

GENERAL CONDITIONS

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1. Scope

These are general conditions to all contracts. Reference to or requirements for non-applicable conditions for any particular contract will be construed to have no meaning relative to the performance of such work.

2. Definitions

The following terms as used in this contract shall be defined and interpreted as follows:

- A. “Contract” or “this Contract”: the particular contract executed by the Contractor and the Owner, of which these general conditions are integral parts.
- B. “Contract Documents”: the Contract Documents shall consist of the following, and in case of conflicting provisions, the first mentioned shall have precedence:
 - 1. Change Orders or Supplemental Drawings and Instructions After the Agreement is Signed
 - 2. Addenda
 - 3. Contract
 - 4. Measurement and Payment
 - 5. Plans
 - 6. Standard Details
 - 7. Technical Provisions
 - 8. Supplemental Provisions
 - 9. Owner’s Development Standards
 - 10. General Conditions
 - 11. Instructions to Bidders
 - 12. Reference Specifications
 - 13. Proposal
 - 14. Performance Bond

These documents are incorporated herein by this reference.

The complete contract includes the above-named parts. These parts complement each other in describing a complete work. Any requirement in one part binds as if stated in all parts. Any inconsistency in the parts of the contract shall be resolved by following the above order of precedence (e.g., 1 presiding over 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; 2 presiding over 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; and so forth).

In case of any ambiguity or dispute over interpreting the contract documents, the Engineer’s decision will be final.

- C. "Owner": the entity that is a part of this Contract, contracting under the official name set forth in the agreement.
- D. "Contractor": the person, partnership, firm or corporation contracting to do the work under these contract documents. The term shall also include the Contractor's agents, employees, and subcontractors. The legal address is shown in the proposal.
- E. "Engineer": the Owner's utilities Engineer or his duly authorized assistants, which includes chief Engineer and project Engineer and/or inspectors, acting as agents for Owner in the administration of this Contract, for the benefit of Owner in accordance with Contract Documents. Legal address of Engineer and the names of the chief Engineer and project Engineer are shown in the information for bidders.
- F. "Project": the structure or improvement to be constructed in whole or in part through the performance of the Contract.
- G. "Plans": the plans shall mean all official drawings or reproductions of drawings made or to be made pertaining to the work provided for in the contract, or to any structure connected therewith.
- H. "Specifications": the specifications shall mean the prescribed directions, requirements, explanations, terms and provisions pertaining to the various features of the work to be done, or manner and method of performance, and the manner and method of measurements and payments. They also include directions, requirements, and explanations as set forth on the plans.
- I. "Reference specifications": reference specifications shall mean the technical specifications of other agencies incorporated or referred to herein.
- J. "Proposal": the proposal shall mean the approved proposal form upon which the bidder is to submit, or has submitted his proposal or bid for performing the work contemplated.
- K. "Work": the work necessary to manufacture and deliver the machinery, equipment and material and/or the furnishings of all labor, tools, materials, equipment, construction equipment, working drawings, where required, and other necessities for the construction or erection of the structures shown and called for in the plans, specifications and contract, and the set of constructing or erecting said structures complete.
- L. "Item": a convenient subdivision of work under these specifications, as herein separately described.
- M. "Major contract (bid) item": any item whose contract price equals or exceeds 10 percent of the total contract price, as determined by original proposed quantities and unit contract prices.
- N. "Material or materials": these words shall be construed to embrace machinery, manufactured articles, materials of construction (fabricated or otherwise) and any other classes of material to be furnished in connection with the contract.

- O. "Equipment": the machinery, accessories, appurtenances, and manufactured articles to be furnished and/or installed under the contract.
- P. "Contractor's Equipment": the phrase "Contractor's equipment" shall include all items of materials or equipment remaining in the Contractor's ownership and removed from the site upon completion of the project.
- Q. "Or equal": any manufactured article, material, method, or work which, in the opinion of the Engineer, is equally desirable or suitable for the purposes intended in these specifications and contract, as compared with similar articles specifically mentioned herein.
- R. "Details or Additional Drawings": all details or drawings prepared and issued by the Engineer subsequent to the signing of the contract, and for further explanation or amplifications of the contract drawings, or for the revision of the same, all as herein provided.
- S. "Supplemental Drawings and Instructions": the Engineer may furnish, at his sole discretion, upon written request of the Contractor, with reasonable promptness, additional instructions by means of drawings or documents necessary, in the opinion of the Engineer, for the proper execution of the work. All such drawings and instructions shall be consistent with the contract documents.
- T. "Words and Phrases": whenever the words, "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood that the direction, requirements or permission of the Owner and Engineer is intended. The words, "sufficient," "necessary," "proper," and the like shall mean sufficient, necessary, or proper in the judgment of the Owner and Engineer. The words, "approved," "acceptable," "satisfactory," or words of like importance shall mean approved by or acceptable to the Owner and Engineer.
- U. "Contract price": either the unit price, the unit prices, or lump sum price or prices named in the proposal, or in properly executed change orders.
- V. "Surety": any firm or corporation executing a surety bond or bonds payable to the Owner, securing the performance of the Contract either in whole or in part.
- W. "Time limits": all time limits stated in the Contract Documents are of the essence of the contract.
- X. "Points": wherever reference is made to the Engineer's points, this shall mean all marks, benchmarks, reference points, stakes, hub, tacks, etc., established by the Engineer for maintaining horizontal and vertical control of the work.
- Y. "Conflict of provisions": in the event of any conflict between any provision or requirement of the component parts of this contract, the component part having the highest order of sequence, as established in Paragraph B, shall govern.

- Z. "Standard Specifications": whenever reference is made to "Standard Specifications" it shall mean the latest edition of the WSDOT and APWA Standard Specifications for Road, Bridge, and Municipal Construction.
- AA. "Working Days": Every day will be counted as a working day unless it is a nonworking day or an Engineer determined unworkable day. A nonworking day is defined as a Saturday, a Sunday, a day on which the contract specifically suspends work, or one of the following holidays:

January 1
Third Monday of January
Third Monday of February
Memorial Day
July 4
Labor Day
November 11
Thanksgiving Day
The day after Thanksgiving
Christmas Day

If any of these holidays fall on a Saturday, the preceding Friday shall be a nonworking day. If the any of the holidays fall on a Sunday, the following Monday shall be a nonworking day.

The days between December 25 and January 1 will be classified nonworking days, provided that the Contractor actually suspends work on the project.

An unworkable day is defined as a partial or whole day when the Engineer declares to be unworkable because of weather, conditions caused by the weather or such other conditions beyond the control of the Contractor that prevents satisfactory and timely performance of the Work, and such performance, if not hindered, would have otherwise progressed toward physical completion of the Work.

- BB. "Substantial Completion": When the contract work has progressed to the extent that the Owner has full use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains to physically complete the total contract, the Engineer may determine the contract work is substantially complete. The Engineer will notify the Contractor in writing of the substantial completion date.
- CC. "Final Acceptance": When the contract work is complete and the Owner has full use and benefit of the facilities, and all minor incidental work including replacement of temporary substitute facilities, correction or repair and all punch list items are complete to the satisfaction of the Owner, the Owner may determine Final Acceptance of the contract work. The Engineer or Owner may notify the Contractor in writing of the Final Acceptance date.

- DD. "Lowest Responsive Bidder": In addition to price, the Owner shall determine the lowest responsible bidder taking into consideration factors such as:
- (a) The **ability, capacity, and skill** of the bidder to perform the contract or provide the service required;
 - (b) The character, integrity, **reputation**, judgment, **experience**, and **efficiency** of the bidder;
 - (c) Whether the bidder can perform the contract within the time specified;
 - (d) The **quality of performance of previous contracts** or services;

 - (e) The previous and existing compliance by the bidder with laws relating to the contract or services;
 - (f) Such **other information** as may be secured **having a bearing on the decision** to award the contract.

3. Abbreviations

Whenever the following abbreviations are used on the plans, specifications, proposals and contracts, they shall be construed to mean the words and terms as listed below:

a	acre
AC	asbestos cement
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AITC	American Institute of Timber Construction
ANSI	American National Standard Institute
APWA	American Public Works Association
asp. pav.	Asphalt pavement
ASTM	American Society for Testing and Materials
ATB	asphalt treated base
Ave	avenue
AWS	American Welding Society
AWWA	American Water Works Association
Blvd	boulevard
BO	blow off
cb	catch basin
CI	cast iron
Cl	centerline
CMP	corrugated metal pipe
cmu	concrete mason unit
conc.	concrete
conc. cb.	concrete curb
conc. pav.	concrete pavement
conc. ret. wall	concrete retaining wall
conc. sew.	concrete sewer
CTB	cement treated base
C to C	center to center
cu	cubic
DFPA	Douglas Fir Plywood Association

dw	drive or driveway
E	east
elev.	elevation
ex, exist.	existing
FH	fire hydrant
FL	flange
ft, ft2, ft3	foot, square feet, cubic feet
gpad	gallons per acre day
gph	gallons per hour
gpm	gallons per minute
GV	gate valve
HMA	hot mix asphalt
hyd	hydrant
ID or dia	inside diameter
in, in2, in3	inch, square inch, cubic inch
L	length
lbs	pounds
LF	linear feet
max	maximum
min	minimum
MGD	million gallons per day
MH	manhole
MJ	mechanical joint
N	north
no.	number
OD	outside diameter
pav	pavement
pl	property line
Pl	place
PP	power pole
psf	pounds per square foot
psi	pounds per square inch
r	radius
S	south
S	sewer
sq	square
St	street
SS	side sewer or sanitary sewers
SSPC	steel structure painting council
std	standard
USAS	U.S.A. Standards
W	west or watermain
WM	water meter
WSDOT	Washington State Department of Transportation
yd	yard

4. Execution, Correlation and Intent of Documents

- A. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the work except where material or equipment is specifically excepted. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.
- B. It is intended that work not covered under any heading, section, branch, class or trade of the specifications shall be supplied if it is shown on the drawings or is reasonably inferable as being necessary to produce the intended results. Minor items of work or material omitted from the original plans or specifications, but clearly inferable from the information presented and which are called for by accepted good practice shall be provided and/or performed by the Contractor as part of his original cost.
- C. Where the Contract Documents refer to referenced specifications, such specifications shall be applicable to technical provisions only, unless otherwise designed.

5. Plans and Specifications – Omissions and Discrepancies

Upon receipt of award of contract, the Contractor shall carefully study and compare all drawings, specifications and other instructions, and shall, prior to ordering material or performing work, report in writing to the Engineer any error, inconsistency or omission in respect to design, mode of construction or cost which he may discover. If the Contractor, in the course of this study or in the accomplishment of the work, finds any discrepancy between the drawings and the physical condition of the locality as represented in the drawings, or any such errors or omissions in respect to design, mode of construction or cost in drawings or in the layout given by points and instructions, it shall be his duty to inform the Engineer immediately in writing and the Engineer shall promptly check the same. Any work done after such discovery, until correction of drawings or authorization of extra work is given, if the Engineer finds that extra work is involved, will be done at the Contractor's risk. If extra work is involved, the procedure shall be as provided in changes in the work.

6. Examination of Site of Work

Before submitting his bid, the bidder shall examine the site of the work and ascertain for himself all the physical conditions in relation thereto. Failure to do this shall not relieve the bidder from entering into a Contract nor excuse him from performing the work in strict accordance with the terms of the Contract and Specifications. He will not be entitled to additional compensation if he subsequently finds the conditions to require other methods or equipment that he did not anticipate in making his unit contract bid prices.

Any statement or representation made by an officer, agent or employee of the Owner with respect to the physical conditions pertaining to the site of the work shall not be binding upon the Owner.

7. Status of Engineer

- A. The Engineer shall act as advisor and consultant to represent the Owner in engineering matters relating to the Contract, provided, however, nothing contained herein or elsewhere in the Contract Documents shall be construed as requiring the Engineer to direct the method or manner of performing any work by the Contractor under this Contract. The Owner, or his duly authorized official, has authority to stop the work whenever, in his opinion, such stoppage may be necessary to ensure the proper execution of the contract. The Engineer may reject all work and materials which, in his opinion, do not conform to the Contract.
- B. It is understood and agreed by and between the parties hereto that the work included in the Contract is to be done to the complete satisfaction of the Engineer, or his duly authorized representative, and that the decision of the Engineer as to the true construction and meaning of the Contract, plans, specifications, and estimates, and as to all questions arising as to proper performance of the work shall be final. The Engineer shall determine the unit quantities and the classification of all work done and materials furnished under the provisions of this agreement and his determination thereof shall be final and conclusive and binding upon the Contractor.
- C. The Engineer shall decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the rate of progress of the work, and all questions as to acceptable fulfillment and performance of the Contract on the part of the Contractor and as to compensation. The decision of the Engineer in such matters shall be final.
- D. The Engineer may direct the sequence of conducting work when it is in locations where the Owner is doing work either by Contract or by his own forces, or where such other works may be affected by the Contract, in order that the conflict may be avoided and the work under these specifications be harmonized with that under other contracts, or with other work being done in connection with, or growing out of, operations of the Owner. Nothing herein contained, however, shall be taken to relieve the Contractor of any of his obligations or liabilities under the Contract.
- E. Neither the Engineer nor his representatives have authority to waive the obligation of the Contractor to perform the work in accordance with the Contract Documents. Failure or omission on the part of the Engineer or his representatives to condemn unsuitable, inferior or defective work and/or labor or material or equipment furnished under the Contract shall not release the Contractor or his bond from performing the work in accordance with the Contract Documents.

8. Engineer's Decision

- A. The Engineer shall, within a reasonable time after presentation of written claims by the Contractor to him, make decisions in writing on all claims and on all matters relating to the execution and progress of the work or the interpretation of the Contract Documents. The Contractor must make all claims in writing. Oral instructions shall be disregarded by the Contractor. Notice of all claims shall be addressed to the chief Engineer at the address of the Engineer given in the Contract Documents.
- B. All the decisions of the Engineer shall be final, except in cases where disputed time and/or increase of the Contract price is involved, which, if no agreement in this regard thereto is reached, shall be subject to determination by a court of competent jurisdiction unless otherwise settled by a compromise or arbitration. In respect to performance of the work prior to any such determination, if the Contractor does proceed with the work which is the subject of dispute, he does so at his own risk pending such determination.

9. Contractor's Representations and Warranty

In making a proposal under these Contract Documents, the Contractor represents and warrants that he has satisfied himself as to construction conditions by personal examination of the plans, specifications, site of the proposed work, and by appropriate examination and investigation as to the nature of the soil and construction problems which may be encountered by reason thereof. The Contractor also warrants and represents himself to be experienced and an expert in the construction contemplated. The Contractor further understands that in making the Contract award, the Owner is relying upon the representations and warranties of the Contractor herein contained.

10. Inspection and Tests

- A. The Engineer and his representatives shall at all times have access to the work to observe the progress and quality wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for necessary inspection testing. If any work shall be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for inspection at the Contractor's expense. After inspection, a reexamination of questioned work may be ordered by the Engineer, and if so ordered, the work shall be uncovered by the Contractor. If such work is found by the Engineer to be in accordance with the Contract Documents, the Owner shall pay the cost of reexamination and replacement. If such work is not found in accordance with the Contract Documents, the Contractor shall pay such costs.
- B. The Contractor shall make reasonable tests of the work at the Contractor's expense upon Engineer's request, and shall maintain a record of such tests. Prior to the time scheduled for a performance test to be observed by the Engineer, the Contractor shall make whatever preliminary tests are necessary to assure that the material and/or equipment are in accordance with the specifications. If, for any reason, the test observed by the Engineer is

unsatisfactory, the Contractor shall pay all costs incurred by the Engineer for the inspection of the unsatisfactory test in the manner specified for liquidated damages.

- C. Should the Contractor elect to work more than eight (8) hours per day during the course of the stated Contract time limit, all costs of Engineering and inspection thus entailed will be charged to the Contractor, at two (2) times payroll costs. Such charges will be billed directly to the Contractor by the Owner and said cost shall be a lien against the Contractor's work. In the event the Contractor fails to pay said bill or bills by the 30th day of the month billed, such payments may be handled in accordance with paragraph 48 of these specifications. In addition, to the above, where the inspector furnished for the project is an employee of the Owner, the Contractor shall reimburse the Owner for all inspection time required on holidays which are a part of the Owner's normal holiday schedule.
- D. Where specifications, the Engineer's instructions, laws, ordinances or any government authority require any work to be specially tested, or inspected, the Contractor shall give the Engineer timely notice that such test of completed work is ready for inspection. If the inspection is by another authority than the Engineer, the Contractor shall give the Engineer timely notice of the date fixed for such inspection. Required certificates of inspection by authority other than the Engineer shall be secured by the Contractor.

11. Final Inspection and Acceptance

- A. All materials and completed Work are subject to final inspection by Engineer before acceptance by Owner. Engineer may require and shall have the right to subject all machinery and equipment and Work to such test, as in his opinion, will assist in determining whether the Contract has been performed in accordance with Contract Documents. All such tests shall be at the expense of Contractor.
- B. Final (Project) Acceptance shall be when the District's Board of Commissioners accepts the construction as conforming to the project plans and specifications including completion of punch-list items. When the Contractor believes the Work is complete, the Contractor shall certify, in writing, to the Owner that the Work has been completed in accordance with the Contract Documents. The Owner shall promptly inspect the Work and advise the Contractor, in writing, of his agreement or disagreement with the Contractor's certificate.

12. Plans and Specifications Accessible

- A. The Contractor will be furnished three copies of the plans and specifications and shall keep at least one copy of the same constantly accessible at the construction site.
- B. Where shop drawings are required to be submitted for acceptance, one copy of the approved shop drawings shall be kept constantly accessible at the construction site.

13. Ownership of Drawings

All drawings, specifications and copies thereof prepared or furnished by the Engineer are his property. They are not to be used on other work, and with the exception of the signed Contract set, are to be returned to him upon completion of the work.

14. Notice of Award

A. A notice of award will be forwarded by the Owner to the successful Contractor, which notice will also state the date of a pre-construction conference to be held between Engineer and Contractor. The notice of award will be accompanied by the agreement to be signed by the Contractor and returned to the Owner within ten (10) days from receipt, along with the following items:

- Progress Schedule
- Certificate of Insurance
- Performance and Guaranty Bond
- Materials List
- Schedule for Values of Lump Sum Work

B. The award of contract, if made, will be made to the lowest responsible bidder based on the bid amount. No award will be made until necessary investigations are made by the Owner as to the responsibility of the apparent low bidder. The Owner shall be the sole judge as to the responsibility of the bidder to satisfactorily perform the work as specified and within the time limit set. Upon failure of the Contractor to enter into a contract and to submit documents listed above within ten (10) days after receiving notice of award, the bid deposit shall be forfeited to the Owner. The award may then, at the discretion of the Owner, be made to the next lowest responsible bidder or the work may be re-advertised, or may be constructed by the Owner, in any legal manner.

15. Notice to Proceed

Notice to Proceed is the official notice from the Engineer on behalf of the Owner to the Contractor to commence execution of the work, and commences the running of the time for completion of the work. Notice to Proceed will generally be given at the Pre-construction Meeting and after the Owner has received from the Contractor all documents required to follow with the Notice of Award. No work shall be commenced by the Contractor prior to receipt of Notice to Proceed.

16. Progress Schedule

A. The progress schedule shall set forth the order in which the Contractor plans to perform the work. The schedule may be in graph or tabular form, and shall include the date of submission for approval of drawings as may be required, starting dates for construction of

the several parts of the work, and estimated completion dates of such parts, and completion date of the project.

- B. The progress schedule shall coordinate the work of the Contractor with the work of other contractors in respect to the availability of job sites upon completion of other work to be performed by other contractors. The progress schedule may be altered or revised by the Engineer in the interest of public safety, welfare or the interest of the Owner, or for coordination with any other activity of other Contractors, the availability of all or portions of the job site, or special provisions of this contract, or to reasonably meet the completion date of the project.
- C. The Contractor shall promptly report to the Engineer any conditions which the Contractor feels will require revision of the schedule and shall promptly submit proposed revisions in the progress schedule for acceptance by the Engineer. The revised schedule shall be followed by the Contractor.
- C. The progress schedule will be reviewed at the Pre-construction Conference between the Engineer and the Contractor. The Contractor shall furnish the Engineer with three (3) copies of the accepted progress schedule prior to commencement of the work.

17. Schedule for Values of Lump Sum Work

If payments are to be made on lump sum items, the Contractor shall submit a schedule of values of the various parts of work, including quantities, aggregating the total sum of the Contract, made out in such form as the Engineer may require, and if required, supported by such evidence as to its correctness as the Engineer may direct. This schedule, when approved by the Engineer, shall be used as the basis for certificates for payments for lump sum work, the Contractor shall submit estimates of the percentage of work completed, and payment will be based upon the schedule of values for lump sum work.

18. Pre-construction Conference

A. A Pre-construction Conference shall be held at a time and place fixed by the Engineer after receipt of documents required to follow with the Notice to Award. The Contractor must be prepared for a thorough discussion and review, as well as revision which may be deemed necessary in the opinion of the Engineer, of the following:

- Progress Schedule
- Materials List
- Product Data
- Equipment List
- Job Procedures
- Inspection Procedures
- Plans and Specifications
- Shop Drawings
- Supplemental Drawings
- Schedule of Value of Lump Sum Work

- Subcontractor Lists
 - Other Matters Pertaining to Performance of the Work
- B. Acceptance by the Engineer of the progress schedule shall not in any event excuse the Contractor of the obligation to complete the work within the time specified in the agreement or of complying with all terms, conditions and provisions of the Contract Documents. Failure of the Contractor to follow the progress schedule submitted and accepted, including revisions thereof, shall relieve the Owner of any and all responsibility for furnishing and making available all or any portion of the job site from time to time, and will relieve the Owner of any responsibility for delays to the Contractor in the performance of the work.

19. Material and Equipment – Material and Equipment List

- A. All materials and equipment shall be new and shall be as specified in the Contract Documents, or, if not specified, shall be of a quality approved by the Engineer. All materials and equipment furnished are warranted by the Contractor as new and in accordance with the Plans and Specifications, if specified therein, and as suitable for the intended purpose. In addition thereto, the Contractor shall furnish the Owner with copies of the supplier's warranty, and adopt the same as the warranty of the Contractor, and shall also be liable thereon to the Owner.
- B. For each proposed substitution the Contractor shall submit samples, descriptive and technical data, and reports of tests to the Owner for approval. The Contractor shall also indicate the difference in the Contract cost by reason of the proposed substitution. No substitute items shall be furnished or installed without the Owner's written approval. The Contractor shall reimburse the Owner for any additional engineering charges and for any charges for changes in the work of other contractors resulting from substitutions.
- C. The Contractor shall file three (3) copies of a material and equipment list with the Engineer prior to the Pre-construction Conference. This list shall include the quantity, manufacturer, and model number, if applicable of materials and equipment to be installed under the contract. This list will be checked by the Engineer as to conformity with the plans and specifications. The Engineer will pass upon the lists with reasonable promptness, making required corrections. The Contractor shall make any required corrections and file two (2) corrected copies with the Engineer within one week after receipt of the required corrections. The Engineer's review and acceptance of the lists shall not relieve the Contractor from responsibility for suitability for the intended purpose nor for deviations from the drawings and specifications unless the Contractor has in writing called the Engineer's attention to such deviations at the time of submittal, and secured the Engineer's written approval for such deviation.
- D. In the event that the Contractor shall request, or submit, an alternate design, or designs for some portions of his work, the Engineer will consider such alternate designs with reasonable promptness. Such request for either a design review from alternate plans submitted by the Contractor, or request for a redesign initiated by the Contractor as set forth above shall be made in writing to the Engineer. When the Contractor submits plans for an alternate design it shall be in the form of reproducible drawings.

Provided that such proposed alternate design or requested redesign appears reasonable and satisfactory to the Engineer, the Engineer will perform an engineering review of the proposed alternate design or if requested by the Contractor, the Engineer will perform an engineering redesign of the work to assure its compatibility within the framework of the complete operating unit or system ready for use between the Contract limits.

The cost of engineering review of the proposed alternate, or the cost of an engineering redesign as requested by the Contractor will be billed to the Contractor by the Engineer at the rate of two times the Engineer's direct payroll costs, plus direct expenses directly attributable to the work.

- E. Hourly rates for each piece of equipment used on the job shall be provided to the Owner. Equipment rates shall be per the most recent AGC/bluebook compilation.

20. Shop Drawings

The Contractor shall check and verify all field measurements. He shall submit with such promptness as to cause no delay in his own work or in that of any other contractor six (6) copies, checked and approved by the Contractor, of all shop or setting drawings and schedules (all collectively herein referred to as "shop drawings") required for the work of the various trades in the performance of the work or where requested by the Engineer, and shall verify all field measurements or conditions to which the shop drawings are applicable. The Engineer shall review them with reasonable promptness, making required corrections, including those related to design and artistic effect. The Contractor shall make any corrections required by the Engineer, and within one week after receipt of the required corrections shall file with the Engineer two (2) corrected copies and furnish such other copies as may be needed by the Engineer. The Engineer's acceptance of such drawings or schedules shall not relieve the Contractor from responsibility for deviation from drawings or specifications, unless the Contractor has in writing called the Engineer's attention to such deviation at the time of submission, and secured the Engineer's written approval, nor shall it relieve the Contractor from responsibility for errors in shop drawings or schedules.

21. Cutting and Fitting

The Contractor shall do all cutting and fitting of his work that may be required to make its several parts come together properly, and fit it to receive or be received by work of other contractors shown or reasonably implied by the drawings and specifications for the completed structure and the Contractor shall restore all surfaces damaged by cutting and fitting as the Engineer may direct.

22. Labor, Materials, Equipment, Facilities, and Workmen

- A. The Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the execution and completion of the work, except as otherwise stipulated in the Contract Documents.

- B. The Contractor shall satisfy himself as to the character of the work and quantities of materials required to complete the project. Quantities in the bid documents are approximate and payment will be made for the exact quantities measured in accordance with the measurement and payment section of this Contract.
- C. The Contractor shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any person unfit or not skilled in the work assigned to him. Employees or agents of the Contractor who, in the opinion of the Engineer, may impair the quality of the construction shall forthwith be discharged by the Contractor upon the written request of the Engineer.
- D. During the term of this Contract, neither party shall employ nor hire any employee of the other party, nor of the Engineer, without the written consent of the other party or of the Engineer. The Contractor shall not use any work performed or any information obtained from any employee hired in violation of this provision in making a claim against the Owner or the Engineer and shall also be liable to the Owner as liquidated damages in an amount equal to double the amount of salary or wages paid to any such employee so hired in violation hereof.
- E. Necessary sanitation conveniences for the use of workmen on the job properly secluded from public observation shall be provided and maintained by the Contractor.

23. Materials and Equipment Furnished by Owner

- A. The Contractor shall receive, inspect and accept all owner-furnished items of material and equipment, subject only to latent defects. Claims by the Contractor to the Owner shall be made in writing within five (5) days after discovery of any latent defect. Damages or loss to the Owner shall be limited to the cost of and labor for replacement of any such damaged item. In any event, the liability of the Owner to the Contractor for furnishing an item having a latent defect is limited to damages or loss resulting from use thereof only to extent that such loss or damage is recoverable by the Owner against the supplier. The Owner shall include in his claim the amount of damage to the Contractor or may assign to Contractor any claim which the Owner would otherwise have against any such supplier; and the sole remedy of the Contractor shall be by suit or action on such assigned claim. The Owner agrees to cooperate with the Contractor in furnishing facts or data to assist the Contractor in prosecuting such action.

24. Samples

The Contractor shall furnish for approval all samples as directed by the Engineer. The finished work shall be in accordance with approved samples. Approval of samples by the Engineer does not relieve the Contractor of performance of the work in accordance with the Contract Documents.

25. Determination of “Or Equal”

The Engineer shall be the sole judge in the question of “or equal” of any supplies or materials proposed by the Contractor. The Contractor shall pay the Owner the cost of tests and evaluations by the Engineer to determine acceptability of alternates proposed by the Contractor, in accordance with the established rates of the Engineer for time and expense work, the total cost of which may be offset by the Owner against the Contract price.

26. Royalties and Patents

The Contractor shall be liable for all suits brought against the Owner by reason of infringement of patent rights or licenses on any materials, machine, appliance or process he may use on the work or incorporate into the finished job, except where specifically exempted by special provisions. Prices named in the proposal shall include payment of royalties, if any. The Contractor shall defend and hold the Owner harmless from any such suit, costs of defense and any judgment which may be made or entered against the Owner thereon.

27. Lands for Work

With the exception of a site for the job site office and material storage yard, the Owner will furnish all lands and rights-of-way necessary for carrying out this Contract and completion of the work herein contemplated, and will use due diligence in acquiring said lands and rights-of-way as speedily as possible. But it is possible that all lands and rights-of-way may not be obtained as herein contemplated before construction begins, in which event the Contractor shall begin his work upon such land and rights-of-way as the Owner may have previously acquired and no claim for damages whatsoever will be allowed by reason of the delay in obtaining the remaining land and rights-of-way. Should the Owner be prevented or enjoined from proceeding with the work, or from authorizing its prosecution, either before or after the giving of notice to proceed by reason of any litigation, or by reason of its inability to procure any lands or rights-of-way for said work, the Contractor shall not be entitled to any damages, costs, expenses, additional compensation or loss of profits by reason of said delay, or to withdraw from the Contract except by consent of the Owner, but time for completion of the work for the time lost by such delay, such determination to be set forth in writing, provided in any event the Contractor may terminate as provided in paragraph 45.

28. Surveys, Permits, Laws and Regulations

- A. The Owner shall furnish all property boundary surveys unless otherwise specified. Permits, permission under franchises, licenses and bonds of a temporary nature necessary for and during the prosecution of the work, and inspection fees in connection therewith shall be secured and paid for by the Contractor. Where the Owner is required to secure such permits, permission under franchises, licenses and bonds and pay the fees, the costs incurred by the Owner thereby shall be charged against the Contractor and offset by the Owner against the Contract price.
- B. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work required by the Contract Documents. If the

Contractor observes that the Contract Documents or any part thereof are inconsistent or at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be made as provided in the Contract for changes in the work. If the Contractor performs any work contrary to such laws, ordinances, rules and regulations, or prior to obtaining permits, permission under or obtained by the Owner, he does so at his own risk and without payment or reimbursement therefore from the Owner unless the Owner shall have given written approval thereof to the Contractor.

- C. Wherever the law of the place of construction requires a sales, consumer, use or similar tax, the Contractor shall pay such tax.

29. Points and Instructions

- A. The Contractor shall provide reasonable and necessary opportunities and facilities for setting points and making measurements by the Engineer as set forth in the special provisions. The Contractor shall not proceed with the work until timely demand in writing has been made upon the Engineer for, and the Contractor has received from the Engineer, such points and instructions. The work shall be done in strict conformity with such points and instructions.
- B. Contractor shall preserve benchmarks, reference points and stakes, and, in case of destruction or removal thereof for any reason, Contractor is responsible for the resulting costs for replacement and shall be responsible for any mistakes and loss or damage arising therefrom which may be caused by the absence, destruction, removal or disturbance thereof.

30. Payment of Prevailing Wages

- A. In accordance with REVISED CODE OF WASHINGTON CHAPTER 39.12, Et seq., As amended, there shall be paid to all laborers, workmen or mechanics employed on this Contract the prevailing rate of wage for an hour's work in the same trade or occupation in the area of work regardless of any contractual relationship which may exist, or be alleged to exist, between the Contractor and any laborers, workmen, mechanics, or subcontractors.
- B. "Prevailing Rate of Wage" shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workmen, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workmen or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor to laborers, workmen, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this shall be mathematically determined by the number of hours worked in such period of time.

"Locality" shall be the largest City in the county wherein the physical work is being performed.

"Usual benefits" shall include the amount of:

1. Rate of contribution irrevocably made by the Contractor to a trustee, or to a trustee or to a third person pursuant to a fund, plan, or program; and

2. Rate of costs to the Contractor which may be reasonably anticipated in providing benefits to workmen, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workmen, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing and, for unemployment benefits, life insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the Contractor is not required by other federal, state or local law to provide any such benefits.
- C. Rules and regulations of the department of labor and industries and the schedule of prevailing wage rates for the locality or localities where this Contract will be performed as determined by the industrial statistician of the Department of Labor and Industries are by reference made a part of this Contract as through fully set forth herein. Inasmuch as the Contractor will be held responsible for paying the prevailing wages, it is imperative that all contractors familiarize themselves with the current wage rates before submitting bids based on these specifications. On projects governed by wage rates determined by the State of Washington Department of Labor and Industries and by the U.S. Secretary of Labor, if there is a difference between the two in the prevailing rate of wage for a similar classification of labor, the Contractor shall pay not less than the wage which is the higher of the two. The schedule of Prevailing Wage Rates that is included in the Contract Documents is the best available information at the time the project was advertised for bid. The Contractor is responsible for obtaining any updates to the wage rates that would apply to this contract.
 - D. The Contractor, on or before the date of commencement of work, shall file a statement under oath with the Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workmen, or mechanics employed upon the work by the Contractor or subcontractor which shall be not less than the prevailing rate of wage. Such statement and any supplemental statements which may be necessary shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.
 - E. In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington and his decision therein shall be final and conclusive and binding on all parties involved in the dispute.
 - F. Prior to commencing work, each contractor and each and every subcontractor shall file a sworn statement of intent with the Owner and with the Department of Labor and Industries as to the prevailing wage rate, including fringe benefits, for each job classification to be utilized.
 - G. Each voucher claim submitted by a contractor for payment on a project estimate shall state the prevailing wages have been paid in accordance with the pre-filed statement or statements of intent on file with the Department of Labor and Industries as approved by the Industrial Statistician.
 - H. At the conclusion of the project, the Contractor and his subcontractors shall submit Affidavits of Wages Paid to the Department of Labor and Industries for certification by the director. Final payment on the Contract shall be withheld until certification by the Director has been received by the Owner that the prevailing wage requirements of the law have been satisfied.

I. The law of this state, R.C.W. Chapter 39.16.005, as amended, provides:

In all contracts let by the state, or any department thereof, of any county, City or town for the erection, construction, alteration, demolition or repair of any public building, structure, bridge, highway, or any other kind of public work or improvements, the Contractor, subcontractor, or person in charge thereof, shall employ 95 percent or more bona fide Washington residents as employees where more than 50 persons are employed and 90 percent or more where 50 or less are employed; and shall pay the standard prevailing wages for the specific type of construction as determined by the U.S. Department of Labor in the City or county where work is being performed. The term, residents, as used in this chapter, shall mean any person who has been a bona fide resident of the State of Washington for a period of 90 days prior to such employment; provided, that in contracts involving the expenditure of federal-aid funds, this chapter shall not be enforced in such manner to conflict with or be contrary to federal statute, rules and regulations prescribing a labor preference to honorable discharged soldiers, sailors, and marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

In the event a sufficient number of Washington residents shall not be available, the Contractor or subcontractor shall immediately notify the public body with whom the Contract has been executed of such facts, and shall state the number of non-residents needed. The public body shall immediately investigate the facts and if the conditions are as stated, the public body shall, by written order, designate the number of non-residents and the period for which they may be employed; provided, that should residents become available within the period, such residents shall be immediately employed and the period shortened consistent with the supply of resident labor.

The provisions of this chapter shall be written into every such public contract, including the following penalty: any contractor or subcontractor who shall employ a non-resident in excess of the percentage preference, excepting as herein permitted, shall have deducted, for every violation, from the amount due him, the prevailing wages which should have been paid to a displaced resident. The money so deducted shall be retained by the public body for whom the Contract is being performed.

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of misdemeanor.

31. Protection of Work and Safety

- A. The Contractor shall continuously maintain adequate protection of the work from damage and shall protect the Owner's property from injury or loss arising in connection with or during the existence of this contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property from loss or damage occasioned by performance of the work. He shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.
- B. The Contractor shall bear the risk of loss or damage for all finished or partially finished work until the entire Contract is accepted by the Owner.

- C. The Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety laws and building codes. He shall erect and properly maintain, at all times, as required by the conditions and progress of the work, all necessary safeguards for protection of workmen and the public; shall post danger signs warning against known or unusual hazards; and he shall designate a responsible member of his organization on the construction site whose duty shall be the prevention of accidents. The name and position of such person so designated shall be reported in writing to the Engineer by the Contractor.

32. Work on City Streets

Contractor represents and warrants to Owner that it has fully inspected the condition of adjacent streets, bridges, pavement subgrade, and culverts and releases the District from any claim that the same are not adequate for Contractors use and agrees that the costs of repair and/or restoration are included in contractor's bid.

Contractor shall strictly comply with the terms and requirements of Owner's franchise from King County and all permits issued for the Work, including without limitation all grading, building and related and associated permits, all right-way-permits, and all other permits, licenses and consents by federal, state, and local governments regarding the Work. Workmen shall wear proper personal safety equipment, hardhats, fluorescent vests, etc., in accordance with City, WISHA and OSHA regulations.

33. Existing Utilities or Obstructions

- A. Contractor's work shall be confined to Owner's premises, including easements and construction permit limits, whenever possible. He shall not enter upon or place materials on other property except by written consent of the individual Owner and he shall save Owner harmless from all suits and actions of every kind and description that might result from his use of property other than that of Owner.
- B. Contractor is directed to RCW 19.122 for responsibilities relating to locating, protecting, relocating and repair of existing underground utilities.
- C. Existing utilities indicated on the drawings have been plotted from the best information available to Engineer. Source of information may consist of construction records, One-Call locates, and other data obtained verbally from officials associated with the particular utility. Verification by excavation of buried facilities has not occurred. Vertical position of existing utilities, if not located or discernable from accessible structures (manholes, catch basins, valve boxes, etc.) are assumed to be in a normal depth range for such utility. Contractor shall expect to pothole ahead of main excavation to verify both horizontal and vertical locations of utilities.

Neither Owner nor Engineer guarantees the accuracy or completeness of this information and assumes no responsibility for improper locations or failure to show utility locations on the construction plans; and it is to be understood that other above ground or underground

facilities not shown on the drawings may be encountered during the course of the Work. The Contractor shall carefully review the identified utilities on the plans and compare to One-Call locates. If there are any discrepancies between the plans and field locates, the Contractor shall bring such discrepancies to the attention of the Engineer and Utility Owner and excavation shall not commence until such discrepancies have been addressed.

Existing utilities, whether shown on the drawings or not, shall be protected by the Contractor. Contractor shall notify Engineer and Utility Owner immediately upon determination of any conflict or disturbance. In the event that an existing utility must be removed, relocated, rerouted, is damaged or otherwise disturbed, such modification or repair shall be performed by the Utility Owner or at the Utility Owner's direction in compliance with RCW 19.122.050.

The Contractor is responsible for all costs and delays associated with damage or disturbance to an identified or located utility including unmarked services per RCW 19.122.030(5). Compensation for costs and delays attributed to utilities not located shall be settled between the Contractor and Utility Owner, the Contractor shall hold the project Owner and Engineer harmless for a utility company's failure to correctly locate their utility per RCW 19.122.

Right is reserved by owners of public utilities and franchises to enter upon any street, road, right-of-way or easement for the purpose of maintaining their property and for making necessary repairs or adjustments caused by Contractor's operations. Contractor shall cooperate with said Owners and defend, indemnify, and save Owner and Engineer harmless of any cost so incurred.

- D. Pursuant to RCW 19.122, the Contractor shall call the utilities underground location center for full location of the utilities and shall not begin excavation until all known utilities have been located and marked. Contractor shall take adequate precautions to protect existing lawns, trees and shrubs outside rights-of-way, sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto. He shall, at this own expense, completely repair any damage thereto caused by his operations to the satisfaction of Engineer, unless otherwise agreed to in writing by the Engineer and affected Owner(s).

34. Replacing Improvements

Whenever it is necessary in the course of construction to remove or disturb culverts, driveways, roadways, pipelines, property stakes or other existing improvements, without limiting the generality thereof and whether on private or public property, they shall be replaced to a condition equal to that existing before they were so removed and disturbed, and all such costs for this replacement shall be borne by the Contractor and considered incidental to the construction and work covered by these specifications unless specific unit or lump sum pay items have been established in the Contract to cover any of the above work.

35. Traffic Maintenance and Protection

The following special provisions shall apply to traffic regulation during the extent of this contract:

- There shall be at all times adequate vehicle and pedestrian access to and egress from the properties adjacent to the project.
- During non-working hours, Contractor shall keep the existing traffic lanes clear for traffic without interference from his operations including all approaches and intersections.
- Where hazardous conditions exist, proper signing and barricading shall be provided by Contractor. Whenever directed by Engineer, supplemental signs and barricades, including lanterns and/or high rise warning devices, shall be provided at the expense of Contractor.
- Contractor shall notify the Traffic Engineering Department, Fire Department, Police Department, medic one, State Highway Department, and the school bus garage by phone or in writing before the beginning of his operations so that these agencies may re-route their emergency and service vehicles around the construction zone.
- Any asphalt concrete pavement, crushed surfacing or gravel base required for maintaining traffic during the life of this Contract shall be furnished and placed by Contractor immediately upon request by Engineer in amounts designated and shall be at no additional cost to Owner.
- Owner shall not be held liable for any claims resulting from accidents or damages caused by Contractor's failure to comply with traffic and public safety regulations during the construction period.
- If operations of Contractor are shown to significantly impede traffic flow during peak hours of traffic, Engineer shall have the authority to restrict Contractor's to time of operation on the street.
- The Contractor shall notify property owners a minimum of 24 hours in advance of a driveway closure. Driveway access shall be provided at all times during non-working hours.

36. Superintendence and Supervision

The Contractor shall keep on the construction site during the progress of the work a competent superintendent and any necessary assistants, all satisfactory to the Engineer. The superintendent shall not be changed except with the consent of the Engineer, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence through instructions given to the Contractor. Instructions to the Contractor shall be confirmed in writing upon his request in each case. The Contractor shall give efficient supervision to the work, using his best skill and attention.

37. Changes in the Work

- A. Except as limited by paragraph 38, "Increase or Decrease of Work," the Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or

deducting from the work, the Contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract, except that any claim by the Contractor for extension of time caused thereby shall be made at the time such change is ordered.

- B. In giving instructions, the Engineer shall have authority to make minor changes in the work, not inconsistent with the purposes of the work. Except in any emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer and countersigned by the Owner, and no claim for an addition to the Contract Sum shall be valid unless so ordered.
- C. The value of any such extra work shall be determined in one or more of the following ways:
 - 1. By estimate and agreement on a lump sum.
 - 2. By unit prices named in the Contract or subsequently agreed upon.
 - 3. If, for any reason, method 1 or 2 cannot be agreed upon, such work will be paid for the actual cost of labor, payroll taxes, material, equipment rental and field supervision required, with the addition of fifteen percent (15%) to cover profit, overhead, use of small tools, taxes, insurance, bookkeeping and all other incidental costs. In such cases the Contractor shall keep and present, in such form as the Engineer may direct, a correct account of such costs, together with supporting time cards and vouchers. In any case, the Engineer shall certify the amount due to the Contractor. Pending final determination of value, payments on account of changes shall be made on the Engineer's estimate.

38. Increase or Decrease of Work

- A. The Owner reserves the right to make such alterations in the plans or in the quantities of work as may be considered necessary. Such alterations shall be in writing by the Engineer and shall not be considered a waiver of any condition of the Contract nor invalidate any of the provisions thereof, provided, however, that the execution of supplemental agreement acceptable to both parties of the Contract shall be necessary before any alteration is made which involves:
 - 1. An extension or shortening of the length of the project by more than twenty-five percent (25%),
 - 2. An increase or decrease of more than twenty-five percent (25%) of the total cost of the work calculated from the original proposal quantities and the unit contract prices,
 - 3. An increase or decrease of more than twenty-five percent (25%) in the quantity of any one major contract item, or
 - 4. A change in the nature of the design or in the type of construction which materially increases or decreases the cost of the performance of the work.

For conditions 3 and 4 above, a major item is defined in paragraph 2: definitions of these general conditions, unless otherwise indicated on the plans or designated in the special provisions.

- B. When an alteration requires the execution of a supplemental agreement, such agreement shall be signed by both parties before any work on the alteration is started. Alterations involving a change of more than twenty-five percent (25%) in the net of any one minor contract item will not require a supplemental agreement.

39. Claims for Extra Cost

- A. If the Contractor claims that the cost of construction under the Contract has been increased through instructions, by drawings or other acts of the Owner, after the Contract has been made, he shall give the Engineer written notice thereof within a reasonable time after the receipt of any such instructions, or occurrence of any other act, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No claim for extra cost shall be valid unless so made.
- B. The Contractor shall not be entitled to claim against the Owner for any damages, costs, expenses, additional compensation or lost profits due to work stoppage or delays caused by any governmental agency or by act of third parties, or inability of the Owner to make the job site available, or for any other cause beyond the control of the Owner.

40. Delays and Extension of Time

- A. Should the Contractor be delayed in the prosecution or completion of the work by the act, neglect or default of the Owner, any of its officers or employees, any other contractor employed by the Owner upon the work, or by any damage caused by fire or other casualty for which the Contractor is not responsible, or by combined action of workmen, in no way caused by or resulting from default or collusion on the part of the Contractor, then the time herein set for completion of the work shall be extended for a period equivalent to the work time lost by reason of any or all of the causes aforesaid. The extended time period shall be determined and fixed by the Owner, which determination shall be final, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within ten (10) days after the occurrence of such delay.
- B. Time for the completion specified has taken into consideration the possibility of delay and work interruption resulting from acts of other contractors, whether or not a contractor for the Owner and no extension of time will be allowed because of such interruption or delay. The Contractor shall cooperate with the Contractor of an adjoining or interdependent project to the full extent possible so that the operations of both will suffer a minimum of interference and delay. In case of disagreement between the contractors, the decision of the Engineer shall be accepted as final. Any unavoidable delays to the Contractor resulting therefrom shall be adjusted as to the Contract time in accordance with the specifications of this section.

- C. In general, the number of working days allowed for completion of the project has been extended sufficiently to provide for the procurement of all materials necessary for construction and, unless otherwise noted in the special provisions, failure to procure the materials involved is not reason for an extension of time. If no schedule or agreement is made between the Engineer and the Contractor stating the dates upon which instruction and/or drawing shall be furnished by the Engineer, then no claim for delay shall be allowed the Contractor on account of such failure to furnish drawings unless the Contractor shall have given two (2) weeks notice of the need for such drawings and not then unless claim of need for such drawings is reasonable.
- D. When it has been determined that the Contractor is entitled to an extension of time, the amount of such extension shall be only to compensate for direct delays and shall be based upon the Contractor's energetically pursuing the work at a rate not less than that which would have been necessary to complete the basic Contract on time. In determining the amount of extension, the Engineer will consider that the Contractor is applying efforts simultaneously on the several parts of the job to the maximum amount practicable.

41. Completion and/or Correction of Work and Remedies Before Final Payment

- A. If the Contractor should neglect to prosecute the work properly and/or fail to perform any provision of this contract, the Owner, upon certification by the Engineer and after five (5) days' written notice to the Contractor, may, without prejudice to any other remedy, make good such deficiencies and deduct the cost thereof from payments then or thereafter due to the Contractor.
- B. The Contractor shall promptly remove from the construction site all materials condemned by the Engineer as failing to conform to the contract, whether incorporated in the work or not. The Contractor shall promptly replace and re-execute his own work in accordance with the intent of the Contract and without expense to the Owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such condemned work and materials and commence re-execution of the work within five (5) days of notice from the Engineer, the Owner may correct the same as otherwise provided herein.
- C. If the Contractor does not remove such condemned work and material within the period hereinabove described, the Owner may remove and store any such materials at the expense of the Contractor. If the Contractor does not pay the cost of such removal within ten (10) days from the notice to the Contractor of the fact of such removal, the Owner may, upon an additional ten (10) days written notice, sell such materials at public or private sale, and deduct all costs and expenses incurred, including costs of sale, accounting to the Contractor for the net proceeds remaining, and the Owner may bid at any such sale. The Contractor shall be liable to the Owner for the amount of any deficiency remaining between the costs incurred and the proceeds of sale. The Owner may deduct the costs of such removal, storage and sale and/or remaining deficiency from any funds otherwise due the Contractor.

42. Defects Arising in One Year and Remedies

- A. The Contractor shall be responsible for correcting all defects in workmanship and material within one year after acceptance of this work. When corrections of defects are made, the Contractor shall be responsible for correcting all defects in workmanship and/or materials in the corrected work for one year after acceptance of the corrections by the Owner. The Contractor shall start work to remedy such defects within seven (7) days of mailing notice of discovery thereof by the Owner and shall complete such work within a reasonable time. In emergencies where damage may result from delay or where loss of service may result, such corrections may be made by the Owner, in which case the cost shall be borne by the Contractor. In the event the Contractor does not accomplish corrections at the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor.
- B. The Contractor shall be liable for any costs, losses, expenses or damages including consequential damages suffered by the Owner resulting from defects in the Contractor's work including, but not limited to, cost of engineering, inspection and supervision by the Owner or the Engineer. The Contractor shall hold the Owner harmless from any and all claims which may be made against the Owner as a result of any defective work and the Contractor shall defend any such claims at his own expense.

43. Suspension of Work

- A. The Owner may at any time suspend the work, or any part thereof, by giving notice to the Contractor in writing. The work shall be resumed by the Contractor within ten (10) days after the date fixed in the written notice from the Owner to the Contractor to do so. The Owner shall not reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of such suspension.
- B. Suspension of the work by the Engineer shall not furnish any ground for claim by the Contractor for damages or extra compensation, but the period of such suspensions shall be taken into consideration in determining the revised date for completion as hereinafter provided. The Contractor shall not suspend work under the Contract without the written order of the Engineer as stated in the preceding paragraphs. The Contractor will be required to work a sufficient number of hours per day in order to complete the project within the days specified. The question as to the necessity of discontinuing any portion of the work by reason of unfavorable weather conditions shall be determined by the Engineer.
- C. Upon failure of the Contractor to carry out the orders of the Engineer or to perform work under the Contract in accordance with its provisions, the Engineer may suspend the work for such period as he may deem necessary. Time lost by reason of such failure or in replacing improper work or materials shall not furnish any ground to the Contractor for claiming an extension of time or extra compensation, and shall not release the Contractor from damages or liability from failure to complete the work within the time prescribed.

44. Owner's Right to Terminate Contract

- A. The Owner may terminate the Contract and take possession of the premises and of all materials thereon and finish the work by whatever methods he may deem expedient, upon the occurrence of any one or more of the events hereafter specified, and receipt of the certificate by the Engineer that sufficient cause exists to justify such action:
1. If the Contractor should be adjudged bankrupt.
 2. If the Contractor should make a general assignment for the benefit of his creditors.
 3. If a receiver should be appointed on the account of insolvency of the Contractor.
 4. If the Contractor should persistently or repeatedly refuse or fail to supply a sufficient number of properly skilled workmen or proper materials for completion of the work.
 5. If the Contractor should fail to complete the work within the time specified in the contract.
 6. If the Contractor should fail to make prompt payment to subcontractors or for material or labor.
 7. If the Contractor should persistently disregard laws, ordinances, or regulations of federal, state or municipal agencies or subdivisions thereof.
 8. If the Contractor should persistently disregard instruction of the Engineer, or otherwise be guilty of a substantial violation of the contract.

The Owner shall give the Contractor five (5) days written notice to cure the default, and if not cured to the satisfaction of the Owner as certified by the Engineer, the Owner may, upon three (3) days of written notice, elect to so terminate. Any such termination shall be without prejudice to any other right or remedy which the Owner may have against the Contractor.

- B. In the event of the failure of the Contractor to cure the default of which notice is given as provided above, or if the Contractor abandons the work undertaken under the contract, the Owner may, at his option, upon ten days written notice to the surety and without any written notice of the Contractor, transfer the employment of said work from the Contractor to surety. Upon receipt of such notice, the surety shall enter upon the premises and take possession of all materials, tools and appliances thereon for the purpose of completing the work included under this Contract and employ, by the Contract or otherwise, any person or persons to finish the work and provide the material therefor, without termination of the continuing full force and effect of the contract. In case of transfer of such employment to the surety, the surety shall be paid in its own name on estimates covering the work subsequently performed under the terms of the Contract and according to the terms hereof, without any right of the Contractor to make any claim for the same or any part thereof.

- C. In the event that the Contract is terminated by the Owner, the Contractor shall not be entitled to receive any further balance of the amount to be paid under this Contract until the work shall have been fully finished. At such time, if the unpaid balance of the amount to be paid under this Contract exceeds the expense incurred by the Owner in finishing the work, and all damages sustained or which may be sustained by the Owner by reason of such refusal, neglect, failure of discontinuance of employment, such excess shall be paid by the Owner to the Contractor. If such expense and damages shall exceed the unpaid balance, the Contractor and his surety and each thereof shall be jointly and severally liable therefore to the Owner and shall pay the difference to the Owner. Such expense and damage shall include all legal costs incurred by the Owner in the employment of attorneys to protect the rights and interests of the Owner under the Contract; provided such legal costs shall be reasonable.

45. Contractor's Right to Stop Work or Terminate Contract

If the work should be stopped under an order of any court, or other governmental authority for a period of ninety working days, through no act or fault of the Contractor or of anyone employed by him, including subcontractors, or if payments due to the Contractor under this Contract are unreasonably delayed, or if the Owner suspends this Contract for any reason other than act or neglect of Contractor for a period of one hundred eighty (180) consecutive calendar days, the Contractor may stop work and terminate this Contract and recover from the Owner payment for all work executed, but the Contractor shall not be entitled to claim against the Owner for damages, expenses, costs, additional compensation or lost profits due to the suspension or termination. Final payment to the Contractor shall be made pursuant to the provisions of paragraphs 48 and 49.

46. Removal of Equipment

In case of the termination of this Contract before completion for any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies from the property of the Owner; the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor, deducting the cost thereof from any funds otherwise due to the Contractor.

47. Use of Completed Portion of Work

The Owner shall have the right to take possession of and use completed or partially completed portions of the work, notwithstanding that the time may not have expired for completing the entire work. Such taking possession and use shall not be deemed to be completion of the Contract in respect to such work nor shall the same be deemed to be any acceptance of any work not completed in accordance with the Contract Documents.

48. Application for Payment

- A. At least five (5) working days before each payment falls due, the Contractor shall submit to the Engineer four (4) copies of an itemized application for payment, supported to the extent required by the Engineer by receipts or other vouchers showing payment for materials and labors, payments to subcontractors, and such other evidence of the Contractor's right to payment as the Engineer may direct.
- B. The Contractor shall be entitled to monthly progress payments corresponding to the stage of the work. Progress estimates will be prepared by the Contractor and reviewed by the Engineer according to the schedule provided by the Owner. These shall be based upon an approximate estimate of quantities of work completed and considered acceptable, as extended by the unit prices established in the Contract or as provided by the schedule of lump sum payments. The Owner shall deduct from each monthly progress payment an amount of retainage provided for by law and by this Contract and also for any charges against the Contractor authorized by this contract.
- C. Cost of materials, properly stored, protected and insured at the site of the work will be paid on monthly estimates only when provided for in the special provisions, and then only for specific materials listed therein for partial payment. In preparing the monthly estimates, advancement will be made therein for ninety percent (90%) of the cost of such materials, as evidenced by invoices to the Contractor. Advances will not be made for any item of material amounting to less than five hundred dollars (\$500.00). All materials must conform to the requirements of these specifications. However, advancement for materials will not constitute acceptance, and any faulty material will be condemned although advancement may have been made for same in the estimates. Deductions at the same rates, and equal in amount to the advancements, will be made on the estimates as the material is used. All materials for which costs are allowed under this subparagraph must be substantiated by written documentation from the material supplier that the material has been paid for.
- D. Quantities used for progress estimates shall be considered only as approximate and provisional, and shall be subject to recalculation, adjustment and correction by the Engineer in subsequent progress estimates and in final estimates. Inclusion of any quantities in progress estimates, or failure to disapprove the work at the time of progress estimates, shall not be construed as acceptance of corresponding work or materials.
- E. The retained amount shall be withheld by the Owner for 30 days following final acceptance or termination of the Contract and shall be paid to the Contractor at the expiration of 30 days if no claims have been filed against such funds as provided by law and if the Owner has no unsatisfied claims against the Contractor. No payments shall be made until releases have been obtained from the Department of Labor and Industries, the Department of Revenue, the Employment Security Department, and any other department or agency having jurisdiction over activities of the Contractor, unless by law such releases are not required. In the event claims are filed, the Owner shall withhold, until such claims are satisfied, a sum sufficient to satisfy all claims and to defray the cost of foreclosing the liens of such claims and to pay attorney's fees. In addition, the Owner shall withhold such amount as is required to satisfy any claims by the Owner against the Contractor, until such claims have been finally settled.

- F. Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if requested, shall deliver to the Owner a complete release of all liens arising out of this contract, or receipts in full in lieu thereof, and, if required in either case, an affidavit that so far as he has knowledge or information, the release and receipts include all labor and materials for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Engineer to indemnify the Owner against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall reimburse to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all cost and reasonable engineer's and attorney's fees.

49. Payments Withheld

Notwithstanding the issuance of any certificate, the Owner may withhold any payment or portion of payment or recover any payment theretofore made, to such extent as may be necessary to protect himself from loss on account of:

- A. Defective work not remedied.
- B. Claims filed or written notice that valid claims will be filed.
- C. Failure of the Contractor to make payments properly to subcontractors or suppliers of material or labor.
- D. Reasonable doubt that the Contract can be completed for the balance then unpaid.
- E. Liquidated damages, inspection and engineering charges, or other claims against the Contractor by the Owner.
- F. Damage to another contractor.
- G. Failure of the Contractor to furnish invoices to support application for payment for materials not incorporated in the work but delivered and suitably stored at the site.
- H. Expenses, including court costs and legal fees, whether or not incident to suit, incurred by the Owner due to any default of the Contractor.

50. Hold Harmless

The Contractor shall indemnify, defend and save harmless the Owner and the Engineer from and against all losses and claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought and recovered against the Owner and/or the Engineer by reason of any act of omission of the Contractor, subcontractors, agents and/or employees arising, directly or indirectly, from the performance of the Contract or in the guarding of the work. The Contractor will, after reasonable notice of any such suit or action, defend and pay the expense of defending any suit which may be commenced against the Owner or the Engineer arising therefrom.

51. Insurance

- A. The Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Contractor.
- B. Coverage shall be at least as broad as:
 - 1. Insurance Services Office Form No. G1 0002 (Ed. 1/73) covering comprehensive general liability and Insurance Services Office form No. G1 0404 (ed. 5/81) covering broad form comprehensive general liability; or Insurance Services Office commercial general liability coverage (“occurrence” form cg 0001) (ed. 11/85).
 - 2. Insurance Services Office Form No. Ca 0001 (Ed. 1/80) covering automobile liability, code 1 “any auto” and endorsement CA 0025 (ed. 11/85).
 - 3. Workers' Compensation as required by the Workers' Compensation Act of Washington State.
- C. The Contractor shall maintain limits of insurance no less than:
 - 1. Comprehensive general liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies where aggregates are applicable, a \$1,000,000 aggregate limit.
 - 2. Automobile liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - 3. Workers' compensation and employers' liability: workers' compensation limits as required by the Workers' Compensation Act of Washington.
- D. Any deductibles or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the Owner, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense and expenses.
- E. The policies are to contain or be endorsed to contain, the following provisions:
 - 1. General liability and automobile liability coverage:
 - a. The Owner, RH2 Engineering, Inc., its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officials, employees or volunteers.

- b. The Contractor's insurance coverage shall be primary insurance as respects the Owner, its officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officials, employees or volunteers.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All coverages:

Each insurance policy required by this clause shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Owner.

F. Acceptability of insurers

Insurance is to be placed with insurers with a Bests' rating of no less than A:XIII, or with an insurer acceptable to the Owner.

G. Verification of coverage

The Contractor shall furnish the Owner with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by the Owner before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies, at any time.

H. Subcontractors

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

52. Performance Bond

- A. The Contractor shall furnish a surety bond or bonds covering faithful performance of the Contract and the payment of all obligations arising thereunder. The bond shall be in the full amount of the Contract and shall be upon the form of bond set forth herein. The surety shall be a firm qualified to conduct business as a surety in the state in which the work is done.

B. The performance for this Contract shall not only indemnify the Owner for the usual performance provisions of the contract, but in addition shall be a bond to guarantee payment of any and all tax liability of any type, kind, nature or description due as a result of work performed pursuant to the contract.

53. Damages

Any claim against the Owner for damages, expenses, costs, lost profits, or extra compensation arising out of the performance of this Contract shall be made in writing to the Owner within a reasonable time after the discovery of such damage, and in no event later than the time of approval by the Owner of final payment. The Contractor, upon making application for final payment, shall be deemed to have waived his right to claim for any other damages for which claim has not been made, unless such claim for final payment includes notice of additional claim and fully describes the alleged damage.

Because the Owner finds it impractical to calculate the actual cost of delays, it has adopted the following schedule of liquidated damages for failure to complete a contract on time.

Accordingly, the Contractor agrees:

1. To pay (according to schedule below) liquidated damages for each working day beyond the contract deadline date for completion, and
2. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

ORIGINAL CONTRACT AMOUNT		LIQUIDATED DAMAGES
From More Than	To and Including	Per Working Day
\$0	\$25,000	\$75
\$25,000	\$50,000	\$125
\$50,000	\$100,000	\$250
\$100,000	\$500,000	\$500
\$500,000	\$1,000,000	\$750
\$1,000,000	\$2,000,000	\$1,250
\$2,000,000	\$5,000,000	\$1,750
\$5,000,000	\$10,000,000	\$2,500
\$10,000,000 and more		\$3,000

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

54. Subletting and Subcontracting

- A. The Contractor shall not assign or sublet the Contract in whole or in part without the written consent of the Owner, nor shall the Contractor assign any monies due or to become due to him hereunder without the prior written consent of the Owner.
- B. The Contractor shall not subcontract more than forty percent (40%) of the work without the written consent of the Owner. In any event, the Contractor shall, at least five (5) days prior to start of a subcontractor's work, notify the Engineer in writing of the name of the subcontractor proposed for the work, and shall not employ any which the Engineer may object to as incompetent or unfit.
- C. The Contractor agrees that he is fully responsible to the Owner for the acts and omissions of the subcontractor and persons either directly or indirectly employed by subcontractors, as well as for the acts and omissions of persons directly employed by the Contractor. Consent to subcontracting part of the work shall in no way release the Contractor from responsibility for performance of the work and he will be held in all respects accountable for the same as if no consent has been given. The Contractor shall be required to give his personal attention to the work which is sublet. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Owner.

55. Separate Contract – Interference with Other Contractors

- A. The Owner reserves the right to perform work with its own forces or to let other contractors for work under similar general conditions in connection with this project, of which the work awarded to one or more contractors under separate contract is a part. The Contractor shall afford the Owner and other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their respective work, and shall properly connect and coordinate his work with theirs.
- B. Bidders are required to inform themselves fully of the conditions relating to construction and labor under which the work will be or is now being performed, and the Contractor shall employ, as far as possible, such methods and means in the carrying out of his work as will not cause any interruption or interference with any other contractor or agency. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report in writing to the Engineer any defect in such work which renders it unsuitable for such proper execution and result. His failure to so inspect and report shall constitute an acceptance of the other contractor's work after the execution of his work. (To insure proper execution of his subsequent work, the Contractor shall measure work already in place and shall report at once to the Engineer any discrepancy between the executed work and the drawings.)

- C. If the performance of any contract for the Project is likely to be interfered with by the simultaneous execution of some other contract or contracts, the Engineer shall decide which contractor shall cease work temporarily and which contractor shall continue, or whether the work under the Contracts can be coordinated so that the Contractors may proceed simultaneously. The Owner shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the project or caused by any decision or omission of the Engineer respecting the order of precedence in the performance of the Contracts other than for an extension of time.

56. Cleanup

- A. The Contractor shall clean up frequently all refuse, rubbish, scrap material and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance.
- B. Upon completion of the work, the Contractor shall remove all rubbish, scrap material, tools, scaffolding and surplus materials, false-works, temporary structures, including foundations thereof, plants of any description, and debris of every nature, resulting from his operations, shall clean out all ditches that may have been filled during the work, replace damaged surfacing, and put the site in a neat, orderly condition and, in respect to structures, shall clean all windows and leave buildings broom clean.

57. Washington State Sales Tax

The Revenue Act of 1935 as amended requires the Owner to pay the Contractor for transmittal to the state a sales tax on the total charges made for construction unless otherwise exempt by Rule 171. Rule 171, issued by the Excise Tax Division of the State of Washington, provides for certain exemptions and compensating tax in regard to public roadway improvements.

In case of a public roadway improvement contract, the Contractor shall include any applicable compensating tax in the bid item and the Owner shall make no payment of any sales tax.

58. Use of Off-shore Items

The state statutes require that, upon the completion of a public contract, the Contractor shall submit a certified statement to the Owner, setting forth the nature and source of off-shore items in excess of two thousand five hundred dollars (\$2,500), which have been utilized in the performance of the contract. Off-shore items are defined as those items procured from sources beyond the territorial boundaries of the United States.

59. Force Account

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

A. For Labor

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

1. Weighted Wage Rate

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

A weighted wage rate shall be computed for each classification of labor used. This rate shall reflect the Contractor's actual cost. It shall neither exceed what is normally paid to comparable labor nor fall below the minimum required by Section 1-07.9. If the Engineer authorizes overtime, the weighted wage rate shall be determined on the same basis.

2. Travel allowance and subsistence

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

3. Industrial insurance and medical aid premiums

The Owner will reimburse contractor-paid premiums for marine industrial insurance, for State of Washington industrial insurance and medical aid premiums which become an obligation of the Contractor and are chargeable to the force account work on the basis of time worked. Reimbursement will be for the composite rate (the full industrial insurance premium plus 1/2 the medical aid premium) which the regulatory body sets for the Contractor doing the work. The composite rate will be adjusted if the regulatory body changes this rate.

4. Overhead and profit

The Owner will pay the Contractor 20 percent of the sum of the costs listed in 1, 2, and 3 above to cover project overhead, general company overhead, profit, and any other costs incurred.

B. For Materials

The Owner will reimburse actual invoice costs for contractor-supplied materials. This cost includes actual freight and express charges and taxes provided that these costs have not been paid in some other manner under the contract. The Owner will then add 15 percent of the balance to cover project overhead, general company overhead, profit and any other cost of supplying materials.

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

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

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

C. For Equipment

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

The payment for any machine-powered tools or equipment shall be made according to the current AGC/WSDOT equipment rental agreement which is in effect at the time the force account is authorized. The rates as set forth in the rental rate blue book (as modified by the current AGC/WSDOT equipment rental agreement) are the maximum rates allowable, for equipment of modern design and in good working condition. These rates shall be full compensation for all fuel, oil, lubrication, repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

The Owner will add 15 percent to equipment costs to cover project overhead, general company overhead, and profit.

Current copies of the rental rate blue book and the AGC/WSDOT equipment rental agreement will be maintained at each district office of the Department of Transportation and at each of the offices of the Associated General Contractor of America (in Seattle, Spokane, Tacoma, and Wilsonville, Oregon) where they are available for inspection.

D. Force Account Mobilization

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

E. Subcontractors

The subcontractors will be allowed a 5 percent markup of the total cost computed for A, B, C and D for insurance, B & O tax, and bonding.

F. Contractor Markup of Subcontractors

When work is performed on a force account basis by approved subcontractors, the Contractor will be allowed an additional markup equal to 5 percent of the total cost computed for A, B, C, D, and E for all administrative costs.

G. Insurance, B & O Tax, and Bonding

The Contractor will be allowed an additional markup equal to 5 percent of the total cost computed for A, B, C, D, E, and F for insurance, B & O tax, and bonding.

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

No claim for force account shall be allowed except upon written order by the Engineer prior to the performance of the work. No work shall be construed as force account work which can be measured under the specifications and paid for at the unit prices named in the contract.

The amount and costs of any work to be paid by force account shall be computed by the Engineer, and the amount certified by the Engineer shall be final as provided in Section 1.-05.1.

The Contractor's cost records pertaining to work paid for on a force account basis shall be open to inspection or audit by representatives of the Owner during the life of the Contract and for a period of not less than three years after the date of acceptance of the contract. The Contractor shall retain these records for that period. The Contractor shall also guarantee that these cost records of all subcontractors and agents shall be open to similar inspection or audit for the same period of time. If an audit is to be commenced more than 60 calendar days after the acceptance date of the contract, the Contractor will be given 20 calendar days' notice of the time when the audit is to begin.

60. Dispute Resolution

If any dispute, controversy or claim arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through direct discussion, the parties agree first to try to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Associates, before resorting to arbitration, litigation or some other dispute resolution procedure. Any dispute, controversy or claim involving \$35,000 or less not resolved by mediation shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having appropriate jurisdiction.

The venue for dispute resolution shall be located within the county in which the Owner's headquarters are located.

61. Attorney's Fees

In the event of a dispute under this agreement or the performance of its terms, whether or not suit is filed or an arbitration or mediation proceeding occurs, the successful party in such dispute shall receive from the unsuccessful party the successful party's attorney fees and costs. Attorney fees and costs for the purpose of this section shall include the costs of attorneys, paralegals, expert witnesses, travel, depositions, and discovery, whether incurred in mediation, arbitration, at trial or upon appeal.

