

Treasure Valley Transit

1136 W. Finch Drive

Nampa, ID 83651

INVITATION FOR BID – Project# 23009

GENERAL CONTRACTOR SERVICES

Date Issued: 10-29-2023

Pre-Bid Meeting: 11-16-2023 at 2:00 PM, local prevailing time

**Questions/Substitution Requests: Due before 11-22-2023 at 5:00 PM,
local prevailing time**

Bids Due: 11/30/2023 at 3:00 PM, local prevailing time

**The Bid must be submitted in a sealed envelope on or before the date and
time indicated above to:**

Treasure Valley Transit
Attn: Debbie Maxwell, Assistant Director
1136 W Finch Drive
Nampa ID 83651

Contact Information: debbie@treasurevalleytransit.com 208.463.9111 office

**The project number and bid submission deadline date and time, as reflected above,
must clearly appear on the face of the Bid envelope.**

Project Description: Treasure Valley Transit (TVT) issues this Invitation For Bid (IFB) for General Contractor Services for a building renovation of a 7,637 sq.ft. Public Transit Administrative Facility, located at 3101 S. Powerline Rd, Nampa ID 83686.

THIS IS A FEDERALLY FUNDED PROJECT.

ALL APPLICABLE FEDERAL RULES AND REGULATIONS APPLY.

LEGAL NOTICE

INVITATION FOR BIDS for FACILITY REMODEL & UPGRADES FOR TREASURE VALLEY TRANSIT PROJECT# 23009

Treasure Valley Transit is soliciting bids for the renovation of the Nampa Public Transit Administrative Facility located at 3101 S. Powerline Rd., Nampa, ID 83686. Sealed bids will be received by Treasure Valley Transit at 1136 W. Finch Drive, Nampa, Idaho 83651 until Thursday, November 30, 2023 at 3:00 PM, local prevailing time. Bidding Documents will be available on Monday, October 30, 2023 at 8:00 AM. The successful bidder shall meet the terms and conditions set forth in the IFB and all other attachments.

A Pre-Bid Meeting will be held on Thursday, November 16, 2023 at 2:00 PM, local prevailing time, at the project building. All prospective bidders are encouraged to attend.

Treasure Valley Transit and the Architect reserve the right to postpone answers to any questions raised during the Pre-Bid Meeting until an addendum is issued at a later date. Any oral explanations provided by TVT or the Architect during this meeting will not be binding until they are placed in a written addendum and given to all potential bidders.

Prospective bidders are required to abide by Treasure Valley Transit general instructions to proposers. **All Bids must be received on or before Thursday, November 30, 2023 at 3:00 PM, local prevailing time.** TVT reserves the right to accept any bid or any part or parts thereof or to reject any and all bids. Any contract resulting from the IFB shall be subject to a Funding Agreement between TVT and the Idaho Transportation Department (ITD).

Bids, if mailed, shall be submitted in a sealed envelope to: Treasure Valley Transit, ATTN: Debbie Maxwell, Assistant Director, 1136 W. Finch Drive, Nampa, ID 83651. The project number and bid submission deadline date and time must clearly appear on the face of the Bid envelope.

The successful bidder shall comply with all applicable Equal Employment Opportunity laws and regulations. The successful bidder shall also certify that it is not on a Controller General's list of ineligible contractors or otherwise debarred from contracting by any federal, state or local public entity.

Alternative formats regarding this information will be produced for people with disabilities. Please call (208) 463-9111 or email debbie@treasurevalleytransit.com.

Treasure Valley Transit is an Equal Opportunity Employer and encourages women, minorities, disadvantaged business enterprises and small business to participate in the competitive bidding process.

ADVERTISED: The Idaho Statesman
 The Idaho Press Tribune

END OF PUBLIC NOTICE

**DIVISION 00
BIDDING REQUIREMENTS**

SUBDIVISION 00.00.01

INVITATION TO BID

1. TIME FOR DELIVERY OF BIDS.

Date: Thursday, November 30, 2023

Time: 3:00 PM, local prevailing time

Bids received after the time and date specified will not be considered, and any bid received after the scheduled closing time shall be returned to the Bidder unopened.

IF BIDS ARE SENT BY MAIL OR ANY OTHER MEANS, THE RESPONSIBILIITY FOR THEIR ON-TIME DELIVERY TO TREASURE VALLEY TRANSIT IS WHOLLY UPON THE BIDDER.

THIS IS A FEDERALLY FUNDED PROJECT. ALL FEDERAL RULES AND REGULATIONS APPLY.

2. PLACE FOR DELIVERY OF BIDS.

If mailed or delivered before the bid date:

Treasure Valley Transit
Attn: Debbie Maxwell
1136 W. Finch Drive
Nampa, ID 83651

If delivered to the bid opening:

3101 S. Powerline Road
Nampa, ID 83686

3. BID-OPENING. Bids will be opened publicly in the project building at 3101 S. Powerline Road, Nampa, Idaho 83686 on Thursday, November 30, 2023 at 3:00 PM, local prevailing time.

4. PRE-BID MEETING. A Pre-Bid Meeting will be held on Thursday, November 16, 2023 at 2:00 PM, local prevailing time at the Nampa Public Transit Administrative Facility 3101 S. Powerline Rd., Nampa, Idaho. All prospective bidders are encouraged to attend. The Pre-Bid Meeting will provide the opportunity to visually inspect the project and to ask questions regarding specifications and the Scope of Work.

5. INQUIRIES. All inquiries regarding the contents and requirements of this Invitation for Bid must be in writing and directed to: Debbie Maxwell by email: debbie@treasurevalleytransit.com, or mailed to Treasure Valley Transit, Attn: Debbie Maxwell, 1136 W. Finch Drive, Nampa ID 83651. Communication with any other person regarding the contents and requirements of this Invitation for Bid will not be permitted and may cause disqualification of the firm involved. All inquiries regarding Drawings, Specifications, and Substitution Requests must be in writing and directed to Schlager Zimmerman Architects by email to Houston Head at: houston@sz-architects.com.

All inquiries shall be received by the appropriate recipient no later than Wednesday, November 22, 2023 at 5:00 PM, local prevailing time. Responses will not be given to inquiries received after the specified date and time herein. All responses will be provided to all potential bidders in the form of an Addendum.

*****END OF INVITATION TO BID*****

SUBDIVISION 00.01.02
INSTRUCTIONS TO BIDDERS

I. DEFINITIONS

- A. Bidding Documents** include the Invitation to Bid, Instructions to Bidders, Bid Proposal Form, Buy America Certification, Certification Regarding Debarment, Certification Regarding Lobbying, Non-Collusion Affidavit and Compliance with Wage Payment Statutes, Affidavit for Compliance, DBE Participation, Bidder Disclosure, Schedule of Values, Substitution Request Form, Drawings, and Specifications, including all Addenda issued prior to receipt of bids. Failure to complete and return all required documents may cause the bid to be declared non-responsive.
- B. Addenda** are written or graphic instruments issued prior to bid opening. These addenda modify or interpret the Bidding Documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed.
- C. Base Bid** is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed.
- D. Alternate Bid** (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid of the corresponding change in the Work, as described in the Bidding Documents.
- E. Administrative Change** means a unilateral contract change, in writing, that does not affect the substantive rights of the parties (e.g., changes of address for submittals of documents, reports, etc).
- F. Changes Clause** means a clause that permits Treasure Valley Transit to make unilateral changes, in designated areas, within the general scope of the contract, to be followed by such equitable adjustments in price and delivery schedule as the change makes necessary. When such unilateral rights are exercised, TVT has an obligation to adjust the price and/or other provisions to compensate for the alteration in the contractor's obligations.
- G. Change Order** means an order authorized by Treasure Valley Transit directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.
- H. Clarification** means communication with a bidder for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in a proposal.
- I. Deductive Change** means a change resulting in a reduction in the contract price because of a net reduction in the contractor's work.
- J. Responsive Bid** means a bid that conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussion with the bidder that submitted the bid.

K. **Owner** shall mean Treasure Valley Transit Inc.,

II. BIDDERS ACKNOWLEDGEMENT

All Bidders that submit a Bid hereby represent that:

- A. They have read and understand the Bidding Documents and the Bid is made in accordance therewith.
- B. They have visited and carefully examined the site, have familiarized themselves with the local conditions under which the Work is to be performed, have correlated the observations with the requirements of the proposed Contract Documents, are satisfied as to the conditions to be encountered in performing the work as scheduled, and have confirmed that the time period provided for this work is adequate.
- C. Their Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception.
- D. By submitting a bid, they certify that they have reviewed and acknowledge the Requirements of the Federal Transit Administration detailed in the General Terms and Conditions Section.

III. BIDDING PROCEDURES

- A. **Form of Bid.** All bids must be prepared on the form provided in this IFB and submitted in accordance with these Instructions to Bidders. ***Oral, telephone, bids by facsimile or other electronic means will not be accepted.***
- B. **Receipt of Bids.** A bid is invalid if it has not been received and docketed at the designated location prior to the time and date for receipt of bids indicated above, or prior to any extension thereof issued to all Bidders. Bidders assume full responsibility for timely delivery. Any questions as to the exact time being used to close the bid period should be confirmed no later than the day prior to the designated bid receipt date.
- C. **Subcontractor Identification.** Each Bidder shall submit, as part of the bid, the names of the subcontractors with whom the bidder, if awarded the Contract, will subcontract for performance of HVAC (heating, ventilation, and air conditioning), plumbing, and electrical work, or to name itself for such work. The bidder shall not list more than one (1) subcontractor for each category of work identified, unless subcontractors will vary with bid alternates, in which case the bidder must indicate which subcontractor will be used for which alternate. Failure of the bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work, or the naming of two (2) or more subcontractors to perform the same work, shall render the bid non-responsive.
- D. **Modification or Withdrawal of Bid.** No bidder shall modify, withdraw, or cancel a bid or any part thereof after the time designated for the receipt of bids. Bid modifications will only be accepted if submitted by bidders prior to the announced receipt deadline of the bid in question. Modified bids must be submitted in sealed envelopes and properly labeled "SUPERSEDES BID SUBMITTED ON PRIOR DATE."

- E. **Addenda.** Notification of issued Addenda will be e-mailed to each person or firm recorded by the Architect as having received the Bidding Documents and will be available for inspection wherever the Bidding Documents are kept available for that purpose. Bidders shall indicate all Addenda received on the Bid Form.

IV. EXAMINATION OF DOCUMENTS

- A. Each Bidder shall examine the Bidding Documents carefully. Bidders shall make written request to Schlager Zimmerman Architects for interpretation or correction of any ambiguity, inconsistency, or error within the Drawings or Specifications which the Bidder may discover and for the submission of Substitution Requests. Such requests shall be directed to Houston Head via email to houston@sz-architects.com. Bidders shall make written request to Treasure Valley Transit for interpretation or correction of any ambiguity, inconsistency, or error which the Bidder may discover within any other parts of the Bidding Documents. Such requests shall be directed to Debbie Maxwell via e-mail to debbie@treasurevalleytransit.com, hand delivered, or mailed to 1136 W. Finch Drive, Nampa ID 83651. All requests must be received no later than Wednesday, November 22, 2023 at 5:00 PM, local prevailing time. Responses will not be given to inquiries received after this date and time. All responses will be provided to all plan holders in the form of an Addendum. Only a written interpretation or correction by an Addendum shall be binding. No Bidder shall rely upon any interpretation or correction given by any other method.
- B. Bids shall be made from complete sets of the Bidding Documents. TVT accepts no responsibility for Bids made from incomplete sets. All Bidding Documents have been uploaded to Bluebeam Studio. Each Bidder wanting access to the documents must make a written request to the Architect. Such requests shall be directed to Houston Head via email at houston@sz-architects.com. Bidders will then receive a link to download the documents. Additional links will be sent upon issuance of any Addenda.

V. SUBSTITUTIONS AND EQUIVALENTS

- A. Each Bidder represents that the Bid is based upon the materials and equipment described in the Bidding Documents. No substitution or equivalent will be considered unless a written request has been submitted to the Architect for review at least seven (7) calendar days prior to the date for receipt of bids. Each such request shall be made in writing on the form provided and shall include the name of the material or equipment for which it is to be substituted, along with drawings, and any other data or information necessary for a complete evaluation. Approved substitutions or equivalents will be enumerated in an Addendum.
- B. To establish a basis of quality, certain materials, and processes, types of machinery and equipment, or kinds of material may be specified on the plans or herein, either by description of process or by designating a manufacturer by name and referring to brand of product designation, or by specifying a kind of material. In so doing, however, the bid specifications are not intended to exclude other processes, equipment, or materials of equal value, utility, or merit, which are approved by Substitution Request.

VI. CONSIDERATION OF BIDS

- A. **Responsible Bidder.** Treasure Valley Transit will make the following assessment in determining responsible bidders. At a minimum, bidders must meet the responsibility

requirements of 49 USC § 5325, which require FTA assisted contract awards to be made only to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract.

Responsibility is a procurement issue that is determined by Treasure Valley Transit after receiving the bids and before making a contract award. FTA expects the prospective contractor to demonstrate affirmatively to the recipient that it qualifies as responsible under the standards of 49 USC § 5325, and that its proposed subcontractors also qualify as responsible, based on: 1) the ability, capacity, and skill of the Bidder to perform the contract or provide the service required; 2) whether the Bidder can perform the Contract within the specified time frames; 3) the quality of performance by the bidder on previous and similar contracts with TVT or any other governmental agency or private party; and 4) any other information that may be available to TVT in making the determination of a responsible bidder.

To designate a prospective contractor responsible as required by 49 USC § 5325, FTA expects Treasure Valley Transit, at a minimum, to determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor must fulfill **all** of the following criteria:

1. Integrity and Ethics. Have a satisfactory record of integrity and business ethics, in compliance with 49 USC § 5325(j)(2)(A).
2. Debarment and Suspension. Be neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
3. Affirmative Action and DBE. Be in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
4. Public Policy. Be in compliance with the public policies of the Federal Government as required by 49 USC § 5325(j)(2)(B).
5. Administrative and Technical Capacity. Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 USC § 5325(j)(2)(D).
6. Licensing and Taxes. Be in compliance with applicable licensing and tax laws and regulations.
7. Financial Resources. Have, or be able to obtain, sufficient financial resources to perform the contract, as required by 49 USC § 5325(j)(2)(D).
8. Production Capability. Have, or be able to obtain, the necessary production, construction, and technical equipment and facilities.
9. Timeliness. Be able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
10. Performance Record. Be able to provide:

- a. **Current Performance.** A satisfactory current performance record; and
- b. **Past Performance.** A satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
 - 1.) **Sufficient Resources.** Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance.
 - 2.) **Adequate Past Experience.** Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient's solicitation; and
 - 3.) **Past Deficiencies Not the Fault of the Bidder.** A prospective bidder that is or recently has been seriously deficient in contract performance is presumed not to be responsible, unless the recipient determines that the circumstances were properly beyond the bidder's control, or unless the bidder has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects Treasure Valley Transit to consider the number of the bidder's contracts involved and the extent of deficient performance in each contract when making this determination.
- B. System for Award Management.** Contractors are required to have an active registration in System for Award Management (SAM) at www.sam.gov to be eligible for contract award on a federally funded project.
- C. Rejection of Bids.** Each Bidder acknowledges the right of Treasure Valley Transit to reject any and all Bids and to waive any informality or irregularity in any Bid received. In addition, the Bidder recognizes the right of Treasure Valley Transit to reject a Bid if the Bidder has previously failed to perform in a manner deemed satisfactory by Treasure Valley Transit or has failed to furnish any required Bid security, or to submit the data required by the Bidding documents, or if the Bid is in any way incomplete or irregular.
- D. Acceptance of Bid and Alternates.** Treasure Valley Transit shall have the right to accept Alternates in any order or combination, and to determine the lowest responsive bid submitted by a responsible bidder on the basis of the sum of the Base Bid and the Alternates accepted.
- E. Bid Price.** Bid prices shall remain in effect for a period of not less than forty-nine (49) calendar days after the bid opening. The bid price shall include all that is necessary to complete the contract, to include the furnishing of all labor, materials, equipment, and other asset the Bidder may possess to facilitate the completion of the contract.

VII. PERFORMANCE AND PAYMENT BONDS

- A. The performance bond and payment bond (or a performance/payment bond) are required to be filed and approved by Treasure Valley Transit prior to commencement of Work.
- B. **Bond Requirements.** Bonds are required for all construction contracts exceeding the Simplified Acquisition Threshold, currently at \$150,000.
 - 1.) *Bid Guarantee* – Each bidder is required to provide a bid guarantee equivalent to five percent (5%) of its bid price. The bid guarantee must consist of one of the following: 1) cash; 2) a cashier's check made payable to the political subdivision; 3) a certified check made payable to the political subdivision; or 4) a bidder's bond executed by a qualified surety company, made payable to the political subdivision.
 - 2.) *Performance Bond* – A performance bond which complies with Idaho Code § 54-1926, in the amount of one hundred percent (100%) of the total contract price, shall be received from the successful bidder before a contract will be approved.
 - 3.) *Payment Bond* – A payment bond on the part of the contractor which complies with Idaho Code § 54-1926, in the amount of fifty percent (50%) of the total contract price, shall be received from the successful bidder before a contract will be approved.

Construction contracts with a value exceeding \$100,000 must include the performance bond, payment bond and bid security requirements specified above with the bid. Bids that do not include the required bid security will be rejected.

VIII. REGULATIONS

- A. **General Legal Compliance.** Each Bidder shall be responsible for ascertaining and complying with applicable federal, state, and local laws and regulations which in any manner affect those engaged or employed in the Work, equipment or materials employed in the Work, or the conduct or means or methods of the Work. The regulations set forth in this section are not meant to be inclusive and each Bidder is solely responsible for compliance with all applicable federal, state, and local laws and regulations.
- B. **Equal Employment Opportunity.** The successful bidder shall comply with the provisions of 41 C.F.R. Chapter 60, which implements Executive Order 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," October 13, 1967.
- C. **Taxes.** Treasure Valley Transit is not exempt from taxation under federal and Idaho law. The successful bidder shall be liable as provided by law for the collection and payment of all taxes, including, without limitation, federal and state taxes as required.
- D. **Disadvantaged Business Participation.** Bidders must ensure that in regard to any Contract entered into pursuant to this advertisement; disadvantaged businesses will be afforded full opportunity to submit Bid in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin or as otherwise required by law in consideration for an award.

E. Disability. Federal, state and local laws prohibit discrimination based on disability. Bidder shall comply with Section 504 of the Federal Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

F. Prevailing Wages and Anti-Kickback. *The Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act.*

1. Under 49 U.S.C. § 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. Part 5, entitled “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week.

2. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

G. Contract Work Hours and Construction Safety. Where applicable, all contracts awarded by a non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Pursuant to 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

H. Environmental Compliance. Contractor is solely responsible for compliance with all federal, state and local laws and regulations dealing with the preservation of public natural resources such as applicable laws and regulations. The cost of compliance with such laws and regulations shall be included within the base bid.

IX. PROTEST AND/OR APPEAL

A. Bidders wishing to protest the legitimacy of any type of procurement action must submit a pre-award Notice of Protest in writing no less than three (3) calendar days before the bid opening. Any unsuccessful bidder wishing to protest a contract award must submit a Notice of Protest in writing no less than seven (5) business days after the awarding of the contract.

B. The Notice of Protest will be handled as follows:

1. The Notice of Protest shall be mailed, sent electronically, sent via facsimile, or delivered to the Treasure Valley Transit Executive Director and shall state all issues and facts applicable to the protest. Issues and facts not stated in the Notice of Protest will not be considered.
2. One or more meetings may be called following receipt of the protest that include representatives from the Agency and the protestor to discuss the issue related to the protest. The meeting may be conducted by telephone conference and must comply with the Idaho Open Meeting Law.
3. The Treasure Valley Transit Executive Director will make their decision according to the following time schedule and the Agency will notify the protester of the decision in writing by regular mail, electronically, or by facsimile transmission.
 - a. Pre-award protests will be decided before the bid opening.
 - b. Contract award protests will be decided within seven (7) days following receipt of the protest.
4. The Treasure Valley Transit Executive Director may, at their sole discretion, extend the limits of time outlined above.
5. The decision of the Treasure Valley Transit Executive Director shall be final. For FTA funded procurements, any appeal of the Treasure Valley Transit Executive Director decision will be governed by the FTA Circular or its successors.
6. Failure of the protestor to specify their objections in writing and in accordance with the specified time deadlines shall constitute a waiver of all right to protest.

*****END OF INSTRUCTIONS TO BIDDERS*****

**SUBDIVISION
00.00.03
BID PROPOSAL FORM**

**PROJECT TITLE: FACILITY REMODEL & UPGRADES FOR TREASURE VALLEY TRANSIT
JOB# 23009**

**To: Treasure Valley Transit
Attn: Debbie Maxwell
1136 W. Finch Drive
Nampa, ID 83651
Telephone: 208.463.9111
e-mail: debbie@treasurevalleytransit.com**

Bid Proposal. The bid proposal is composed of the following parts:

1. Base Bid – The base bid shall include construction of all items not specifically described as alternates.
2. Alternate Bids – As indicated and described on the Drawings and in Section 01 11 90 Contract Considerations.

Bid Procedures. To be considered responsive, the bidder shall submit a price on the Base Bid and all Alternate Bids.

Award Procedures. Treasure Valley Transit shall have the right to accept Alternates in any order or combination, and to determine the lowest responsive bid submitted by a responsible Bidder on the basis of the sum of the Base Bid and the Alternates accepted.

Bid Amounts.

1. The bid amounts provided shall include Idaho State Sales Tax.
2. The bid amounts shall be written out in words as well as figures.

BASE BID. For construction of all work other than designated alternate work, the Lump Sum amount of:

_____ Dollars (\$_____),

including contractor overhead, profit, insurance, bonds and any applicable taxes.

In making this bid, I hereby understand and acknowledge that this project is subject to Idaho laws regarding sales and use taxes as set forth in Title 63, Chapter 36, Idaho Code. Under these provisions, the Contractor is considered to be the consumer of the materials that will be included in the project, and as such, is obligated to pay sales or use tax for said materials and shall not collect such taxes from the owner. Services, including labor costs, are not taxable under this chapter. For more detailed information regarding proper handling of required taxes, contractors are encouraged to familiarize themselves with this chapter. More information regarding the Idaho sales and use tax is available at tax.idaho.gov. All other taxes shall be the responsibility of the Contractor.

ALTERNATE BID ITEMS. (including contractor overhead, profit, insurance, bonds and any applicable taxes)

Add Alternate "A": York Avenue Roadway

_____ Dollars (\$_____)

Add Alternate "B": Pergola

_____ Dollars (\$_____)

Add Alternate "C": Panelboards

_____ Dollars (\$_____)

Add Alternate "D": Switchboard

_____ Dollars (\$_____)

Add Alternate "E": Wood Doors

_____ Dollars (\$_____)

Add Alternate "F": HVAC

_____ Dollars (\$_____)

MANDATORY NAMING OF SUBCONTRACTORS. Each bidder must submit, as part of the bid, the names of the subcontractors with whom the bidder, if awarded the Contract, will subcontract for performance of the work of: 1) HVAC (heating, ventilation, and air conditioning); 2) plumbing; and 3) electrical work, or to name itself for any or all such categories of work. The bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work, or the naming of two or more subcontractors to perform the same work, shall render the bid nonresponsive and, therefore, void.

HVAC:_____

Plumbing:_____

Electrical:_____

SCHEDULE OF VALUES. Contractor shall submit to owner a breakdown of costs using the Schedule of Values form provided herein.

SUBSTITUTION OF SUBCONTRACTORS. Treasure Valley Transit hereby notifies all bidders that it requires that it approves all substitution of subcontractors. Bidders must include the extent of subcontracting contemplated.

OVERHEAD AND PROFIT. All of the above prices include overhead and profit. Combined overhead and profit of the Contractor and Subcontractors of all tiers for change orders shall be in accordance with the General Conditions.

CONTRACT TIME. The undersigned hereby agrees to Substantially Complete all the work under the Base Bid (and accepted Alternates) within 150 calendar days after the date of Notice to Proceed, unless amended via Owner-approved Change Order. All Work shall be fully and finally completed in accordance with the Contract Documents within fourteen (14) calendar days after the date of Substantial Completion unless amended via Owner-approved Change Order. Contract Times can only change as defined in Section 7.03 of the General Conditions, entitled "CHANGES IN THE CONTRACT TIME."

LIQUIDATED DAMAGES. Should the Contractor fail to complete the Work within the Contract Time, as revised by approved extensions, the Owner shall reserve the right to assess the Contractor liquidated damages in the sum of two hundred fifty dollars (\$250) per calendar day or as modified in the Contract until such time as the Work is substantially complete, an occupancy permit is issued, and any uncompleted work does not interfere with tenants' normal business operations. Owner reserves the right to waive Liquidated Damages for a justifiable reason.

FEDERAL AND STATE REQUIREMENTS. The undersigned agrees to perform the requirements set forth and/or incorporated by reference in the Federal Transit Administration (FTA) Requirements.

RECEIPT OF ADDENDA. Receipt of the following addenda is acknowledged:

Addendum No. _____ Addendum No. _____ Addendum No. _____

Addendum No. _____ Addendum No. _____ Addendum No. _____

The undersigned declares that this Bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, or organization or corporation; that the Bid is genuine and not collusive or sham; that the undersigned has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid and has not directly or indirectly colluded or agreed with any Bidder or anyone else to put in a sham Bid or to refrain from bidding; that the undersigned has not directly or indirectly sought by agreement, communication or conference with anyone to fix his Bid price or the Bid price of any other Bidder, or to secure any advantage against Treasure Valley Transit or anyone interested in the proposed contract; that the only persons or parties interested in this Bid as principals are those named herein; that all statements contained in this Bid are true; that the undersigned has not directly or indirectly submitted his Bid price or any breakdown thereof, or thereto, to any other person, partnership, corporation or association except to such person or persons as have a direct financial interest in Bidder's general business.

Wherever in this proposal an amount is stated in both words and figures, in case of discrepancy between words and figures, the words shall prevail; if all or any portion of the proposal is required to be given in unit prices and totals and a discrepancy exists between any such unit prices and totals so given, the unit prices shall prevail.

Contractor Name

Authorized Signature

Address

Printed Authorized Signature

City, State, Zip Code

Title

Telephone

Date

Fax

e-Mail

Contractor's Idaho State License No.
(Required)

EIN Number

*****END OF BID PROPOSAL FORM*****

Schedule of Values

Contractor: _____ Date: _____

Division #	Description	Materials	Labor	Total
1	General Requirements			
2	Site Construction			
3	Concrete			
4	Masonry			
5	Metals			
6	Wood and Plastic			
7	Thermal and Moisture Protection			
8	Doors and Windows			
9	Finishes			
10	Specialties			
11	Equipment			
12	Furnishings			
13	Special Construction			
14	Conveying Systems			
22	Plumbing			
23	HVAC			
26	Electrical			
27	Structured Cabling/Data			
28	Security			

SUBTOTAL _____

Overhead and Profit _____ %

Bond _____

GRAND TOTAL _____

BUY AMERICA CERTIFICATION
49 U.S.C. 5323(j) and 49 CFR Part 661
(To be submitted with each bid or offer exceeding \$100,000)

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

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

The Bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5322 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

OR

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

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

Date _____

Signature _____

Company Name _____

Title _____

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Instructions for Certification

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

to all remedies available to the Federal Government, Treasure Valley Transit may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary
Exclusion - Lower Tier Covered Transaction"**

1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals," as defined at 49 C.F.R. § 29.105(P), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2) When the prospective lower tier participant is unable to certify the statements in this certification, such prospective participant shall attach an explanation to this proposal.

STATE OF _____ }
COUNTY OF _____ } ss.

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

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

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

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

Signature and Title of Authorized Official

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

Notary Public
In and for the State of _____
Residing at _____
Commission Expires _____

LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995,

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

APPENDIX A, 49 C.F.R. PART 20 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government-Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, codified at 2 U.S.C. § 1601 *et seq.*)

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

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

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

STATE OF _____ }
COUNTY OF _____ } ss.

DISADVANTAGED BUSINESS PARTICIPATION

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

Treasure Valley Transit's Disadvantaged Business Enterprise (DBE) participation is to be achieved through race- neutral means. Contractors who have difficulty identifying disadvantaged or small business subcontractors for this project, or have questions in regard to Treasure Valley Transit's DBE Program, should contact Debbie Maxwell, Director, via email at debbie@treasurevalleytransit.com.

To be eligible for award of this Contract, the Bidder must submit with the bid the Disadvantaged Business Utilization Form on the next page listing qualified DBEs to be contracted with, including all required information. DBEs listed must be certified by the Idaho Transportation Department (ITD) as of the date and time that bid submittals are due.

Treasure Valley Transit will treat bidders' compliance with DBE good faith effort requirements as a matter of responsiveness. The successful Contractor shall enter into a contract with the firms identified below as successful subcontractors. Failure to complete this section of the bid proposal or the inclusion of false information shall be considered as evidence that the proposal is nonresponsive and shall not receive further consideration.

Each solicitation will require the bidder to submit the following information at the time of the bid under sealed bid procedures. Compliance with this request must be met before submittal of the bid.

DISADVANTAGED BUSINESS PARTICIPATION FORM

PLEASE LIST ALL SUBCONTRACTORS. ADD SHEETS AS NECESSARY

Name of Subcontractor _____

Address _____

Telephone Number _____

Description of Work Performed _____

Will Contract Be Awarded ____yes____no

Value of Subcontract \$ _____

Percent of Subcontract Work Actually Performed by DBE Subcontractor _____%

Additional Required Bidder Disclosure (per 49 C.F.R. Part 26.11):

Is this company a certified Disadvantaged Business Enterprise (DBE) or a certified Small Business Enterprise (SBE)? No____ Yes____ DBE____ SBE____

Certification No. _____

How many years has this company been in business? _____years

What are the annual gross receipts for this company? (Please circle one item)

Less than \$500,000	\$500,000-\$1,000,000
\$1,000,000-\$2,000,000	\$2,000,000 to \$5,000,000
\$5,000,000-\$10,000,000	\$10,000,000-\$23,000,000
\$23,000,000-\$50,000,000	Greater than \$50,000,000

SUBSTITUTION REQUEST FORM

PROJECT: _____

We hereby submit for your consideration the following product instead of the specified item for the above project:

SECTION: _____

PARAGRAPH: _____

SPECIFIED ITEM: _____

PROPOSED SUBSTITUTION: _____

Include complete information on changes to Drawings and/or Specifications which the proposed substitution will require for its proper installation. Attach complete technical data. Include laboratory tests if applicable.

Fill in blanks below (Attach additional sheets as required):

A. Would the substitution affect dimensions shown on Drawings? _____

B. Would the undersigned pay for changes to the building design, including architectural and engineering detailed costs caused by the requested substitution? _____

C. What effect would substitution have on other trades? _____

D. Differences between proposed substitution and specified item? _____

E. Manufacturer's guarantees of the proposed and specified items are: ☐ Same ☐ Different
(Explain on attachment)

F. Does the substitution affect the Contract Price? How? _____

The undersigned states that the function, appearances and quality are equivalent or superior to the specified item.

Submitted by:

(Signature)

(Firm)

(Address)

(Date)

(Telephone)

Review Status:

- ☐ Reviewed, no exceptions taken.
- ☐ Reviewed, comments noted.
- ☐ Not in conformance with Design Concept.
- ☐ Received too late for review.

By: _____

Date: _____

Remarks: _____

*****END OF SUBSTITUTION REQUEST FORM*****

**SUBDIVISION
00.00.04 GENERAL
CONDITIONS**

PART I – GENERAL PROVISIONS

1.01: DEFINITIONS.

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

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

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

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

E. Completion or Completion Date is the complete and successful performance by Contractor of all Work in accordance with this Contract.

F. Contract is the written and executed Contract between the Owner and Contractor covering the Work to be performed including other Contract documents as they now exist and as they may be hereafter amended or supplemented as provided herein.

G. Contract Award Amount is the sum of the Base Bid and any accepted Alternates.

H. Contract Documents means the Invitation for Bids, Instructions for Bidders, completed Form of Bid/Proposal, General Conditions, Supplemental Conditions, Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.

I. Contract Sum is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents.

J. Contract Time is the number of calendar days allotted in the Contract Documents for achieving completion of the Work so it is ready for final acceptance and payment as provided in the Contract Documents.

K. Contractor means the person or entity that has agreed with Owner to perform the Work in accordance with the Contract Documents.

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

M. Final Acceptance shall occur at the issuance of the Notice of Completion and is the point in the process of the Work at which the Owner determines that the Work is physically complete and all documentation pertaining to the Work has been submitted to and accepted by the Owner, including signed permits, Operations and Maintenance Manuals, record drawings and warranties. Substantial completion must occur, and all punch-list items must be completed.

N. Force Majeure means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in Subsection 3.05(A) of this subdivision.

O. Notice means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.

P. Notice to Proceed is the written notice given by the Owner to the Contractor stating that the Contract has been executed and specifying the date on which Contractor is authorized to commence Work under the Contract.

Q. Owner means Treasure Valley Transit.

R. Owner Furnished Equipment is equipment and materials provided by the Owner for incorporation into the Work.

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

T. Prior Occupancy means Owner's use of all or parts of the Project before Substantial Completion.

U. Progress Schedule means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Section 3.02 of this subdivision.

V. Project means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.

W. Project Manual means the volume usually assembled for the Work, which may include the bidding requirements, sample forms, and other Contract Documents.

X. Project Record means the separate set of Drawings and Specifications as further set forth in Part 4 of this subdivision.

Y. Schedule of Values means a written breakdown allocating the total Contract Sum to each principal category of Work, in such detail as requested by Owner.

Z. Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

AA. Subcontract means a contract entered into by Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.

BB. Subcontractor means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.

CC. Substantial Completion or Substantial Completion Date means the point in the progress of the Work, established in writing by the Owner, when the Work is completed to the extent that the Owner has beneficial use and occupancy of the facilities, the Work satisfies the customary insurance contractual conditions necessary for Owner's insurance to be binding with respect to operations, and only minor incidental work, replacement of temporary facilities, or correction or repair remains for the Work to be completed in full. The conditions that must be met for Substantial Completion are more fully set forth in Section 6.07 of this subdivision.

DD. Work means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

1.02: ORDER OF PRECEDENCE. Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order.

A. The signed Contract, as amended by any Contract Amendments or Change Orders.

B. Supplemental Conditions.

C. General Conditions.

D. Specifications. Provisions in Division 01 shall take precedence over the provisions of any other division.

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

F. Signed and Completed Bid Proposal, including Addenda.

G. Instructions to Bidders.

H. Invitation to Bidders.

1.03: EXECUTION AND INTENT. Contractor makes the following representations to Owner:

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

B. The Contractor accepts the relationship of trust and confidence established by this Contract and covenants with the Owner to cooperate with the Architect/Engineer through every phase of the Work and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to exercise best efforts to furnish at all times

an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to assist the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving, in a timely way, information required by the Contractor, and by making payments to the Contractor in accordance with requirements of the Contract Documents.

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

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

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

PART 2 – INSURANCE AND BONDS

2.01 : GENERAL INSURANCE AND WORKERS' COMPENSATION INSURANCE. No Contractor shall commence work under this Contract until it has obtained all the insurance required under this Part and such insurance has been approved by Treasure Valley Transit, nor shall the Contractor allow any subcontractor to commence work on a subcontract until such subcontractor has obtained insurance equal to or greater than that required for the Contractor under this Article.

A. Insurance Requirements. By the date of execution of the Contract, 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 work hereunder by the Contractor, its agents, representative, employees, and/or subcontractors. The cost of such insurance shall be paid by the Contractor.

B. Coverages. Each insurance policy shall be written on an "Occurrence" form only. Copies of each policy shall be provided to Treasure Valley Transit by the date of execution of this Contract.

C. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. *General Liability coverage*, including coverage for bodily injury, personal injury, property damage.
2. *Automobile Liability coverage*, including uninsured motorist coverage.
3. *Workers' Compensation coverage*, as required by the State of Idaho or the state in which the Contractor's principal place of business is located, whichever is greater.

4. *Employer's Liability or Stop-Gap coverage.* The protection provided by the Employer's Liability provisions of the Workers' Compensation policy, or the protection provided by the Stop-Gap endorsement to the General Liability policy.

5. *Umbrella or Excess Liability coverage.* When Umbrella and/or Excess Liability policies are used in connection with primary underlying General Liability policies to meet the required limits of liability, the Umbrella and/or Excess Liability policies shall be in force concurrently with the primary insurance policy, have the same expiration date, and provide coverage as broad as the primary policy, with a "drop down" provision.

6. *Products and Completed Operations coverage.*

7. *Professional Liability coverage.* The Contractor shall procure and maintain, during the life of this Contract, Products and Completed Operations coverage for protection against bodily injury and property damage claims arising from this hazard, at a limit acceptable to Treasure Valley Transit.

D. Minimum Limits of Insurance. The Contractor shall maintain the following minimum limits for:

1. *General Liability:* \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

2. *Automobile Liability:* \$1,000,000 combined single limit per accident for bodily injury and property damage.

3. *Workers' Compensation:* Statutory requirements of the state of residency.

4. *Employers Liability or "Stop Gap" Coverage:* \$1,000,000

5. *Umbrella or Excess Liability Coverage:* \$5,000,000

6. *Products and Completion Operations:* \$2,000,000

7. *Professional Liability:* \$1,000,000

E. Other Insurance Provisions. The insurance policies required in this Contract shall contain, or be endorsed to contain, the following provisions:

1. Treasure Valley Transit, its officers, officials, employees, and agents are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract.

2. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be the primary insurance with respect to Treasure Valley Transit, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by Treasure Valley Transit, its officers, officials, employees, or agents shall not contribute with the insurance of the Contractor who is the Named Insured or benefit the Contractor as the Named Insured in any way.

3. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

4. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except for the reduction of the aggregate by paid claims until after forty-five (45) days prior written notice, return receipt requested, has been given to Treasure Valley Transit.

F. Builders' Risk Insurance. The Contractor shall affect and maintain Builders' Risk Insurance, excluding Quake and Flood, upon the entire work done at any time under this Contract to one hundred percent (100%) of insurable value thereof, including items of labor and materials connected therewith, whether in or adjacent to the structure insured, and whether materials are in place or to be used as part of the permanent structure.

G. Other Contract Provisions.

1. *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by Treasure Valley Transit. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to Treasure Valley Transit and shall be the sole responsibility of the Contractor.

2. *Acceptability of Insurers.*

a. Insurance is to be placed with insurers with a Best's rating of no less than A: VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

b. If at any time one of the foregoing policies shall be or become unsatisfactory to Treasure Valley Transit, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to Treasure Valley Transit, the Contractor shall, upon notice to that effect from Treasure Valley Transit, promptly obtain a new policy, and shall submit the same to Treasure Valley Transit, with the appropriate certificates and endorsements, for approval.

3. *Verification of Coverage.* The Contractor shall furnish Treasure Valley Transit with certificates of insurance and bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on a form approved by Treasure Valley Transit and are to be received and approved by Treasure Valley Transit prior to the commencement of activities associated with the Contract.

4. *Subcontractors.* The Contractor shall include all subcontractors as insured under its policies, and/or shall furnish separate certificates of insurance and policy endorsements for each subcontractor as evidence of compliance with all insurance requirements of this Contract.

5. *Work Site Safety.* The Contractor shall have the right to control and shall bear sole responsibility for the job site conditions and safety. The Contractor shall comply with all applicable federal, state, and local safety regulations governing the job site, employees, and subcontractors. The Contractor shall be responsible for all subcontractors' compliance with these provisions.

No provision in this section shall be construed to limit the liability of the Contractor for work not done in accordance with the Contract or expressed or implied warranties. The liability for the work shall extend as far as the appropriate periods of limitation provided by law.

The Contractor agrees to defend, hold harmless and indemnify Treasure Valley Transit against any and all claims, suits, damages, costs, or legal expense as a result of bodily injury or property damage resulting from the negligence of the Contractor. All policies of insurance carried by the Contractor shall be written as primary policies, not contributing with and not in excess of insurance coverage which Treasure Valley Transit may carry.

The Contractor and its subcontractors shall maintain Workers' Compensation Insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of the Workers' Compensation laws.

If at any time during the continuance of the Contract, the sureties, or any of them, shall, in the opinion of the Owner become irresponsible, Owner shall have the right to require additional and sufficient Sureties which Contractor shall furnish to the satisfaction of Owner within ten (10) days after notice.

2.02 : PAYMENT AND PERFORMANCE BONDS. A bid guarantee equivalent to five (5%) percent of the bid price including all Change Orders and applicable taxes, shall be furnished for the Work. A performance bond on the part of the contractor for 100 percent of the contract price. A payment bond on the part of the contractor for 50% of the contract price. Such bonds shall be in a form which complies with Idaho Code § 54-1926 and is acceptable to the Owner. Payment and Performance Bonds shall increase to one hundred percent (100%) of the contract sum if the Contract sum increases.

2.03 : ADDITIONAL BOND SECURITY.

A. Owner shall have the right to require additional and sufficient Sureties, which Contractor shall furnish to the satisfaction of Owner within ten (10) days after notice.

PART 3 – TIME AND SCHEDULE

3.01 : PROGRESS AND COMPLETION.

A. The completion time for this project shall be as set forth in the Bid Proposal Form. This time period shall commence on the first day of work on the project, which shall be no more than seven (7) days after the date specified in the Notice to Proceed.

B. Contractor shall diligently perform the Work with adequate forces and shall achieve Substantial and Final Acceptance within the completion time.

C. Notice to proceed for construction will not be given until the Contract has been executed and all required bonds, evidence of insurance and preliminary Progress Schedule have been approved and/or reviewed by the Owner. The Contractor shall not commence the Work until the Owner has issued a

Notice to Proceed. The Contractor shall begin the Work within seven (7) days after the date specified in the Notice to Proceed.

3.02 : CONSTRUCTION SCHEDULE.

A. The Progress Schedule shall show the sequence in which Contractor proposes to perform the Construction Work, and the dates on which Contractor plans to start and finish major portions of the Construction Work, including dates for shop drawings and other submittals, and for acquiring materials and equipment.

B. The Progress Schedule shall be in the form of a bar chart, or a critical path method analysis, as specified by Owner. The preliminary Progress Schedule may be general, showing the major portions of the Construction Work, with a more detailed Progress Schedule submitted as directed by Owner.

C. Owner shall return comments on the preliminary Progress Schedule to Contractor within fourteen (14) days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this Section.

D. Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in Section 3.05 of this Part, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Progress Schedule, and if directed by Owner, Contractor shall submit a corrective action plan and revise the Progress Schedule to reconcile with the actual progress of the Work.

E. Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

F. Schedule Requirements. Contractor shall coordinate all mobilization and construction activities with Treasure Valley Transit's Project Manager. The Contractor shall maintain a vehicle access route to adjacent properties. Any shutdown of the access route must be approved in writing by Treasure Valley Transit.

Contractor shall submit a plan showing hour of work, and scheduling of deliveries for approval by Treasure Valley Transit. The plan will indicate any closure of access to the adjacent properties. The schedule shall consider the impact of construction activity including noise on surrounding roads and buildings.

3.03 : OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE.

A. Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to ninety (90) days, or for such longer period as mutually agreed.

B. Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring any costs of performance directly attributable to such suspension. Within a period up to ninety (90) days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:

1. Cancel the written notice suspending the Work; or
2. Terminate the Work covered by the notice as provided in the termination provisions set forth in Part 9 of this subdivision.

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

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

3.04 : OWNER'S RIGHT TO STOP THE WORK FOR CAUSE.

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

B. Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

3.05 : DELAY.

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

1. Acts of God or the public enemy;
2. Fire or other casualty for which Contractor is not responsible;
3. Quarantine or epidemic;
4. Strike or defensive lockout;
5. Unusually severe weather conditions which could not have been reasonably anticipated; and

6. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.

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

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

D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor, any Subcontractor, or anyone for whose acts Contractor is responsible.

E. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to Section 7.03 of this subdivision, but shall not be entitled to an adjustment in the Contract Sum.

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

3.06 : NOTICES TO OWNER OF LABOR DISPUTES.

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

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

3.07 : LIQUIDATED DAMAGES. Should the Contractor fail to complete the Work within the Contract Time, as revised by approved extensions, the Owner shall reserve the right to assess the Contractor liquidated damages in the sum of two hundred fifty dollars (\$250) per calendar day or as modified in the Contract until such time as the Work is substantially complete, an occupancy permit is issued, and any uncompleted work does not interfere with tenants normal business operations. Owner reserves the right to waive Liquidated Damages for justifiable reason.

PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS 4.01:

DISCREPANCIES AND CONTRACT DOCUMENT REVIEW.

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

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

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

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

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

F. Questions regarding interpretation of the requirements of the Contract Documents must be in writing and directed to: Debbie Maxwell via e-Mail to debbie@treasurevalleytransit.com, hand delivered, or mailed.

4.02 : DRAWINGS. The Contract Documents include drawings that show such details as are necessary to give a complete understanding of the Work. Any alterations affecting the requirements and information in the Drawings shall be in writing and approved by the A/E or Owner.

The Architect may supplement the Drawings with additional drawings and explanations, consistent with the purpose and intent of the original Drawings, to detail and illustrate the Work. The Contractor shall perform the Work according to these supplemental drawings and explanations.

Where the words "similar," "typical," or equivalent terms are used in the Contract Documents, they shall not be interpreted to mean that all parts of the Work referred to are identical or substantially identical, or that such elements of the Work are connected identically or substantially identically to the rest of the Work. The Contractor has the responsibility to work out the details of the Work in relation to their location and connection to other parts of the Work.

Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to other like portions of the Work. Where ornament or other detail is

indicated by starting only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.

4.03 : PROJECT RECORD.

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

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

C. Contractor shall submit the completed and finalized Project Record to A/E or Owner prior to Completion.

4.04 : SHOP DRAWINGS.

A. "Shop Drawings" means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing, in detail, the proposed fabrication and assembly of structural elements and the installation (i.e. form, fit, and attachment details) of materials and equipment.

B. Shop Drawings include, but are not limited to, drawings, diagrams, layouts schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.

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

D. Approval or other appropriate action with regard to Shop Drawings, whether by Owner or A/E, shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from

responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.

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

F. Unless otherwise provided herein, Contractor shall submit to A/E for approval three (3) copies of all Shop Drawings. Unless otherwise indicated, one (1) set of drawings shall be retained by A/E and two (2) sets shall be returned to Contractor.

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

4.06 : OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS.

A. The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.

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

C. Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in Section 5.23 of this subdivision from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this Section.

D. The Shop Drawings and other submittals prepared by Contractor, subcontractors of any tier, or its or

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

PART 5 – PERFORMANCE

5.01 : AUTHORITY OF OWNER.

A. If the Contractor fails to perform the Work according to requirements of the Contract Documents, the Owner shall provide written notice of the deficiency to the Contractor, and Contractor shall have seven (7) days, or such longer period as Contractor and Owner may agree, to correct the deficiency in the Work. If the Contractor fails to correct the deficiency in the Work within the seven (7) day or agreed-to period, the Owner may, without prejudice to other remedies,

1. Use Treasure Valley Transit forces, other contractors, or other means to make good the Contractor's deficiency; and
2. Deduct from the Contractor's payments the cost of such effort.

The Owner's exercise of its rights under this Article shall not constitute termination of the contract.

B. Nothing in the Contract Documents requires the Owner or Architect/Engineer to provide the Contractor with direction or advice on how to do the Work. If the Owner or Architect/Engineer approves or recommends any method or manner for doing the Work or producing materials, the approval or recommendation shall not:

1. Guarantee that following the method or manner will be effective or result in compliance with the Contract Documents;
2. Relieve the Contractor of any risks or obligations under the Contract; or
3. Create any liability for the Owner.

5.02 : CONTRACTOR CONTROL AND SUPERVISION.

A. Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work,

unless the Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.

B. Performance of the Work shall be directly supervised by a competent superintendent who is satisfactory to Owner and has authority to act for Contractor. The superintendent shall not be changed without the prior written consent of Owner.

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

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

E. Contractor shall keep on the Project site a copy of the Drawings, Specifications, and Addenda, reviewed Shop Drawings, and permits and permit drawings.

5.03 : PERMITS, FEES, AND NOTICES.

A. Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work except as noted in Paragraph D of this section. Prior to Completion, the approved, signed permits shall be delivered to Owner.

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

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

D. Owner, at its own expense, will provide the Building Permit to the contractor.

5.04 : PATENTS AND ROYALTIES.

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

5.05 : PREVAILING WAGES.

A. Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with the rules and regulations of the Department of Labor or Davis Bacon for Federally funded projects. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor. It is the Contractor's responsibility to verify the applicable prevailing wage rate.

B. Before commencing the Work, Contractor shall file a statement under oath with Owner and with the U.S. Department of Labor certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

C. Disputes regarding prevailing wage rates shall not be subject to the general dispute resolution provisions of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

D. Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent, if applicable. Copies of approved intent statement(s) shall be posted on the job site.

E. Contractor shall also comply with the provisions of Part 00.00.07.

5.06 : NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.

A. Notwithstanding any other provisions in the Project Manual, this Contract does not require any specific levels of utilization of minorities or women in the Contractor's workforce, except as may be specified in any federal regulations or statutes included or referenced in the Contract Documents. The Owner encourages the Contractor to employ a workforce reflective of the region's diversity. The Contractor shall adhere to all non-discrimination requirements as set forth in Federal and State laws and regulations and provisions.

B. The Contractor and all subcontractors (not including materialmen) holding subcontracts of one thousand dollars (\$1,000) or more shall comply with the following minimum specific requirement activities of equal employment opportunity. The Contractor shall include these requirements in every subcontract of one thousand dollars (\$1,000) or more with such modification of language as is necessary to make them binding on the subcontractor.

5.08 : SAFETY PRECAUTIONS.

A. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The Contractor shall have the right to control and bear the sole responsibility for the job site conditions, and job site safety.

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

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

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

1. *Information.* At a minimum, Contractor shall inform persons working on the Project site of:

- a. Any operations in their work area where hazardous chemicals are present; and
- b. The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets (MSDS).

2. *Training.* At a minimum, Contractor shall provide training for persons working on the Project site which includes:

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

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

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

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

F. All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibility. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.

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

H. Nothing provided in this Section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

5.09 : OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS.

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

B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. Contractor will supply a porta potty for workers to use. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor at its expense upon completion of the Work.

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

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

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

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

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

5.11 : UNFORESEEN PHYSICAL CONDITIONS.

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

B. If such conditions: 1) differ materially as provided above; 2) are pre-existing; 3) were not and could not have been discovered upon reasonable inspection of the Project site; and 4) cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor will be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefor as provided in Part 7 of this subdivision.

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

5.13 : LAYOUT OF WORK.

A. Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.

B. Contractor shall lay out the Work from Owner-established baselines and benchmarks indicated on the Drawings and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

5.14 : MATERIAL AND EQUIPMENT.

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

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

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

5.15 : AVAILABILITY AND USE OF UTILITY SERVICES.

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

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

5.16 : TESTS AND INSPECTION.

A. Owner shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for quality surveillance of all its Work and all Work performed by any subcontractor. Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity and shall bear all related costs of tests, inspections, and approvals. Contractor shall coordinate tests and inspections with the testing agency

and shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.

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

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

C. Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.

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

5.17 : CORRECTION OF NONCONFORMING WORK.

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

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

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

D. If, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or within one (1) year after the date for commencement of any system warranties established under Section 6.08 of this subdivision, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one (1) year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one (1) year from the date of repair or replacement. Obligations under this Section shall survive Final Completion.

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

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

G. Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

H. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor may have according to the Contract Documents. Establishment of the time period of one (1) year as described in Subsection (D) of this section relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.

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

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

5.19 : ACCESS TO WORK. Contractor shall provide Owner and A/E access to the Work in progress, wherever located.

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

5.21 : SUBCONTRACTORS AND SUPPLIERS.

A. Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, telephone numbers, of all subcontractors, as well as suppliers providing materials in excess of two thousand five hundred dollars (\$2,500.00). Contractor shall utilize subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any subcontractor or supplier to whom the Owner has a reasonable objection and shall obtain Owner's written consent before making any substitutions or additions.

B. All subcontracts must be in writing. By appropriate written agreement, Contractor shall require each subcontractor, so far as applicable to the Work to be performed by the subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. However, nothing in this section shall be construed to alter the contractual relations between Contractor and its subcontractors with respect to insurance or bonds.

C. Contractor shall schedule, supervise, and coordinate the operations of all subcontractors. No subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents. If the Owner determines that any subcontractor is performing services in an unsatisfactory manner or is not completing the Work in accordance with the requirements of the Contract Documents or is otherwise undesirable or unacceptable, the Owner will by written notice so notify the Contractor. The Contractor shall then take immediate steps to terminate such subcontractor. Subcontracting by subcontractors will be subject to the same regulations.

D. Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:

1. The assignment is effective only after termination by Owner for cause pursuant to Section 9.01 of this subdivision and only for those subcontracts which Owner accepts by notifying the subcontractor in writing; and
2. After the assignment is effective, Owner will assume all future duties and obligations toward the subcontractor which Contractor had assumed in the subcontract.

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

5.22 : WARRANTY OF CONSTRUCTION.

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

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

1. Obtain all warranties that would be given in normal commercial practice;
2. Require all warranties to be executed, in writing, for the benefit of Owner;
3. Enforce all warranties for the benefit of Owner, if directed by Owner; and
4. Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranty should they extend beyond the period specified in the Contract Documents.

C. The obligations under this section shall survive Final Completion.

5.23 : DEFENSE AND INDEMNIFICATION AGREEMENT.

A. To the extent permitted by law, the Contractor shall specifically and expressly defend, indemnify, and hold harmless, Treasure Valley Transit, its officers, agents and employees at its own expense from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind in nature, including reasonable attorneys' fees and claims by the employees of the Contractor, arising out of and in connection with performance of this Contract as a result of Contractor's own acts or omissions. Contractor agrees that Treasure Valley Transit is entitled to select and appoint its own counsel for defense of any suit, claim or action subject to the defense and indemnity provisions herein. If such suits, claims, actions, losses, costs, penalties, and damages are caused by or result from the concurrent negligence of the Contractor and Treasure Valley Transit, then this defense and indemnity provision shall be valid and enforceable only to the extent of the Contractor's negligence. In instances of alleged concurrent negligence, Contractor shall provide a defense to Treasure Valley Transit pending the final determination of Contractor and Treasure Valley Transit's proportionate share of negligence, if any. Further, Contractor shall not be required to hold Treasure Valley Transit harmless or defend Treasure Valley Transit, its officers, agents, and employees from any and all suits, claims, actions, losses, costs, penalties, and damages arising from the sole negligence of Treasure Valley Transit, its officers, agents, and employees. This indemnification obligation shall include, but is not limited to, all claims brought against Treasure Valley Transit by an employee or former employee of the Contractor.

B. The indemnification provided herein shall apply to and require each party to defend, indemnify and hold harmless the other party for claims brought by an employee of one party against the other party if said claims are alleged to have arisen from the alleged negligent actions or omissions of the employee's employer, and in such case, the Contractor and Treasure Valley Transit, with respect to each other only, waive and will not assert against each other, any immunity under the State of Idaho. This waiver is limited to

actions by and between the Contractor and Treasure Valley Transit only and does not extend to the employees of either party. The Contractor and Treasure Valley Transit expressly do not waive their immunity against claims brought by their own employees.

PART 6 – PAYMENTS AND COMPLETION

6.01 : CONTRACT SUM. Owner shall pay Contractor the Contract Sum for performance of the Work in accordance with the Contract Documents. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Project, including sales tax.

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

6.03 : APPLICATION FOR PAYMENT.

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

B. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is re-certifying that the representations set forth in Section 1.03 of this subdivision are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment. Certified payroll shall be submitted along with each Application for Payment.

C. At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.

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

1. The material will be placed in a secured primary staging area approved by the owner;
2. Only materials for the Project are stored within the approved area;

3. The designated area (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
4. Owner shall at all times have the right of access in the company of Contractor;
5. Contractor and its surety assume total responsibility for the stored materials; and
6. Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required.

6.04 : PROGRESS PAYMENTS.

A. Owner shall make progress payments, in such amounts as Owner determines are properly due, within thirty (30) days after receipt of a properly executed Application for Payment. Owner shall notify Contractor if the Application for Payment does not comply with the requirements of the Contract Documents.

B. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.

6.05 : PAYMENTS WITHHELD.

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

1. Work not in accordance with the Contract Documents;
2. Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
3. Work by Owner to correct defective Work or complete the Work in accordance with Section 5.17 of this subdivision;
4. Failure to perform in accordance with the Contract Documents; or
5. Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.

B. In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor.

6.06 : PROMPT PAYMENT TO SUBCONTRACTORS. The Contractor agrees to pay each subcontractor under the Contract for satisfactory performance of its contract no later than thirty days from the receipt

of each payment the Contractor receives from Treasure Valley Transit. The Contractor agrees to not withhold retainage from payments to subcontractors. Any delay or postponement of payment from the above timeframes may occur only for good cause following written approval of Treasure Valley Transit. This clause applies to both DBE and non-DBE subcontractors.

6.07 : SUBSTANTIAL COMPLETION. Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner has beneficial use of the facility and all occupancy related requirements of the Contractor have been fulfilled. All Work other than incidental corrective or punch list work shall be completed. Substantial Completion shall not have been achieved if systems and parts are not functional, if utilities are not connected and operating normally, if Contractor has not satisfied occupancy related obligations, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion, which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

6.08 : PRIOR OCCUPANCY.

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

B. Notwithstanding anything in the preceding subsection, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy. Contractor's one (1) year duty to repair and any system warranties shall begin upon activation and use of building systems by Owner as agreed in writing by Owner and Contractor.

6.09 : COMPLETION, ACCEPTANCE, AND PAYMENT.

A. When the Contractor considers that the Work is Complete, it shall give written notice of that fact to the Owner and Architect. The Architect will promptly inspect the Work and, if it agrees that the Work is Complete, notify the Owner. If the Owner determines that the Work is Complete, it will direct the Architect to issue a Certificate of Final Acceptance and process the Contractor's final payment request.

B. Completion shall be achieved when the Work is fully and finally Complete in accordance with the Contract Documents. The date Completion is achieved shall be established by Owner in writing.

C. Final Completion is the formal action of Owner acknowledging Completion. Prior to Completion, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its subcontractors, including the amounts and other details thereof. Neither the issuance of a Certificate of Final Acceptance, Completion, nor final payment, shall release Contractor or its sureties from any obligations.

of these Contract Documents or the Public Works Bond or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.

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

PART 7 – CHANGES

7.01 : CHANGES IN THE WORK.

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

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

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

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

E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within thirty (30) days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If

Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in Part 8 of this subdivision.

7.02 : CHANGES IN THE CONTRACT SUM.

A. General Application.

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

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

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

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

c. Within thirty (30) days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with Subparagraphs (a) and (b) of this paragraph with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with Subsection 7.03(C) of this part. Failure to provide such additional information and documentation within

the time allowed or within the format required shall constitute a waiver of Contractor's right to an equitable adjustment.

d. Pending final resolution of any request made in accordance with this Section, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.

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

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

a. On the basis of a fixed price as determined in Subsection (B) of this section.

b. By application of unit prices to the quantities of the items involved as determined in Subsection (C) of this section.

c. On the basis of time and material as determined in Subsection (D) of this section, as may be approved by Owner or granting authorities.

4. When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in Paragraph 3 of this subsection to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

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

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

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

3. If any of Contractor's pricing assumptions is contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.

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

5. If the total cost of the change in the Work or request for equitable adjustment does not exceed one thousand dollars (\$1,000.00), Contractor shall not be required to submit a breakdown if the

description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.

6. If the total cost of the change in the Work or request for equitable adjustment is between one thousand dollars (\$1,000.00) and two thousand five hundred dollars (\$2,500.00), Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:

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

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

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

(1) Basic wages and benefits: Hourly rates and benefits as stated on Department of Labor approved "statement of intent to pay prevailing wages." Direct supervision shall be a reasonable cost. No supervision markup shall be allowed for a working supervisor's hours.

(2) Worker's insurance: Direct contributions to the state of Idaho; medical aid; and supplemental pension, by the class and rates established by the Department of Labor.

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

(4) Safety: Safety costs shall be reasonably related to the change in the Work.

b. *Material costs*: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.

c. *Equipment costs*: This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the

changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs, or if owned, from the current edition of one of the following sources:

- (1) Associated General Contractors (Idaho or Inland Northwest Chapter)
- (2) The Idaho Public Utilities Commission for trucks used on highways.
- (3) The National Electrical Contractors Association for equipment used on electrical work.
- (4) The Mechanical Contractors Association of America for equipment used on mechanical work.

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

- (1) For Contractor, direct labor costs.
- (2) For Subcontractors, direct labor costs.

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

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

f. *Allowance for overhead:* This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any Change Order, or any request for additional Work or extra payment of any kind on the Project. This allowance shall compensate Contractor for all non-craft labor, temporary construction facilities, field engineering, and schedule updating, as-built drawings, home office costs, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable, mutually acceptable amount, or if none can be agreed upon, then to an amount not to exceed the cost to which overhead is to be applied, which shall be determined in accordance with Subparagraphs (a) through (e) of this paragraph.

g. *Allowance for profit:* This allowance shall be determined in accordance with Subparagraphs (a) through (e) of this paragraph.

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

- (1) Contractor's liability insurance: The cost of any changes in Contractor's liability insurance arising directly from execution of the Change Order; and

(2) Public works bond: The cost of the additional premium for payment and performance bonds arising directly from the changed Work.

The costs of any change in insurance or bond premium shall be added after overhead and allowance for profit are calculated in accordance with Subparagraphs (f) and (g) of this paragraph.

C. Change Order Pricing – Unit Prices.

1. Whenever Owner authorizes Contractor to perform Work on a unit price basis, Owner's authorization shall clearly state:

- a. Scope of work to be performed;
- b. Type of reimbursement including pre-agreed rates for material quantities; and
- c. Cost limit of reimbursement.

2. Contractor shall:

- a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;
- b. Leave access as appropriate for quantity measurement; and
- c. Not exceed any cost limit(s) without Owner's prior written approval.

3. Contractor shall submit costs in accordance with Subsection (B) of this section, and satisfy the following requirements:

- a. Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead and profit, and bond and insurance costs; and
- b. Quantities must be supported by field measurement statements signed by Owner.

D. Change Order Pricing – Time-and-Material Prices – If Applicable and Authorized.

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

- a. Scope of Work to be performed;
- b. Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
- c. Cost limit of reimbursement.

2. Contractor shall:

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

b. Identify on daily time sheets all labor performed in accordance with this authorization. Contractor shall submit copies of daily time sheets within two (2) working days for Owner's review;

c. Leave access as appropriate for quantity measurement;

d. Perform all Work in accordance with this Section as efficiently as possible; and

e. Not exceed any cost limit(s) without Owner's prior written approval.

3. Contractor shall submit costs in accordance with Subsection (B) of this section, plus additional verification supported by:

a. Labor detailed on daily time sheets; and

b. Invoices for material.

E. Notwithstanding any other provision of the Contract Documents, no claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after the Final Acceptance Date.

7.03 : CHANGES IN THE CONTRACT TIME.

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

B. If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.

1. A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within fourteen (14) days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.

2. Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than fourteen (14) days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and, to the extent possible, the amount of the adjustment in

Contract Time requested. Failure to properly give such written notice shall constitute a waiver of Contractor's right to an equitable adjustment.

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

4. Pending final resolution of any request in accordance with this section, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.

C. Foreseeability shall modify all factors in determining entitlement to an excusable delay. Failure of the Contractor to efficiently utilize all available time after the Notice to Proceed date will be considered in evaluating requests for extensions of time.

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

E. Contractor may request compensation for the cost of a change in Contract Time in accordance with this subsection, subject to the following conditions:

1. The change in Contract Time was caused solely by the fault or negligence of Owner or A/E;
2. Compensation under this Section is limited to funds in excess of any that may have been paid pursuant to a change in the Contract Sum that contributed to this change in Contract Time.
3. Contractor shall follow the procedure set forth in Subsection (B) of this section;
4. Contractor shall establish the extent of the change in Contract Time in accordance with Subsection (D) of this section; and
5. The daily cost of any change in Contract Time shall be limited to:
 - a. cost of nonproductive field supervision or labor extended because of the delay;

- b. cost of weekly meetings or similar indirect activities extended because of the delay;
- c. cost of temporary facilities or equipment rental extended because of the delay;
- d. cost of insurance extended because of the delay;
- e. general and administrative overhead in an amount to be agreed upon, but not to exceed three percent (3%) of the Contract Sum divided by the Contract Time for each day of the delay. This amount shall be the total paid for general and administrative overhead to the Contractor for the Contractor and all affected subcontractors.

7.04 : DELETED OR TERMINATED WORK.

A. If the Contract is terminated for convenience only, in accordance with Section 9.02 of this division, or if any item of Work is deleted in whole or in part, payment will be made for the actual number of units of work completed at the unit contract prices. Payment for partially completed lump sum items will be as mutually agreed or as determined by the Owner in the proportion that the partially completed Work is to the total lump sum item. No claim will be allowed because of the termination or the Change Order. Contract time shall be adjusted as the parties agree. If the parties cannot agree, the Owner will determine the equitable adjustment for Contract time.

B. Acceptable materials ordered by the Contractor or delivered on the Work prior to the date the Work was terminated or deleted by the Owner will either be purchased from the Contractor by the Owner at the actual cost, and shall become the property of the Owner, or the Owner will reimburse the Contractor for the actual costs connected with returning these materials to the suppliers.

PART 8 – CLAIMS AND DISPUTE RESOLUTION

8.01 : CLAIMS PROCEDURE.

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

B. Contractor shall file its Claim within the earlier of: one hundred twenty (120) days from Owner's final offer in accordance with either Subsection 7.01(E) of this subdivision, or the date of Completion.

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

1. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
2. The date on which facts arose which gave rise to the Claim;

3. The name of each employee of Owner or A/E knowledgeable about the Claim;
4. The specific provisions of the Contract Documents which support the Claim;
5. The identification of any documents and the substance of any oral communications that support the Claim;
6. Copies of any identified documents, other than the Contract Documents, that support the Claim;
7. If an adjustment in the Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
8. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, Section 7.02 of this subdivision; and
9. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.

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

1. If the Claim amount is less than fifty thousand dollars (\$50,000.00), with a decision within sixty (60) days from the date the Claim is received; or
2. If the Claim amount is fifty thousand dollars (\$50,000.00) or more, with a decision within sixty (60) days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.

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

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

8.02 : DISPUTE RESOLUTION.

A. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be subject to the alternative dispute resolution procedures in this section after compliance with the Claim

notice procedure set forth in Section 8.01 of this part, and A/E review. Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the Owner and Contractor, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree.

B. Failing resolution, the parties shall attempt to resolve the dispute through a structured mediation procedure fashioned by the parties with the assistance of a professional mediator initiated within thirty (30) days from the date of a written request for mediation by any party, unless extended by agreement of both parties. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding. If the parties are able to reach resolution at mediation, the parties shall memorialize such resolution in writing, to be signed by all parties and the mediator. Any agreement reached in mediation will be binding on the parties.

C. At all times during the course of the parties efforts to resolve any claim or controversy whether through negotiation, mediation or otherwise, the Contractor shall supervise, direct and perform the Work in a diligent and professional manner and without delay as provided under the terms of the Contract. In the event the Owner requests the Architect and the Contractor to participate in partnering or similar planning conferences and team building efforts, the Contractor shall attend and join in such efforts even if a claim or controversy is pending.

D. The good faith completion of negotiation efforts and mediation pursuant to this Section shall be a prerequisite to the filing of any litigation. Venue for any such litigation between the parties arising out of this Contract or related to the Project shall be exclusively in state or federal court in Treasure Valley Transit.

8.03 : CLAIMS AUDITS.

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

B. In support of an Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner any documents relating to the Claim, including, but not limited to:

1. Daily time sheets and supervisor's daily reports.
2. Collective bargaining agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.

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

C. The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal

business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

PART 9- TERMINATION OF THE WORK

9.01: Termination by Owner for Cause

A. Owner may, upon seven (7) days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events ("Events of Default"):

1. Contractor fails to perform the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
2. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of its insolvency;
3. Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
4. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
5. Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
6. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
7. Contractor is otherwise in material breach of any provision of the Contract Documents.

B. The notice of termination shall set forth in detail the applicable Events of Default and any other reasons for termination for cause.

C. Upon termination for cause, Owner may at its option:

1. Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
2. Accept assignment of Subcontracts pursuant to Section 5.21 of this subdivision; and
3. Finish the Work by whatever other reasonable method it deems expedient.

D. If the contract is terminated for cause while the Contractor has possession of Treasure Valley Transit goods, the Contractor shall, upon direction of Treasure Valley Transit, protect and preserve the goods until surrendered to Treasure Valley Transit or its agent. In such case, the Contractor and Treasure Valley Transit shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved in accordance with the Dispute Resolution procedures set forth in Section 8.02 of this subdivision.

E. Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

F. When Owner terminates the Work in accordance with this Part, Contractor shall take the actions set forth in this section, and shall not be entitled to receive further payment until the Work performed up to the effective date of termination is accepted.

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

H. Termination of the Work in accordance with this part shall not relieve Contractor or its surety of any responsibilities for Work performed.

I. In the case of termination for cause, Owner, in its sole discretion, may allow Contractor at least ten (10) days in which to cure all applicable Events of Default. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy all applicable Events of Default to Owner's satisfaction within ten (10) days after receipt of Notice of Termination by Contractor, Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for cause shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for any Events of Default.

J. If Owner terminates Contractor for cause, and it is later determined that none of the Events of Default set forth in Subsection (A) of this section actually existed, then such termination shall be deemed a termination for convenience pursuant to Section 9.02 of this part.

K. If Owner later determines that the Contractor had an excusable reason for not performing, such as events which were not the fault of or were beyond the control of the Contractor, Owner may allow the Contractor to continue work after setting up a new delivery of performance schedule, or may treat the termination as a termination for convenience pursuant to Section 9.02 of this part.

9.02 : TERMINATION FOR CONVENIENCE. Owner may terminate the contract, in whole or in part, at any time by written notice to the Contractor when it determines that it is in the interest of Treasure Valley Transit. The Contractor shall be paid its costs, including contract close-out costs, and on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Owner to be paid. If the Contractor has any property in its possession belonging to Owner, the Contractor will account for the same, and dispose of it as directed by Owner. Owner, by written notice, may also terminate this contract, in whole or in part, when it is in the interest of the Federal Government. If the contract is terminated, Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

9.03 : WAIVER OF REMEDIES FOR DEFAULT OR BREACH. In the event that Owner elects to waive its remedies for any default by contractor of any covenant, term or condition contained in the Contract Documents, such waiver by Owner shall not limit Owner's remedies for any succeeding default of that or of any other term, covenant, or condition of the contract.

9.04 : RESPONSIBILITY OF THE CONTRACTOR AND SURETY. Termination of the Contract shall

not relieve the Contractor of any responsibilities under the Contract for work performed, nor shall termination of the Contract relieve the Surety or Sureties of obligations under the Contract Bond, and Retainage Bond if applicable, for work performed.

PART 10 – MISCELLANEOUS PROVISIONS

10.01 : GOVERNING LAW. The laws of the state of Idaho and applicable federal laws shall govern the Contract Documents and the rights of the parties herein. Jurisdiction and venue over questions of state law shall be in the District Court of the First Judicial District, Treasure Valley Transit, Idaho. Jurisdiction and venue over questions of federal law shall be in the U.S. District Court for the District of Idaho, Northern Division.

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

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

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

10.05 : PUBLIC WORKS CONTRACTOR LICENSING. Contractor and all subcontractors of any tier shall have a current, valid public works contractor license commensurate with the value of the Work to be performed by Contractor, or any subcontractor of any tier, as required by the laws of the State of Idaho, including but not limited to Title 54, Chapter 19 and Title 67, Chapter 28, Idaho Code.

10.06 : TIME COMPUTATIONS. When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or

holiday. When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

10.07 : RECORDS RETENTION. The wage, payroll, and cost records of Contractor and its subcontractors, and all records subject to audit in accordance with Section 8.03, shall be retained for a period of not less than six (6) years after the date of Completion.

10.08 NO THIRD-PARTY AGREEMENT OR BENEFIT. The Contract Documents shall not be construed to create a contractual relationship or benefit of any kind between A/E and Contractor; Owner and any subcontractor; or any persons other than Owner and Contractor.

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

***END OF GENERAL CONDITIONS ***

SUBDIVISION 00.00.05
SUPPLEMENTARY GENERAL
CONDITIONS

[Reserved]

SUBDIVISION 00.00.06

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CLAUSES

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

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

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Treasure Valley Transit, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. § 18.39(i)(11).

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

C. APPLICABILITY AND FEDERAL GRANT CONTRACT (FEDERAL CHANGES). This procurement is subject to a financial assistance contract between Treasure Valley Transit and the U.S. Department of Transportation. The contractor will be required to comply with all terms and conditions that have been included in this procurement specification.

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

D. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES. Treasure Valley Transit and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express, written consent by the Federal Government the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Treasure Valley Transit,

Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

E. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31

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

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

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

F. CIVIL RIGHTS REQUIREMENTS. The following requirements apply to the underlying contract:

1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C.

§ 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of

U.S. Department of Labor (U.S. DOL) regulations entitled "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42

U.S.C. § 2000e note, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

G. CONTRACT BREACHES AND DISPUTE RESOLUTION. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be subject to the alternative dispute resolution procedures in this section after compliance with the Claim notice procedure set forth in Section 8.01 of this part, and A/E review. Prior to the initiation of any action or proceeding permitted by this Contract to resolve disputes between the Owner and Contractor, the parties shall make a good faith effort to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree. Failing resolution, the parties shall attempt to resolve the dispute through a structured mediation procedure fashioned by the parties with the assistance of a professional mediator initiated within thirty (30) days from the date of a written request for mediation by any party, unless extended by agreement of both parties. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding. If the parties are able to reach resolution at mediation, the parties shall memorialize such resolution in unity, to be signed by all parties and the mediator. Any agreement reached in mediation will be binding on the parties.

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

such litigation between the parties arising out of this Contract or related to the Project shall be exclusively in state or federal court within the Treasure Valley, Idaho.

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

H. DISADVANTAGED BUSINESS ENTERPRISES (DBE).

1. This contract is subject to the requirements of 49 C.F.R. Part 26, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Contractors are encouraged to cooperate with Treasure Valley Transit in its effort to ensure equal and open access to Treasure Valley Transit contracting opportunities for DBEs. A separate contract goal for DBE participation has not been established for this procurement.
2. The Contractor or sub-contractor shall not discriminate on the basis of race, color, sex, or national origin, in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Treasure Valley Transit deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph. *See* 49 C.F.R. § 26.13(b).
3. The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
4. The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the Contractor receives from Treasure Valley Transit. The Contractor agrees to not withhold retainage from subcontractors' payments. Any delay or postponement of payment from the above timeframes may occur only for good cause following written approval of Treasure Valley Transit. This clause applies to both DBE and non-DBE subcontractors.
5. The Contractor must promptly notify Treasure Valley Transit whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Treasure Valley Transit.

I. PROMPT PAYMENT.

1. Treasure Valley Transit will require the Contractor to submit regular reports of the actual payments made to DBE firms for work committed to the at the time of contract award. Treasure Valley Transit will review the reports submitted by the Contractor and seek confirmation, as needed, that payment was actually made to the DBE firm.
2. If the Contractor is found not to be in compliance with its DBE commitment, it shall be so notified

by Treasure Valley Transit and directed to cure the problem within an appropriate time period. Failure by the Contractor to comply may result in monetary penalties and partial or total termination for default with re-solicitation costs to be borne by the Contractor or its bond. In addition, Treasure Valley Transit may consider the Contractor's non-compliance when evaluating contractor responsibility in future bids or proposals.

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

K. INCORPORATION OF FTA TERMS. The provisions contained herein include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in these contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Treasure Valley Transit requests that would cause Treasure Valley Transit to be in violation of the FTA terms and conditions.

L. FTA PROTEST PROCEDURES. FTA may entertain a protest that alleges the Agency has failed to have or follow written protest procedures, or a protest involving issues important to FTA's overall public transportation program. A protester must exhaust all administrative remedies with Treasure Valley Transit before pursuing a protest with FTA. Such protest must be filed with FTA not later than five (5) working days after the Executive Director has rendered their final decision or five (5) working days after the protestor knows or has reason to know that the Executive Director have failed to render their final decision. Such protest to FTA must be filed in accordance with Chapter VII(l)(b) of the FTA Circular or its successors.

When a protest has been timely filed with the Agency before award, the Agency shall not make an award for seven (7) days after the resolution of the protest, or if a protest has been filed with FTA during the pendency of that protest, unless the Agency determines that:

1. Goods or services to be procured are urgently required;
2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to the Agency.

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

1. U.S. DOT regulations entitled "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

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

N. CERTIFICATION REGARDING DEBARMENT SUSPENSION. This contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 C.F.R. § 29.995, or affiliates, as defined at 49 C.F.R. § 29.905, are excluded or disqualified as defined in 49 C.F.R. §§ 29.940 and 29.945.

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

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

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

O. BUY AMERICA. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Each bidder must submit to Treasure Valley Transit the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. A Buy America certification form is included in this Invitation for Bids. Bids or offers that are not accompanied by a completed Buy America certification shall be rejected as non-responsive. This requirement does not apply to lower tier

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

P. CLEAN WATER.

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Q. CLEAN AIR.

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include the requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

R. DISCLOSURE OF LOBBYING ACTIVITIES. Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, “New Restrictions on Lobbying.” A lobbying activity certification form is included in this Invitation for Bids. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Treasure Valley Transit.

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

T. RECYCLED PRODUCTS. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6962, requires governmental recipients to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. EPA guidelines entitled “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247, direct that third party contracts of \$10,000 or more with governmental recipients specify a competitive preference for products containing recycled materials identified in those EPA guidelines.

END OF FTA REQUIRED CLAUSES

SUBDIVISION 00.00.07
DAVIS-BACON WAGE
RATES

A. MINIMUM WAGES.

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 C.F.R. Part 3), the full amount of wages and *bona fide* fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for *bona fide* fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster

(WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and

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

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

d. The wage rate (including fringe benefits where appropriate) determined pursuant to this section shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

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

- (1) The Work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any *bona fide* fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

d. The wage rate (including fringe benefits where appropriate) determined pursuant to this section shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

C. PAYROLLS AND BASIC RECORDS.

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing

benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. Part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (C)(2)(b) of this section.

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

3. The Contractor or subcontractor shall make the records required under paragraph (C)(1) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the

suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

D. APPRENTICES AND TRAINEES.

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

2. *Trainees.* Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division

determines that there is an apprenticeship program associated with the corresponding journeyman wage rate listed on the wage determination. Any worker listed on a payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

E. COMPLIANCE WITH COPELAND ACT REQUIREMENTS. The contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this contract.

F. SUBCONTRACTS. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. § 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

G. CONTRACT TERMINATION AND DEBARMENT. A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

H. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.

I. DISPUTES CONCERNING LABOR STANDARDS. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general dispute resolution provisions of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29

C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. CERTIFICATION OF ELIGIBILITY.

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

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

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

K. PREVAILING WAGES AND ANTI-KICKBACK. The Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146- 3148, as supplemented by DOL regulations at 29 C.F.R. Part 5, entitled “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. Part 3, entitled “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.”

L. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

1. *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

2. *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. *Withholding for Unpaid Wages and Liquidated Damages.* Treasure Valley Transit shall upon its own action, or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any

lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5. *Payrolls and Basic Records.* Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of work. Such records shall contain the name, address, and social security number of each such worker, his or her classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

END OF DAVIS-BACON WAGE RATES