities involved with this project, and to coordinate the construction sequence. Should there be conflicts or interfering requirements with the operation of the Contractor, the Contractor shall work with the Project Manager to minimize and mitigate the effects of this conflict or interference. However, should there still remain a conflict or interference after the best efforts of the Project Manager have been expended, the Project Manager will determine such priority as is necessary for the contractors to proceed without undue hindrance. During the Preconstruction phase, milestone dates and requirements may be adjusted based on schedule coordination with interfacing contracts.
2. The descriptions of the following Contract Milestones are necessarily abbreviated and shall be understood to include all Work reasonably necessary to achieve their stated intent. The contractor will be provided access by the follow-on contractor for punchlist work for all milestones.

Table 1 – Contract Milestones

MILESTONE NO.	DESCRIPTION	TIME FOR COMPLETION
1	TBD	
2	TBD	

SC-7.19 TAXES

Delete General Conditions Article 7.19 paragraph A and replace it with the following:

A. Retail Sales Tax:

Portions of the Work to be performed under this Contract are exempt from the retail sales tax pursuant to Chapter 82.04.050(8) RCW and WAC 458-20-171 (“Rule 171”) and portions of the

SECTION 00 73 00 – SPECIAL CONDITIONS

Work are not exempt. The Work which is not exempt will be identified as such in the Subcontractor Bid Packages. All other Work is considered exempt pursuant to “Rule 171”.

SC-10.02 DELAYS

Supplement General Conditions Article 10.02 - Delays, Paragraph A - Liquidated Damages, with the following:

- 5. Liquidated Damages for the Contract Milestones of this Contract are as follows:

Table 2 – Liquidated Damages

Milestone No.	Liquidated Damages/Day
1	TBD
2	TBD
3	TBD
4	TBD
5	TBD
6	TBD

The Liquidated Damages for Milestones 1 through 6 are not cumulative; only the highest applicable value of Liquidated Damages will be charged if more than one of these Milestones is missed.

END OF SECTION 00 73 00

SECTION 00 73 16 – INSURANCE

1.01 Description

- A. This Section includes insurance requirements applicable to this contract.
- B. Except as otherwise specified, the Contractor shall, at its sole cost and expense, obtain and maintain during the entire term of this Agreement the minimum insurance set forth below.
- C. In the event the Contractor is a Joint Venture, these insurance requirements shall apply to each Joint Venture member separately.
- D. By requiring such minimum insurance, Pierce Transit shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- E. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of the Contractor, including without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Pierce Transit shall not be limited to the amount of the required insurance coverage.

1.02 Insurance Coverages

A. Liability Insurance

- 1. General Liability: Commercial General Liability for bodily injury including death, personal injury, and property damage, with contractual and completed operations endorsements, and Employer's Liability coverage, utilizing insurers and coverage forms acceptable to Pierce Transit, with limits of at least \$2,000,000 per occurrence and \$10,000,000 general aggregate, with \$10,000,000 products and completed operations coverage.
- 2. Automobile Liability: Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Pierce Transit, with a limit of \$2,000,000 per occurrence and \$4,000,000 general aggregate.

Such liability insurance, identified in 1.02.A.1 and 1.02A.2 above, shall name Pierce Transit, its officers, directors, agents, Board, and employees, as additional insureds with respect to the work, including completed operations, under this Agreement.

- B. Workers Compensation: The Contractor will secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. The Contractor will be responsible for Workers Compensation insurance for any subcontractor who provides work under subcontract.

If the Contractor is qualified as a self-insurer under Chapter 51.14 of the Revised Code of Washington, it will so certify to Pierce Transit by submitting a letter signed by a corporate officer, indicating that it is a qualified self-insurer, and setting forth the limits of any policy of excess insurance covering its employees.

- C. Builders Risk Insurance: The Contractor shall purchase and maintain in force throughout the course of construction "All-Risk" Builders Risk Insurance on the Work provided under this Agreement until Acceptance of the Work by Pierce Transit and when the project has been put to its intended use. Such insurance shall be written on a completed value in an amount equal to the initial Contract Price, subject to subsequent modifications of the Contract Price. The

SECTION 00 73 16 – INSURANCE

insurance coverage shall apply on a replacement cost basis. The insurance policy shall name Pierce Transit as an additional insured and loss payee, as its interest may appear. The insurance shall cover the entire Work at the Site. Insured property shall also include portions of the Work located away from the Site but intended for use at the Site, and shall also cover portions of the Work in transit. The insurance policy shall cover the cost of removing debris, including demolition of the undamaged portion of property insured, as may be made legally necessary by the operation of any law, ordinance, or regulation which is in force at the time of any physical loss, damage or destruction to insured property by a peril insured by the insurance policy. Deductibles or Self-Insured Retentions (SIRs) in excess of \$10,000 each loss must be disclosed and are subject to Pierce Transit's approval. The Contractor shall be responsible for and pay any deductible or SIR. The insurance policy, and all endorsements, is subject to Pierce Transit approval as to form.

Pierce Transit and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and the Architect, Architect's consultants, and separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent of proceeds actually paid by property insurance obtained pursuant to this Section 1.02(C). The Contractor, as appropriate, shall require of its subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- D. Contractors Pollution Liability: A policy with limits of a minimum of \$10,00,000 per claim providing coverage for claims involving remediation, disposal, or other handling of pollutants arising out of Contractor's operations for others; Contractor's site (owned); arising from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos.
- E. Other Insurance:
 - 1. Other insurance as may be deemed appropriate to cover the specified risk and exposure of the scope of work or changes to the scope of work evaluated by Pierce Transit. The costs of which shall be borne by contracting parties as mutually agreed.

1.03 General Provisions

- A. Certificates and Policies: Prior to commencement of Work for this Agreement, the Contractor shall provide Pierce Transit with certificates of insurance showing insurance coverage in compliance with the foregoing paragraphs. All insurance coverage outlined above shall be written by insurance companies meeting Pierce Transit's financial security requirements, (A.M. Best's Key Rating A-; VII or higher). Such certificates shall reference Pierce Transit's contract number and title. The Contractor will provide thirty (30) calendar days' advance written notice to Pierce Transit in the event the Contractor's insurance policies are cancelled, not renewed, or materially reduced in coverage. Should the Contractor neglect to obtain and maintain in force

SECTION 00 73 16 – INSURANCE

any of the insurance required in this Section, Pierce Transit may suspend or terminate this Agreement. Suspension or termination of this Agreement shall not relieve the Contractor from insurance obligations hereunder.

- B. Taking into account the scope of work and services to be performed by a subcontractor, the Contractor shall prudently determine whether, and in what amounts, each subcontractor shall obtain and maintain commercial general liability and any other insurance coverage. Any insurance required of subcontractors shall, where appropriate and/or applicable, name Pierce Transit as an additional insured.
- C. Contractor's insurance for General Liability, Auto Liability and Railroad Protective Liability (if applicable) shall be primary as respects Pierce Transit, and any other insurance maintained by Pierce Transit, shall be excess and not contributing insurance with the Contractor's insurance.
 - 1. The Contractor and its insurers shall require that the applicable insurance policy(ies) be endorsed to waive their right of subrogation against Pierce Transit. The Contractor and its insurers also waive their right of subrogation against Pierce Transit for loss of their owned or leased property or property under their care, custody and control.
- D. Complete copies of the Additional Insured Endorsement(s) required in 1.02 A.1 and 1.02 A.2 above, the Waiver of Subrogation Endorsements, and the Primary and Non-Contributory Endorsements, or policy provisions, from the General Liability and Automobile Liability policies shall be attached to the Certificates of Insurance required in this section.
 - 1. No provision in this Section shall be construed to limit the liability of the Contractor for work not done in accordance with the Agreement, or express or implied warranties. The Contractor's liability for the work shall extend as far as the appropriate periods of limitation provided by law and up to any legal limits.
- E. The Contractor may obtain any combination of coverage or limits that effectively provides the same or better amounts and types of coverage as stipulated above, subject to review and approval by Pierce Transit.
 - 1. The Contractor warrants that this Agreement has been thoroughly reviewed by the Contractor's insurance agent(s)/broker(s), who have been instructed by the Contractor to procure the insurance coverage required by this Agreement.

END OF SECTION 00 73 16

SECTION 00 73 73 – FEDERAL PROVISIONS

Addendum 1

REQUIREMENTS OF THE FEDERAL TRANSIT ADMINISTRATION

SECTION 1. ALL CONTRACTS

SECTION 2. CONTRACTS OVER \$100,000.00

SECTION 3. TRANSIT OPERATIONS / OPERATIONAL / SAFETY SENSITIVE

SECTION 4. AIR / WATER TRANSPORTATION

SECTION 5. ADMINISTRATION OF RECORDS / RESEARCH / RECYCLED PRODUCT

SECTION 6. CONSTRUCTION

SECTION 1. CLAUSES APPLICABLE TO ALL CONTRACTS

ENERGY CONSERVATION

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

In the case of all negotiated contracts and contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive bidding procedures, contractor agrees that Pierce Transit, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit, examination, excerpts and transcriptions be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, contractor agrees to maintain all required records for at least three (3) years after Pierce Transit makes final payment and all other pending matters pertaining to the contract are closed.

APPLICABILITY AND FEDERAL GRANT CONTRACT (FEDERAL CHANGES)

This procurement is subject to a financial assistance contract between Pierce Transit and the U.S.

SECTION 00 73 73 – FEDERAL PROVISIONS

Addendum 1

Department of Transportation. The contractor will be required to comply with all terms and conditions that have been included in this procurement specification.

In addition, Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Pierce Transit and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract. The Contractor agrees to accept all changed requirements that apply to this contract.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Purchaser and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express, written consent by the Federal Government the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Pierce Transit, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification to Pierce Transit in connection with this project, Pierce Transit and/or the Federal Government reserve the right to the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent that Pierce Transit and/or the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to Pierce Transit or the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. para 5307, Pierce Transit and/or the Federal Government reserves the right to impose the penalties of 18 U.S.C. para 1001 and 49 U.S.C. para 5307 (n)(1) on the Contractor, to the extent that Pierce Transit and/or the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION OF CONTRACT

A. Termination for Convenience:

Pierce Transit for its convenience may terminate this contract, in whole or in part, at any time by written notice to the Contractor. After receipt of a Notice of Termination, and except as directed by the Pierce

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Transit, the Contractor shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the Notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to Pierce Transit, the Contractor will account for the same and dispose of it in the manner Pierce Transit directs. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the contract, the contract termination agreement, applicable laws and regulations.

B. Termination for Default:

In addition to termination for convenience, if the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services and the Contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other material provisions of the contract, Pierce Transit may terminate this contract, in whole or in part, for default. Termination shall be effected by serving a Notice of Termination on the Contractor, setting forth the manner in which the Contractor is in default and the effective date of termination. The Contractor will only be paid the contract price for goods delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract less any damages to Pierce Transit caused by such default. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the contract, the contract termination agreement, applicable laws and regulations. If the Contractor has any property in its possession belonging to Pierce Transit, the Contractor will account for the same and dispose of it in the manner Pierce Transit directs.

If the contract is terminated, the rights, duties and obligations of the parties, including compensation to the Contractor, shall be determined in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract. The termination of this contract shall in no way relieve the Contractor from any of its obligations under this contract nor limit the rights and remedies of Pierce Transit hereunder in any manner.

If it is later determined by Pierce Transit that the Contract had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of are beyond the control of the Contractor, Pierce Transit, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Pierce Transit in its sole discretion may, in the case of a termination for breach or default, allow the contractor fourteen (14) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Pierce Transit's satisfaction the breach or default or any of the terms, covenants, or conditions of the Contract within fourteen (14) calendar days after receipt by Contractor of written notice from Pierce Transit setting forth the nature of said breach or default, Pierce Transit shall have the right to terminate the Contract with a written 30-day cancellation notice without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Pierce Transit from also pursuing all available remedies against Contractor and its sureties for said breach of default.

In the event that Pierce Transit elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Pierce Transit shall not limit Pierce Transit's remedies

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for any succeeding breach of that or of any other term, covenant or condition of the contract.

C. Termination or Suspension for Non-Appropriation:

Pierce Transit's Board of Commissioners may cancel this contract at the end of the then current fiscal period for non-appropriation of funds. Such cancellation shall be upon thirty (30) days written notice to the Contractor. Pierce Transit's fiscal period ends December 31 of each year. If the contract is terminated as provided in this subsection Pierce Transit will be liable only for payment in accordance with the terms of this contract for costs incurred prior to the effective date of termination; and the Contractor shall be released from any obligation to provide further services pursuant to the contract as are affected by the termination. If the Contractor has in its possession any property belonging to Pierce Transit, the Contractor shall account for same and dispose of it in the manner Pierce Transit directs.

Funding under this contract beyond the current appropriation year is conditional upon the appropriation by the Pierce Transit Board of Commissioners of sufficient funds to support the activities described in this contract. Should such an appropriation not be approved, the contract will terminate at the close of the current appropriation year and the termination will be processed as a termination for convenience. Termination may be for all or part of the contract. In addition, Pierce Transit reserves the right to suspend delivery of all or part of an order if it is in the best interest of the Agency.

CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

CONTRACT BREACHES AND DISPUTE RESOLUTION

Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be subject to the dispute resolution procedures in this Subparagraph. Prior to the initiation of any action or proceeding to resolve disputes between Pierce Transit and Contractor, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree. Failing resolution, the parties shall attempt to resolve the dispute through a mediation conducted by a person(s) or organization experienced in mediation initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding.

At all times during the course of any unresolved dispute between the parties, the Contractor shall supervise, direct and perform the Work in a diligent and professional manner and without delay as provided under the terms of the Contract. The good faith completion of negotiation efforts and mediation pursuant to this Article shall be a prerequisite to the filing of any litigation.

Venue for any such litigation between the parties arising out of this Contract or related to the Project shall be exclusively in Pierce County Superior Court in Tacoma, Washington.

Rights and Remedies: The duties and obligations imposed by the Contract documents and the rights and remedies thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Pierce Transit or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Contractors are encouraged to cooperate with Pierce Transit in its effort to ensure equal and open access to Pierce Transit's contracting opportunities for DBEs. A separate contract goal for DBE participation has not been established for this procurement.

b. The contractor or sub-contractor shall not discriminate on the basis of race, color, national origin, or

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sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as PIERCE TRANSIT deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The prime contractor agrees to pay each sub-contractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contractor receives from Pierce Transit. The prime contractor agrees to not withhold retainage from sub-contractors' payments. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of Pierce Transit. This clause applies to both DBE and non-DBE sub-contractors.
- e. The contractor must promptly notify PIERCE TRANSIT whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of PIERCE TRANSIT.

PROMPT PAYMENT

- a. Pierce Transit will require contractors to submit regular reports of the actual payments made to DBE firms for work committed to the at the time of contract award. Pierce Transit will review the reports submitted by the prime contractor and seek confirmation, as needed, that payment was actually made to the DBE firm.
- b. If a prime contractor is found not to be in compliance with its DBE commitment, it shall be so notified by Pierce Transit and directed to cure the problem within an appropriate time period. Failure by the prime contractor to comply may result in monetary penalties and partial or total termination for default with re-solicitation costs to be borne by the prime contractor or its bond. In addition, Pierce Transit may consider a contractor's non-compliance when evaluating contractor responsibility in future bids or proposals.

VETERANS EMPLOYMENT

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

INCORPORATION OF FTA TERMS

The provisions contained herein include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in these contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated April 15, 1996, are hereby incorporated by reference.

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Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Pierce Transit requests that would cause Pierce Transit to be in violation of the FTA terms and conditions.

FTA PROTEST PROCEDURES

Bidders are hereby notified that, if this contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that Pierce Transit failed to have or follow written protest procedures. Bidders must file a protest with the FTA not later than five (5) days after Pierce Transit renders a final decision or five (5) days after the Bidder knows or has reason to know that Pierce Transit has failed to render a final decision. Protests to the FTA must be filed in accordance with FTA Circular 4220.IF (as periodically updated).

If a protest has been filed with the FTA, Pierce Transit will not make an award of contract unless Pierce Transit determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to Pierce Transit or the Federal Government.

ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

Pierce Transit and contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. § 1612; and the following regulations and any amendments thereto:

- A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- C. U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;
- D. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
- E. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- F. General Services Administration regulations, "Construction and Alteration of Public Buildings", "Accommodations for the Physically Handicapped", 41 C.F.R. Part 101-19;
- G. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630;
- H. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 47 C.F.R. Part 64, Subpart F; and
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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1. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for Unpaid Wages and Liquidated Damages. Pierce Transit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
5. Payrolls and Basic Records (Nonconstruction). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of work. Such records shall contain the name, address, and social security number of each such worker, his or her classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

CERTIFICATION REGARDING DEBARMENT SUSPENSION AND OTHER RESPONSIBILITY MATTERS (applicable to contracts over \$25,000)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Pierce Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Pierce Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SECTION 2. CONTRACTS OVER \$150,000.00

BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a sixty-five percent (65%) domestic content.

A bidder or offeror must submit to Pierce Transit the appropriate Buy American certification (see forms attached) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification shall be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Contractor agrees to assume the risk of increased cost or time requirements related to compliance with Buy America requirements.

CLEAN WATER

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN AIR

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include the requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

DISCLOSURE OF LOBBYING ACTIVITIES

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Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". (See forms) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Pierce Transit.

SECTION 3. TRANSIT OPERATIONS / OPERATIONAL / SAFETY SENSITIVE

TRANSIT EMPLOYEE PROTECTIVE PROVISION (Transit operations)

1. The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- (a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interest of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project for which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of the subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 40 U.S.C. 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- (b) Transit Employee Protective Requirements for Projects Authorized by 40 U.S.C. - 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. 5333 (b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in Grant Agreement of Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. - 5311 in Non-Urbanized Areas. - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-Urbanized Area Program agreed to be the U.S.

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Secretaries of Transportation and Labor, date May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

2. The Contractor also agrees to include the applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

CHARTER SERVICE OPERATIONS (Operational)

The Contractor agrees to comply with 49 U.S.C.5323(d) and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment and/or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be “incidental”, i.e., it must not interfere with or detract from the provision of mass transportation.

SCHOOL BUS OPERATIONS (Operational)

Pursuant to 60 U.S.C. 5323(f) and 49 C.F.R. Part/ 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

DRUG AND ALCOHOL TESTING COMPLIANCE (Operational / Safety Sensitive)

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Washington, or Pierce Transit, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 and submit the Management Information System (MIS) reports to Human Resources, Pierce Transit, PO Box 99070, Lakewood, WA 98496-0070. To certify compliance the contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurance for Federal Transit Administration Grants and Cooperative Agreements”, which is published annually in the Federal Register.

SECTION 4. AIR / WATER TRANSPORTATION

FLY AMERICA

The contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification of memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

CARGO PREFERENCE - USE OF U.S. FLAG VESSELS

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The Contractor agrees:

- a. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Pierce Transit (through the contractor in the case of a subcontractor's bill-of-lading.), marked with appropriate identification of the project.
- c. To insert these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transportation of equipment, material or commodities by ocean vessel.

SECTION 5. ADMINISTRATION OF RECORDS / RESEARCH / RECYCLED PRODUCT

PRIVACY ACT REQUIREMENTS (Administration of records)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

RIGHTS IN DATA AND COPYRIGHTS (Research)

The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of this contract:

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- (a) Except for its own internal use, the or the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to contracts with academic institutions.
- (b) As authorized by 49 C.F.R. 18.34 and C.F.R. 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use, and to authorize other to use, for government purposes, any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, “for Federal Government purposes”, means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- 1) Any subject data developed under a grant, cooperative agreement, subgrant, sub- agreement, or third-party contract, irrespective of whether or not a copyright has been obtained; and
 - 2) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
- (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the contractor performing experimental, developmental, or research work required by the underlying contract to which this attachment is added agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of the clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor’s use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- (d) Unless prohibited by State law, upon request for the Federal Government, the contractor agrees to indemnify, save and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this contract. The contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
- (e) Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (f) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying

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contract to which this attachment has been added is exempt from the requirements of subsections b, c, and d of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work.

- (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provide by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.* a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

PATENT RIGHTS (Research)

1. General. If any invention, improvement, or discovery of the contractor or any of its subcontractors is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States or any foreign country, the Purchaser and the Contractor agrees to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F. R. Part 401.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

RECYCLED PRODUCTS (Yearly purchases of \$10,000.00 or more of EPA designated items)

1. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
2. The contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provide by the FTA.

SECTION 6. CONSTRUCTION

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SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

BONDING REQUIREMENTS

A Bid Bond of five (5%) percent of the Base Bid amount will be required by Pierce Transit and shall accompany the bid. Cost for this bond shall be included in the Base Bid. Bidder may also submit cash, a cashier's check or certified check in said amount.

No later than ten (10) days after award of Contract, the successful Bidder shall file with the Purchasing Manager a surety bond for one hundred (100%) percent of the full amount of the Bid to insure performance according to said Contract and these specifications. Also a payment bond for one hundred (100%) percent of the Contract amount. Said bond or bonds shall be executed by a surety company of known responsibility and good standing, which qualifications shall be judged by Pierce Transit.

The performance bond, a payment bond (or a performance/payment bond) are required to be filed and approved by Pierce Transit prior to commencement of Work.

DAVIS-BACON ACT (Construction over \$2,000.00)

1. Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be

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easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable

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standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

2. Withholding - Pierce Transit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Pierce Transit may, after written notice to the contractor, sponsor, applicant, or owner,

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take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Pierce Transit for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of

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Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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10. Certification of eligibility

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Construction over \$100,000.00)

1. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for Unpaid Wages and Liquidated Damages. Pierce Transit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

END OF SECTION 00 73 73

ATTACHMENT 2 – PROJECT CONTROL BASELINE GUIDES

Task Number	Task Name	Task Hours	Task Subtotal (including overhead)
1	Project Management		
2	Meetings		
3	Budget Development		
4	Schedule Development		
5	Project Review		
6	Mechanical/Electrical/Plumping (MEP) Subcontracts (Optional)		
<i>Labor Subtotals</i>			
<i>Fee Subtotal</i>			
<i>ODC Subtotal</i>			
Agreement Total			

ATTACHMENT 2 – PROJECT CONTROL BASELINE GUIDES

Task #	Sub Task #	Task Name	Firm Name																	
			Labor Hours																	
1	1.1	Project Management																		
	1.2	Construction Plan																		
	1.3	Floating Bridge Construction Plan																		
	1.4	Subcontract Packaging Plan																		
	1.5	S/DBE Outreach Program																		
	1.6	Monthly Progress Reports																		
			Task 1 Labor Totals																	
2	2.1	Kick Off Meetings																		
	2.2	Project Team Meetings																		
	2.3	Special Meeting and Subject Specific Review Meetings																		
	2.4	Partnering During Preconstruction																		
	2.5	Regular Constructability/Design Review Progress Meetings																		
			Task 2 Labor Totals																	
3	3.1	Estimating Methodology Report																		
	3.2	Baseline Construction Cost Estimate																		
	3.3	Estimating Support for Evaluation of Alternatives																		
			Task 3 Labor Totals																	
4	4.1	Construction Contract Initial CPM Schedule																		
	4.2	Scheduling Support for Evaluation of Alternatives																		
			Task 4 Labor Totals																	
5	5.1	Constructability Reviews and Value Engineering																		
	5.2	Risk Management																		
	5.3	Sustainability Practices Plan (SPP)																		
	5.4	Third Party Interface Coordination																		
			Task 5 Labor Totals																	
6	6.1	Early MEP Sub Qualification and Selection																		
	6.2	MEP Subcontractor Management and Coordination																		
	6.3	Mechanical Preconstruction Services																		
	6.4	Electrical Preconstruction Services																		

ATTACHMENT 2 – PROJECT CONTROL BASELINE GUIDES

me																						
Firm Overhead Rate			Employee Name																			
Firm Fee %			Employee Title																			
			Employee Rate																			
Task #	Sub Task #	Task Name	Labor Hours													Total Subtask Labor Hours	Total Subtask Labor Cost					
1	1.1	Project Management																				
	1.2	Construction Plan																				
	1.3	Holding Bridge Construction Plan																				
	1.4	Subcontract Packaging Plan																				
	1.5	S/DBE Outreach Program																				
	1.6	Monthly Progress Reports																				
Task 1 Labor Totals																						
2	2.1	Kick Off Meetings																				
	2.2	Project Team Meetings																				
	2.3	Special Meeting and Subject Specific Review Meetings																				
	2.4	Partnering During Preconstruction																				
	2.5	Regular Constructability/Design Review Progress Meetings																				
Task 2 Labor Totals																						
3	3.1	Estimating Methodology Report																				
	3.2	Baseline Construction Cost Estimate																				
	3.3	Estimating Support for Evaluation of Alternatives																				
Task 3 Labor Totals																						
4	4.1	Construction Contract Initial CPM Schedule																				
	4.2	Scheduling Support for Evaluation of Alternatives																				
Task 4 Labor Totals																						
5	5.1	Constructability Reviews and Value Engineering																				
	5.2	Risk Management																				
	5.3	Sustainability Practices Plan (SPP)																				
	5.4	Third Party Interface Coordination																				
Task 5 Labor Totals																						
6	6.1	Early MEP Sub Qualification and Selection																				
	6.2	MEP Subcontractor Management and Coordination																				
	6.3	Mechanical Preconstruction Services																				
	6.4	Electrical Preconstruction Services																				
Task 6 Labor Totals																						
Task 7 Labor Totals																						
													Total Labor Hours									
													Total Labor Cost									
													Total Overhead Cost									
													Total Fee									

Travel

Employee Name	Origin City	Destination City	Number of Trips	Estimated Cost/Trip	Total Employee Estimated Travel Cost
Total Estimated Travel					

Other Cost Items	Estimated Cost
Reproduction	
Geotechnical	
Other Items	
Total Other Estimated Cost	

GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification.

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, Pierce Transit may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to Pierce Transit if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transactions," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49CFR Part 29]. You may contact Pierce Transit for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Pierce Transit.
6. **The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Pierce Transit may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, suspension, Ineligibility and Voluntary Exclusion - Lower Tier covered Transaction"

- 1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(P)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

ATTACHMENT 3 - FEDERAL PROVISIONS FORMS

APPENDIX A, 49 CFR PART 20 - CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. (Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Bidder, _____, (insert name of company) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (federal, state or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE BIDDER _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

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

Notary Public

BUY AMERICA CERTIFICATION

49 U.S.C. 5323 (J)

49 CFR Part 661

(To be submitted with each bid or offer exceeding \$150,000)

Certification requirements for procurement of steel, iron, or manufactured products.

Certification of Compliance with 49 U.S.C. 5323(j)(l)

The Bidder or offer or hereby certifies that it will meet the requirements of 49 U.S.C. 5232 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

OR

Certification of Non-Compliance with 49 U.S.C. 5323(j)(l)

The bidder or offerer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(l), but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

ATTACHMENT 3 - FEDERAL PROVISIONS FORMS

DISADVANTAGED BUSINESS PARTICIPATION

The Contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Pierce Transit deems appropriate.

Pierce Transit’s Disadvantaged Business Enterprise (DBE) participation is to be achieved through race-neutral means. Contractors who have difficulty identifying disadvantaged or small business subcontractors for this project, or have questions in regard to Pierce Transit’s DBE Program should contact Naomi Graddeham, Procurement Coordinator, via email at ngraham@piercetransit.org.

To be eligible for award of this Contract, the Bidder must submit with the bid the Disadvantaged Business Utilization Table below listing the DBEs to be contracted with, including all information required. DBEs listed must be certified by the Washington State Office of Minority and Women Business Enterprises (OMWBE) at the date and time bids/proposals are due.

The successful Contractor shall enter into a contract with the firms identified on these tables as successful subcontractors. Failure to complete this section of the bid proposal or the inclusion of false information shall be considered as evidence that the proposal is nonresponsive and shall not receive further consideration.

DISADVANTAGED BUSINESS UTILIZATION TABLE

Name Of Subcontractor	Address	Telephone	Description of Work To Be Performed	Will Contract Be Awarded: (Yes/No)	\$ Value Of Subcontract	Percent of Subcontract Work Actually Performed by DBE Subcontractor
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
TOTAL DISADVANTAGED BUSINESS UTILIZATION					\$	%

ATTACHMENT 3 - FEDERAL PROVISIONS FORMS

NOTE: Written confirmation from each DBE firm that is participating in the Contract as shown above must be received by Pierce Transit within forty-eight (48) hours after the bid due date and time. Note: In the category of supplies, please inform Pierce Transit if the business is the dealer, broker, re-packager, or manufacturer. Pierce Transit will verify eligibility of disadvantaged business subcontractors.

CERTIFICATE REGARDING CONFLICT OF INTEREST

The Submitter is required to certify that performance of the work will not create any conflicts of interest or disclose any actual or potential conflicts of interest by completing and signing one of the following statements:

The Submitter hereby certifies that to the best of its knowledge and belief, and in accordance with [Pierce Transit Procedures and Guidelines for Preventing Organizational Conflicts of Interest](#) in Planning, Design, and Construction and as described in the Scope of Work/Requirements section of this RFQ will not create any conflicts of interest for the Submitter, any affiliates, any proposed subconsultants, and key personnel of any of these organizations.

DATE:

AUTHORIZED SIGNATURE:

TITLE:

SUBMITTER/COMPANY NAME:

OR

The Submitter hereby discloses the following circumstances that could give rise to a conflict of interest for the Submitter, any affiliates, any proposed subconsultants, and key personnel of any of these organizations. (Attach additional sheets as needed.)

Name of the Individual/Company to which potential conflict of interest might apply:

Nature of potential conflict of interest:

Proposed Remedy:

DATE:

AUTHORIZED SIGNATURE:

TITLE:

SUBMITTER/COMPANY NAME:

ATTACHMENT 1 – DRAFT PRECONSTRUCTION SERVICES AGREEMENT

GENERAL

BASIC SERVICES

- TASK 1 PROJECT MANAGEMENT
 - 1.1 Project Management
 - 1.2 Construction Plan
 - 1.3 Subcontract Packaging Plan
 - 1.4 S/DBE Outreach Program
 - 1.5 Monthly Progress Reports
- TASK 2 MEETINGS
 - 2.1 Kickoff Meeting
 - 2.2 Project Team Meetings
 - 2.3 Special Meetings and Subject Specific Review Meetings
 - 2.4 Partnering During Preconstruction
 - 2.5 Regular Constructability / Design Review Progress Meetings
- TASK 3 BUDGET DEVELOPMENT
 - 3.1 Estimating Methodology Report
 - 3.2 Baseline Construction Cost Estimate
 - 3.3 Estimating Support for Evaluation of Alternatives
- TASK 4 SCHEDULE DEVELOPMENT
 - 4.1 Construction Contract Initial CPM Schedule
 - 4.2 Scheduling Support for Evaluation of Alternatives
- TASK 5 PROJECT REVIEW
 - 5.1 Constructability Reviews and Value Engineering
 - 5.2 Risk Management
 - 5.3 Sustainability Practices Plan (SPP)
 - 5.4 Third Party Interface Coordination
- TASK 6 MECHANICAL/ELECTRICAL/PLUMBING (MEP) SUBCONTRACTS
 - 6.1 Early MEP Sub Qualification And Selection
 - 6.2 MEP Subcontractor management and coordination
 - 6.3 Mechanical Preconstruction Services
 - 6.4 Electrical Preconstruction Services

GENERAL

- A. It is anticipated that the preconstruction services tasks defined as Basic Services within the Scope of Work will be performed over a two-year period.
- B. The GC/CM Consultant will work collaboratively with Pierce Transit, its design consultant, and its construction management consultant (CMC) as a member of the project team to perform the tasks identified in this Scope of Work and to review significant aspects of the Project. The GC/CM Consultant shall be responsive to requests for information, and technical reviews, provide input as needed, and attend meetings as requested by Pierce Transit.
- C. Pierce Transit will require the GC/CM Consultant to maintain schedule flexibility with respect to starting construction and in coordinating with other Pierce Transit contractors. It is expected that through regular progress meetings between Pierce Transit and the GC/CM Consultant, the status and progress of Pierce Transit’s other contractors will be discussed, and the GC/CM Consultant can coordinate MACC negotiations with Pierce Transit and plan and schedule its work accordingly. Unless noted otherwise, allow 21 Calendar Days for Pierce Transit to review deliverables and provide review comments.
- D. The project is still in schematic design phase and the project configuration and full scope is still evolving. As such, the contract packaging and phasing has not yet been defined. Pierce Transit expects the GC/CM to be an integral team member in defining the phasing and contract packaging as the design advances from schematic design to 100% design.
- E. Deliverable logs will be as required as an ongoing document and updated in the PMIS.

BASIC SERVICES

TASK 1 PROJECT MANAGEMENT

1.1 Project Management

1. Description:

Provide overall project management services for the GC/CM Consultant’s preconstruction services; ensure coordination of all efforts with Pierce Transit, the design team, and others as appropriate.

2. Duration:

From Notice to Proceed for Preconstruction Services (NTP) through completion of 100% design, MACC negotiations and execution of GC/CM Construction Contract.

3. Purpose:

Manage the preconstruction efforts and tasks of the GC/CM Consultant team and ensure coordination with Pierce Transit’s design schedule and budget to maximize the benefits of the GC/CM delivery system and to coordinate with Pierce Transit and other project participants during the preconstruction phase.

4. Deliverables:

- a) Draft Preconstruction Task Schedule:

ATTACHMENT 1 – DRAFT PRECONSTRUCTION SERVICES AGREEMENT

Submit detailed schedule of Preconstruction Tasks within 14 days of NTP. The schedule shall be in a form acceptable to Pierce Transit, shall be presented in bar chart format and shall include, at a minimum, Task ID number, description, duration, and sequence. This schedule is subject to Pierce Transit's approval.

b) Final Preconstruction Task Schedule:

Submit detailed schedule of Preconstruction Tasks within 7 days from receipt of Pierce Transit review comments on draft Preconstruction Task Schedule.

c) Draft PMP within 30 days of NTP

d) Final PMP within 60 days of NTP

e) Project Management Plan (PMP) for Preconstruction Services shall include details of how GC/CM Consultant will manage:

- 1) Work elements and milestone schedule
- 2) Project communication plan.
- 3) Document Control Plan
- 4) Document review/comment protocols.
- 5) Plan for tracking any Value Engineering (VE) and constructability recommendations and their cost/schedule impacts
- 6) Schedule of Project Progress and Team Meetings
- 7) Risk Management Plan
- 8) Quality Management Plan (QA/QC)

1.2 Construction Plan

1. Description

In coordination with Pierce Transit's project team, develop a construction plan that addresses issues relating to how the construction will be managed. It is anticipated that contract packaging will phase in different scopes of work over time. The initial Construction Plan shall be updated to integrate the new scopes of work (contract packages) as they progress through design and into construction. Specific issues to address include, but are not limited to:

- a) Safety and security.
- b) Site access and phasing
- c) Interface and coordination with Pierce Transit Operations and Maintenance facilities and activities.
- d) Contract Interfaces with Pierce Transit's other Contractors
- e) Contract interfaces with adjacent contracts administered by other agencies.
- f) Contractor interface with other agencies providing inspection on their infrastructure.
- g) Cost management and tracking

ATTACHMENT 1 – DRAFT PRECONSTRUCTION SERVICES AGREEMENT

- h) Sequencing of the work
- i) Schedule control, updating, and reporting
- j) Traffic control, pedestrian access, and parking
- k) Environmental Compliance, including Industrial Waste Discharge, TESC, material disposal, noise and vibration
- l) Community outreach
- m) Site staging including construction offices, laydown and work areas, temporary facilities and utilities
- n) Commissioning and startup plans.
- o) Quality Management (QA/QC)

2. Purpose

Provide direction for managing critical elements of the work through the construction phase. Develop information for negotiation of costs for items identified as Negotiated Support Services as part of the MACC. Develop information that will provide the basis for early submittals required in the Contract Documents. Each construction package will require an update to the current Construction Plan.

3. Deliverables

- a) 60% Construction Plan based on 60% design submittal. Draft and Final.
- b) 90% Construction Plan (Based on 90% Design) Draft and Final:
- c) Submit within 60 days of 90% estimate submittal
- d) 90% Construction Plan Presentation Meeting:
- e) Hold within ten days following submission of the 90% Construction Plan. Attendees will include project stakeholders. The GC/CM Consultant shall administer and chair the meeting, with a focus on presentation of the Draft Construction Plan and soliciting comments and input for integration into the Final Construction Plan.
- f) 90% List of Anticipated Construction Work Plans (Draft and Final):
- g) Coordinate submission with Pierce Transit's design schedule.
- h) 100% Construction Plan (based on 100% design). GC/CM Contract Requirement.
- i) Updates:
- j) As required, including incorporation of new contract packages and of any comments provided to the Final Construction Plan submittal.
- k) Submittal Schedule/Log based on 90% Design and Construction Plan.

1.3 Subcontract Packaging Plan

1. Description

For each contract package, develop a breakdown of the work into the Subcontract Packages

ATTACHMENT 1 – DRAFT PRECONSTRUCTION SERVICES AGREEMENT

that will be bid by the GC/CM and identify any packages that the GC/CM intends to bid on as self-performed or negotiate as self-performed. Include the scope of work, schedule, delivery method, estimated value of each bid package and, subcontract bidder responsibility criteria for each contract package. If pre-bid eligibility of subcontractors is recommended, this should be included, along with pre-bid eligibility requirements and a schedule to ensure sufficient time to establish such eligibility criteria and conduct the qualification process.

Explain the logic behind the subcontracting packaging and why the proposed approach and packages are in the best interest of Pierce Transit and the Project. Include a discussion on potential subcontractor capabilities to deliver each package and proposed packaging benefits in the market conditions at time of bidding.

Each contract package will require an update to the initial subcontracting plan.

2. Purpose

- a) Determine construction subcontract packaging.
- b) Develop alternative packaging configurations and evaluation factors.
- c) Determine early procurement packages.
- d) Recommend preferred approach to Construction Subcontract Packaging.

3. Deliverables

- a) Subcontract Packaging Workshop with Design team and Pierce Transit (including materials) – Hold within 30-Days of 60% Baseline Construction Cost Estimate.
- b) Initial subcontracting Packaging Plan. Based on 60% design submittal.
- c) Subcontract Packaging Plan documenting alternatives, analysis, recommendations, and subcontract bid package schedule identifying the planned sequence and timing of all subcontract bid packages. Submit Subcontract Packaging Plan within 14 days of Subcontract Packaging Workshop.
- d) Subcontract Packaging Presentation Meeting – Hold within 10 Days of submission of 90% Subcontract Packaging Plan. GC/CM Consultant shall administer and chair the meeting, with a focus on presentation of the 90% Subcontract Packaging Plan and soliciting comments and input for integration into the Final Subcontract Packaging Plan. Include schedule for packages and its goals for S/DBE in the packages.
- e) Final Subcontract Packaging Plan – Submit 60 Days before advertising GC/CM Consultant’s first bid package (excluding MC/CM and EC/CM bid packages, if applicable).

1.4 S/DBE Outreach Program

1. Purpose

Ensure that subcontracting opportunities within each subcontract bid package are clearly identified, that these opportunities will attract a high level of competition from qualified local subcontractors.

2. Deliverables

ATTACHMENT 1 – DRAFT PRECONSTRUCTION SERVICES AGREEMENT

- a) Provide a Draft Outreach Plan within 60 days of NTP.
- b) Final Outreach Plan submitted within 120 days of NTP.
- c) Participate in a minimum of one off-site outreach event planned and coordinated in conjunction with Pierce Transit personnel.
- d) Final Plan incorporating Pierce Transit comments – Prepare revisions to the plan as necessary to adapt to changing conditions and experience in the initial and subsequent Construction Packages.

1.5 Negotiated Support Services Plan

1. Description

Develop a plan for Negotiated Support Services

2. Frequency

Initial Draft, updated as necessary or requested. Anticipate updates at each design milestone deliverable (30%, 60%, 90%).

3. Purpose

Detail the services the GC/CM intends to provide/assign to support the construction of the project. These services will be identified in the planning subcontracting opportunities and support subcontracting planning and inclusion efforts.

4. Deliverable

Table identifying the services that will be directly contracted to support the construction efforts proposed as negotiated support services.

Provide scope narrative with estimated quantities and unit of payment for each potential service. Include as a part of subcontracting plan.

1.6 Monthly Progress Reports

1. Description

Prepare Monthly Progress Reports and detailed monthly invoice in accordance with the Contract Documents.

2. Purpose

Ensure clear and consistent reporting of progress throughout the Preconstruction Services phase.

3. Deliverables

- a) Monthly Progress Report, to include at a minimum the status on the following elements:
 - 1) Executive Summary, including a description of the month's activities
 - 2) Preconstruction Services Agreement status (budget and schedule)
 - 3) Identification of potential high-risk issues
 - 4) Status of Preconstruction deliverables achieved to-date and completed during

ATTACHMENT 1 – DRAFT PRECONSTRUCTION SERVICES AGREEMENT

the reporting period

- 5) Current Construction Project Schedule status
 - 6) Current Construction Project Budget (TCC)
 - 7) Current Subcontract Packaging Plan
 - 8) S/DBE Outreach Program status and highlights
 - 9) Status of Subcontract Procurements
 - 10) Status of MACC Negotiations
- b) Provide a log of Current Deliverables
 - c) The Monthly Progress Report shall accompany each monthly invoice
 - d) Detailed Monthly Invoice

No later than the date specified in Section 9 “Reporting Requirements” of the GC/CM Preconstruction Services Agreement

TASK 2 MEETINGS

2.1 Kickoff Meeting

1. Frequency

General kickoff meeting will be held within 10 days of NTP. All subsequent discipline specific kickoff meetings to be held within 30 days of NTP.

2. Duration

Up to a Half Day meeting for general Kickoff purposes/introductions, design team presentation, project schedule. Assume up to two hours for discipline specific kickoff meetings. Expect up to 5 discipline specific kickoff meetings.

3. Attendees

Project Executive, Project Manager, Superintendent, Cost Estimator, Scheduler, and other key personnel of the GC/CM Consultant team as identified in contract documents and approved by Pierce Transit.

4. Purpose

To introduce key project personnel, introduction of design by the design team, familiarize personnel with the project and to explain roles and responsibilities of each team member. Develop a Preconstruction Meeting schedule and review the design team’s project schedule.

5. Deliverables

Provide the following within 3 Days of completion of meeting to the Pierce Transit CM Consultant for Kick-off Meeting Minutes (minutes will be prepared by Pierce Transit):

- a) Key personnel Roster with names, phone numbers, role during Preconstruction Services, e-mail address.

2.2 Project Team Meetings

ATTACHMENT 1 – DRAFT PRECONSTRUCTION SERVICES AGREEMENT

1. Frequency

- a) Every two weeks the GC/CM Consultant shall conduct and lead Project Team Meetings held with Pierce Transit and others as deemed appropriate by Pierce Transit, beginning at NTP and continuing through MACC negotiations and execution of GC/CM Construction Contract (estimated 26 meetings).
- b) After Basic Services have been completed during the design phase, the GC/CM Consultant shall continue to attend periodic monthly Project Team Meetings as necessary to stay informed of current progress related to other contracts that precede the start of construction.

2. Duration

Not to exceed 2 hours

3. Attendees

Project Manager, Project Engineer, Project Superintendent, and others as determined by the GC/CM Consultant and as approved by Pierce Transit.

4. Purpose

Provide monthly update of required Deliverables; distribute constructability Issue Log, VE Log, Risk Register and other project issues and coordination topics as needed. Discuss design progress and Project issues. Determine follow-up actions to be taken by each party.

5. Deliverables

- a) Agenda and meeting minutes at each meeting.

2.3 Special Meetings and Subject Specific Review Meetings

1. Description

Attend or lead meetings as necessary between the City, design team, and GC/CM, beginning at NTP and continuing until negotiating the final MACC package is completed.

2. Attendees

Project Manager, Project Superintendent, Project Engineer, and/or discipline specific superintendents or others as appropriate for the subject matter.

3. Frequency

a) Workshops:

Anticipate 5 workshops, each having durations of five hours (average) to be completed and coordinated with Pierce Transit and the design schedule.

b) Individual Meetings:

To be held on an “as-needed” basis as requested by either Pierce Transit or GC/CM Consultant. Assume 50 meetings of 2 hours each.

c) Purpose

To provide regular collaborative forum for the GC/CM to actively engage in the design process with Pierce Transit and the Design team. To discuss specific issues, ideas, or recommendations for the benefit of the project and/or to review and formulate approaches and ideas to improve the delivery of specific elements of the work. These are intended to be discipline-specific and involve a small group of subject-matter experts.

4. Deliverables

Agenda and meeting minutes for meetings lead by the GC/CM.

2.4 Regular Constructability / Design Review Progress Meetings

1. Description

Attend design consultant progress meetings to stay apprised of design progress and provide input to the design process and address constructability and design issues.

2. Frequency

Design Progress meetings are held every week. GC/CM Consultant shall attend these meetings along with Pierce Transit and others deemed appropriate by Pierce Transit, beginning at NTP and continuing through completion of preconstruction services. Assume 50 meetings.

3. Duration

Estimated meeting duration is 2 hours.

4. Attendees

Project Manager, Project Superintendent, Project Engineer, others as determined by the GC/CM Consultant and approved by Pierce Transit.

5. Purpose

a) To provide a regular collaborative forum for the GC/CM Consultant to actively engage Pierce Transit, design team and CMC on subjects including but not limited to VE, contract interface, design review and progress, and design and constructability issues. Determine follow-up actions to be taken by each party. Provide periodic updates and review of required Deliverables; Distribute Constructability Log, VE Log, Interface Control Document (ICD) Status.

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- b) The GC/CM Consultant shall develop a Constructability Log that identifies proposed changes together with drawings, specifications and/or interfaces with other contract designs that will require modification as a result of the proposed change(s) and observations. This initial report will serve as the Constructability Log to track constructability issues throughout the life of each design phase.

6. Deliverables

Constructability Log updated regularly for the meetings required in this Task.

TASK 3 BUDGET DEVELOPMENT

3.1 Estimating Methodology Report

1. Description

Prepare a report documenting the approach that will be used in preparing cost estimates for the project and how that will be compatible with the estimates produced by the Engineer so that comparisons and reconciliations can be made easily between the two estimates. Identify how risks and where risks will be monetized. This approach shall be used for each milestone cost estimate submittal (30%, 60%, 90%, and 100%). Include the types of information required that were not included in the Contract Documents, other sources of information, recommended level of detail, format of reports, estimating software, and descriptions of estimating process.

2. Purpose

- a) Develop a cost-estimating methodology in coordination with the design team and Pierce Transit to allow estimates to be compared and costs classified in a manner that meets FTA and Pierce Transit reporting requirements.
- b) Provide a methodology for how costs will be developed consistently for each element of the estimate and provide a checklist to track completeness of the estimate submittals. It shall also address how the estimates from the GC/CM and the Engineer will be compared to maximize efficiency and how monetized risk will be identified.

3. Deliverables

- a) Estimating Methodology Kick-Off Meeting within 30 Days of NTP
- b) Draft Estimating Methodology Report within 21 Days after kickoff meeting.
- c) Final Estimating Methodology Report within 35 Days after Draft Estimate is due.
- d) Final Estimating Methodology 2-Day Workshop. Within 7-days of Final Estimating Methodology Report.

3.2 Construction Cost Estimates

1. Description

- a) Prepare a detailed construction cost estimate at 30%, 60%, 90% and 100% design submittals for each construction package based on the design documents provided by Pierce.
- b) Estimate shall include cost information for items identified as Negotiated Support

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Services as part of the MACC.

- c) The estimate will be in conformance with the approved Estimating Methodology Report and at a level of detail acceptable to Pierce Transit. The estimate shall be summarized in a format consistent with the approved format as established in the Estimating Methodology Report (Task 3.1).
- d) The GC/CM shall develop a Negotiated Support Services Plan document to define the Negotiated Support Services. The purpose of this document is to allow for a common understanding of the Negotiated Support Services scope.
- e) Upon completion of the cost estimate, the GC/CM and the Design Team shall reconcile their estimates.

2. Purpose

To develop a detailed and complete construction cost estimate for the Work. This will provide information for Pierce Transit, the design team and CMC to assist in evaluating alternative designs, equipment, materials or other variations in implementation of the project. MACC negotiations will be based upon 100% cost estimates; GC/CM will not be compensated for efforts associated with MACC (or Mini-MACC) negotiations.

3. Deliverables

- a) Cost estimates at 30%, 60%, 90% and 100% design for each construction package within 21 days of respective design submittal.
- b) Construction Cost Estimate Presentation Meeting:
- c) Hold within 7 days following submission of each construction cost estimate. GC/CM Consultant shall administer and chair the meeting, with a focus on presentation of the Construction Cost Estimate in a side-by-side comparison with the cost estimate provided by Pierce Transit and soliciting comments and input for integration into the cost estimate.

3.3 Estimating Support for Evaluation of Alternatives

1. Description

- a) Develop Construction Cost estimates for alternative concepts, designs, approaches, or means and methods as necessary to evaluate ideas proposed as part of Project Reviews (Task 5) or through other discussions and proposals.
- b) Cost estimates are to include any impacts to interfacing contracts and be at the same level of detail and format as established in the most current construction cost estimate.

2. Budget

- a) To inform the decision-making process on the acceptance of alternatives based on the cost savings that would result from inclusion of changes into the project.
- b) Assumed level of effort of 400 hours as defined.

3. Deliverables

Detailed Alternative Construction Cost Estimates:

Allow for up to 20 alternative concepts and comparison of alternatives to baseline costs for the same item using a combination of narrative and tables to clearly demonstrate cost differences.

TASK 4 SCHEDULE DEVELOPMENT

Schedules shall use Work Breakdown Structure (WBS) as the primary means of organization. Level of detail will be commensurate with that reflected in the GC/CM cost estimates as described in Task 3, Budget Development, herein. Schedules will be cost and resource loaded. Schedules will be updated for each construction package design submittal.

Activities will be coded to identify the entity responsible for the work. Each schedule submittal shall be accompanied by a narrative report which describes the assumptions made in developing the schedule, coordination required with other entities, schedule risks associated with the schedule, and explaining conformance with contract specifications.

4.1 Construction Contract Initial CPM Schedule

1. Description

- a) Develop a Construction Contract Initial Critical Path Method (CPM) Schedule as set forth above and further described below.
- b) The schedule shall be based on the Task included in this Scope of Work and the 30% design documents provided by Pierce Transit.

2. Purpose

To incorporate all Pierce Transit, third party and GC/CM Construction Phase activities into one schedule. Included in this schedule shall be all subcontract bidding/procurement and anticipated construction activities. At a minimum, the schedule shall also identify all long-lead procurement items, including submittals, obtaining permits, mobilization, demobilization, and submission of required documentation.

3. Deliverables

- a) Initial Contract CPM Schedule
 - 1) Contract Initial CPM Schedule – Delivered within 14 days of submission of 30% Construction Cost Estimate (Task 3.2).
 - 2) Contract Initial CPM Schedule Presentation Meeting – Hold 14 days following submission of the Initial Contract CPM Schedule. GC/CM Consultant shall administer and chair the meeting, with a focus on presentation of the Initial

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Contract CPM Schedule and soliciting comments and input for integration into the Initial Contract CPM Schedule.

- b) 60%, 90% and 100% Contract CPM Schedules
 - 1) 60%, 90%, and 100% Construction Contract CPM Schedules – Deliver within 7 days of submission of respective Construction Cost Estimate (Task 3.2).
 - 2) 60%, 90%, and 100% Contract CPM Schedule Presentation Meeting – Hold 7 days following submission of the respective Contract CPM Schedule. GC/CM Consultant shall administer and chair the meeting, with a focus on presentation of the Contract CPM Schedule and soliciting comments and input for integration into the Construction Contract CPM Schedule.

4.2 Scheduling Support for Evaluation of Alternatives

1. Description

- a) Develop Construction Fragnet Schedules for alternative concepts, designs, approaches, or means and methods as necessary to evaluate ideas proposed as part of VE, Schedule Presentation Meetings, risk mitigation and/or constructability reviews or through other discussions and proposals.
- b) Construction Fragnet Schedules shall be developed using scheduling Best Practices and to a level of detail suitable to its purpose.

2. Purpose

To inform the decision-making process on the acceptance of alternatives based on the schedule impacts that would result from inclusion of changes into the project.

1. Deliverables

3. Assumed level of effort of 280 hours.

- a) Detailed Construction Fragnet Schedules – Allow for up to 20 alternative concepts and comparison of alternatives to baseline schedules for the same item using a combination of narrative and tables to clearly demonstrate time differences.

TASK 5 PROJECT REVIEW

5.1 Constructability Reviews, Value Engineering, and Risk Management

1. Description

- a) Prepare for and perform constructability reviews, value engineering and identification, proposed allocation and mitigation of risks for the 30%, 60%, and 90% design submittals.
- b) Perform an intense cross check of all contract documents to identify interface issues between design disciplines and to validate schedule and budget. Reduce conflicts, ambiguities, or reduce potential for change orders, time extensions, and liability claims. The review ensures sufficient detail, logistics, sequencing, and conformance with actual building practices, budget, and schedule. In addition, the Contract Documents shall be reviewed in their entirety to identify errors, conflicts, omissions or duplications in or between documents. Identify opportunities to reduce cost, schedule

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and risk to the project through value engineering. Identify and proposed allocation of project risk and potential mitigations; track risks to monitor mitigation and/or realization of risk.

- c) The GC/CM Consultant shall address all major components of the design and shall submit reports as necessary including analysis of costs, schedules and savings or other benefits to Pierce Transit that will be gained with the recommended alternatives.
- d) The GC/CM Consultant shall participate in the design comment review and resolution processes as required for the 30%, 60% and 90% design completion packages.
- e) Constructability reviews, value engineering, and risk management shall be coordinated with the project design schedule to maximize the GC/CM Consultant's input to the design process.
- f) Assist in evaluating design costs and schedule impacts related to each proposed change.

2. Purpose

To review and provide recommendations on the construction documents with issues such as phasing of the work, substitution requests, staging, temporary work, new construction techniques or methods for executing the work, value engineering suggestions that could lead to cost reductions or increased long-term value, and identifying where the contract documents are not consistent or complete; to review and ensure good building practice is being incorporated into the documents and design elements are buildable as drawn and specified. To identify and track risks to the project and recommend mitigation strategies.

3. Deliverables

- a) Attend design presentation meetings
- b) Attend meetings with Pierce Transit and its design team to review constructability and value engineering items
- c) Develop Constructability, Value Engineering, and Risk Management Logs to be used to identify items above and further developed design.
- d) Constructability and Value Engineering report; update for each design submittal.

5.2 Sustainability Practices Plan (SPP)

1. Description

- a) Pierce Transit is interested in promoting the following sustainable practices at its construction sites:
 - 1) Comprehensive energy and fuel conservation
 - 2) Water conservation
 - 3) Waste management and reduction plans
 - 4) Pollution prevention (improvements in air and water quality; reduction in pollutants and ghg emissions)
 - 5) Alternative fuels and transportation plans

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- 6) Use of resource-efficient building materials (recycled content, durable and low-maintenance)
- 7) Sustainable purchasing and life cycle assessment for materials
- b) The GC/CM Consultant shall prepare and implement a Sustainable Practices Plan (SPP) that:
 - 1) Identifies roles and responsibilities of key personnel in regard to sustainable practices
 - 2) Documents procedures adopting sustainable practices
 - 3) Establishes communications and monitoring procedures for documenting plan adherence
 - 4) Establishes, tracks and reports performance metrics for sustainable practices

2. Purpose

The purpose of integrating sustainability into construction practices is to:

- a) Implement environmental stewardship and sustainable development
- b) Reduce environmental risks and liabilities
- c) Ensure regulatory compliance
- d) Improve environmental performance with a focus on reducing the:
- e) Impacts of our natural resource use
- f) Identify cost-effective solutions
- g) Enhance our public education and outreach

3. Deliverables

- a) Attend a half-day workshop with Pierce Transit, design team, and others as necessary to review and identify opportunities for sustainable practices and reporting approach.
- b) Sustainability Practices Plan half Day Workshop with Design team and Pierce Transit (including materials) – Hold within 90 Days of NTP.
- c) Draft Sustainability Practices Plan (based on 30% design):
- d) Document sustainability practices recommended on the project, recommended sustainability requirements to be incorporated in the design specifications, and tracking and reporting performance metrics. Submit Sustainability Practices Plan within 30 days of Workshop.
- e) Final Sustainable Practices Plan:

Submit 30 days before the 90% design completion package is scheduled for submittal by the design team for review by Pierce Transit.

5.2 Operation and Maintenance Coordination

1. Description

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GCCM shall coordinate with the Project Team and Pierce Transit Operation and Maintenance staff to develop and provide input on construction interfaces, phasing, staging, safety and other issues between construction and Operations and Maintenance of the Base.

2. Purpose

To discuss specific issues, ideas, or recommendations for the benefit of the project while maintaining full operations and maintenance functions at the Base. To review and provide recommendations on the construction documents and constructability/VE/Risk register with respect to operations and maintenance.

3. Deliverables

- a) Updated Constructability/ Risk Allocation and Mitigation Log.
- b) Assist in evaluating construction phasing, design costs and schedule impacts related to proposed changes.

TASK 6 MECHANICAL/ELECTRICAL/PLUMBING (MEP) SUBCONTRACTS (OPTIONAL – AS DIRECTED)

6.1 Early MEP Sub Qualification And Selection

1. Description

- a) Coordinate with Pierce Transit to determine the merit of contracting EC/CM and MC/CM subcontractors as defined by RCW 39.10.385. Provide recommendations on implementation the benefits and/or drawbacks.
- b) If directed by Pierce Transit, the GC/CM Consultant will implement the EC/CM and/or MC/CM procurement process as defined by RCW 39.10.385 at Pierce Transit's concurrence with implementation of the EC/CM and/or MC/CM procurement.
- c) If directed by Pierce Transit, the GC/CM Consultant shall prepare, submit, and, upon approval by Pierce Transit, award and execute Preconstruction services agreements for the MEP subcontracts in accordance with Section 00 72 00 General Conditions Article 2.05, Article 2.05.A.7 and RCW 39.10.385:
 - 1) Prepare a plan and schedule for the selection of the MEP subcontractors (MC/CM and/or EC/CM) and award of Preconstruction services agreement and subsequent construction contracts.
 - 2) Process the advertisement and final determination report for use of alternative selection process for MEP subcontracts.
 - 3) Prepare the RFQ/RFP bidding documents for Preconstruction services agreement(s) and construction contract(s).
 - 4) Advertise process and manage the bidding, award and execution of the Preconstruction services agreements.
 - 5) The MEP subcontractor(s) (MC/CM and/or EC/CM) Preconstruction Services agreement Statement of Work shall include participation in preparations of all applicable deliverables for Tasks 1 through 7 of the GC/CM Consultant's Preconstruction Agreement or as later mutually agreed with Pierce Transit. Early

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Preconstruction services task input from MEP subcontractors may be solicited as part of the MC/CM and/or EC/CM selection process and selection criteria.

2. Purpose

To determine if early agreements for MEP are warranted.

If warranted, to select and execute agreements with MEP subcontractors to provide early MEP subcontractor Preconstruction services participation and resultant project quality, cost and schedule benefits to Pierce Transit.

3. Deliverables

- a) MEP Subcontracting plan and schedule for selection of MEP subcontractors – Within 14 Days of Pierce Transit direction to procure.
- b) Advertise and complete final determination report as per RCW 39.10.385 for use of alternative selection process for MEP subcontracts – Within 35 Days of Pierce Transit direction to procure.
- c) Issue MEP subcontracting bidding documents for Pierce Transit review and approval – Within 60 Days of Pierce Transit direction to procure.
- d) Advertise and complete selection process, seek Pierce Transit review and approval, award, execute and issue NTP for Preconstruction services to MEP subcontractors - Within 75 Days of Pierce Transit direction to procure.

6.2 MEP Subcontractor management and coordination [If implemented]

1. Description

The GC/CM Consultant shall manage, coordinate and incorporate MEP subcontractor's participation and input for preparations of all applicable deliverables for Tasks 1 through 7 of the Prime GC/CM Consultant's Preconstruction Agreement or as later mutually agreed with Pierce Transit:

- a) Early Preconstruction services task input from MEP subcontractors may be solicited as part of the MC/CM and/or EC/CM selection process and selection criteria.
- b) Post award and specific MEP subcontractor's Preconstruction services deliverables shall be provided as subsections to Prime GC/CM Consultant deliverables for specific tasks.

2. Purpose

To provide early MEP subcontractor Preconstruction services participation and resultant project quality, cost and schedule benefits to Pierce Transit.

3. Deliverables

All MEP subcontractor's participation and specific Preconstruction services task deliverables shall support the GC/CM Consultant Preconstruction services deliverables schedule herein.

6.3 Mechanical Preconstruction Services

1. Description

The GC/CM Consultant will implement the MC/CM procurement process as defined by RCW

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39.10.385. The Mechanical subcontractor Preconstruction Services shall include participation in preparations of all applicable deliverables for Tasks 1 through 7 of the GC/CM Consultant's Preconstruction Agreement including Project Management, attendance at regular Meetings, Estimating, Scheduling, Constructability and VE Reviews, and BIM Modeling.

2. Purpose

Engage early Mechanical Preconstruction services participation to improve resultant project quality, cost and schedule benefits to Pierce Transit.

3. Deliverables

All MC/CM subcontractor's participation and specific Preconstruction services task deliverables shall support the GC/CM Consultant Preconstruction services deliverables schedule herein that includes but not limited to;

- a) Input to GC/CM Preconstruction Task Schedule
- b) Input to GC/CM Construction Plan
- c) Participate in GC/CM S/DBE Outreach Program
- d) Attend Regular Project Meetings and Discipline Specific Meetings
- e) Mechanical Cost Estimates
- f) Mechanical Alternative Cost Estimates
- g) Final Mechanical Construction Cost Estimate
- h) Input with GC/CM CPM Schedules
- i) Provide Constructability Review of Mechanical Systems
- j) Provide Value Engineering Review of Mechanical Systems
- k) Provide Risk Management support for Mechanical Systems.

6.4 Electrical Preconstruction Services

1. Description

The GC/CM Consultant will implement the EC/CM procurement process as defined by RCW 39.10.385. The Electrical subcontractor Preconstruction Services shall include participation in preparations of all applicable deliverables for Tasks 1 through 7 of the GC/CM Consultant's Preconstruction Agreement including Project Management, attendance at regular Meetings, Estimating, Scheduling, Constructability and VE Reviews, and BIM Modeling.

2. Purpose

Engage early Electrical Preconstruction services participation to improve resultant project quality, cost and schedule benefits to Pierce Transit.

3. Deliverables

All EC/CM subcontractor's participation and specific Preconstruction services task deliverables shall support the GC/CM Consultant Preconstruction services deliverables schedule herein that includes but not limited to;

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- a) Input to GC/CM Preconstruction Task Schedule
- b) Input to GC/CM Construction Plan
- c) Participate in GC/CM S/DBE Outreach Program
- d) Attend Regular Project Meetings and Discipline Specific Meetings
- e) Electrical Cost Estimate
- f) Electrical Alternative Cost Estimates
- g) Final Electrical Construction Cost Estimate
- h) Input with GC/CM CPM Schedules
- i) Provide Constructability Review of Electrical Systems
- j) Provide Value Engineering Review of Electrical Systems
- k) Provide Risk Management support for Electrical Systems.

END OF DRAFT PRECONSTRUCTION SERVICES AGREEMENT

