Washington State
Department of Transportation

I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints Project

Request for Proposal

March 6, 2023

Chapter 1: General Provision

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1-01 Definitions and Terms

1-01.1 *General*

The following abbreviations and terms shall have the meanings set forth herein as they are used in the Contract Documents and Design Documents.

1-01.2 *Abbreviations*

1-01.2(1) Associations and Miscellaneous

AAA	American Arbitration Association
AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACM	Asbestos-Containing Materials
ADA	Americans with Disabilities Act of 1990
ADO	Award Determination Official
ADR	Alternative Dispute Resolution
AGC	Associated General Contractors of America
AHERA	Asbestos Hazard Emergency Response Act
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMS	Aerospace Material Specification
ANSI	American National Standards Institute
APA	American Plywood Association
APE	Area of Potential Effect
API	American Petroleum Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance Association
ARTBA	American Road & Transportation Builders Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials International
AWPA	American Wood Protection Association
AWS	American Welding Society
AWWA	American Water Works Association
BAFO	Best and Final Offer

BA	Biological Assessment
BLAS	Bridge and Landscape Architectural Standards
BMP	Best Management Practice
CE	Categorical Exclusion
CESCL	Certified Erosion and Sediment Control Lead
CFR	Code of Federal Regulations
CPESC	Certified Professional in Erosion and Sediment Control
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DBIA	Design-Build Institute of America
DEIR	Daily Environmental Inspection Report
DIPRA	Ductile Iron Pipe Research Association
ECAP	Environmental Compliance Assurance Procedure
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECP	Environmental Compliance Plan
ECY	Washington State Department of Ecology
EEI	Edison Electric Institute
EEO	Equal Employment Opportunity
EIA	Electronic Industries Alliance
EJ	Environmental Justice
EOR	Engineer of Record
EPA	Environmental Protection Agency
EPD	Escrow Proposal Documents
ESAL	Equivalent Single Axle Loads
FHWA	Federal Highway Administration
FSBE	Federal Small Business Enterprise
FOP	Field Operating Procedure
GBR	Geotechnical Baseline Report
GDR	Geotechnical Data Report
GP	General Purpose
HAC	High Accident Corridor
HAL	High Accident Location
HCM	Highway Capacity Manual
HOT	High Occupancy Toll
HOV	High Occupancy Vehicle
HPA	Hydraulic Project Approval
HVF	High Visibility Fencing
HVSF	High Visibility Silt Fence
ICEA	Insulated Cable Engineers Association

IECP	Interim Environmental Compliance Plan
IEEE	Institute of Electrical and Electronics Engineers
IES	Illumination Engineering Society
IGA	Intergovernmental Agreement
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
JARPA	Joint Aquatic Resource Permit Application
LBP	Lead Based Paint
LEP	Limited English Proficient
MBTA	Migratory Bird Treaty Act
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MP	Milepost
MUTCD	Manual on Uniform Traffic Control Devices
MTCA	Model Toxics Control Act
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NPDES	National Pollution Discharge Elimination System
NRMCA	National Ready Mix Concrete Association
NTP	Notice to Proceed
OEO	Office of Equal Opportunity
OJT	On the Job Training
OMWBE	Office of Minority and Women's Business Enterprises
OSHA	Occupational Safety and Health Administration
PAL	Pedestrian Accident Location
PCA	Portland Cement Association
PHD	Preliminary Hydraulic Design Report
PPI	Plastic Pipe Institute
P/PCI	Precast/Prestressed Concrete Institute
PTI	Post Tensioning Institute
QA	Quality Assurance
QMP	Quality Management Plan
QPL	Qualified Products List
RAM	Request for Approval of Material
RCW	Revised Code of Washington (Laws of the State)

RFC	Released for Construction
ROW	Right of Way
SAE	Society of Automotive Engineers
SATC	State Apprenticeship Training Council
SDE	Stream Design Engineer
SEPA	State Environmental Policy Act
SFTP	Secure File Transfer Protocol
SGDR	Supplemental Geotechnical Data Report
SOP	Standard Operating Procedure
SPCC	Spill Prevention, Control, and Countermeasures Plan
SPUI	Single Point Urban Interchange
SR	State Route
SSPC	Steel Structures Painting Council
STA	Station
TESC	Temporary Erosion and Sediment Control
TIA	Telecommunications Industry Association
TNM	Traffic Noise Model
TR	Technical Requirements
TRB	Transportation Research Board
UHPC	Ultra-High Performance Concrete
UL	Underwriters Laboratory
UST	Underground Storage Tank
VPH	Vehicles per Hour
VPHPL	Vehicles per Hour per Lane
WAC	Washington Administrative Code
WAQTC	Western Alliance for Quality Transportation Construction
WDFW	Washington Department of Fish and Wildlife
WCLIB	West Coast Lumber Inspection Bureau
WISHA	Washington Industrial Safety and Health Administration
WQMPP	Water Quality Monitoring and Protection Plan
WSDOT	Washington State Department of Transportation
WWPA	Western Wood Products Association

1-01.2(2) Items of Work

Agg.	Aggregate
Al.	Aluminum
ATB	Asphalt Treated Base
BST	Bituminous Surface Treatment
CCTV	Closed Circuit Television
Cl.	Class

Cfm	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Comb.	Combination
Conc.	Concrete
CPF	Composite Pay Factor
Crib.	Cribbing
CSBC	Crushed Surfacing Base Course
Culv.	Culvert
cy or cu yd.	Cubic Yard
Diam.	Diameter
DBH	Diameter at Breast Height
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
gph	Gallon per Hour
gpm	Gallon per Minute
HDPE	High Density Polyethylene
Hund.	Hundred
HMA	Hot Mix Asphalt
In.	Inch
Incl.	Including
ITS	Intelligent Transportation System
JMCIF	Job Mix Compliance Incentive Factor
JMF	Job Mix Formula
lb	Pound(s)
LED	Light Emitting Diode
LF or Lin. Ft.	Linear Foot (Feet)
LS	Lump Sum
LWM	Large woody material
M	Thousand
MBM	Thousand Feet Board Measure
MUTS	Minimum Ultimate Tensile Strength
PCCP	Portland Cement Concrete Pavement
PCPS	Precast/Prestressed
Pres.	Pressure
PSI	Pounds per Square Inch
PVC	Polyvinyl Chloride
RAP	Recycled Asphalt Pavement
Reg.	Regulator
Reinf.	Reinforced, Reinforcing

Sec.	Section
St.	Steel
Str.	Structural
sy or sq. yd.	Square Yard(s)
Th.	Thick or Thickness
Tr.	Treatment
Va	Air Voids
VFA	Voids Filled with Asphalt
VMA	Voids in Mineral Aggregate
VMS	Variable Message Sign

1-01.3 *Definitions*

1-01.3(1) Defined Terms

The following capitalized terms shall have the following meanings:

Active Traffic Management (ATM) – A system of signs, variable message signs, embedded loops, and associated support Structures placed at approximately ½-mile intervals to reduce congestion and improve safety. The signs are able to display speed limits for each travel lane, display warning messages to drivers, or indicate that a lane is closed.

Alternative Technical Concept (ATC) – A concept proposed by the Design-Builder and approved by WSDOT pursuant to the Instructions to Proposers, which modifies the Basic Configuration or other Contract requirements.

Apparent Best Value - Is the result of an evaluation and selection process that considers price and other key factors in determining the likelihood of successfully achieving the Project goals.

Apparent Best Value Proposer -The responsive Proposer chosen as a result of Apparent Best Value determination.

Appendix (Appendices) - Where referred to in the Request for Proposal (without other reference), the term Appendix (Appendices) refers to the documents listed in Appendix A1 of the Technical Requirements.

Applicable Law - All laws, codes, rules, ordinances, restrictions, and regulations of the Federal, State, regional, or any local government (including those resulting from the initiative or referendum process) and judicial or administrative orders which affect the acquisition of real property for, or the design, construction, operation, or maintenance of the Project including, without limitation, those relating to fire, safety, land use, health, labor, environmental protection, seismic design, conservation, traffic control, parking, handicapped access**,** zoning and building laws, codes, ordinances, rules, and regulations.

As Built Plans - Final drawings and specifications furnished by the Design-Builder, documenting the details and dimensions of the completed Work.

Authorized Utility - A facility that occupies the Right of Way under a franchise, permit or compensable right.

Auxiliary Lane - The part of the roadway next to traveled ways for parking, speed changes, turning, weaving, truck climbing, or for anything that adds to through traffic movement.

Basic Configuration - The following required elements shown in the Conceptual Plans, Pre-Approved Design Analyses, or both as such elements may have been modified (with WSDOT's permission) in the Proposal:

- ***Horizontal alignment of I-5 mainline
- Vertical alignment of I-5 mainline, except in the area where the existing crown point is proposed to be shifted to align with the lane line as shown on the conceptual plans
- Number of highway lanes and shoulders
- Existing lane and shoulder widths
- Lane and shoulder configurations shall match the existing configurations.
- Number, type, and location of ramps, overpasses, underpasses, and interchanges
- Number, location, and control type of intersections
- CCP on mainline travel lanes
- Ramp paving limits***

Betterment - With respect to the Technical Proposal, any item included in the Design-Builder's Technical Proposal that clarifies the Design-Builder's intention to exceed a requirement included in the Contract Documents.

Betterment (Utility) - With respect to a given Utility facility, any upgrading of such facility that is not attributable solely to the construction of the Project, and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, level of service, efficiency, duration, or function of the Relocated or replaced or new facility over that which was provided by the existing facility; provided that the following are not considered Betterments:

1. Any upgrade necessary for safe and effective construction of the Project.
2. Replacement devices or materials that meet equivalent standards although they are not identical.
3. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size.
4. Any upgrading required by applicable Governmental Rules.
5. Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase).
6. Any upgrading required by the Utility Owner's Utility Standards in effect as of the date of execution of the applicable Relocation Agreement.

7. Any discretionary decision by a Utility Owner contemplated within a particular Utility Standard.

Notwithstanding the foregoing, in case of any discrepancy between the determination of applicable Utility Standards or the definition of "Betterment" set forth above, and the determination of applicable Utility Standards or the definition of Betterment in the Relocation Agreement applicable to a particular Utility, the terms of the Relocation Agreement shall apply.

Bridge Approach Embankments - An embankment beneath a Structure and extending 100 feet beyond a Structure's end (at Subgrade elevation for the full embankment width) plus an access ramp on a 10:1 slope to the original ground elevation. Also, any embankment that replaces unsuitable foundation soil beneath the Bridge Approach Embankment.

Broker - A business firm that provides a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the Contract; or Persons/companies who arrange or expedite transactions.

Calendar Day - Any day, or portion of a day, on the calendar including Saturdays, Sundays, and legal holidays, beginning and ending at midnight.

Certified Business Description – Specific descriptions of work the Disadvantaged Business Enterprise, Federal Small Business Enterprise, or both are certified to perform, as identified in the Certified Firm Directory, https://omwbe.diversitycompliance.com/, under the firm's Certified Profile page.

Certified Claim – A written claim filed by the Design-Builder pursuant to the terms, conditions and requirements of Section 1-09.11, after exhausting all the means provided to resolve a dispute, including the use of a Disputes Review Board if one was established.

Certified Firm Directory – A database of all Minority, Women, and Disadvantaged Business Enterprises, Federal Small Business Enterprises, or both currently certified by the State. The online directory is available to Design-Builders for their use in identifying and soliciting interest from certified firms. The database is located under the "Certification" section of the State's Office of Minority and Women's Business Enterprises' Certification Management System webpage at https://omwbe.diversitycompliance.com/

Change Order - An amendment to the terms and conditions of the Contract Documents issued in accordance with Section 1-04.4.

Cited References - Any standard or specification (including Mandatory Standards) applicable to the Project established by reference contained in the Contract Documents or Design Documents.

Code of Federal Regulations (CFR) - Regulations that implement and carry out the provisions of Federal law relating to the administration of Federal-aid for highway.

Cold Weather Protection Period – A period of time 7 Calendar Days from the day of concrete placement or the duration of the cure period, whichever is longer.

Commercially Useful Function (CUF) - 49 CFR 26.55(c)(1) defines commercially useful function as: "A Disadvantaged Business Enterprise performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the Disadvantaged Business Enterprise must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a Disadvantaged Business Enterprise is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the Disadvantaged Business Enterprise credit claimed for its performance of the work, and other relevant factors."

Complete Streets – An approach to planning, designing, building, operating, and maintaining streets that enables access along and across the street for all people including pedestrians, bicyclists, motorists, and transit riders of all ages and abilities. See Project Delivery Memo #22-03 in Appendix D.

Completion Date/Completion - The meaning set forth in Section 1-08.5(3).

Conceptual Design - Preliminary design concept, including the required elements of the Basic Configuration, presented in Appendix M and in the conceptual Utility Relocation Plans presented in Appendix U, if any.

Conceptual Plans - The plans included in Appendix M.

Conformed Request for Proposal - The version of the Request for Proposal documents that incorporates addenda released during the proposal preparation period. The Conformed Request for Proposal will be provided for the convenience of the parties to the Contract and shall not be construed as a Contract Document.

Context Sensitive Solutions - The planning approach for transportation projects that accounts for effects on the aesthetic, social, economic, and environmental values, needs, constraints, and opportunities in a larger community setting.

Contract - Depending on the context, either (a) the written agreement (Contract Form) between WSDOT and the Design-Builder or (b) the Contract Documents.

Contract Bond - The approved form of security furnished by the Design-Builder and the Design-Builder's Surety as required by the Contract that guarantees performance of the Work required by the Contract and payment to anyone who provides supplies or labor for the performance of the Work and performance as required under the Warranty requirements of the Contract.

Contract Documents - The documents identified as such in the Contract Form.

Contract Form (Agreement Form) - The form provided by WSDOT that requires the authorized signatures of the Design-Builder and WSDOT to result in formal execution of the Contract.

Contract Price - The total amount payable by WSDOT to the Design-Builder for performance of the Work under the Contract, as stated in the Contract Form and as adjusted in accordance with the Contract.

Contract Schedule - The price-loaded critical path method schedule setting forth the plan for performance of the Work as described in Section 1-08.3 including the Baseline Contract Schedule and Monthly Contract Schedule Updates.

Contract Time - The period of time in Calendar Days, including adjustment thereto authorized by WSDOT, designated in the Contract Form for Substantial Completion of the Work. Contract Time shall begin on the first Calendar Day after the effective date of Notice to Proceed.

Cost Responsibility - A legal or contractual obligation requiring a Utility Owner to pay for Relocation Costs.

Critical Path - Each critical path on the Contract Schedule which ends on the contractual deadline for Substantial Completion (i.e., the term shall apply only following consumption of all available float in the schedule for Substantial Completion). The lower case term "critical path" shall generally mean the sequence of activities that shows the longest path through the network that establishes the minimum overall duration for Completion of the Project.

Dangerous Waste – Solid wastes designated in WAC 173-303-070 through WAC 173-303-100 as dangerous or extremely hazardous or mixed waste. Dangerous waste includes all federal hazardous waste, plus certain wastes exhibiting specific characteristics based on toxicity and persistence.

Deactivated Utility - A Utility facility no longer being used by the Utility Owner. The Utility Owner continues to maintain ownership and responsibility for the facility's disposition.

Description of Work - Specific descriptions of work that the Disadvantaged Business Enterprise (DBE) is certified to perform, as identified in the Office of Minority & Women's Business Enterprises Certified Firms Directory, under the DBE's profile page.

Design Analysis - A process and tool to record design element changes where the dimensions chosen do not meet the value, or lie within the range of values, provided for that element in the WSDOT *Design Manual* (see WSDOT *Design Manual*, Chapters 300 and 1106).

Design-Builder - The firm, partnership, joint venture, or organization that contracts with WSDOT to perform the Work.

Design-Builder Initiated Change - The meaning set forth in Section 1-04.4.

Design Documents - Documents that manifest the design for the Project developed by the Design-Builder or any portion, component, or element thereof.

Design File - The meaning set forth in the Technical Requirements.

Design Work - Work that includes technical reports/memoranda, design survey, geotechnical testing and engineering, Utilities investigation and design, pavement design, Structures design, drainage design, stormwater/water quality management plans,

landscape architecture and design, civil roadway design, traffic engineering, lighting design, and Quality Assurance.

Differing Site Conditions - The meaning set forth in Section 1-04.7.

Digital Signature - A cryptographic electronic signature created and sent by a recognized agent of the Design-Builder using a certificate to provide authentication. Examples of records where digital signatures are required include, at a minimum:

- WSDOT Form 134-146, Final Contract Voucher Certificate
- WSDOT Form 421-009, *Retained Percentage (except landscaping)*

Disadvantaged Business Enterprise (DBE) - A business firm certified by the Office of Minority & Women's Business Enterprises, as meeting the criteria outlined in 49 CFR 26 regarding DBE certification.

DBE Commitment - The scope of work and dollar amount that the Design-Builder indicates they will be Subcontracting to certified DBEs, as shown in the DBE Performance Plan submitted with the Design-Builder's Proposal, and for subsequent Work opportunities arising from the Project. The DBE Commitment amount will be incorporated into the Contract and shall be considered a Contract requirement. The Design-Builder shall utilize DBEs to perform the work and supply the materials for which they are committed. Any changes to the DBE Commitment, as described in the DBE Performance Plan, shall require the WSDOT Engineer's prior written approval.

DBE Goal - An assigned numerical percentage of the Proposal Price. This is the minimum amount that the Design-Builder shall commit to by submission of the DBE Performance Plan including Good Faith Efforts. The DBE Goal will also be applied to Change Orders associated with the Contract.

DBE Manufacturer - A DBE that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract. A DBE Manufacturer shall produce finished goods or products from raw or unfinished material or purchase and substantially alters goods and materials to make them suitable for construction use before reselling them.

DBE Performance Plan - The plan submitted by Design-Builder with its Proposal pursuant to the Instructions to Proposers and updated in accordance with Section 1-07.11(12) of the General Provisions.

DBE Reasonable Fee – A reasonable fee shall not exceed 5 percent of the total cost of the goods or services brokered for the purposes of Brokers or service providers.

DBE Regular Dealer - A DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a DBE Regular Dealer, the DBE shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A DBE Regular Dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as DBE Regular Dealers within the meaning of this definition.

Disputes Review Board (DRB) – Three-member board created as part of the dispute resolution process pursuant to Section 1-09.11.

Electronically submitted/delivered – The successful submittal of a Statement of Qualifications or Proposal to the WSDOT secure file transfer protocol (SFTP) site via the process described in the Request for Qualifications or Request for Proposal. The Statement of Qualifications and Proposal files shall be free of defects affecting the access and evaluation of the documents by WSDOT.

Engineer of Record (EOR) - The Design-Builder's engineer(s) who places their professional engineering seal on a document.

Environmental Justice (EJ) - Environmental justice seeks to lessen unequal distributions of environmental burdens (pollution, industrial facilities, crime, etc.), equalize benefits and balance access to nutritious food, clean air and water, parks, recreation, health care, education, transportation, safe jobs, etc., in a variety of situations. Self-determination and participation in decision making are key pieces of environmental justice. Presidential Executive Order 12898, USDOT, and FHWA implementing orders set the standards for environmental justice for transportation projects. Environmental justice means minority and low-income populations do not suffer disproportionately high and adverse human health or environmental effects from agency programs, policies, and activities.

Environmental Laws - All Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material into the environment including into the air, surface water, or groundwater or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material, or otherwise relating to the protection of public health, public welfare, public safety or the environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including, at a minimum, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"), as amended by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Hazardous Materials Transportation Uniform Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. §1531 et seq.; the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §703 et seq.; Fish and Game Code §1600 et seq.; the Washington Model Toxics Control Act, Chapter 70.105D RCW; and the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; the Washington Water Pollution Control Act; the Clean Air Washington Act; the Washington Solid Waste Management laws; the Washington Underground Petroleum Storage Tanks Act, the Washington Industrial Safety and Health

Act; the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, all as amended and supplemented previously or in the future.

Escrow Proposal Documents (EPD) - The documentary information used in preparation of the Proposal required to be placed in safekeeping as provided in Section 1-03.15.

Federal Small Business Enterprise (FSBE) – A firm certified by OMWBE as meeting Federal requirements of a small business enterprise. All firms on the OMWBE Certified Firm Directory with the designation of SBE or DBE are FSBEs.

Existing Utility Listing – A spreadsheet in Appendix U that identifies each known utility for ownership, Utility Type or a Prior Relocation, and other information.

FSBE Goal - An assigned numerical percentage of the Proposal Price. The FSBE Goal will also be applied to Change Orders associated with this Contract.

FSBE Manufacturer – A FSBE that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract. A FSBE Manufacturer shall produce finished goods or products from raw or unfinished material or purchase and substantially alters goods and materials to make them suitable for construction use before reselling them.

FSBE Reasonable Fee – For purposes of Brokers or service providers a reasonable fee shall not exceed 5 percent of the total cost of the goods or services brokered.

FSBE Regular Dealer – A FSBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a Regular Dealer, the FSBE must be an established regular business that engages in as its principal business and in its own name the purchase and sale of the products in question. A Regular Dealer in such items as steel, cement, gravel, stone, and petroleum products need not own, operate or maintain a place of business if it both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term formal lease agreements and not on an ad-hoc basis. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as Regular Dealers within the meaning of this definition.

Final Acceptance - Acceptance of the Contract and Work following Completion in accordance with Section 1-05.12.

Final Cleanup - The Work described in Section 1-04.11.

Final Contract Voucher Certification - WSDOT Form 134-146, *Final Contract Voucher Certificate*.

Final Design Documents - The Design Documents reflecting the final design for the Project, as reviewed by WSDOT.

Final Inspection - Inspection by WSDOT of the construction Work to determine whether the Work conforms to the requirements of the Contract Documents and is complete. Final Inspection of warranted Work will be made at the end of the Warranty term.

Force Account Work – Work measured and paid in accordance with Section 1-09.6.

Franchise/Permit Utility - A Utility that is installed in its existing location pursuant to a franchise or permit issued by WSDOT or a Governmental Body.

Frontage Road - A local street or road usually next to an arterial highway that serves abutting property and adjacent areas and controls access.

Geotechnical Baseline Report (GBR) - The Contract Document set forth in Appendix G identifying the geotechnical baselines and risk profile that will be used in determining Differing Site Conditions.

Geotechnical Data Report (GDR) - The summary set forth in Appendix G of geotechnical surveying performed by WSDOT upon which WSDOT developed the Geotechnical Baseline Report.

Geotechnical Recommendations –Recommendations for design or construction that are geotechnical in nature or address geotechnical issues. These may be in the form of email, memorandums, letters, or reports. The term "Geotechnical Recommendations", as most often used within the Request for Proposal, refers to products produced by the Design-Builder, but the term may also refer to products produced by WSDOT. The Design-Builder may have to rely on context and use to distinguish the difference.

Good Faith Efforts (GFE) – Efforts to achieve the Disadvantaged Business Enterprise Goal, the Federal Small Business Enterprise Goal, or both or other requirements which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Governmental Approvals - Any approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration, or ruling, required by or with any Governmental Body in order to perform the Work or any Relocation Work being performed by a Utility Owner, including any modification or supplement to any of the foregoing, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in the Contract Documents and (b) any such approvals required by or with a Governmental Body in its capacity as a Utility Owner.

Governmental Body - Any Federal, State, local, or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body, or entity other than WSDOT.

Governmental Rules - All applicable Federal, State, and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Body having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Governmental Rule" does not include Governmental Approvals.

Hazardous Materials - Any (a) substance, product, waste, pollutant, contaminant, or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds, or inorganic compounds, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed

pursuant to any Environmental Law; (c) substance, product, waste, pollutant, contaminant, or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a State or Federal court; (d) petroleum hydrocarbons excluding de minimus amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) hazardous building materials including, but not limited to, asbestos or asbestos-containing materials, lead or polychlorinated biphenyls (PCBs) in Structures and other improvements on or in the Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground). The term "Hazardous Materials" includes Hazardous Waste and non-RCRA hazardous waste.

Hazardous Materials Management - Sampling, stockpiling, treatment, clean up, remediation, transportation, and off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Governmental Rules and Environmental Law.

Hazardous Waste - Waste as defined in 40 C.F.R. Part 261.

High Occupancy Toll (HOT) Lane - A traffic lane that is managed using a dynamic pricing system.

Highway - A public way for vehicles, including the entire Right of Way.

Hold Point - Mandatory inspection points identified in the Design-Builder's Quality Management Plan beyond which Work cannot proceed until required Quality Assurance inspection has been performed and a written release is granted by the Design-Builder's Quality Assurance organization. The Design-Builder shall provide WSDOT with a notification period of 3 Calendar Days prior to the identified Work proceeding to provide WSDOT with the opportunity to witness the Work.

Impact Area Line - The line depicted in the Conceptual Plans that defines the limit of the permitted footprint of the Project as described in Section 2.8, *Environmental*.

Interim Channelization Plan - A Channelization Plan developed by the Design-Builder related to temporary conditions such as temporary alignment, stage construction, temporary by-pass, and other conditions as required.

Incidental Utility Work - Includes all of the following Work necessary for the construction of the Project:

1. Service Line Relocations
2. The adjustment of Utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway Work.
3. All Work necessary to remove or deactivate in-place any Utility that was taken out of service prior to the Proposal Due Date, in accordance with Section 2.10, *Utilities and Relocation Agreements*.

Indemnified Parties - The meaning set forth in Section 1-07.14(1).

Independent Assurance (IA) - The meaning set forth in Section 2.28, *Quality Management Plan*.

Initial Planting – The meaning set forth in Section 1-05.16(9).3.

Inspector - The Design-Builder's representative who inspects Contract performance in detail.

Injunction - the permanent injunction regarding culvert correction (United States District Court Western District of Washington at Seattle, United States of America, et al., Plaintiffs, v. State of Washington, et al., Defendants, No. C70-9213 subproceeding No. 01-1, (Culverts), Permanent Injunction Regarding Culvert Correction).

Instructions to Proposers (ITP) - The WSDOT-issued document included in the Request for Proposal, providing instructions regarding the preparation and submission of the Proposal.

Intelligent Transportation Systems (ITS) - All components and equipment referenced as such in the Technical Requirements.

Intergovernmental Agreement (IGA) -An agreement between WSDOT and another Governmental Body that is included in the Request for Proposal, which addresses Utility Work, roadway design, engineering studies, construction, maintenance, or other services, as the same may be amended. IGAs pertaining to roadway design or engineering studies are located in Appendix O. IGAs pertaining to maintenance are located in Appendix Q. IGAs pertaining to Utility Work are located in Appendix U.

Interpretive Engineering Decision - The meaning given in Section 1-03.5.

Key Personnel - The personnel described in the Request for Qualifications.

Landscape Architect - An architect registered in the State of Washington under Title 18 RCW.

Landscaping Warranty Area – The meaning set forth in Section 1-05.16(9).2.

Legal Requirements - All applicable Federal, State, and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders, and decrees of any Governmental Body having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals.

Limited English Proficient (LEP) - Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. Federal laws particularly applicable to language access include Title VI of the Civil Rights Act of 1964, and the Title VI regulations, prohibiting discrimination based on national origin, and Executive Order 13166 issued in 2000.

Local Agency - A Governmental Body that is not a Federal or state government.

Maintenance of Traffic (MOT) – A term used to describe the overall Work the Design-Builder performs to provide for the safe and efficient movement of people, goods, and services through and around the Project in coordination with construction staging. This Work shall be done while minimizing adverse impacts to residents, communities,

businesses, and freight as well as providing a safe work area for construction staff and safe movement of the traveling public.

Major Participants - The entities described in the Request for Qualifications.

Major Underground Utility - All Utilities that are buried or placed below ground, other than Service Lines, all street lighting, traffic signals, or irrigation facilities.

Mandatory Standards - The standards and specifications identified as such in the Technical Requirements.

Minority Business Enterprise (MBE) - A minority owned business meeting the requirements of RCW 39.19 and WAC 326-20 and certified by the Office of Minority & Women's Business Enterprises.

Necessary Basic Configuration Change - All changes in the Basic Configuration which is necessary to correct an error, omission, inconsistency or other defect in the Basic Configuration (with the understanding that a change shall be deemed "necessary" only if the error, omission, inconsistency, or other defect creates a conflict with other Contract requirements or another problem that cannot be corrected without a material change in the Basic Configuration).

Nonconforming Work - Work performed that does not meet requirements of the Contract Documents.

Notice to Proceed (NTP) - The written authorization issued by WSDOT that permits the Design-Builder to commence performance of the Work.

Originator - The engineer, architect, planner, designer, or other Person who develops a specific document. In the case of drawings, the originator is the individual who provides the design information, sketches, and instructions to the drafter.

Peer Review - An independent review and assessment of elements of Work to meet the performance requirements of the Work element. The Peer Review shall be performed by a Peer Reviewer.

Peer Reviewer - An independent expert reviewer who performs the Peer Review. The Peer Reviewer shall not be an employee of the Design-Builder or any firm providing engineering for the Design-Builder. The Peer Reviewer shall report to the Design Quality Assurance Manager.

Person - Any individual, corporation, company, limited liability company, voluntary association, partnership, trust, unincorporated organization, or Governmental Body.

Physical Completion Date, Physical Completion - The meaning set forth in Section 1-08.5(2).

Plain Language - is writing designed to ensure the reader understands as quickly, easily, and completely as possible.

Pre-Approved Design Analyses - Design Analyses identified by WSDOT in the Technical Requirements as being required to accomplish the Basic Configuration that differ from WSDOT established standards required in the Contract Documents.

Pre-Approved Deviations - Deviations identified by WSDOT in the Technical Requirements as being required to accomplish the Basic Configuration that differ from WSDOT established standards required in the Contract Documents.

Preliminary Design – Defines the general Project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and plans, general estimates of the types and quantities of material, and other work needed to establish parameters for the final design. Prior to completion of the NEPA review process, any such preliminary engineering and other activities and analyses must not materially affect the objective consideration of alternatives in the NEPA review process.

Preliminary Engineering – The level of effort for WSDOT to develop the Conceptual Plans and Basic Configuration and the Proposers' level of effort to develop their Proposal.

Prior Relocation - Utility Relocations to be undertaken by either the Utility Owner or a third-party contractor identified as such in the Utility Listing or Section 2.10, *Utilities and Relocation Agreements*.

Prior Relocation Agreement - An agreement (as the same may be amended) between WSDOT and Utility Owner, included in the Request for Proposal and addressing a Prior Relocation. A document is a "Prior Relocation Agreement" if it meets the definitions set forth herein, without regard to the title of the document.

Professional Engineer- An engineer registered in the State of Washington under Title 18 RCW.

Project - The ***I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints*** Project.

Project Specifications - Specifications necessary to address Work not covered by the Standard Specifications, Special Provisions, or the Technical Requirements.

Proposal - The proposal submitted by the Design-Builder in response to the Request for Proposal, including the Price Proposal, the Technical Proposal, and all clarifications and supplements thereto.

Proposal Due Date - The date specified for delivery of Proposals in the Instructions to Proposers.

Proposal Price - The total price for performance of the Work set forth in the Proposal.

Protection in Place or Protect in Place - Any action taken to avoid damaging a Utility which does not involve removing or reinstalling it in a new location, including staking the location of the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would be

considered a Temporary Relocation. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Punch List - The list of Work that remains to be completed after achievement of Substantial Completion as a condition precedent to achievement of Physical Completion, limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use, or operability of the Project.

Qualification (Personnel) - The characteristics or abilities gained through documented training, documented experience, or both, as measured against established standards, knowledge tests, and performance tests that qualify an individual to perform a required function.

Quality Assurance (QA) - All those planned and systematic actions performed by the Design-Builder to demonstrate to WSDOT that the Work complies with the Contract and that all elements of the Work will perform satisfactorily for the purpose(s) intended.

Quality Assurance Sample - Samples and testing for QA performed under the direction of or by the Construction Quality Assurance Manager (CQAM). These tests and samples are for materials acceptance and documentation of the materials quality.

Quality Assurance Team - A joint Design-Builder and WSDOT team effort responsible for reviewing and responding to all quality issues.

Quality Control (QC) - The total of all activities performed by the Design-Builder to assess design, production, and construction processes so as to control the level of quality being produced in the end product. Components may include design reviews and checks, establishing procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any sampling, testing, and inspection done for these purposes.

Quality Control Sample - Samples and testing performed by the Design-Builder's QC, the producer, or the manufacturer to ensure that a product is of uniform quality meeting the requirements of the Contract.

Quality Management Plan (QMP) - The plan, developed by the Design-Builder, which identifies the Design-Builder's overall framework for implementation of its QC and QA programs across all aspects of the Project.

Quality Organization (QO) - The Quality Organization is comprised of two separate groups; QC and QA. The Quality Organization provides the QC procedures and QA review, testing, and inspections necessary to ensure the Project quality meets Contract requirements.

Quality Verification (QV) - A combination of inspections, independent sampling, and testing performed by WSDOT, or their agent, on a random basis to validate that the Design-Builder is following the approved QA procedures and that such procedures appear to be effective in assuring quality.

Reasonable Accuracy - The meaning set forth in Section 1-07.17(9).

Reference Documents - Reference Documents are for information purposes only and the Design-Builder shall rely upon Reference Documents at its own risk. Reference Documents are designated as such by WSDOT in Appendix A1.

Related Entity - The Design-Builder, Subcontractors, and their employees, agents and officers, and all other Persons for whom the Design-Builder may be legally or contractually responsible.

Released for Construction (RFC) Documents - The Design Documents stamped "Released for Construction" by the Design-Builder.

Relocation/Relocate - Each removal, relocation, reconstruction, deactivation, Temporary Relocation, provision of temporary services as necessary, or Protection in Place (whether permanent or temporary), of any existing Utility facility that is necessary in order to accommodate or permit construction of the Project, including backfilling and pavement restoration, and any other Work with respect to such a Utility described in the Technical Requirements or with respect to Utilities in Section 1-07.17.

Relocation Agreement - An agreement (as the same may be amended from time to time) between the Design-Builder and a Utility Owner that provides specific details for the Relocation of one or more particular Utilities. A document is a "Relocation Agreement" if it meets the definition set forth herein, without regard to the title of the document.

Relocation Costs - The direct and indirect costs of performing Relocation Work (including costs incurred by Utility Owners for acquisition of necessary Utility Easements, permit processing fees, and administrative and overhead costs) after applying any customary credits for salvage, depreciation, or both. If the Design-Builder is obligated to reimburse a Utility Owner for Relocation Costs, the term shall encompass all costs that the Relocation Agreement specifies are reimbursable. Costs attributable to Betterments are specifically excluded from the term.

Relocation Work - The Work necessary for Relocation of Utilities to accommodate the Project (excluding any Work necessary for the Prior Relocations that is completed before issuance of the Notice to Proceed), whether performed by the Design-Builder or by or on behalf of the Utility Owner, including labor, equipment, and materials associated with the design, design review, construction, construction management, permit processing, inspection, and real property acquisition.

Resource Co-Managers - Treaty Tribes and WDFW, with jurisdiction over activities affecting streams and associated habitat.

Request for Proposal (RFP) - The document package issued by WSDOT requesting submittal of Proposals for the Project and providing information relevant to the preparation and submittal of Proposals, including the Instructions to Proposers, Contract Documents, and Reference Documents.

Review and Comment - The process for review, comment, and resolution of comments on the Design-Builder's submittals in accordance with the Design-Builder's responsibility for Work. The review period will be 14 Calendar Days unless otherwise noted. Refer to Section 1-07.13 of the General Provisions.

Revision - Modifications to Released for Construction Plans or Documents during construction that require typical standard of care Engineer of Record approval such as engineering calculations, modifications to drawings, or Change Orders.

Right of Way (ROW) - Land, property, or property interest, acquired for or devoted to transportation purposes. The term specifically excludes all Utility Easements and all temporary easements or other real property interests outside of the access control line which the Design-Builder deems necessary or advisable in connection with (a) construction of the Project, (b) Relocations, or both.

Roadbed - The graded part of the roadway within top and side slopes, prepared as a foundation for the pavement Structure and shoulders.

Roadway - The portion of the Right of Way within the outside limits of the side slopes.

Secretary of Transportation - The chief executive officer of WSDOT.

Section/section - The capitalized version designates a reference to an entire Technical Requirement section (e.g., Section 2.1). The lower-case version designates a reference to information contained within the same Technical Requirement subsection.

Sensitive Areas - Resources on or adjacent to the Project location, which are regulated or protected by Federal, State or local regulatory agencies or tribes, including natural features (e.g., wetlands, other waterbodies, jurisdictional ditches, buffers, mitigation sites and floodplains), and areas with known contamination or cultural resources.

Service Line - A line, also referred to as a service lateral or lateral, the function of which is to directly connect the improvement(s) on an individual property, to a Utility that is part of a larger line, facility, or system. Unless noted otherwise in the Technical Requirements, the term Service Line excludes cables, conduits, or other line that connects a Traffic Control/Illumination System to a Utility that is part of a larger line, facility, or system. Such a cable, conduit, or other line shall be considered to be part of the applicable Traffic Control/Illumination System. A Utility providing service to wireless communication facilities shall not be considered a Service Line.

Shoulder - The part of the roadway next to the traveled way or auxiliary lanes. It provides lateral support of base and surface courses and is an emergency stopping area for vehicles.

Site of Work/Site - Those areas designated by WSDOT for performance of the Work and such additional areas as may be designated in writing by WSDOT for the Design-Builder's use in performance of the Work.

Small Business – A business meeting State requirements for a "Small business", "Minibusiness" or "Microbusiness" as defined in RCW 39.26.010 and included on the WSDOT Office of Equal Opportunity list of Small Businesses at www.wsdot.wa.gov/equalopportunity/bddirectory.htm

Special Provisions - WSDOT developed modifications to the Standard Specifications listed in Appendix B. The Engineer of Record shall incorporate applicable Special Provisions into the Technical Specifications. The index includes an explanation of when the specification is applicable.

Specialty Report - A complex hydraulic report as defined in Chapter 1 of the WSDOT *Hydraulics Manual*.

Standard Plans - A manual of specific plans or drawings adopted by WSDOT such as the Standard Plans *for Road, Bridge, and Municipal Construction* M 21-01, which show frequently recurring components of work that have been standardized for use.

Standard Specifications - Divisions 2 through 9 of the WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction* M 41-10, subject to the modifications set forth in Section 1-03.3 and modifications contained in the Special Provisions. Division 1 of said publication is superseded in its entirety by these General Provisions.

State - The State of Washington acting through its elected officials and their authorized representatives, including, at a minimum, WSDOT, or the State of Washington in the geographic sense, depending on the context.

Statistical-based Verification - Verification of the Design-Builder's Quality Assurance test results through statistical comparison, performed by the Design-Builder, with WSDOT's Quality Verification test results.

Statistical Acceptance - A statistical analysis performed by the Design-Builder, of the Design-Builder's Quality Assurance test results for compliance with material specifications.

Structural Engineer - An engineer registered in the State of Washington ***as a Structural Engineer*** under Title 18 RCW.

Structures - Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, service pipes, sewers, underdrains, foundation drains, noise walls, drainage vaults, and other features found during Work that WSDOT determines should be classified as a Structure.

Subcontract - An agreement between the Design-Builder and one or more third parties providing for such third party to perform parts of the Work or such agreement between a Subcontractor and its lower tier Subcontractor, at all tiers.

Subcontractor/Subconsultant - An individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Design-Builder. Suppliers and materialmen are excluded from the term.

Subgrade - The top surface of the roadbed on which subbase, base, surfacing, pavement, or layers of similar materials are placed.

Substantial Completion Date, Substantial Completion - The meaning set forth in Section 1-08.5(1).

Substructure - The part of the Structure below:

1. The bottom of the grout pad for the simple and continuous span bearing.
2. The bottom of the block supporting the girder.
3. Arch skewbacks and construction joints at the top of vertical abutment members or rigid frame piers and extending.

Subsurface Utility Engineering (SUE) - An engineering process for accurately identifying the quality of subsurface Utility Information needed for Highway Plans, and for acquiring and managing that level of information during the development of a highway project.

Superstructure - The part of the Structure above:

A) The bottom of the grout pad for the simple and continuous span bearing.

B) The bottom of the block supporting the girder.

C) Arch skewbacks and construction joints at the top of vertical abutment members or rigid frame piers and extending.

Longitudinal limits of the Superstructure extend from end to end of the Structure in accordance with the following criteria:

(a) From the face of end diaphragm abutting the Bridge Approach Embankment for end piers without expansion joints

(b) From the end pier expansion joint for bridges with end pier expansion joints

Superstructures include, but are not limited to, the bottom slab and webs of box girders, the bridge deck and diaphragms of all bridges, and the sidewalks when shown on the bridge deck. The Superstructure also includes the girders, expansion joints, bearings, barrier, and railing attached to the Superstructure.

Superstructures do not include endwalls, wingwalls, barrier and railing attached to the wingwalls, and cantilever barriers and railings unless supported by the Superstructure.

Supplemental Geotechnical Data Report (SGDR) - The Contract Document developed pursuant to the Instructions to Proposers that contains factual subsurface data collected prior to the Proposal Due Date, and which is included in Appendix G.

Surety - The company(ies) bound with the Design-Builder to ensure performance of the Contract, payment of all obligations pertaining to the Work, and fulfillment of such other conditions as are specified in the Contract, Contract Bond, or otherwise required by law.

Technical Credits - The number of credits, in terms of dollars, earned by a Proposer as a result of the Proposal evaluation process.

Technical Proposal - The part of a Proposal designated as such in the Instructions to Proposers.

Technical Requirements (TR) - Chapter 2 of the Request for Proposal document package.

Technical Specifications - All specifications developed, assembled, and used by the Engineer of Record, including the Project Specifications.

Temporary Relocation - (a) Any interim Relocation of a Utility (i.e., the installation, removal, and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and (b) any removal and reinstallation of a Utility in the same place with or without an interim Relocation.

Traffic Control/Illumination Systems - These systems include traffic signals, ramp metering systems, flashing beacon systems, highway illumination systems (including streetlights), fire or police signal systems, and Intelligent Transportation Systems, regardless of ownership of such system.

Traveled Way - The part of the roadway made for vehicle travel excluding shoulders and auxiliary lanes.

Type #1 Utility - A Utility for which the Utility Owner has Cost Responsibility in accordance with Section 1-07.17.

Type #2 Utility - A Utility for which the Utility Owner does not have Cost Responsibility in accordance with Section 1-07.17.

Type #3 Utility – A Utility with Cost Responsibility allocated as described in Technical Requirement Section 2.10, *Utilities and Relocation Agreements*, and in accordance with Section 1-07.17.

Upset Amount -The not to exceed amount WSDOT is authorized to pay a Design-Builder to complete this Project.

Utility(ies) - A privately, publicly, or cooperatively owned line, facility, or system (including municipal and government lines, facilities, and systems but excluding WSDOT-owned lines, facilities, or systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system. The necessary appurtenances to each Utility facility (including fire hydrants as appurtenances to water lines) shall be considered part of such Utility. However, unless noted otherwise in the Technical Requirements, the term "Utility" or "utility" excludes (a) stormwater facilities that provide drainage solely for the Project Right of Way, (b) Traffic Control/Illumination Systems, and (c) facilities that are the subject of a wireless communication site lease. Without limitation, any Service Line shall be considered a Utility regardless of the ownership of such Service Line.

Utility Agreement - The meaning set forth in Section 1-07.17(2). A document is a "Utility Agreement" if it meets the definition set forth herein, without regard to the title of the document.

Utility Delay - The meaning set forth in Section 1-07.17(12) as the context may require.

Utility Easement - A permanent replacement easement or other interest in real property outside the Project Right of Way (excluding a franchise or permit) that is necessary for Relocation.

Utility Information - The information regarding Utilities included in Appendix U, the information about known Utilities included in Section 2.10, *Utilities and Relocation Agreements*, and any other information WSDOT includes in the Request for Proposal with regard to identification, location, size, type, and ownership of Utilities. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

Utility Listing – A spreadsheet in Appendix U that identifies each known utility for ownership, Utility Type or a Prior Relocation, and other information.

Utility Memorandum of Understanding (MOU) - A non-binding agreement or memorandum of understanding (as the same may be amended) between WSDOT and a Utility Owner establishing certain understandings as to the Relocation of such Utility Owner's Utilities as necessary for the Project. A document is a "Utility MOU" if it meets the definition set forth herein, without regard to the title of the document. Utility MOUs, if any, are located in Appendix U.

Utility Owner - Any entity or body (including city, county, State, public corporation, or public district) that owns and operates a Utility, including cooperative Utilities.

Utility Owner Project - The design and construction by or at the direction of a Utility Owner of a new Utility other than (a) as part of Relocation or (b) to provide service to the Project. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

Utility Standards - The Standard Specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities constructed by the Utility Owner (or for the Utility Owner by its contractors) at its own expense and that are comparable to the Utilities being Relocated for the Project.

Utility Work - All Relocation Work that is the Design-Builder's responsibility pursuant to the Contract Documents, as more particularly described in Section 1-07.17 and Section 2.10, *Utilities and Relocation Agreements*.

Veteran Business – A veteran owned business meeting the requirements of RCW 43.60A.010 and included on the WSDOT Office of Equal Opportunity list of Veteran Businesses at www.wsdot.wa.gov/equalopportunity/bddirectory.htm

Warranty(ies) - An assurance by the Design-Builder that the Work is free of defects, conforms to Professional Engineering Principles in the State of Washington, and meets the requirements of the Contract Documents in which the Design-Builder agrees to repair or replace Work or items that are defective or do not meet the requirements of the Contract for a defined period.

Washington State Department of Transportation (WSDOT) - The State Agency authorized by law to administer transportation-related Work.

Women Business Enterprise (WBE) – A women owned business meeting the requirements of RCW 39.19 and WAC 326 and certified by the Office of Minority & Women's Business Enterprises.

Work - All of the administrative, design, engineering, real property acquisition support services, Utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, inspection, labor, materials, equipment, maintenance, documentation, and other duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except those efforts which the Contract Documents specify will be performed by WSDOT or other Persons. In certain cases, the term may also be used to mean the products of the Work.

Working Drawings - Drawings, plans, diagrams, or any other supplementary data or calculations, including a schedule of submittal dates for Working Drawings where specified, which the Design-Builder must submit to the WSDOT Engineer.

Written - Any communication (except social media) exchanged electronically, including, at a minimum, requests, notices, demands, approvals, decisions, submissions, consents, correspondence, amendments, agreements, summaries, recommendations, releases, authorizations, tests, releases, instruments, determinations, orders, change orders, statements, protests, notifications, settlements, records, contracts, and confirmations, that can be readily furnished as support or evidence for a decision.

Written Determination – The official position of the WSDOT Engineer, in writing, on items including entitlement, instructions, or interpretations. The Written Determination shall be evidenced by a letter or email originating from the WSDOT Engineer.

WSDOT Engineer - The WSDOT representative responsible for making decisions on behalf of WSDOT as outlined in the Contract.

WSDOT Form - Forms developed and maintained by WSDOT that are required or available for use on a project. These forms can be downloaded from the forms catalogue at: http://wsdot.wa.gov/forms/pdfForms.html

1-02 Certifications and Representations

1-02.1 *Responsibility for Design*

It is the intent of the Contract Documents that the Design-Builder undertake full responsibility for delivery of the Project. The Contract Documents do not provide details of the design necessary to carry out the intent of the Contract Documents. Such detailed designs are the sole responsibility of the Design-Builder to develop. If the Contract Documents omit or misdescribe the Work necessary to be performed in order to deliver the Project in accordance with the intent of the Contract Documents and the standards and criteria for performance of the Project, the Design-Builder shall not be excused from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and such Work shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed by the Contract Documents.

Design-Builder specifically acknowledges and agrees that:

(a) The Conceptual Design is preliminary and conceptual in nature and has not been signed or sealed.

(b) The Design-Builder is responsible for correcting any errors, omissions, inconsistencies, and other defects in the Conceptual Design through the design and construction process. There will be no increase in the Contract Price or extension of the Contract Time for correcting any errors, omissions, inconsistencies, and other defects in the Conceptual Design, except as provided herein with respect to Necessary Basic Configuration Changes.

(c) The Design-Builder's Warranties and indemnities hereunder cover errors, omissions, inconsistencies, and other defects in the Project, even though they may be related to errors, omissions, inconsistencies, and other defects in the Conceptual Design, except as otherwise provided herein with respect to Necessary Basic Configuration Changes.

Notwithstanding anything in the Contract Documents to the contrary, no field explanations or interpretations provided by WSDOT at any meetings, and no comments by WSDOT on Design Documents or Released for Construction (RFC) Documents, shall be deemed, construed, or interpreted to (a) amend, supersede, or alter the terms, requirements, limitations, or meaning of any Contract Document or (b) release or relieve the Design-Builder from full responsibility for the design of the Project in accordance with the Contract Documents. (However, written Interpretive Engineering Decisions from WSDOT pursuant to Section 1-03.5 may be relied upon to provide information, clarifications, and interpretations of ambiguous or uncertain design requirements set forth in the Contract Documents.)

1-02.2 *Disclaimer Regarding Documentation*

The Design-Builder is not entitled to rely on any document or information provided by WSDOT, except to the extent expressly provided otherwise in the Contract Documents. The Design-Builder may rely on the Conceptual Design only to the extent it describes the Basic Configuration. WSDOT does not represent or warrant that the information contained in the Conceptual Design is either complete or accurate or that such information conforms to the requirements of the Contract Documents, except as

otherwise provided herein with respect to the Basic Configuration. Unless stated otherwise in the Contract, the Design-Builder is not entitled to rely on the Reference Documents.

The Design-Builder understands and agrees that WSDOT shall not be responsible or liable in any respect for any loss, damage, cost, or expense whatsoever suffered by the Design-Builder or any Related Entity by reason of any use of any information contained in the Conceptual Design or Reference Documents or any action or forbearance in reliance thereon, except to the extent that the Contract Documents provide that the Design-Builder shall be entitled to an increase in the Contract Price, extension of Contract Time, or both with respect to such matter. The Design-Builder further acknowledges and agrees that (a) if and to the extent the Design-Builder or anyone on the Design-Builder's behalf uses any of said information in any way, such use is made on the basis that the Design-Builder, not WSDOT, has approved and is responsible for said information, and (b) the Design-Builder is capable of conducting and is obligated hereunder to conduct any and all studies, analyses, and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at the Design-Builder's own risk and at its own discretion.

1-02.3 *Design Professional Licensing Requirement*

All design services furnished by the Design-Builder shall be performed by or under the supervision of personnel licensed to perform such services in accordance with Washington law, by personnel who are careful, skilled, experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and RFC Documents prepared or checked by them.

WSDOT does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by execution of the Contract Form, the Design-Builder acknowledges that WSDOT has no such intent. It is the intent of the parties that the Design-Builder is fully responsible for furnishing the design of the Project through Subcontracts with licensed design firm(s) as provided herein. References in the Contract Documents to the Design-Builder's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Design-Builder shall "furnish" the design for the Project. The terms and provisions of Section 1-02.3 shall control and supersede every other provision of all Contract Documents.

1-02.4 *Examination of Site of Work*

1-02.4(1) General

The Design-Builder has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed all Contract and Reference Documents provided by WSDOT; inspected and examined the Site and surrounding locations; and undertaken other appropriate activities sufficient to familiarize itself with surface and subsurface conditions discernible from the surface affecting the Project, to the extent necessary for submittal of a Proposal. As a result of such review,

inspection, examination, and other activities; the Design-Builder is familiar with and accepts the physical requirements of the Work, including:

1. The nature and location of the Work.
2. The general and local conditions which can affect the Work or its cost, including:
   (a) Conditions bearing upon acquisition, transportation, disposal, handling, and storage of materials
   (b) The availability of labor, materials, water, electric power, and roads
   (c) Uncertainties of weather, river stages, tides, or similar physical conditions at the Site
   (d) The conformation and condition of the ground
   (e) The character of equipment and facilities needed preliminary to and during Work performance
   (f) The Site biological hazards and associated physical hazards
3. The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work Site (including material sites), the GDR, GBR, SGDR (if any), as well as from the Contract and information made a part of the Contract.
4. The adequacy of time allowed for the completion of the Work.
5. The risk profile conveyed by the Contract including but not limited to the baselines identified in the GBR.

The Design-Builder is solely responsible for all Site conditions discoverable from a reasonable Site examination. The Design-Builder further acknowledges and agrees that changes in conditions at the Site may occur after the date hereof, and that the Design-Builder shall not be entitled to any increase in compensation or time extension in connection therewith except as specifically permitted by the Contract. Proposal submission will be considered conclusive evidence that the Proposer has determined that it has performed a reasonable Site investigation.

The actual locations, shape, and other geometrics of the Project features will be determined by the Design-Builder within certain constraints set forth in the Contract. Before commencing any Work on a particular aspect of the Project, the Design-Builder shall verify all governing dimensions at the Site and shall examine all adjoining work, which may have an impact on such Work. The Design-Builder shall ensure that the Design Documents and RFC Documents accurately depict all governing and adjoining dimensions and conditions.

It is the Design-Builder's responsibility to make interpretations and draw conclusions with respect to the character of the geotechnical materials encountered and their impact upon its Work, and perform additional explorations and testing, both prior to bid and post-award, to supplement the GBR, GDR, and SGDR (if any) data to design the Project elements.

Failure of the Design-Builder to take the actions described and acknowledged in this clause shall not relieve the Design-Builder from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or from performance of the Work without additional expense to WSDOT.

The Design-Builder agrees that WSDOT shall not be liable to the Design-Builder on any claim for additional payment or additional time or any claim whatsoever if the claim directly or indirectly results from the Design-Builder's failure to investigate and familiarize itself sufficiently with the conditions under which the Contract is to be performed.

The Design-Builder shall be familiar and comply with all Federal, State, tribal, and local laws, ordinances, and regulations which might affect the Work or those engaged in the performance of the Work. WSDOT will not consider any plea of misunderstanding or ignorance of such requirements.

The Contract Price reflects the cost of completing the Work, including, but not limited to design, engineering, Site and home office overhead, temporary facilities, methods, materials, labor, and equipment. Except as the Contract may provide, the Design-Builder shall receive no payment for any costs in excess of the Contract Price.

Prospective Proposers are advised that projects with Work on or adjacent to water may require insurance coverage in compliance with:

1. The Longshore and Harbor Workers' Compensation Act (LHWCA) (administered by the U.S. Department of Labor)
2. The State Industrial Insurance (administrated by the Washington State Department of Labor and Industries (L&I)

The Design-Builder shall bear all cost for such insurance as provided in Section 1-07.10.

No Certified Claim shall be allowed because of any ambiguity in the Contract if:

1. The Design-Builder discovers an ambiguity but fails to notify WSDOT
2. The Design-Builder failed to discover a patent ambiguity that would be discovered by a reasonably prudent design-build contractor in preparing its Proposal

1-02.4(2) Subsurface Information

When the Contract includes a GBR or GDR, including any supplements to a GBR or GDR, WSDOT makes no representation or warranty expressed or implied that:

1. The Design-Builder's interpretations from the GBR or GDR are correct.
2. Moisture conditions and groundwater elevations will not vary from those identified in the GDR.
3. The ground and subsurface conditions as represented in the GBR and GDR have not been physically disturbed or altered after the documents were prepared.

The GBR describes the geotechnical baseline conditions with respect to certain subsurface and site conditions that may be encountered during the performance of the Work. These baseline conditions were developed based upon consideration of

geotechnical information and data gathered through subsurface explorations, predictions, and evaluations concerning anticipated means and methods that may likely be used by the Design-Builder, and the interpretation of that information, data, and other relevant factors. These baseline conditions or lack of baseline conditions establish a contractual basis for the allocation of risk for subsurface and site conditions and for the determination if a Differing Site Condition exists.

A description of the various subsurface and site conditions in the GBR, while based on geotechnical investigations included in the GDR and SGDR, shall not be understood or interpreted as guaranteeing or warranting that those conditions actually will be encountered while performing the Work. No amount of investigation and analysis can precisely predict the characteristics, quality, or quantity of subsurface and site conditions, or the behavior of such conditions during the performance of the Work. The behavior of such conditions may be dependent upon and influenced by the means and methods selected by the Design-Builder to perform the Work.

The baseline conditions described in the GBR are not intended to represent, describe, or constitute any warranty, or indication, whether expressed or implied, of the actual conditions that are encountered during the Design-Builder's performance of the Work. The Design-Builder shall not rely exclusively upon the baseline conditions described in the GBR as the only input for planning or performing the Work. Planning and performing the Work by the Design-Builder, includes, at minimum, the following designs, means and methods, equipment, techniques, sequences, and procedures chosen to meet the terms of the Contract.

Whenever there is an inconsistency between geotechnical conditions described in the GBR and the information in the GDR, then the geotechnical conditions described in the GBR shall take precedence, and shall be the geotechnical conditions against which actual geotechnical conditions encountered are compared for the purpose of determining if a Differing Site Condition exists.

The Design-Builder acknowledges that the Contract Price and the Contract Schedule were developed with full consideration given to the contents and the risk allocation of the GBR and GDR, and that the Design-Builder shall not be entitled to an adjustment in the Contract Price or Contract Time as the result of encountering conditions consistent with those described.

The availability of subsurface information provided from WSDOT shall not relieve the Design-Builder from any risks or of any duty to make examinations and investigations as required by Section 1-02.4(1) or any other responsibility under the Contract or as may be required by law.

The geotechnical information in the Contract does not represent Site conditions for an Alternative Technical Concept (ATC). As noted in the Instructions to Proposers (ITP), the Design-Builder is responsible for conducting its own geotechnical investigation, prior to the Proposal Due Date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of any ATC included in the Proposal. As part of the ATC, the Design-Builder shall identify and include geotechnical baselines. The Design-Builder proposed baselines shall be the geotechnical conditions against which actual geotechnical conditions encountered are compared for the purpose of determining if a

Differing Site Condition exists with respect to the ATC. The geotechnical investigation, including the geotechnical baselines accepted by WSDOT as part of an approved ATC incorporated in a Proposal will form the basis upon which Differing Site Conditions will be addressed pursuant to Section 1-04.7 for Work implemented as part of said ATC.

1-02.4(3) Hazardous Materials

The Hazardous Materials Report or the asbestos GFI report do not represent Site conditions for an ATC. As noted in the Instructions to Proposers (ITP), the Design-Builder is responsible for conducting its own Hazardous Materials investigation, prior to the Proposal Due Date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of any ATC included in the Proposal. The Hazardous Materials investigation, as part of an approved ATC incorporated in a Proposal, will form the basis upon which Differing Site Conditions will be addressed, pursuant to Section 1-04.7 for Work implemented as part of said ATC.

1-02.5 *Further Assurances*

The Design-Builder shall promptly execute and deliver to WSDOT all such instruments and other documents and assurances as are reasonably requested by WSDOT to further evidence the obligations of the Design-Builder under the Contract Documents, including assurances regarding the assignments of Subcontracts contained herein.

1-02.6 *Vacant*

1-02.7 *Vacant*

1-02.8 *Noncollusion Declaration and Lobbying Certification*

1-02.8(1) Noncollusion Declaration

Section 112(c) Title 23, United States Code, requires that the Design-Builder provides a statement that certifies that the Design-Builder has not taken part in collusion or other action that would restrain competitive bidding.

The Code of Federal Regulations [23 CFR 635.112(f)(1)] requires that: “Each Design-Builder shall file a sworn or unsworn statement executed by, or on behalf of the Person, firm, association, or corporation submitting the bid, certifying that such Persons, firm, association, or corporation has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the sworn or unsworn statement as part of the Proposal package will make the bid nonresponsive and not eligible for award consideration.” In addition, 23 CFR 635.112(f)(1) requires that WSDOT provide the form for the declaration to prospective Design-Builders and that the declaration shall be executed by such Persons, firm, association, or corporation under penalty of perjury under the laws of the United States.

Therefore, by including Form G, *Non-Collusion Declaration* as part of the signed Proposal, the Design-Builder will be deemed to have signed and agreed to the requirements of Form G, *Non-Collusion Declaration*.

1-02.8(2) Lobbying Certification

Section 319 of Public Law 101-121 prohibits payment of Federal funds for contract lobbying by the Design-Builder and any Subcontractor whose contract exceeds $100,000. WSDOT Form 272-040, *Certification for Federal Aid Contracts* is provided in the Proposal form for contracts exceeding $100,000 to address this requirement.

By signing the Proposal, the Proposer will be deemed to have signed and agreed to the conditions and requirements of the Certification for Federal-aid Contracts.

The Design-Builder shall ensure that WSDOT Form 272-040, *Certification for Federal Aid Contracts* is included in every contract with any Subcontractor whose contract exceeds $100,000. By signing the contract any Subcontractor will be deemed to have signed and agreed to the conditions and requirements of the Certification for Federal-aid Contracts. The Design-Builder shall keep evidence in their files that such Subcontractor has committed to this requirement.

Section 319 of Public Law 101-121 also provides that, if any funds other than Federally appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any Federal 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 Design-Builder shall complete and submit to WSDOT the Standard Form LLL, *Disclosure of Lobbying Activities* in accordance with the instructions on the form. Any Subcontractor or lower tier Subcontractor whose contract exceeds $100,000 shall disclose in the same manner as the Design-Builder, except that, Standard Form LLL, *Disclosure of Lobbying Activities* shall be submitted to the Design-Builder for processing to WSDOT. Standard Form LLL is available for download at https://www.gsa.gov/reference/forms.

1-03 Interpretation of Contract Documents

1-03.1 *Contract Documents*

Each of the Contract Documents identified in the Contract Form is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract.

Unless provided otherwise in the Contract, Reference Documents are for information purposes only and the Design-Builder shall rely upon Reference Documents at its own risk.

In the event that a Reference Document or Cited Reference is called out in the Contract Documents as a mandatory requirement then the Reference Document or Cited Reference shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of precedence as the highest level Contract Document in which the reference occurs. Addenda and approved, incorporated ATCs shall be addressed at the same order of precedence as the Contract Document to which the addendum or ATC applies.

1-03.2 *Order of Precedence*

Should conflicts appear between any of the following parts of the Contract, a listed part shall take precedence over all those listed below it:

1. Change Orders
2. Design-Build Contract (Contract Form), excluding Exhibit B - WSDOT Identified Betterments
3. WSDOT Identified Betterments (Exhibit B), from the Design-Builder's Proposal
4. General Provisions – RFP Chapter 1
5. Technical Requirements – RFP Chapter 2
6. All other documents listed as RFP Documents in RFP Appendix A1
7. Design-Builder's Proposal

Notwithstanding the order of precedence listed above:

1. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher-level document.
2. In the event of a conflict among any Mandatory Standards, the order of precedence designated in the Technical Requirements regarding said standards shall prevail. The Technical Requirements shall take precedence over all Mandatory Standards listed within the Technical Requirements.
3. If the Proposal includes statements or incorporates approved ATC(s) that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those

otherwise required, or otherwise contains terms that are more advantageous to WSDOT than the requirements of the Contract Documents, Design-Builder's obligations hereunder shall include compliance with all such statements, offers, and terms.

On plans, Working Drawings, and Standard Plans, calculated dimensions shall take precedence over scaled dimensions.

1-03.3 *Integration of Standard Specifications and Cited References into Contract*

The Standard Specifications Divisions 2 through 9, excluding measurement and payment Sections, are incorporated by reference into the Contract. Any cross-references to provisions of Division 1 contained therein shall instead be deemed to refer to the appropriate provisions of these General Provisions and other Contract Documents.

References to plan(s) or Contract Documents in the Standard Specifications and Cited References shall be deemed to refer to the Final Design Documents. References to the Project owner shall mean WSDOT, or where Work is being performed on facilities owned by a Governmental Body other than WSDOT, such Governmental Body. References to “bid,” “proposal,” or “bid proposal” shall be deemed to refer to the Proposal. References to the “Contractor” shall be deemed to refer to the Design-Builder. References to the Engineer in the context of provider of compliance judgment may mean an appropriate representative of the Design-Builder, or it may mean a WSDOT representative, depending on the context, as determined by WSDOT in its sole discretion, or as defined in the Contract.

If any question arises regarding how to apply any provision of the Standard Specifications to this Contract, WSDOT’s interpretation regarding such matter shall control. WSDOT may, in its sole discretion, allow a deviation from the requirements of the Standard Specifications, pursuant to the process described in the Section 1-04.4 of these General Provisions.

1-03.4 *Contract Bond*

The Design-Builder shall provide an executed Contract Bond in an amount equal to 100 percent of the Contract Price.

This Contract Bond shall:

1. Be on WSDOT Form 272-002B, *Contract Bond - Highway Construction*, provided in Appendix F
2. Be signed by an approved Surety (or Sureties) that:
   (a) Is registered with the Washington State Insurance Commissioner
   (b) Appears on the current Authorized Insurance List in the State published by the Office of the Insurance Commissioner
3. Be conditioned upon the faithful performance of the Contract by the Design-Builder within the prescribed time
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the Project under titles 50, 51, and 82 RCW

5. Guarantee that the Surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure of:

   (a) The Design-Builder (or any of the employees, Subcontractors, or lower tier Subcontractors of the Design-Builder) to faithfully perform the Contract

   (b) The Design-Builder (or the Subcontractors or lower tier Subcontractors of the Design-Builder) to pay all laborers, mechanics, Subcontractors, lower tier Subcontractors, material, or any other Person who provides supplies or provisions for carrying out the Work

WSDOT may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the Surety or sureties to be inadequate, it may, upon written demand, require the Design-Builder to furnish additional Surety with the required A.M. Best Co. rating of at least "A" or better and Financial Size Category VIII or better to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

1-03.5 *Ambiguities*

The Design-Builder acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents and to bring to the attention of WSDOT any conflicts or ambiguities contained therein. The Design-Builder further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, said documents shall not be interpreted or construed against the Person which prepared them and instead other rules of interpretation and construction shall be used.

WSDOT's final answers to the questions posed during the procurement process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

In the event of any ambiguity or uncertainty over any design requirements set forth in the Contract Documents, the Contract shall be interpreted and construed, insofar as is reasonably possible, to be consistent with the standards and criteria for the performance of the Project.

The Design-Builder shall not take advantage of any apparent error, omission, inconsistency, or other defect in the Contract Documents. The Design-Builder shall promptly notify WSDOT of any error, omission, inconsistency, or other defect that the Design-Builder may discover in the Contract Documents, and shall obtain specific instructions in writing from the WSDOT Engineer regarding any such error, omission, inconsistency, or other defect before proceeding with the Work affected thereby.

The Design-Builder may from time to time request in writing that WSDOT provide information, clarifications, and interpretations of ambiguous or uncertain design

requirements set forth in the Contract Documents (an Interpretive Engineering Decision). WSDOT may issue a written approval of the Design-Builder's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision the Design-Builder proposes. WSDOT will, within 14 Calendar Days, respond in writing to any such application for an Interpretive Engineering Decision, including explanation of any disapproval of such application or any differing interpretation; provided that (a) no presumption of approval or disapproval shall arise by reason of delay by WSDOT in issuing its written determination and (b) no Interpretive Engineering Decision by WSDOT shall form the basis for an increase in the Contract Price or extension of the Contract Time, unless WSDOT expressly provides otherwise in writing. If the Design-Builder disputes WSDOT's disposition of the application, such dispute shall be subject to resolution in accordance with the Contract Documents. In any dispute over Interpretive Engineering Decisions, the Design-Builder shall bear the burden of proving that WSDOT's interpretation is incorrect or unreasonable.

1-03.6 *Interpretations*

In the Contract Documents, where appropriate:

1. The singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to.
2. The words "including," "included," "includes," and "include" are deemed to be followed by the words "without limitation".
3. Unless otherwise indicated, references to Sections, appendices and exhibits are to the document which contains such references; words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular provision or Section.
4. Words not otherwise defined which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.
5. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Bodies, Persons succeeding to their respective functions and capacities.
6. Words of any gender used herein include each other gender where appropriate.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.

The titles or headings of the Sections and Subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

1-03.7 *Approvals and Acceptances*

The terms "approved" and "approval," when used in the context of obtaining WSDOT's approval of a specific approach, proposal, plan, schedule, analysis, or design submitted

by the Design-Builder, means that WSDOT's representative is in agreement with the specific approach, proposal, plan, schedule, analysis, or design and that the submittal itself and its contents appear to conform to the respective requirements of the Contract Documents for that submittal. In all cases where approvals are required to be provided by WSDOT or the Design-Builder under the Contract Documents, such approvals shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified the decision shall be final, binding, and not subject to dispute resolution hereunder.

The oversight, spot checks, audits, reviews, tests, and inspections conducted by WSDOT do not constitute approval nor acceptance of the materials or Work inspected or reviewed or waiver of any Warranty or legal or equitable right with respect thereto. No acceptances or approval by WSDOT shall constitute a waiver of any Warranty or legal or equitable right under the Contract Documents, at law or in equity. WSDOT may require remedies for Nonconforming Work, identify additional Work which must be done to bring the Project into compliance with requirements of the Contract Documents, or both regardless of whether previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were conducted by WSDOT. The Design-Builder agrees and acknowledges that any such activity or failure to conduct any such activity by WSDOT is solely for the benefit and protection of WSDOT, does not create or impose upon WSDOT any duty or obligation toward the Design-Builder to cause it to fulfill the requirements of the Contract Documents, may not be relied upon by the Design-Builder or used as evidence in determining whether the Design-Builder has fulfilled the requirements of the Contract Documents, and may not be asserted by the Design-Builder against WSDOT as a defense, legal or equitable, to, or as relief from, the Design-Builder's obligation to fulfill the requirements of the Contract Documents. Regardless of any such activity or failure to conduct any such activity by WSDOT, the Design-Builder at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents.

WSDOT shall not be precluded by any measurement, estimate, or certificate made or given by WSDOT under any provisions of the Contract, either before or after Final Acceptance, or by making any payment, from showing that any such measurement, estimate, or certificate is untrue, incorrect, or improper in any particular, or from showing the true amount and character of the Work performed and materials furnished by the Design-Builder, or from showing that the Work or materials do not conform in fact to the requirements of the Contract Documents. WSDOT shall not be precluded, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Design-Builder and the Sureties such damages as it may sustain by reason of the Design-Builder's failure to comply with the terms of the Contract. Neither the acceptance by the Secretary, nor any payment for the whole or any part of the Work, nor any extension of time, nor any possession taken by WSDOT shall operate as a waiver of any portion of the Contract or of any power herein reserved or any right to damages herein provided, or bar recovery of any money wrongfully or erroneously paid to the Design-Builder.

1-03.8 *Computation of Periods*

If the last date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice "within" a specified time period) falls on a non-business day (weekends, State, and Federal holidays), such act or notice may be timely performed on the next succeeding day which is a business day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-business day, shall be performed as specified, even though the date in question may fall on a non-business day.

1-03.9 *Waiver*

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision of the Contract Documents, notwithstanding any course of dealing or custom of the trade.

1-03.10 *Limitation on Third Party Beneficiaries*

Unless specifically noted otherwise in this Section, the parties to this Contract do not intend by any of the provisions of this Contract to cause the public or any member thereof or any other Person to be a third party beneficiary of the Contract Documents. Nothing in this Contract authorizes anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. It is the further intent of WSDOT and the Design-Builder in executing the Contract Form that no individual, firm, corporation, or any combination thereof which supplies materials, labor, services, or equipment to the Design-Builder for the performance of the Work shall become thereby a third party beneficiary of this Contract. The Contract Documents shall not be construed to create a contractual relationship of any kind between WSDOT and a Subcontractor or any other Person except the Design-Builder.

1-03.11 *Severability*

If any clause, provision, Section, or part of the Contract is ruled invalid by a court of competent jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, Section, or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section, or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, Section, or part.

1-03.12 *Headings*

The headings of the Sections of this Contract are for convenience of reference only and shall not be deemed part of this Contract or considered in interpreting this Contract.

1-03.13 *Amendments*

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

1-03.14 *Governing Law*

This Contract shall be construed under and shall be governed in accordance with the laws of the State.

1-03.15 *Escrow Proposal Documents*

1-03.15(1) Scope and Purpose

The purpose of this specification is to preserve the Design-Builder's Proposal documents for use by WSDOT in litigation between WSDOT and the Design-Builder arising out of this Contract.

The Design-Builder shall submit a legible electronic copy of all Escrow Proposal Documents (EPD) to a records management company designated by WSDOT. Such documentation shall be placed in escrow with the records management company and preserved by that institution as specified in this specification.

1-03.15(2) Escrow Proposal Documents

The EPD as used in this specification means any writings, working papers, charts, and any other data compilations of any nature which contain or reflect all information, data, and calculations used by the Design-Builder to determine the Proposal for this Project. These items may be created originally in electronic format or converted to electronic format. The Design-Builder shall ensure paperless submittal by creating a PDF for each document. The EPD shall be submitted only electronically. The EPD shall include, but is not limited to equipment rates, overhead rates, labor rates, efficiency and productivity factors, and arithmetic extensions. The EPD shall also include detailed information from all Subcontractors identified in the Proposal and any other potential Subcontractors who provided data upon which the Proposal is based. The EPD shall include any manuals which are standard to the industry used by the Design-Builder in determining the Proposal for this Project. Such manuals may be included in the EPD by reference. The EPD do not include documents provided by WSDOT for use by the Design-Builder in developing the Proposal.

1-03.15(3) Submittal of Escrow Proposal Documents

The EPD shall be submitted within 7 Calendar Days after the Contract has been fully executed in a password protected secure folder to the designated records management company. The secure folder shall be clearly marked "EPD" and shall also show the Design-Builder's name, the date of submittal, the Project title, and the Contract number.

The Design-Builder shall provide the records management company with the password(s) to access the secure folder.

1-03.15(4) Affidavit

The secure folder shall contain, in addition to the Proposal documentation, an affidavit digitally signed by an individual authorized by the Design-Builder to execute Proposals. The affidavit shall list each EPD with sufficient specificity so a comparison can be made between the list and the EPD to ensure that all the EPD listed in the affidavit have been included in the secure folder. The affidavit shall show that the affiant has personally examined the EPD and that the affidavit lists all of the documents used by the Design-Builder to determine its Proposal for the Project and that all such documentation has been enclosed in the secure folder.

1-03.15(5) Verification

The records management company upon receipt of the secure folder shall save the folder in a virtual vault, or other secure place, and immediately notify WSDOT in writing that the secure folder has been received. Upon receipt of such notice, WSDOT will promptly notify the Design-Builder in writing that WSDOT will open the secure folder to verify that the affidavit has been included and to compare the EPD listed in the affidavit with the saved files stored in the secure folder to ensure that all of the EPD has been submitted and are legible. The notification will advise the Design-Builder of the date and time the secure folder will be opened and the name of the WSDOT employee who will verify the contents of the secure folder. The WSDOT employee verifying the contents of the escrow secure folder will not be involved or connected with the review, evaluation, or resolution of any claim by the Design-Builder made to WSDOT in connection with the Contract for which the verification was made. The Design-Builder may have representatives present at the opening.

1-03.15(6) Supplementation

EPD listed in the affidavit but not saved in the secure folder through error or oversight shall be submitted in a secure folder within 5 Calendar Days after the opening of the original secure folder. Also, any EPD that are illegible shall be replaced with legible versions and furnished within 5 Calendar Days after the opening of the original secure folder. The secure folder shall be marked “Supplemental EPD”. The same procedure used in verifying the contents of the original secure folder shall be used in verifying the contents of the supplemental submittal.

1-03.15(7) Duration and Use

The EPD and affidavit shall remain in escrow during the life of the Contract and will be returned to the Design-Builder by the records management company, provided that the Design-Builder has signed the Final Contract Voucher Certification and has not reserved any claims on the Final Contract Voucher Certification against WSDOT arising out of the Contract. In the event that claims against WSDOT are reserved on the Final Contract Voucher Certification, the EPD and affidavit shall remain in escrow. If the claims are not resolved and litigation ensues, WSDOT may serve a request upon the Design-Builder to

authorize the records management company, in writing, to release the EPD and affidavit in escrow to WSDOT. The Design-Builder shall respond to the request within 20 Calendar Days after service of the request. If the Design-Builder objects or does not respond to the request within 20 Calendar Days after service of the request, WSDOT may file a motion under the Civil Rules requesting the court to enter an order directing the records management company to deliver the EPD and affidavit in escrow to WSDOT. The records management company shall release the EPD and affidavit as follows:

1. To WSDOT upon receipt of an email from the Design-Builder authorizing the release
2. To WSDOT upon receipt of a certified copy of a court order directing the release of the documents
3. To the court for an in-camera examination pursuant to a certified copy of a court order
4. The EPD and affidavit shall be returned to the Design-Builder if litigation is not commenced within the time period prescribed by law.

The Design-Builder agrees that the secure folder saved in escrow and any supplemental secure folder saved in escrow contain all of the Proposal documentation used to determine the Proposal and that no other Proposal documentation shall be utilized by the Design-Builder in litigation over claims brought by the Design-Builder arising out of this Contract unless otherwise ordered by the court.

1-03.15(8) Remedies for Refusal or Failure to Provide Bid Proposal Documentation

Failure or refusal to provide EPD will be deemed a material breach of this Contract. WSDOT may at its option refuse to make payment for progress estimates under Section 1-09.9 until the Design-Builder has submitted the EPD required by the Contract. WSDOT may at its option terminate the Contract for default under Section 1-08.10. These remedies are not exclusive and WSDOT may take such other action as is available to it under the law.

1-03.15(9) Confidentiality of Proposal Documentation

The EPD and affidavit held in escrow are and will remain the property of the Design-Builder. WSDOT has no interest in or right to the EPD and affidavit other than to verify the contents and legibility of the EPD unless litigation ensues between WSDOT and Design-Builder over claims brought by the Design-Builder arising out of this Contract. In the event of such litigation, the EPD and affidavit may become the property of WSDOT for use in the litigation as may be appropriate subject to the provisions of any court order limiting or restricting the use or dissemination of the EPD and affidavit as provided in Section 1-03.15(7).

Apart from content and legibility verification and litigation, the EPD shall not be accessed by either WSDOT or the Design-Builder at any time without the party desiring access to the documents providing written notification to, and receiving concurrence from, the other party. Both WSDOT and the Design-Builder shall be present whenever the EPD is accessed.

1-03.15(10) Cost and Escrow Instructions

The cost of the escrow will be borne by WSDOT. WSDOT will provide escrow instructions to the records management company consistent with this specification.

1-04 Scope of the Work

1-04.1 *Intent of Contract*

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the parties with respect to its subject matter.

The parties intend for the Contract to obligate the Design-Builder to perform all Work necessary to complete the Project within the Contract Time, for the Contract Price, subject only to certain specified limited exceptions. The Design-Builder will be required to coordinate its Work with WSDOT's other contractors including contractors who are engaged in other WSDOT contracts or other Persons who are engaged in construction work in the overall vicinity of the Project. The Contract includes restrictions affecting the Design-Builder's ability to make claims for an increase to the Contract Price or an extension of the Contract Time.

WSDOT has supplied the Conceptual Design to the Design-Builder for the purpose of defining certain aspects of the Project. The Design-Builder has the right to assume that the Basic Configuration is feasible and represents a reasonable engineering approach to the Project. The Design-Builder's reliance on any aspect of the Conceptual Design other than the Basic Configuration shall be at its own risk.

WSDOT and the Design-Builder both intend for the Design-Builder to assume full responsibility and liability with respect to the design of the Project, including correction of any errors, omissions, inconsistencies, or other defects in the Conceptual Design, subject only to the Design-Builder's right to a Change Order for Necessary Basic Configuration Changes. Except as specifically set forth herein, WSDOT and the Design-Builder both intend for the Design-Builder to indemnify and hold harmless WSDOT and others with respect to any defects in the Project which may relate to errors, omissions, inconsistencies, or other defects in the Conceptual Design.

1-04.1(1) Work Included in the Contract

The Design-Builder acknowledges and agrees that, subject only to the Design-Builder's rights under Section 1-04.4 and its rights to receive Change Orders as expressly provided herein, the Contract Price includes (a) all designs, permits, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services relating to the Design-Builder's performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in the Special Provisions); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Governmental Rules, except for the work to be undertaken by WSDOT or others as described in the Contract (e) payment of any taxes, duties, permit, and other fees and royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein; and (f) compensation for all risks and contingencies assigned to the Design-Builder under the Contract Documents.

1-04.1(2) General Obligations of the Design-Builder

The Design-Builder, in addition to performing all other requirements of the Contract Documents, shall:

(a) Furnish all services, provide all materials, and undertake all efforts necessary or appropriate (excluding only those services, materials, and efforts which the Contract Documents specify will be undertaken by WSDOT or other Persons):

(i) To construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, each applicable Contract Schedule, all applicable Legal Requirements, all Governmental Approvals, the Quality Management Plan (QMP), the safety program, assist WSDOT with public information, and all other applicable safety, environmental, licensing, and other requirements, taking into account the ROW Plans and other physical limits resulting from constraints affecting the Project, so as to achieve milestone completion, Completion, and Final Acceptance, and by the deadlines specified herein.

(ii) Otherwise to complete all Work and activities required by and in accordance with the Contract Documents

(b) At all times provide a Project Manager approved by WSDOT who:

(i) Will have full responsibility for the prosecution of the Work

(ii) Will act as agent and be a single point of contact in all matters on behalf of the Design-Builder

(iii) Will be present (or its approved designee will be present) at the Site at all times that Work is performed

(iv) Will be available to execute instructions and directions from WSDOT or its authorized representatives

(c) Obtain and pay the cost of obtaining all Governmental Approvals including Governmental Approvals required to implement any approved ATCs incorporated into the Contract Documents.

(d) Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including implementation of all environmental mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to WSDOT or another Person.

(e) Provide such assistance as is reasonably requested by WSDOT in dealing with any Governmental Person and in prosecuting and defending environmental lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations, and attending meetings and hearings, but which shall in no event be deemed to require the Design-Builder to provide design or legal services.

(f) Comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Legal Requirements, including:

(i) Compliance with all Environmental Laws and Requirements

(ii) Performance of all environmental mitigation and monitoring measures required for the Project, including those set forth in the Technical Requirements

(iii) Requirements regarding the handling, generation, treatment, storage, transportation, and disposal of Hazardous Materials

(g) Perform construction inspection, sampling, testing, and all other activities in accordance with the Contract Documents and the Design-Builder's QMP.

(h) Provide and maintain facilities as described in the Technical Requirements for the use of the Design-Builder, WSDOT, WSDOT's Engineer, and other Persons designated by WSDOT.

(i) Cooperate with WSDOT in its oversight of the design of the Project, its oversight of construction of the Project including Quality Verification, testing, sampling, and inspection during construction, and other matters relating to the Work.

(j) Supervise and be responsible to WSDOT for acts and omissions of the Design-Builder's employees, agents, officers, Subcontractors, and other Persons performing portions of the Work for whom the Design-Builder may be contractually or legally responsible.

(k) Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying the Design-Builder's forces to other Work, as appropriate.

(l) Pay all applicable Federal, State, and local sales, consumer, use, and similar taxes, property taxes, and any other taxes, fees, charges of levies imposed by a Government Body, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

(m) Comply with all applicable terms and conditions of all Utility Agreements.

(n) Obtain and pay the cost of obtaining any third party approvals required to implement any approved ATCs incorporated into the Contract Documents.

(o) Unless otherwise noted in the Contract, be responsible for all costs, delays, or both of any nature associated with the implementation of any approved ATC incorporated into the Contract Documents.

1-04.2 *Vacant*

1-04.3 *Practical Design Workshop*

Within 7 Calendar Days of Contract execution, and prior to issuing NTP, the WSDOT Engineer and the Design-Builder shall discuss the merits of a Practical Design Workshop (PDW). If the parties agree there is merit in proceeding with the PDW, the parties will initiate and participate in the PDW. The PDW may last up to 30 Calendar Days. If mutually agreed upon by the Design-Builder and WSDOT, the Design-Builder may be granted NTP during the PDW.

The purpose of the PDW is to explore ideas and potential Contract changes that may eliminate or alter certain Project design elements yet still satisfy the Project's purpose and need. The 30 Calendar Day duration of the PDW will be used for the parties to identify potential changes, evaluate those changes, and negotiate approved changes, if any. Changes shall be approved by the WSDOT Engineer and executed prior to the conclusion of the PDW, unless otherwise allowed by the WSDOT Engineer.

Changes identified through the PDW shall be submitted and administered as Design-Builder Initiated Changes in accordance with Section 1-04.4(2). If mutually agreed upon by the Design-Builder and WSDOT the PDW may be extended, shortened or conclude at any time.

1-04.4 *Changes*

Change Orders will be transmitted electronically to the Design-Builder for signature. The Design-Builder shall apply all signatures electronically using the software provided by WSDOT. Within 21 Calendar Days of execution of the Contract, the Design-Builder shall submit a Type 1 Working Drawing consisting of the names, email addresses, and text-message capable phone numbers for the authorized Change Order signers and shall bear the name, phone number, and email of the Design-Builder's representative providing this authorization. Delegation of authority to sign Change Orders shall be by the Design-Builder's representative authorized to sign the Contract.

1-04.4(1) WSDOT-Initiated Changes

WSDOT reserves the right to authorize and require changes in the Work within the general scope of the Contract as provided herein. Such changes shall not invalidate the Contract nor release the Surety, and the Design-Builder agrees to perform the Work as altered. Among others, these changes may include:

1. Deleting any part of the Work
2. Adding new Work
3. Otherwise modifying the scope of the Work
4. Otherwise revising the terms and conditions of the Contract Documents
5. Altering facilities, equipment, materials, services, or Sites provided by WSDOT
6. Ordering the Design-Builder to speed up or delay the Work

The Technical Proposal is a part of the Contract and the concepts contained therein shall not be materially changed unless authorized by WSDOT. Changes in the Design Documents by the Design-Builder to meet Contract requirements or correct deficiencies, that do not materially change the Technical Proposal, are the responsibility of the Design-Builder and are not considered a change in the Work. No adjustment will be allowed to Contract Price or Contract Time for such changes.

If WSDOT determines that a change in the Work directed by WSDOT increased or decreased the Design-Builder's Contract Price or Time required for performance of the Work, WSDOT will make an equitable adjustment, excluding the loss of anticipated profits, to the Contract. The equitable adjustment will be by agreement with the Design-

Builder. However, if the parties are unable to agree, WSDOT will determine the amount of the equitable adjustment in accordance with Section 1-09.4 and adjust the Contract Price as WSDOT deems appropriate. Extensions of Contract Time will be evaluated in accordance with Section 1-08.8. WSDOT's decision concerning equitable adjustment and extension of Contract Time shall be final as provided in Section 1-05.1.

The Design-Builder shall maintain concurrent time and materials records for all Work performed which it believes constitutes extra Work (including non-construction Work), pending issuance of a Change Order or resolution of any dispute in accordance with Section 1-04.5.

The Design-Builder shall proceed with WSDOT-directed changes in the Work upon receiving:

1. A written Change Order approved by WSDOT
2. An oral order from WSDOT before receiving the written Change Order

Within 14 Calendar Days of delivery of the Change Order, the Design-Builder shall endorse and return the Change Order, request an extension of time for endorsement, or respond in accordance with Section 1-04.5. WSDOT may unilaterally process the Change Order if the Design-Builder fails to comply with these requirements. The Design-Builder shall obtain written consent of the Surety or Sureties if WSDOT requests such consent.

The Design-Builder accepts all requirements of a Change Order by:

1. Endorsing it
2. Not responding within the allotted time as outlined in Section 1-04.4
3. Not protesting in accordance with Section 1-04.5.

A Change Order that is not protested as provided in this Section shall be full payment and final settlement of all claims for Contract Time and for all costs of any kind, including costs of delays, related to any Work either covered or affected by the change. By not protesting in accordance with Section 1-04.5, the Design-Builder also waives any additional entitlement and accepts from WSDOT any written order (including directions, instructions, interpretations, and determinations).

1-04.4(2) Design-Builder Initiated Changes

It is the desire of WSDOT to allow the Design-Builder to have significant flexibility in determining how best to design and construct the Project, within the parameters established by the Contract Documents. The Design-Builder is encouraged to propose changes whenever it identifies potential savings. This Section sets forth the requirements applicable for addressing Design-Builder Initiated Changes. Approval of a Design-Builder Initiated Change is at WSDOT's sole discretion. Design-Builder Initiated Changes fall into one of the following categories:

1. Changes that are based on an idea(s) derived from a Proposal submitted by an unsuccessful Proposer. All cost savings realized shall be shared between the Parties in accordance with Section 1-04.4(2).3.

2. Changes that do not meet the requirements of item 1 above, and are deemed by WSDOT in its sole discretion to be equal or better than the Contract requirement proposed to be changed. All cost savings realized shall be kept by the Design-Builder. These changes if approved will be implemented into the Contract as a no cost Change Order. Section 1-04.4(2).3 does not apply to this category of change.
3. Changes resulting from the PDW or other changes that require a Design Analysis. Any cost or time adjustments derived from this change shall be negotiated. Negotiations will take into consideration the value of deletions, additions, cost savings, Contract Time, risk, engineering, short- and long-term financial impacts to WSDOT and the travelling public, and other tangible costs. Section 1-04.4(2).3 does not apply to this category of change.
4. Changes that do not meet the requirements of either category 1, 2 or 3 above. Any cost savings derived from this change shall be shared as the parties mutually agree. Section 1-04.4(2).3 does not apply to this category of change.

1-04.4(2).1 Required Information

At a minimum, the following information shall be submitted by the Design-Builder with each Design-Builder Initiated Change:

(a) A statement that the submission is a Design-Builder Initiated Change, and a narrative description of the proposed change, including identification of the type of change as described above.

(b) Description of the existing Contract requirements which are involved in the proposed change.

(c) Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item.

(d) Itemization of the Contract requirements (with reference to specific Sections) which must be changed if the Design-Builder Initiated Change is approved.

(e) Justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents, including environmental compliance requirements.

(f) A description of any previous use or tests of the proposal and the conditions and results. If the proposal was previously submitted on another WSDOT project, indicate the date, Contract number, and the action taken by WSDOT.

(g) Date or time by which a Change Order adopting the Design-Builder Initiated Change must be issued in order to obtain the maximum cost reduction noting any effect on each applicable Contract Schedule.

(h) A complete cost analysis including (i) a cost estimate for the existing Contract requirements compared to the Design-Builder's cost estimate of the proposed changes, (ii) an estimate of any additional costs that will be incurred by WSDOT, including any additional Right of Way and Relocation costs, and (iii) an analysis of

cost and schedule risks due to the need to modify permits and other environmental documents as applicable.

(i) Costs of development and implementation by the Design-Builder. Any additional information requested by WSDOT shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

1-04.4(2).2 WSDOT Review and Approval or Rejection

Review of Design-Builder Initiated Changes

Upon receipt of a Design-Builder Initiated Change, WSDOT will process it expeditiously, but will not be liable for any delay in acting upon any proposal submitted pursuant to this Section. The Design-Builder may withdraw all or part of any Design-Builder Initiated Change at any time prior to approval by WSDOT. Each party shall bear its own costs in connection with preparation and review of Design-Builder Initiated Changes.

Approval of Design-Builder Initiated Changes

WSDOT may approve, in whole or in part by Change Order, any Design-Builder Initiated Change submitted. Until a Change Order is issued on a Design-Builder Initiated Change, the Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of the rejection or approval of any Design-Builder Initiated Change will be at the sole discretion of WSDOT and will be final and not subject to partnering, dispute resolution, or appeal.

Rejection of Design-Builder Initiated Changes

WSDOT will determine whether a Design-Builder Initiated Change qualifies for consideration and evaluation. Design-Builder Initiated Changes that require excessive time or costs for review, evaluation, or investigations, or that are not consistent with WSDOT's design policies and basic design criteria may be rejected.

The Design-Builder shall have no claim for any additional costs or delays resulting from the rejection of a Design-Builder Initiated Change, including development costs, loss of anticipated profits or increased material or labor costs. In evaluating Design-Builder Initiated Changes, WSDOT will consider only proven features that have been employed under similar conditions or projects acceptable to WSDOT.

1-04.4(2).3 Contract Price Adjustment Split Between Parties

If WSDOT accepts a Design-Builder Initiated Change submitted by the Design-Builder pursuant to this Section, the Contract Price shall be adjusted in accordance with the following:

Estimated Net Savings

The term "estimated net savings" as used in this Section shall mean the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform it according to the proposed change, not including the costs of studying and preparing the Design-Builder Initiated Change as proven by the Design-

Builder and approved by WSDOT in accordance with the Change Order procedures set forth herein, or any additional costs incurred by WSDOT (including costs relating to any Relocations and Right of Way) resulting from the Design-Builder Initiated Change. The Design-Builder's profit shall not be considered part of the cost.

Collateral and Future Savings

Except as specified elsewhere in this Section, the Design-Builder is not entitled to share in either collateral or future Contract savings. The term "collateral savings" means those measurable net reductions in WSDOT's costs of operation resulting from the Design-Builder Initiated Change, including costs of maintenance by WSDOT, logistics, and WSDOT-furnished property. The term "future Contract savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a Design-Builder Initiated Change submitted by the Design-Builder.

Price Adjustment Factor

The Contract Price shall be reduced by an amount equal to the sum of (a) 100 percent of any additional costs incurred by WSDOT resulting from the Design-Builder Initiated Change plus (b) 50 percent of estimated net savings, providing that the Design-Builder's profit shall not be reduced by application of the Design-Builder Initiated Change.

Design-Builder Initiated Changes Affecting Right of Way Plans

In a case where a Design-Builder Initiated Change involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the Design-Builder Initiated Change shall compare:

(a) The incremental reduction in costs (such as for not designing and building a wall).

(b) The costs involved in adjusting the ROW Plans or environmental clearances (which shall be based on the Design-Builder's additional costs, such as for providing real property acquisition support services (including profit), plus WSDOT's additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of WSDOT personnel involved in the acquisition); or (as appropriate) shall compare:

(i) The incremental reduction in costs (if any) for not acquiring the unnecessary real property.

(ii) The additional construction costs to be incurred.

The estimated net savings shall be shared 50-50 between WSDOT and the Design-Builder. In the event the Design-Builder wishes to propose such a Design-Builder Initiated Change, the Design-Builder shall provide a separate notification to WSDOT describing the proposed impact concurrently with delivery of the Design-Builder Initiated Change to WSDOT.

Payment Due Date

The Design-Builder's share of any Design-Builder Initiated Change cost savings shall be payable at such time as payments would have been made for the Work which is the

subject of the Design-Builder Initiated Change had the Design-Builder Initiated Change not been implemented.

1-04.4(2).4 Use of Design-Builder Initiated Changes by WSDOT

All approved or disapproved Design-Builder Initiated Changes will become the property of WSDOT and shall contain no restrictions imposed by the Design-Builder on their use or disclosure. WSDOT retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the proposal on any other or subsequent projects without any obligation to the Design-Builder. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

1-04.4(3) Basic Configuration Changes

The Design-Builder shall not perform any Work that is inconsistent with the requirements of the Contract Documents or that modifies the Basic Configuration unless such Work has been specifically authorized by Change Order or by an order from WSDOT specifically authorizing the change prior to receiving a Change Order. This requirement applies regardless of whether the Work in question is required by a Governmental Approval, is desired by Design-Builder for its benefit, or for any other reason. Design-Builder acknowledges and agrees that constraints set forth in the Contract Documents, as well as Site conditions, will impact Design-Builder's ability to revise the Basic Configuration.

Nevertheless, upon the Design-Builder's fulfillment of all applicable requirements and limitations relating to Change Orders specified herein, if a Necessary Basic Configuration Change increases the cost, time to perform the Work, or both, the Design-Builder shall be entitled to an increase in the Contract Price, an extension of the Contract Time, or both, excluding any costs or time that could have been avoided by the Design-Builder; provided, however, the Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Time in connection with any error, omission, inconsistency or other defect in the Conceptual Plans.

If a Necessary Basic Configuration Change decreases the cost, time to perform the Work, or both, the Contract Price, Contract Time, or both shall be decreased accordingly.

1-04.4(4) Minor Changes

Payments or credits for any change amounting to $25,000 or less may be authorized as a "Minor Change." At the discretion of WSDOT, this procedure for Minor Changes may be used in lieu of the more formal procedures as outlined in Section 1-04.4, Changes.

The Design-Builder will be provided a copy of the completed order for Minor Change. The agreement for the Minor Change will be documented by signature of the Design-Builder. If the Design-Builder is in disagreement with anything required by an order for Minor Change, the Design-Builder may protest the order as provided in Section 1-04.5.

Payments or credits will be determined in accordance with Section 1-09.4. For the purpose of providing a common Proposal for all Proposers, WSDOT has entered an amount for "Minor Change" in the Proposal to become a part of the total Price Proposal by the Design-Builder.

1-04.4(5) Matters Not Eligible for Change Orders

The Design-Builder acknowledges and agrees that no increase in the Contract Price is available except in circumstances expressly provided for in the Contract, that such price increases shall be available only as provided in Section 1-04.4, and that the Design-Builder shall bear full responsibility for the costs of all other changes. Matters which are the Design-Builder's exclusive responsibility include the following:

(a) Errors, omissions, inconsistencies, or other defects in the Design Documents (including errors, omissions, inconsistencies, or defects directly attributable to errors, omissions, inconsistencies, or other defects in the Conceptual Design), subject only to the right to a Change Order for Necessary Basic Configuration Changes.

(b) Any design changes required by WSDOT as part of the process of reviewing the Design Documents for consistency with the requirements of the Contract Documents, except to the extent directly attributable to errors, omissions, inconsistencies or other defects in the Basic Configuration as provided herein.

(c) Defects or errors in the Design-Builder's schedule for performance of the Work or changes in the planned sequence of performance of the Work (except to the extent that changes in the planned sequence of performance of the Work arise from causes which otherwise give rise to a right to a Change Order).

(d) Action or inaction of a Subcontractor (unless arising from causes which will require a Change Order).

(e) The action or inaction of an adjoining property owner or of another contractor (including failure to organize and integrate their work with the Design-Builder's Work).

(f) Any delay in the use and incorporation of borrow and excavated materials into the Work, or the removal and disposal of excavated materials.

(g) Untimely delivery of equipment or material, or unavailability, defectiveness, or increases in costs of material, equipment, or products specified by the Contract Documents (except to the extent caused by a strike).

(h) Costs associated with any delay not on the Critical Path.

(i) Costs covered by insurance proceeds received by or on behalf of the Design-Builder.

(j) Correction of Nonconforming Work and oversight and related activities in connection therewith by WSDOT (including rejected design submittals).

(k) Failure by the Design-Builder to comply with Contract requirements.

(l) Delays in obtaining Governmental Approvals that are required to be obtained by the Design-Builder.

(m) Delays in obtaining or failure to obtain any third party approvals required to implement any approved ATCs incorporated into the Contract Documents.

(n) Unless noted otherwise in the Contract, any increases in costs or time incurred implementing an ATC.

(o) All events beyond the control of WSDOT except for events that WSDOT has agreed to assume liability for in the Contract.

(p) Delays in obtaining the Governmental Approval that are required to be obtained by WSDOT, changes to requirements of Governmental Approvals, or both where said delay, change(s), or both are the result of the Design-Builder's design choices within the Design-Builder's control.

(q) Changes of any nature to the Environmental Commitments List (Appendix C) that are imposed by, or agreed to by a Governmental Body having jurisdiction, that are the result of the Design-Builder's design choices within the Design-Builder's control.

The Design-Builder hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by the Design-Builder of responsibility for such costs and delays, and the consequences and costs resulting there from, is reasonable under the circumstances of the Contract and that contingencies included in the Contract Price in the Design-Builder's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

1-04.5 *Procedure, Protest, and Dispute by the Design-Builder*

If in disagreement with anything required in a Change Order, or the WSDOT Engineer's Written Determination or decision for which the Design-Builder believes they are entitled to an increase in the Contract Price or Time, the Design-Builder shall:

1. Give a signed written notice of protest to the WSDOT Engineer within 14 Calendar Days of receiving a Change Order or a WSDOT Engineer's Written Determination.
2. Supplement the written protest within 14 Calendar Days, or an extension of time as agreed by the WSDOT Engineer in writing, with a written statement and supporting documents providing the following:
   (a) The date and nature of the protested order, direction, instruction, interpretation, or determination.
   (b) A full discussion of the circumstances which caused the protest, including names of Persons involved, time, duration and nature of the Work involved, and a review of the Contract Documents/Design Documents referenced to support the protest.
   (c) The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined.
   (d) An analysis of the progress schedule showing the schedule change or disruption if the Design-Builder is asserting a schedule change or disruption.

If the WSDOT Engineer determines, in writing the supplemental information is insufficient to evaluate the protest or fails to include all required information, the Design-Builder may be allowed one correction of the supplemental information. The corrected supplemental information, when requested by the WSDOT Engineer, shall be submitted within 14 Calendar Days or as specified by the WSDOT Engineer, in writing.

Throughout any protested Work, the Design-Builder shall keep complete records of extra costs and time incurred. The Design-Builder shall permit the WSDOT Engineer access to these and any other records related to the protested Work as determined by the WSDOT Engineer.

The WSDOT Engineer will evaluate all protests provided the procedures in this Section are followed. If the WSDOT Engineer determines that a protest has merits, the WSDOT Engineer will adjust payment for Work or time by an equitable adjustment in accordance with Section 1-09.4. Extensions of time will be evaluated in accordance with Section 1-08.8. No adjustment will be made for a protest without merit.

If the WSDOT Engineer determines that the protest is without merit, that determination and the reasons for it will be provided in writing to the Design-Builder. The determination will be provided within 21 Calendar Days after receipt of the Design-Builder's supplemental written statement (including any additional information requested by the WSDOT Engineer to support a continuing protest) described in item 2 above.

If the Design-Builder does not accept WSDOT's determination, then the Design- Builder shall pursue the dispute and claims procedures set forth in Section 1-04.5(1). In spite of any protest, the Design-Builder shall proceed promptly with the Work as the WSDOT Engineer orders.

By failing to follow the procedures of this Section, the Design-Builder completely waives any claims for protested Work.

1-04.5(1) Disputes

When protests occur during a Contract, the Design-Builder shall first pursue resolution through the WSDOT Engineer as outlined in Section 1-04.5. Unless noted otherwise in the Contract, compliance with all the requirements of Section 1-04.5 is a condition precedent to initiating any action pursuant to this Section.

If the negotiations using the procedures outlined in Section 1-04.5 fail to provide satisfactory resolution of the protest, then the Design-Builder shall provide the WSDOT Engineer with written notification of dispute stating that the Design-Builder will continue to pursue the dispute in accordance with the provisions of this Section. The written notification shall be provided within 14 Calendar Days after receipt of the WSDOT Engineer's determination of merit that the Design-Builder's protest is without merit pursuant to Section 1-04.5.

When the Proposal Form includes the Price Proposal item "Disputes Review Board", unresolved protests shall be subject to the provisions of Section 1-04.5(1).1. Either party, Engineer or Design-Builder, may refer a matter in dispute to the Disputes Review Board (DRB or Board). Compliance with the requirements of Section 1-04.5(1).1 is a condition precedent to any further right of the Design-Builder to pursue the dispute either by Certified Claim or litigation/arbitration.

When the Proposal Form does not include the Price Proposal item "Disputes Review Board", the Design-Builder's written notice of dispute noted above shall indicate whether the Design-Builder is requesting to resolve the dispute through the use of a Disputes Review Board as outlined in Section 1-04.5(1).1, or will submit a formal Certified Claim

directly to the WSDOT Engineer pursuant to Section 1-09.11(2). If the Design-Builder requests a DRB, the WSDOT Engineer will notify the Design-Builder in writing within seven Calendar Days of receipt of the request whether the request is acceptable. If both parties to the dispute agree to use a DRB, then a Price Proposal item "Disputes Review Board" shall be added to the Contract by Change Order and the dispute will be subject to the provisions of Section 1-04.5(1).1. If the parties do not mutually agree to establish a DRB or the Design-Builder does not request a DRB in its written notice of dispute, the Design-Builder shall comply with the formal Certified Claim process outlined in Section 1-09.11(2).

Regardless of any protest or dispute, the Design-Builder shall proceed promptly with the Work as the WSDOT Engineer orders and WSDOT will continue to pay for all undisputed amounts.

1-04.5(1).1 Disputes Review Board

The procedures set forth in Section 1-04.5(1).1 shall apply only when a DRB has been created in accordance with Section 1-04.5(1).

1-04.5(1).1.1 Disputes Review Board – General

In order to assist in the resolution of dispute(s) between WSDOT and the Design-Builder arising out of the Work of this Contract, a Disputes Review Board will consider disputes referred to it and furnish written recommendations to WSDOT and Design-Builder to assist in resolution of the dispute(s). The purpose of the Board response to such issues is to provide nonbinding findings and recommendations designed to expose the disputing parties to an independent view of the dispute.

1-04.5(1).1.2 Disputes Eligible for Consideration by the Board

The Board will consider and provide written recommendations concerning the following disputes:

1. Interpretation of the Contract.
2. Entitlement to additional compensation and/or time for completion.
3. Other subjects mutually agreed by WSDOT and Design-Builder to be a Board issue.

1-04.5(1).1.3 Board Member Qualifications

The following definitions apply for the purpose of setting forth experience and disclosure requirements for Board members.

Financial ties – any ownership interest, loans, receivables, or payables.

Party directly involved – WSDOT or Design-Builder of this Contract.

Party indirectly involved – The firms associated with the Design-Builder on this Contract, including joint venture partners, Subcontractors of any tier, and suppliers; and firms associated with the Design-Builder or WSDOT on this Contract, such as designers, architects, engineers, or other professional service firms or consultants.

The Board members shall:

1. Be experienced in the interpretation of construction contract documents.
2. Have attended training by the Dispute Resolution Board Foundation in dispute resolution within the last five years.
3. Be experienced in construction Contract dispute resolution for an owner or Design-Builder at the level of having responsibility and authority to settle disputes.
4. Discharge their responsibilities impartially and independently, considering the facts and conditions related to the matters under consideration in strict compliance with the provisions of the Contract.
5. Not be a current employee of any Party directly or indirectly involved.
6. Not have been an employee of any Party directly or indirectly involved with the Project within a period of one year of the Contract execution date.
7. Not have a financial interest in the Contract except for payments for services on the Board.

1-04.5(1).1.4 Board Member Ongoing Responsibilities

While serving as a Board member on this project:

1. No member will participate in any discussion contemplating the creation of an agreement or making an agreement with any party directly or indirectly involved in the Contract regarding employment or fee-based consulting services, or any other business arrangement after the Contract is completed.
2. No Board member will officially give any advice to either party. The individual members will act in a completely independent manner and will have no consulting or business connections with either party, except for payments for services on the Board.
3. During routine meetings of the Board as well as during formal hearings, Board members should refrain from expressing opinions on the merits of statements on matters under dispute or potential dispute. Opinions of Board members expressed in private sessions with other Board members should be kept strictly confidential.
4. The Board shall comply with the terms of the Contract and enforce such terms consistent with the laws of the State. Board members shall not supplant or otherwise interfere with the respective rights, authorities, duties and obligations of the Parties as defined in the Contract. In making its recommendations, the Board shall not make a recommendation that ignores, disregards, or undermines the intention, requirements, or allocation of risk, established by the Contract.
5. Disclosure of potential conflicts of interest is a continuing obligation of all Board members throughout the life of the Contract.

1-04.5(1).1.5 Establishment of the Board

Process to establish the Board:

1. WSDOT and Design-Builder shall meet no later than 30 Calendar Days after NTP to jointly select three prospective Board members.

2. WSDOT and the Design-Builder shall provide to the Board nominees a list of the firms directly and indirectly involved with the Project, including, but not limited to designers, architects, engineers, professional service firms, consultants, JV partners, Subcontractors and suppliers, along with a listing of key personnel of each.

3. Board nominees shall provide to the Design-Builder and WSDOT the following information:

   (a) Resume showing:

      (i) Full name and contact information

      (ii) Experience qualifying the person as a Board member.

      (iii) Previous DRB participation, if any. List each DRB assignment separately, indicating the name and location of the project, approximate dates of DRB service, name of contracting agency, name of Design-Builder, names of the other Board members and the approximate number of disputes heard. When previous DRB experience is extensive, the list may be truncated at the prospective Board member's discretion.

   (b) Disclosure statement addressing the following:

      (i) Previous or current direct employment by one of the parties directly or indirectly involved.

      (ii) Previous or current engagement as a consultant to any party directly or indirectly involved - by the prospective Board member or by the firm to which the prospective Board member is directly employed.

      (iii) Previous, current, or future financial ties to any of the parties directly or indirectly involved.

      (iv) Previous or current personal or professional relationships with a key member of any party directly or indirectly involved.

      (v) Previous and current service as a Board member on projects where any of the parties directly or indirectly involved in this Contract were also involved.

      (vi) Any prior involvement in this project.

   WSDOT and the Design-Builder shall have three weeks to solicit and receive information from the three prospective candidates, and another two weeks to review and jointly agree on the final selection of the three members to serve on the Board. In the event that any of the three members cannot be agreed upon, the process shall be repeated for the positions not agreed upon until all positions are filled.

4. WSDOT, the Design-Builder, and the Board shall execute the Three-Party Agreement not later than the first Board meeting (WSDOT Form 134-091, *Disputes Review Board Three-Party Agreement*).

5. The Board members shall determine amongst themselves who will act as the Board Chair.

Use of the WSDOT/AGC Pool of Board Candidates

The qualifications of some potential DRB members have been reviewed and deemed potentially acceptable by both the Washington State Department of Transportation and the Associated General Contractors of Washington. This list of potential DRB members is available at https://wsdot.wa.gov/business/construction/dispute-review-boards, and their resumes are available upon request from the Deputy State Construction Engineer. Nevertheless, either party may propose a DRB member or members that are not on the WSDOT/AGC Pool list. In either case, every potential Board member must comply with the requirements of Sections 1-04.5(1).1.3, 1-04.5(1).1.4, and 1-04.5(1).1.5, and every Board member must be deemed acceptable by both WSDOT and the Design-Builder.

Replacement or Termination of a Board Member

Should a Board member need to be replaced, the replacement will be done in accordance with WSDOT Form 134-091, *Disputes Review Board Three-Party Agreement*.

1-04.5(1).1.6 Board Procedures – General

The Board, WSDOT, and Design-Builder may mutually develop rules of operation of the Board that supplement the Three Party Agreement. Such supplemental rules must be in writing and accepted by the Board, WSDOT, and Design-Builder.

It is expressly understood that the Board members are to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by the WSDOT or the Design-Builder and that the recommendations concerning any such dispute are advisory.

WSDOT will furnish to the Board documents which are or may become pertinent to the activities of the Board. WSDOT will furnish the following services and items:

1. Contract-Related Documents: WSDOT will furnish the Board three copies of the Contract documents, including change orders, written instructions issued by WSDOT to the Design-Builder, correspondence, or other documents pertinent to the performance of the Contract, and therefore, necessary to the Board's work.
2. Coordination and Services: WSDOT will, in cooperation with the Design-Builder, coordinate the operations of the Board. WSDOT will arrange or provide conference facilities at or near the job site and copying services.

The Design-Builder shall furnish to the Board three sets of documents, which are or may become pertinent to the activities of the Board, except documents furnished by WSDOT. Pertinent documents may include any drawings or sketches, calculations, procedures, sched-ules, estimates, correspondence, or other documents that are created in the planning or the performance of the Contract work. Copies of any documents provided to the Board must also be furnished to WSDOT.

1-04.5(1).1.7 Regular Board Meetings

All regular Board meetings are expected to be held at or near the job site. The frequency of regular meetings will be set by mutual agreement of the Board, WSDOT and the Design-Builder, consistent with the construction activities and the matters under the

Contract. Each regular meeting is expected to consist of a round table discussion and a field inspection of the work. A member of WSDOT and Design-Builder are expected to jointly facilitate the round table discussion. Round table discussion attendees are expected to include selected personnel from WSDOT and the Design-Builder. The agenda for each meeting will be set by the Board and may include the following elements:

1. Meeting opened by the Board Chair.
2. Remarks by WSDOT's representative.
3. By the Design-Builder: a description of work accomplished since the last meeting, the current status of the work schedule, and a forecast for the coming period.
4. By the Design-Builder: An outline and description of potential problems.
5. By the WSDOT Engineer: An outline and description of the status of the work, including an assessment of potential problems (if any), from WSDOT's point of view.
6. A brief description, by the Design-Builder or WSDOT, of potential claims or disputes, which have surfaced since the last meeting.
7. A summary, by the Design-Builder, WSDOT or the Board, of the status of past disputes and claims.
8. A construction site visit. The Board must be accompanied by both WSDOT and Design-Builder personnel.

1-04.5(1).1.8 Standard Procedure for Consideration of Disputes

Dispute Referral

The dispute referral shall be made in writing to the Board Chair with a copy concurrently provided to the other Board members and the other party.

1. The dispute referral shall concisely define the nature and specifics of the dispute that is proposed to be considered by the Board and the scope of the recommendation requested. This referral is not expected to contain a mutually agreed upon statement of the dispute.
2. The Board Chair shall confer with the parties to establish a briefing schedule for delivering prehearing submittals/rebuttals, and a date, time, and location for convening the Board hearing.

Pre-Hearing Submittal

1. WSDOT and the Design-Builder shall each prepare a pre-hearing submittal and transmit an electronic copy of it to all three members of the Board and the other party. The pre-hearing submittal, comprising a position paper with such backup data as is referenced in the position paper, shall be tabbed, indexed, and the pages consecutively numbered.
2. Both position papers shall, at a minimum, contain the following:
   (a) A mutually agreed upon joint statement of the dispute and the scope of the desired report being requested of the Board, placed at the beginning of the

papers. The language of this joint statement shall summarize in a few sentences the nature of the dispute. If the parties are unable to agree on the wording of the joint statement of dispute, each party's position paper shall contain both statements, and identify the party authoring each statement.

(b) The basis and justification for the party's position, with reference to Contract language and other supporting documents for each element of the dispute. In order to minimize duplication and repetitiveness, the parties may identify a common set of documents that will be referred to by both parties, and submit them in a separate package.

3. If requested by the Board or either party, WSDOT and the Design-Builder shall each prepare and submit a rebuttal paper in response the position paper of the other party.
4. The distribution requirements and time for submittal will be established by the Board and communicated to the parties by the Chair.

Board Hearings

1. WSDOT will arrange for or provide hearing facilities at or near the site.
2. Attendance:
   (a) WSDOT and the Design-Builder will have a representative at all hearings.
   (b) WSDOT and Design-Builder shall both limit attendance at the hearing to personnel directly involved in the dispute and participants in the good-faith negotiations that were conducted prior to submittal to the Board except as noted below.
   (c) At least 14 Calendar Days before the hearing, each party shall provide a list of proposed attendees to the Board and to the other party. In the event of any disagreement, the Board shall make the final determination as to who attends the hearing.
   (d) Attorneys shall not attend Board hearings except as provided below:
      (i) Attorneys are identified as such on the list of proposed attendees.
      (ii) All parties desiring their attorney present are able to do so.
      (iii) Attorneys shall not participate in the hearing, unless the scope and extent of Attorney participation is mutually agreed to by WSDOT, Design-Builder and the Board at least 7 Calendar Days before the hearing.
   (e) At Board hearings regarding disputes involving a Subcontractor, the Design-Builder shall require and ensure that each Subcontractor involved in the dispute have present an authorized representative with actual knowledge of the facts underlying the Subcontractor disputes.
3. A party furnishing written evidence or documentation of any kind to the Board must furnish copies of such information to the other party and the Board a minimum of 21 Calendar Days prior to the date the Board sets to convene the hearing for the dispute, unless otherwise mutually agreed to by the parties and the Board. Either party shall

produce such additional evidence as the Board may deem necessary and furnish copies to the other party prior to submittal to the Board.

4. The conduct of the hearing shall be established by the Board and be generally consistent with the following guidelines:

   (a) The party who referred the dispute to the Board shall present first, followed by the other party.

   (b) To assure each party a full and adequate opportunity to present their position, both parties shall be allowed successive rebuttals and to rebut the opposing party's position until, in the Board's opinion, all aspects of the dispute have been fully and fairly covered.

   (c) The Board shall be fully prepared to, and may at any time, ask questions, request clarifications, or ask for additional data, documents, and/or job records.

   (d) Either party may request that the Board direct a question to, or request a clarification from the other party. The Board shall determine at what point in the proceedings such requests may be made and if they will be granted. In general, the Board will not allow one party to be questioned directly by the other party.

   (e) In difficult or complex cases, additional hearings may be necessary to facilitate full consideration and understanding of the dispute.

   (f) The Board, in its discretion, may allow introduction of arguments, exhibits, handouts, or documentary evidence that were not included in that party's prehearing position paper or rebuttal and have not been previously submitted to the other party. In such cases the other party will be granted time to review and prepare a rebuttal to the new material, which may require a continuation of the hearing.

5. After the hearing is concluded, the Board shall meet in private and reach a conclusion supported by two or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent Contract provisions, facts, and circumstances involved in the dispute. The Contract shall be interpreted and construed in accordance with the laws of the State. The Board shall make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report.

Failure to Prepare a Pre-Hearing Submittal or Attend a Board Hearing

1. In the event that either party fails to deliver a pre-hearing submittal by the date established by the Board, the Board shall, at its discretion, determine whether the hearing shall proceed as originally scheduled, or allow additional time for the submittal and/or reschedule the hearing. On the final date and time established for the hearing, the Board shall proceed with the hearing utilizing the information that has been submitted.

2. In the event that representatives of either WSDOT or the Design-Builder fail to appear at the appointed time of a Board hearing, the Board shall postpone the hearing

until such time as representatives from both parties are available to proceed with the hearing.

Use of Outside Experts

1. By WSDOT or the Design-Builder:
   (a) A party intending to offer an outside expert's analysis at the hearing shall notify the other party and the Board in writing no less than 30 Calendar Days prior to the due date for delivering the pre-hearing submittal, and provide the following disclosure:
      (i) The expert's name and a general statement of the area of the dispute that will be covered by his or her testimony.
      (ii) A statement prepared by the proposed expert which addresses the requirements of Section 1-04.5(1).1.5, item 3(b).
      (iii) A statement prepared by the proposed expert which identifies the experience and training which qualifies them as an expert.
   (b) Upon receipt of the above disclosure, the other party shall have the opportunity to secure the services of an outside expert to address or respond to those issues that may be raised by the other party's outside expert. The notification and disclosure requirement shall be the same as that specified above, except the time requirement is 21 Calendar Days.
   (c) In the event that either WSDOT or the Design-Builder fail to notify the other party of their intent to provide an outside expert; the Board, in its discretion, may allow introduction of the outside experts' arguments, exhibits, handouts, or documentary evidence that were not included in that party's prehearing position paper or rebuttal and have not been previously submitted to the other party. In such cases the other party will be granted time to review and prepare a rebuttal to the new material, which may require a continuation of the hearing.
2. By the Board:
   (a) When requested by the Board and subject to approval of the parties, outside experts may be needed to assist the Board. In such cases, the outside expert shall in no way be deemed authorized to usurp the Board's authority to issue the Board recommendations. Such authority shall remain vested solely in the Board.
   (b) Prior to arranging for outside experts, the Board shall obtain prior approval from WSDOT and the Design-Builder by providing:
      (i) A statement explaining why the expert assistance is needed.
      (ii) An estimate of the cost of the expert assistance.
      (iii) The expert's name and a general statement of the area of expertise they will provide.
      (iv) A statement prepared by the proposed expert which addresses the requirements of Section 1-04.5(1).1.5, item 3(b).

(v) A statement prepared by the proposed expert which identifies the experience and training which qualifies them as an expert.

(vi) A confidentiality statement, consistent with the confidentiality obligations of the Board described in the Three Party Agreement, executed by the proposed expert.

Board Report

1. The Board's recommendations for resolution of a dispute will be formalized in a written report signed by all Board members. The recommendations shall be based on the Contract Provisions and the facts and circumstances involved in the dispute. The report should include a description of the dispute, statements of each party's position, findings as to the facts of the dispute, discussion and rationale for the recommendation(s), and the recommendation(s). The report shall be submitted concurrently to the parties, as soon as possible after completion of the hearing as agreed by all parties.
2. If the Board cannot arrive at a unanimous report, the Board shall prepare minority findings and recommendations, which, together with the majority findings and recommendations shall comprise the DRB report. The minority report shall identify the issues of disagreement, along with the reasons for disagreement.
3. Clarification:
   (a) Either party may request clarification of a report within 14 Calendar Days following receipt of the report. Within a reasonable period of time, the Board shall provide written clarification to both parties.
   (b) Requests for clarification shall be submitted in writing simultaneously to the Board and the other party.
4. Reconsideration:
   (a) Either party may request reconsideration of a report, provided:
      (i) The request is made within 14 Calendar Days following receipt of the report, and
      (ii) New information is obtained or developed that was not known at the time of the hearing or, in the party's opinion, the Board misunderstood or failed to consider pertinent facts of the dispute.
   (b) Within a reasonable time, the Board shall provide written reconsideration to both parties.
   (c) Requests for reconsideration shall be submitted in writing simultaneously to the Board and the other party.
   (d) The Board will give the party not requesting reconsideration the option of submitting a rebuttal to any information that is the basis of the request for reconsideration.

Acceptance of Board Recommendations

Within 30 Calendar Days of receiving the Board recommendations or within 14 Calendar Days of receiving the Board's written clarification and/or reconsideration both WSDOT and the Design-Builder shall respond to the other in writing signifying that the dispute is either resolved or remains unresolved. Although both parties should place weight upon the Board recommendations, the recommendations are not binding.

If the Board's assistance does not lead to resolution of the dispute, the Design-Builder must file a claim according to Section 1-09.11(2) before seeking any form of judicial relief.

In the event the Board's recommendations do not lead to resolution of the dispute, the Board's recommendation consisting solely of the Board's written report and any written minority reports, along with the Board's written clarifications and written responses to requests for reconsideration, if any, will be admissible in any subsequent dispute resolution proceedings including, but not limited to litigation/arbitration. The aforementioned list of documentation shall be considered all-inclusive.

1-04.5(1).1.9 Vacant

1-04.5(1).1.10 Payment for the Board Processes

1. The Design-Builder and WSDOT shall each bear their respective in-house costs.
2. WSDOT and Design-Builder shall share equally in the cost of the Board's services and all operating expenses of the Board. The Board members' compensation shall be in accordance with the Three Party Agreement. After the Design-Builder and WSDOT review invoices from the Board and other operating expenses of the Board, the Design-Builder shall make full payment for all Board members and Board operating expenses. WSDOT will reimburse the Design-Builder for 50 percent of such payments, under the Price Proposal item "Disputes Review Board".
3. The Design-Builder and WSDOT shall equally bear the cost of the services of the outside expert hired to advise the Board. Outside experts hired to advise the Board shall Contract directly with the Design-Builder after concurrence from the Board and approval from WSDOT. Invoices for these services shall be submitted by the expert to both the Design-Builder and WSDOT for approval by both parties. The Design-Builder shall pay approved invoices in full, and WSDOT will reimburse the Design-Builder for 50 percent of such payments, under the Price Proposal item "Disputes Review Board".
4. The cost for securing outside expert services for WSDOT or the Design-Builder shall be borne by the party securing such services.
5. WSDOT, through the WSDOT Engineer, will provide administrative services, such as conference facilities and copying services, to the Board and WSDOT will bear the costs for these services.

1-04.5(1).1.11 Indemnification of Board Members

WSDOT and Design-Builder shall indemnify and hold harmless the Board members from and against all claims, damages, losses and expenses, including but not limited to attorney's fees arising out of and resulting from the actions and recommendations of the Board.

1-04.6 *Paths and Trails*

The Design-Builder shall calculate the percentage of paths and trails and submit with the RFC Plans per RCW 47.30. This percentage will be provided to the WSDOT Engineer. For projects with no paths and trails calculation, use 0 percent. Communicating 0 percent ensures the review of the paths and trails percentage occurred.

1-04.7 *Differing Site Conditions*

For Work unrelated to an ATC, Differing Site Conditions shall mean (a) actual subsurface or latent physical conditions encountered at the Site that are substantially or materially different from the baseline conditions identified in the GBR and, the data in the GDR, or the SGDR (if any) as set forth in Section 1-02.4(2) and which are not discoverable from a reasonable investigation and analysis of the Site, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work Site characteristics, or (c) the discovery of Hazardous Materials or asbestos not identified in the Hazardous Materials Report, asbestos GFI report, or not ordinarily encountered and generally recognized in the type of Work provided for in the Contract and the Work Site characteristics provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

For Work related to an ATC, Differing Site Conditions shall mean (a) actual subsurface conditions or latent physical conditions encountered at the Site that are substantially or materially different from the conditions indicated in the Design-Builder's geotechnical investigation, including its geotechnical basis of design, included in said ATC (see Section 1-02.4(2)), and which are not discoverable from a reasonable investigation and analysis of the Site, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work Site characteristics, or (c) the discovery of Hazardous Materials or asbestos not identified in the Design-Builder's Hazardous Materials investigation (see Section 1-02.4(3)), and which are not discoverable from a reasonable investigation and analysis of the Site, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

The party discovering such conditions shall promptly notify the other party in writing of the specific Differing Site Conditions before they are disturbed and before the affected Work is performed. Such notification shall identify the conditions represented in the Contract Documents, the conditions encountered at the Site, and an explanation of the difference.

Upon written notification, WSDOT will investigate the conditions to determine if conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. WSDOT will provide the Design-Builder a Written Determination whether an adjustment of the Contract is warranted.

Notwithstanding the above, the Design-Builder shall be entitled to an equitable adjustment adjusting the Contract Price only for the actual, reasonable cost increase resulting from Differing Site Conditions which in the aggregate exceeds ***$500,000***. The responsibility for the first ***$500,000*** worth of Differing Site Conditions shall rest solely with the Design-Builder.

If WSDOT determines that Differing Site Conditions do not exist and no adjustment in costs or time is warranted, such determination shall be final as provided in Section 1-05.1.

No Contract adjustment which results in a benefit to the Design-Builder will be allowed unless the Design-Builder has provided the required written notice.

The equitable adjustment will be by agreement with the Design-Builder. However, if the parties are unable to agree, WSDOT will determine the amount of the equitable adjustment in accordance with Section 1-09.4. Extensions of time will be evaluated in accordance with Section 1-08.8.

If WSDOT determines that Differing Site Conditions do not exist and no adjustment in costs or time is warranted, such determination shall be final as provided in Section 1-05.1.

If the Design-Builder does not agree with the WSDOT Engineer's Written Determination, the Design-Builder shall pursue the protest procedures in accordance with Section 1-04.5.

No claim by the Design-Builder shall be allowed unless the Design-Builder has followed the procedures provided in Section 1-04.5 and 1-09.11.

1-04.7(1) Burden of Proof

The Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order under Section 1-04.7 shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by the Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by the Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

1-04.7(2) Insurance Claims

Prior to filing any request for a Change Order relating to a Differing Site Condition, Design-Builder shall inquire whether insurance proceeds may be available to cover any

of its costs. If Design-Builder finds that reasonable grounds for filing an insurance claim exist, then Design-Builder shall so notify WSDOT and shall take appropriate steps to file and pursue the claim in accordance with Section 1-07.18(4). Upon receipt of a Change Order request and evidence that the claim has been properly filed, WSDOT will process the Change Order request pursuant to the Contract.

1-04.8 *Progress Estimates and Payments*

Progress estimates or payments for the Work shall not be used as evidence of performance for the Work. Progress estimates serve only as basis for partial payments. WSDOT may revise progress estimates at any time before Final Acceptance. If WSDOT deems it proper to do so, changes may be made in progress estimates and in the final estimate.

The failure by WSDOT to deduct from a progress payment any of the sums which WSDOT is entitled to recover from the Design-Builder under the terms of the Contract shall not constitute a waiver of WSDOT's right to such sums.

1-04.9 *Vacant*

1-04.10 *Use of Materials Found on the Project*

With the WSDOT Engineer's written approval, the Design-Builder may use the following on the Project: stone, gravel, sand, other materials from on-site excavation, or timbers removed in the course of the Work. Approval will not be granted if:

1. The excavated materials or timber fail to meet Contract requirements.
2. The excavated materials or timber are required for other use under the Contract.
3. Such use is not in the best interests of WSDOT as determined by the WSDOT Engineer, whose decision shall be final as provided in Section 1-05.1.

Any material disturbed by, but not used in, the Work shall be disposed of as provided elsewhere in the Contract or as directed by WSDOT.

The Design-Builder shall not create borrow pits on the WSDOT Right of Way unless specifically provided for in the Contract.

1-04.11 *Final Cleanup*

The Design-Builder shall perform final cleanup as provided in this Section to WSDOT's satisfaction. WSDOT will not establish the Physical Completion Date until this is done. The highway Right of Way, material sites, and all ground the Design-Builder occupied to do the Work shall be left neat and presentable. The Design-Builder shall:

1. Remove all rubbish, surplus materials, discarded materials, falsework, temporary Structures, equipment, and debris.
2. Deposit in embankments, or remove from the Project, all unneeded, oversized rock left from grading, surfacing, or paving.

The Design-Builder shall not remove warning, regulatory, informational, or guide signs unless WSDOT approves.

1-05 Control of Work

All Work and materials shall be constructed in accordance with the Contract Documents or as otherwise approved in writing by WSDOT in accordance with Section 1-04.4.

The Design-Builder shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures, and Site safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

1-05.1 *Authority of the WSDOT Engineer*

The WSDOT Engineer will be satisfied that all the Work is being done in accordance with the requirements of the Contract. The Contract and specifications give the WSDOT Engineer authority over the Work. Whenever it is so provided in this Contract, the decision of the WSDOT Engineer will be final: provided, however, that if a written protest is brought within the time allowed in the Contract, challenging the WSDOT Engineer's Written Determination or decision, the protest addressing that Written Determination or decision shall be addressed in accordance with the procedures set forth in Section 1-04.5

The WSDOT Engineer's decisions will be final on all questions including, but not limited to, the following:

1. Quality and acceptability of materials and Work
2. Measurement of quantities of Work
3. Determination as to the existence of changed or Differing Site Conditions
4. Interpretation of Contract requirements
5. Fulfillment of the Contract by the Design-Builder
6. Payments under the Contract including equitable adjustment
7. Suspension(s) of Work
8. Termination of the Contract for default or public convenience

The WSDOT Engineer represents WSDOT on the Project, with full authority to enforce Contract requirements and carry out WSDOT's orders. If the Design-Builder fails to respond promptly to the requirements of the Contract or orders from WSDOT:

1. The WSDOT Engineer may use WSDOT resources, other contractors, other Design-Builders, or other means to accomplish the Work.
2. WSDOT will not be obligated to pay the Design-Builder, and will deduct from the Design-Builder's payments, any costs that result when any other means are used to carry out the Contract requirements or the WSDOT Engineer's orders.

At the Design-Builder's risk, WSDOT may suspend all or part of the Work according to Section 1-08.6.

Nothing in these General Provisions or in the Contract requires the WSDOT Engineer to provide the Design-Builder with direction or advice on how to do the Work. If the

WSDOT 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 result in compliance with the Contract
2. Relieve the Design-Builder of any risks or obligations under the Contract
3. Create any WSDOT liability

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, the Design-Builder shall perform as directed by the WSDOT Engineer in a diligent manner and without delay, shall abide by the WSDOT Engineer decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with these Contract Documents.

1-05.1(1) Oral Orders

When an oral order, including directions, instructions, interpretations, and determinations are issued by the WSDOT Engineer, the WSDOT Engineer will send a Written Determination to the Design-Builder within 3 Calendar Days thereafter. If the WSDOT Engineer determines that a change to the Contract is warranted, a written Change Order will be processed in accordance with Section 1-04.4. If the Design-Builder disagrees with the Written Determination, the Design-Builder may protest in accordance with Section 1-04.5. When the Design-Builder believes they have received an oral order, the Design-Builder shall notify the WSDOT Engineer in writing and within 3 Calendar Days. After the Design-Builder notifies the WSDOT Engineer, WSDOT will respond with a Written Determination within 14 Calendar Days. If the WSDOT Engineer determines that a change to the Contract is warranted, a written Change Order will be processed in accordance with Section 1-04.4. If the Design-Builder disagrees with the Written Determination, the Design-Builder may protest in accordance with Section 1-04.5. Failure to follow procedures of this Section will result in a waiver of claim.

1-05.2 *Authority of Assistants and Inspectors*

Assistants and inspectors have the authority to determine if the Work and materials meet the Contract requirements, reject defective material, and suspend Work that is being done improperly, subject to the final decisions of the WSDOT Engineer or, when appropriate, WSDOT.

Assistants and inspectors are not authorized to accept Work, to accept materials, to issue instructions, or to give advice that is contrary to the Contract. Work done or material furnished which does not meet the Contract requirements shall be at the Design-Builder's risk and shall not be a basis for a claim even if the inspectors or assistants purport to change the Contract.

Assistants and inspectors may advise the Design-Builder of any faulty Work or materials or infringements of the terms of the Contract; however, failure of the WSDOT Engineer or the assistants or inspectors to advise the Design-Builder does not constitute acceptance.

1-05.3 *Plans and Working Drawings*

1-05.3(1) Obligation to Review the Basic Configuration

Before commencing any design or construction Work in an area, the Design-Builder shall review the design contained in the Basic Configuration for constructability and shall notify WSDOT in writing of any errors, omissions, inconsistencies, or other defects in such design affecting constructability. If, after the start of any design or construction Work, the Design-Builder becomes aware of any such error, omission, inconsistency, or other defect in the Basic Configuration, the Design-Builder shall immediately notify WSDOT of the same.

1-05.3(2) Required Approvals

If it is necessary to modify the Basic Configuration in order to correct any errors, omissions, inconsistencies, or other defects, the Design-Builder shall first obtain WSDOT's and any third party's written approvals prior to commencing any related Work.

If more than 15 Calendar Days are required for WSDOT's review of any individual submittal or re-submittal, an extension of time will be considered in accordance with Section 1-08.8.

In all cases where approvals, acceptances, or consents are required to be provided by WSDOT or the Design-Builder hereunder, such approvals, acceptances, or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified, and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the decision shall not be subject to dispute resolution hereunder.

1-05.3(3) Railroad Approvals

This Section is intentionally omitted.

1-05.3(4) Design Documents

The Design-Builder shall furnish the Design Documents to WSDOT and shall address WSDOT's comments prior to designating them as the RFC Documents.

1-05.3(5) Working Drawings

The Design-Builder shall submit Working Drawings for the performance of the Work. Working Drawings shall be submitted by the Design-Builder electronically to WSDOT in accordance with Section 2.28, *Quality Management Plan*.

Working Drawings will be classified under the following categories:

1. Type 1 – Submitted for information
2. Type 2 and 2E – Submitted to the Design-Builder's reviewer for Review and Comment

3. Type 3 and 3E – Submitted to the Design-Builder's reviewer for approval. The Engineer of Record shall review and approve and then submit to WSDOT for Review and Comment

Unless designated otherwise by the Design-Builder prior to the submittal date, submittals of Working Drawings will be reviewed in the order they are received by WSDOT. In the event that several Working Drawings are received simultaneously without an order of review designated by the Design-Builder the review sequence will be at WSDOT's discretion.

WSDOT's review of Working Drawings shall neither confer upon WSDOT, nor relieve the Design-Builder of, any responsibility for the accuracy of the drawings or their conformity with the Contract. The Design-Builder shall bear all risks and all costs of any Work delays caused by unresolved WSDOT review comments.

1-05.4 *Performance*

1-05.4(1) Performance Standards

The Design-Builder shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, free from defects (except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents.

1-05.5 *Vacant*

1-05.6 *Inspection of Work and Materials*

WSDOT may inspect all Work and materials for conformity with the Contract Documents. To ensure WSDOT's safety and access during these inspections, the Design-Builder shall provide any equipment needed, such as walkways, railings, ladders, and platforms.

The Design-Builder shall provide, without charge, samples of materials used or to be used in the Work at WSDOT's request. WSDOT may order the Design-Builder to remove and replace, at the Design-Builder's expense, any materials used without documented Quality Assurance (QA) measures on the part of the Design-Builder's QA Organization.

Any inspections, tests, measurements, or other actions by WSDOT employees serve only one purpose: to assure WSDOT that Work, materials, and progress rate comply with the Contract Documents. Such work by WSDOT employees shall not relieve the Design-Builder from doing any Contract-assigned Work or from performing in accordance with the Contract Documents. The Design-Builder shall correct any substandard Work or materials. WSDOT may reject unsuitable Work or materials even though such Work was previously inspected or paid for.

The Design-Builder shall inform WSDOT of any part of the Work which is about to be covered and offer a full and adequate opportunity to WSDOT to inspect and test such part

of the Work before it is covered. If WSDOT requests, the Design-Builder shall remove or uncover any area of the completed Work. After WSDOT inspects it, the Design-Builder shall restore the area to the standard the Contract requires. The Design-Builder shall bear the cost of uncovering, removing, and restoring the exposed Work: (a) if it proves unacceptable, or (b) if it was placed without due notice to WSDOT. WSDOT will pay these costs by agreed price or by force account if the Work proves to be acceptable and the Design-Builder had performed the original Work with the authority of and due notice to WSDOT.

The Design-Builder shall permit representatives from other agencies to inspect the Work when it is to be done:

1. On any railroad, utility, or facility of a public agency
2. To the satisfaction of any Federal, State, or municipal agency

In any crushing or screening operation, the Design-Builder shall provide and install a mechanical sampler that:

1. Is automatic or semi-automatic
2. Can safely and easily obtain representative samples of the materials being produced
3. Can convey the samples to ground level in WSDOT-provided sacks
4. Moves at an even rate through the full width of the materials stream falling from the discharge end of the belt, gate, or chute
5. Is power driven during the material intercept cycle
6. Can be adjusted to take samples of about 100 pounds as often as the QA Inspector or WSDOT Engineer requires

The Design-Builder shall bear all costs of providing the sampling equipment, the power to operate it, and the space for its use.

The oversight, spot checks, audits, tests, acceptances, and approvals conducted by WSDOT and others do not constitute acceptance of the materials or Work. WSDOT may request remedies for Nonconforming Work, identify additional Work which must be done to bring the Project into compliance with Contract requirements, or both at any time prior to Final Acceptance, whether or not previous oversight, spot checks, audits, tests, acceptances, or approvals were conducted by WSDOT or any such Persons. The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty obligations, by oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals performed by any Persons, or by any failure of any Person to take such action.

1-05.7 *Removal of Defective Work*

WSDOT will not pay for defective Work, including any Work or materials, or both that do not conform to the Contract. The Design-Builder shall be responsible to immediately report to the WSDOT Engineer any defective Work. The Design-Builder shall immediately remedy, remove, replace, or dispose of defective Work or materials and bear all costs of doing so.

The Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that WSDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If the Design-Builder fails to correct any Nonconforming Work within 10 Calendar Days of receipt of notice from WSDOT requesting correction (or, for Nonconforming Work which cannot be corrected within 10 Calendar Days, if the Design-Builder fails to begin correction within 10 Calendar Days of receipt of such notice and diligently prosecute such correction to completion), then WSDOT may cause the Nonconforming Work to be remedied or removed, and replaced, and may deduct the cost of doing so from any payment due or to become due the Design-Builder, obtain reimbursement from the Design-Builder for such cost, or both.

1-05.8 *Vacant*

1-05.9 *Vacant*

1-05.10 *Guarantees*

The Design-Builder shall furnish to WSDOT any guarantee or Warranty furnished as a customary trade practice in connection with the purchase of any equipment, materials, or items incorporated into the Project. For additional Warranty requirements, refer to Section 1-05.16, General Warranties.

1-05.11 *Final Inspection*

WSDOT will not make the Final Inspection until the physical Work required by the Contract, including Final Cleanup and all extra Work ordered by WSDOT, has been completed. The Physical Completion Date for the Contract will be determined as provided in Section 1-08.5.

1-05.12 *Final Acceptance*

The Design-Builder must perform all the obligations under the Contract before Completion and Final Acceptance can occur. Failure of the Design-Builder to perform all the obligations under the Contract shall not bar WSDOT from unilaterally accepting the Contract as provided in Section 1-09.9(2). The Secretary accepts the Project as complete and acknowledges the final amount due to the Design-Builder by signature on the Final Contract Voucher Certification. The date of that signature constitutes the Final Acceptance date.

The Design-Builder agrees that neither Completion nor Final Acceptance shall relieve the Design-Builder of the responsibility to indemnify, defend, and protect WSDOT, or its Agents, assignees' etc. against any claim or loss resulting from the failure of the Design-Builder (or any Subcontractors) to pay all laborers, mechanics, Subcontractors, material suppliers, or any other Person who provides labor, supplies, or provisions for carrying out the Work or for any payments required for unemployment compensation under Title 50 RCW or for industrial insurance and medical aid required under Title 51 RCW.

Final Acceptance shall not constitute acceptance of any unauthorized or non-compliant Work or material. WSDOT shall not be barred from requiring the Design-Builder to

remove, replace, repair, or dispose of any Work or material that is defective, unauthorized, or that otherwise fails to comply with the Contract Documents or from recovering damages for any such Work or material. Neither Completion nor Final Acceptance shall relieve the Design-Builder of any obligations and responsibilities relating to Warranty requirements, if any, designated in the Contract Documents.

1-05.12(1) Overpayments; No Relief from Continuing Obligations

Acceptance of the Work hereunder will not prevent WSDOT from correcting any measurement, estimate, or certificate made before or after Completion of the Work, or from recovering from the Design-Builder or the Surety or both, the amount of any overpayment sustained due to failure of the Design-Builder to fulfill the obligations under the Contract. The occurrence of Final Acceptance shall not relieve the Design-Builder from any of its continuing obligations hereunder.

1-05.12(2) Vacant

1-05.12(3) Assignment of Causes of Action

The Design-Builder hereby offers and agrees to assign to WSDOT all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), arising from purchases of goods, services, or materials pursuant to the Contract or any Subcontract. This assignment shall be made and become effective at the time WSDOT tenders final payment to the Design-Builder, without further acknowledgment by the parties.

1-05.13 *Superintendents, Labor, and Equipment of the Design-Builder*

At all times, the Design-Builder shall keep at the Work Site a set of the RFC Plans, specifications, and Working Drawings. The Design-Builder shall devote the attention required to make reasonable progress on the Work and shall cooperate fully with WSDOT representatives.

All employees shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If WSDOT determines in its sole discretion that any Person employed by the Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, then, at the written request of WSDOT, the Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written approval of WSDOT. If the Design-Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then WSDOT may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Design-Builder. Such suspension shall in no way relieve the Design-Builder of any obligation contained in the Contract Documents or entitle the Design-Builder to a Change Order. Once compliance is achieved, the Design-Builder shall be entitled to and shall promptly resume the Work.

All design and engineering Work furnished by the Design-Builder shall be performed by or under the supervision of Persons licensed to practice architecture, engineering, or surveying (as applicable) in the State, and by personnel who are careful, skilled,

experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and RFC Documents prepared or checked by them.

Competent supervisors experienced in the task being performed shall continuously oversee the Contract Work.

The Design-Builder shall keep all machinery and equipment in good, workable condition. It shall be adequate for its purpose and used by competent operators.

WSDOT will rate the Design-Builder's performance and Contract compliance in these categories:

1. Progress of Work
2. Quality of Work
3. Equipment
4. Administration/Management/Supervision
5. Coordination and Control of Subcontractors

Whenever WSDOT evaluates the Design-Builder's prequalification under RCW 47.28.070, it will take these reports into account.

No substitution or withdrawal of Major Participants or Key Personnel as identified in the Proposal shall be made without prior written approval by WSDOT. All proposed substitutes shall have qualifications equal to or better than the qualifications of the Person or entity to be replaced. The Design-Builder shall notify WSDOT in writing of any proposed substitution or withdrawal at least 30 Calendar Days in advance of the proposed substitution or withdrawal. Such notification shall include: (i) an explanation of the circumstances necessitating the substitution or withdrawal; (ii) a complete resume of any proposed substitute; and (iii) any other information requested by WSDOT to allow it to evaluate the request. WSDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its sole discretion.

1-05.13(1) Emergency Contact List

The Design-Builder shall submit an Emergency Contact List to the WSDOT Engineer as a Type 1 Working Drawing no later than 5 Calendar Days after the date the Contract is executed. The list shall include, but is not limited to, the Design-Builder's Project Manager, or equivalent; Construction Manager; Erosion and Sediment Control (ESC) Lead; Traffic Control Supervisor (TCS); and Communications Specialist. The list shall identify a representative with delegated authority to act as the emergency contact on behalf of the Design-Builder and include one or more alternates. The emergency contact shall be available upon WSDOT's request at other than normal working hours. The Emergency Contact List shall include 24-hour telephone numbers for all individuals identified as emergency contacts or alternates.

1-05.14 *Cooperation with Other Contractors*

WSDOT may perform other work at or near the Site, including any material site, with other forces than those of the Design-Builder. This work may be done with or without a contract. If such work takes place within or next to this Project, the Design-Builder shall cooperate with all other contractors or forces. The Design-Builder shall carry out Work under this Project in a way that will minimize interference and delay for all forces involved. WSDOT will resolve any disagreements that may arise among the contractors or the Design-Builder and WSDOT over the method or order of doing the Work. WSDOT's decision in these matters shall be final, as provided in Section 1-05.1. Refer to Sections 2.1, *General Information,* and 2.18, *Intelligent Transportation Systems*, for known projects that are on or near the Project limits.

The coordination of the Work shall be taken into account by the Design-Builder as part of the Site investigation in accordance with Section 1-02.4 and any resulting costs shall be incidental and included within the Contract Price.

1-05.15 *Method of Serving Notices*

Any notice to the Design-Builder required under the Contract may be served on the Design-Builder via email with a delivery receipt and read receipt to the last known email address of the Design-Builder's Point of Contact.

The Design-Builder shall require all Subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work to formally communicate with WSDOT only through the Design-Builder.

All correspondence from the Design-Builder shall be directed to the WSDOT Engineer.

1-05.16 *Warranties*

1-05.16(1) General Warranty

The following general Warranty is in addition to any express Warranties provided for elsewhere in the Contract Documents. The Design-Builder shall represent and Warrant the following:

- All Design Work performed pursuant to the Contract, including Work performed by Subcontractors and manufacturers, conforms to all professional engineering principles generally accepted as industry standard in the State.
- The Project is free of defects, including design errors, omissions, inconsistencies, and other defects.
- Materials, plants, and equipment furnished under the Contract are of good quality, and were new when installed, unless otherwise approved by WSDOT.
- The Work meets all of the requirements of the Contract.
- The specifications, drawings, or both, selected or prepared for use during construction are appropriate for their intended use.
- The Project has been constructed so that it can be used for the intended function.

1-05.16(2) General Warranty– Time of General Warranty

The general Warranty shall commence on the day of Physical Completion. The general Warranty shall remain in effect until ***three*** year(s) after Physical Completion. At any time during the general Warranty period, if WSDOT determines that any of the Work has not met the standards set forth in the Contract, then the Design-Builder shall correct the Work in accordance with this Section, even if the performance of such correction extends beyond the stated general Warranty period.

Within 7 Calendar Days of receipt of notice from WSDOT, specifying a failure of any Work required satisfying the general Warranty; or specifying a failure of any Subcontractor representation, Warranty, guarantee, or obligation, which the Design-Builder is responsible for enforcing, the Design-Builder and WSDOT shall mutually agree when and how the Design-Builder shall remedy such failure. In the case of an emergency requiring immediate curative action, the Design-Builder shall implement such immediate action it deems necessary and shall notify WSDOT of the urgency of a mutually agreed-upon remedy. The Design-Builder and WSDOT shall agree on a remedy immediately upon notice by or to WSDOT of such emergency. If the Design-Builder does not use its best efforts to proceed to effectuate a remedy within the 7 Calendar Day period, or if the Design-Builder and WSDOT fail to reach an agreement within the 7 Calendar Day period (or immediately, in the case of emergency conditions), then WSDOT, upon notice to the Design-Builder, shall have the right to order the Design-Builder to perform the Work, or to perform or have performed by others the remedy approved by WSDOT, and the costs shall be paid by the Design-Builder.

1-05.16(3) General Warranty – Subcontractor Warranties

Without in any way derogating the Design-Builder's own representations, Warranties, and other obligations with respect to the Work, the Design-Builder shall obtain from all Subcontractors and cause to be extended to WSDOT, appropriate representations, Warranties, guarantees, and obligations with respect to design, material, plants, workmanship, equipment, tools, and supplies furnished by all Subcontractors. All representations, Warranties, guarantees, and obligations of Subcontractors shall be in writing, and shall run directly to and be enforceable by the Design-Builder and WSDOT and their respective successors and assigns.

1-05.16(4) General Warranty – Performance Responsibility

The Design-Builder retains responsibility for all Work performed on the Project, including all Work of Subcontractors and all materials and equipment provided by suppliers, vendors, and manufacturers. Upon receipt from WSDOT of notice of a failure of any of the Work to satisfy a Warranty, representation, covenant, guarantee, or obligation provided by any Subcontractor, the Design-Builder shall be responsible for enforcing or performing any such Warranty, representation, covenant, guarantee, or obligation, in addition to the Design-Builder's other obligations. WSDOT's rights under this Section shall commence at the time the Warranty, representation, covenant, guarantee, or obligation is furnished to WSDOT, and shall continue until the expiration of the Design-Builder's Warranty, including extensions for repaired or replaced Work. Until such expiration, the cost of any equipment, material, plants, labor, including re-

engineering, and shipping shall be paid by the Design-Builder, if the cost is covered by the Warranty, and the Design-Builder shall be required to repair or replace defective equipment, material, plants, or workmanship furnished by Subcontractors.

1-05.16(5) General Warranty – Extension of General Warranty

The Warranty shall apply to all repaired or replaced Work pursuant to the terms of the Contract. The general Warranty for repaired or replaced Work shall extend beyond the original Warranty period, if necessary, to provide an additional 1-year Warranty period following acceptance by WSDOT of any repaired or replaced Work.

1-05.16(6) General Warranty – No Limitations of Liability

The Warranty is in addition to all rights and remedies available under the Contract or Applicable Law, and shall not limit the Design-Builder's liability or responsibility imposed by the Contract or by Applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability negligence, or fraud.

1-05.16(7) Damages for Breach of Warranty

In addition to all rights and remedies available under the Contract or Applicable Law, if the Design-Builder fails or refuses to provide the Warranty remedies described in this Section, the Design-Builder shall be liable for the cost of performance of the Warranty Work by others.

1-05.16(8) Exclusions

The Warranty shall not require the Design-Builder to perform repair or replacement Work under the following circumstances:

- Normal wear and tear, provided that damage, deterioration outside allowable limits specified in the Contract, or both shall not be considered normal wear and tear
- Failure of Owners to perform routine maintenance consistent with policies and procedures established by WSDOT or other maintenance agencies, including Utility Owners, or in the absence of such policies and procedures in accordance with industry standards of maintenance for similar projects in the United States
- Rebellion, war, riot, act of sabotage, civil commotion, or acts of vandalism
- Wind, flood event greater than the design requirements, earthquakes and other acts of God
- Spill or release of hazardous or contaminated substances not caused by the Design-Builder

1-05.16(9) Landscaping Warranty

1-05.16(9).1 Applicability

In addition to other work described in this Section 1-05.16(9), the Landscaping Warranty applies to all plant material, without regard to:

1. The type of plant material, including transplanted or seeded, grass, shrub, or tree
2. The purpose of the plant material, including stream mitigation, wetland mitigation, habitat restoration, roadside restoration, and lid landscaping
3. The location of the plant material, including on and off the project site, and on and off State Right of Way
4. And without regard to why it was required, including from permits, restoration, mitigation, Section 2.8, *Environmental;* Section 2.15, *Roadside Restoration*, and the *Environmental Commitments List*.

The provisions of Sections 1-07.13(2) and 1-07.13(3) do not apply to Work covered by the Landscaping Warranty.

1-05.16(9).2 Designation of Landscaping Warranty Areas

For purposes of acceptance of Initial Planting and management of the Landscaping Warranty, prior to requesting WSDOT to accept any Landscaping Warranty Area for Initial Planting, the Design-Builder shall submit a Type 1 Working Drawing for Review and Comment designating the horizontal footprint of all Landscaping Warranty Areas on the Project. Upon WSDOT's approval of Initial Planting, the Design-Builder shall revise and resubmit these Type 1 Drawings showing the WSDOT approved Initial Planting acceptance date for each Warranty Planting Area. A Landscaping Warranty Area shall comprise all areas of the project within which Work described under 1-05.16(9).1, Applicability, has been or will be performed. The Design-Builder may designate all such areas in the Contract collectively as one Landscaping Warranty Area, or may, with the WSDOT Engineer's concurrence, subdivide all such areas into individual, discrete Landscaping Warranty Areas.

1-05.16(9).3 Initial Planting

When the Design-Builder's QA Manager has determined that a given Landscaping Warranty Area is complete and meets all Contract requirements, Design-Builder may request such area to be accepted by WSDOT for Initial Planting. In response to this request, the WSDOT Engineer will inspect the Landscaping Warranty Area. The WSDOT Engineer will notify the Design-Builder, in writing, of any replacements or corrective action necessary to meet the plant installation requirements. The Design-Builder shall replace all materials rejected or missing and correct unsatisfactory conditions. Completion of the Initial Planting within a designated Landscaping Warranty Area includes the following conditions:

1. 100 percent of each of the plant material categories are installed as shown in the Plans.
2. Mulch thickness and coverage is complete.
3. All weeds are controlled.
4. Repairs are completed, including but not limited to, full operation of the irrigation system.

5. The area is free of litter and construction debris, and no further Work of any kind will be performed.

Upon concurrence by the WSDOT Engineer that a Landscaping Warranty Area has met all Contract requirements, such area shall be deemed as accepted for Initial Planting, and the Landscaping Warranty shall commence for that Landscaping Warranty Area.

1-05.16(9).4 Term of Landscaping Warranty

The Landscaping Warranty period for each Landscaping Warranty Area shall:

1. Begin on the date the WSDOT Engineer approves Initial Planting.
2. Have a duration of ***1*** year, unless extended for failure by the Design-Builder to fulfill its Landscaping Warranty Obligations as described elsewhere in this Section.

For projects on which the Design-Builder has designated more than one Landscaping Warranty Area, the Landscaping Warranty period will be administered independently for each. For example, each Landscaping Warranty Area may have a different date approved for Initial Planting. As another example, while the duration of the Landscaping Warranty will initially be the same for each Landscaping Warranty Area, this duration will be extended for all areas withing which the Design-Builder fails to comply with the Warranty requirements in that Landscaping Warranty Area.

1-05.16(9).5 Ongoing Requirements During the Landscaping Warranty Period

During the first year of the Landscaping Warranty period, the Design-Builder shall meet monthly or at an agreed upon schedule with the WSDOT Engineer for the purpose of joint inspection of the Landscaping Warranty Areas. Subsequent year Landscaping Warranty periods shall begin immediately at the completion of the preceding year's Landscaping Warranty period. Each subsequent Landscaping Warranty shall be one full calendar year in duration. For subsequent Landscaping Warranty periods, the Design-Builder shall meet with the WSDOT Engineer at an agreed upon frequency to ensure the Work necessary for the continued healthy and vigorous growth of all plant material. The Design-Builder shall correct all unsatisfactory conditions identified by the WSDOT Engineer within a 10 Calendar Day period immediately following the inspection. If plant replacement is required, the Design-Builder shall, within the 10 Calendar Day period, submit a plan and schedule for the plant procurement and replacement.

The Landscaping Warranty shall be extended an amount equal to any periods where the Design-Builder does not comply with the Landscaping Warranty requirements.

The Design-Builder shall perform the Landscaping Warranty activities listed below:

1. Plant Survival – 100 percent of the plants are alive, healthy, and vigorously growing as determined by WSDOT. All dead, dying, or unhealthy plants shall be replaced. Remove all foreign, dead, or rejected plant material. At the end of the first year of Landscaping Warranty, if more than 20 percent of plants are not healthy and vigorous, as determined by the WSDOT Engineer, the Landscaping Warranty period will be extended to include an additional year. All replacement plants shall be of the same species as the plants they replace and meet the requirements of Section 9-14.7 unless otherwise approved by the WSDOT Engineer. Replacement plant material

larger than specified in the Plans shall meet the applicable section requirements of the ASNS for container class, ball size, spread, and branching

2. Seeded Areas – Protection and Care of Seeded Areas shall meet the requirements of Section 8-02.3(9)E of the Standard Specifications.
3. Watering – Water all plant materials in Landscaping Warranty Areas and replacement plants during the first year after installation. At a minimum, provide 2 inches of water, including precipitation, to Landscaping Warranty Areas once every 14 Calendar Days from June 1 through September 15 for projects west of the Cascade Mountains and from April 15 through October 15 for projects east of the Cascade Mountains. Apply water at a rate that does not allow runoff to occur. The Design-Builder shall submit a plan for watering methods and frequency during the Landscaping Warranty Period the WSDOT Engineer, for Review and Comment. If a temporary irrigation system is proposed, submit a watering schedule.
4. Emergent and Aquatic Vegetation – Maintain sufficient water in the soils to support vegetation. At a minimum, soils shall be completely saturated; at a maximum, there shall be a water depth of ⅓ the height of the vegetation during the growing season.
5. Stormwater Vegetation – Implement a Water Management Plan to ensure survival of vegetation in accordance with the WSDOT *Highway Runoff Manual*. Ensure an adequate supply of water is present for a minimum of 10 months of the year to ensure survival of emergent vegetation in accordance with the WSDOT *Highway Runoff Manual.*
6. Mulching – Maintain a 3-inch layer of mulch in a weed free condition over all Landscaping Warranty Areas during the Landscaping Warranty period
7. Pruning – Pruning of plant material shall be restricted to the removal of damaged branches on trees and shrubs to prevent injury or disease. Pruning shall be done in such a way that the natural habit of growth is maintained. No unnatural pruning, topping or hedging will be permitted.
8. Erosion Control – Repair eroded areas and replace mulch as needed to prevent continued erosion
9. Weed and Pest Control – Maintain all planting areas in a weed-free condition. The Design-Builder shall comply with its Weed and Pest Control Plan. Seeded areas shall have a dense and healthy stand of the seeded species, free of noxious or undesirable species as defined by the Weed and Pest Control Plan.
10. Litter Control – Remove litter and debris on an annual basis.
11. Mowing – Roadside Mowing shall be in accordance with Standard Specifications 8-02.
12. Environmental mitigation areas shall meet all criteria specified in Section 2.8, *Environmental*, and in Section 2.14, *Stormwater*, pertaining to environmental mitigation restoration.
13. At any time during the Landscaping Warranty period, if WSDOT determines the Landscaping Warranty Work has not met the standards set forth in the Contract, the

Design-Builder shall correct the Work in accordance with this Section, even if the performance of such correction extends beyond the stated Landscaping Warranty period.

1-05.16(9).6 Payment for Landscaping Warranty

All costs related to the Landscaping Warranty Work, including costs in any manner necessary to facilitate that work, including but not limited to submittals, Governmental Approvals, traffic control, establishing and removing access, water, power, disposal fees, supervision, bonding, insurance, overhead, and profit shall be included in the Proposal Price.

1-05.16(9).7 Vacant

1-05.16(10) Vacant

1-05.16(11) Warranty Inspections

The failure to conduct any inspection specified shall not invalidate or cancel the Warranty provisions, responsibilities, or performance requirements. Notwithstanding the provisions of this Section, WSDOT may inspect any component of the Project at any time prior to the completion of the Warranty, and issue notice to the Design-Builder to perform repair or replacement Work.

1-05.16(12) Warranty Performance Requirements

In addition to the Warranty provisions of this Section, the Work shall meet the requirements specified in the Contract.

1-05.16(13) Costs of Correction Work

All costs of repair and replacement Work, including additional testing and inspections, shall be paid by the Design-Builder. The Design-Builder shall reimburse WSDOT within 14 Calendar Days after receipt of WSDOT's invoice.

1-05.16(14) Damages for Breach of Warranty

If the Design-Builder fails or refuses to provide any Warranty remedy described in this Section, the Design-Builder shall be liable for the cost of performance of the Warranty Work by others.

1-05.16(15) Disputes

Any disagreement between WSDOT and the Design-Builder relating to this Section shall be subject to the dispute resolution provisions described in Section 1-04.5, provided that the Design-Builder proceeds as directed by WSDOT, pending resolution of the dispute.

1-06 Vacant

1-07 Legal Relations and Responsibilities to the Public

1-07.1 *Laws to be Observed*

1-07.1(1) General

The Design-Builder shall always comply with all Federal, State, tribal, or local laws, ordinances, regulations, and Governmental Approvals that affect Work under the Contract. The Design-Builder acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure to comply with such requirements. The Design-Builder shall indemnify, defend, and save harmless the Indemnified Parties against any claims that may arise because the Design-Builder (or any employee of the Design-Builder or Subcontractor or material Person) violated a legal requirement.

The Design-Builder shall immediately report to the WSDOT Engineer any deviation from the Contract provisions pertaining to environmental compliance, including, but not limited to, spills, unauthorized fill in waters of the State including wetlands, water quality standards, noise, air quality, etc.

Without usurping the authority of other agencies, WSDOT will cooperate to enforce Legal Requirements. Upon awareness of any violation of a legal requirement, the WSDOT Engineer will notify the Design-Builder in an effort to achieve compliance. WSDOT will also notify the agency responsible for enforcement if WSDOT deems that action necessary to achieve compliance with Legal Requirements. The WSDOT Engineer will also assist the enforcing agency obtain Design-Builder compliance to the extent such help is consistent with the provisions of the Contract.

1-07.1(2) Health and Safety

The Design-Builder shall be responsible for the safety of all workers and shall comply with all appropriate State safety and health standards, codes, rules, and regulations, including, at a minimum, those promulgated under the Washington Industry Safety and Health Act RCW Chapter 49.17 (WISHA) and as set forth in Title 296 WAC (L&I). In particular, the Design-Builder's attention is drawn to the requirements of WAC 296.800 which requires employers to provide a safe workplace. More specifically, WAC 296.800.11025 prohibits alcohol and narcotics from the workplace. The Design-Builder shall likewise be obligated to comply with all Federal safety and health standards, codes, rules, and regulations that may be applicable to the Contract Work. A copy of all safety plans (e.g., Fall Protection Work Plan) that are developed by the Design-Builder shall be submitted to the WSDOT Engineer as a Type 1 Working Drawing. When requested by the WSDOT Engineer, the Design-Builder shall provide training to WSDOT employees working on-site for all activities covered by a safety plan. Costs for training that is provided solely to WSDOT employees will be paid to the Design-Builder in accordance with Section 1-09.4.

1-07.1(3) Mine Safety

U.S. Mine Safety and Health Administration rules apply when the Project includes pit or quarry operations. Among other actions, these regulations require the Design-Builder to

notify the nearest Mine Safety and Health sub district office (1) of the Project before it begins, (2) of the starting date, and (3) of the Physical Completion date.

1-07.1(4) Wells

When wells are included in the Contract or encountered as part of the Work, the Design-Builder shall meet all the requirements in WAC 173-160 Minimum Standards for Construction and Maintenance of Wells and all environmental considerations for installing, protecting in place, decommissioning, or abandonment of wells.

1-07.1(5) Changes to Laws to be Observed

1-07.1(5).1 General

WSDOT will not adjust payment to compensate the Design-Builder for changes in Legal Requirements unless those changes are specifically within the scope of RCW 39.04.120. For changes under RCW 39.04.120, WSDOT will compensate the Design-Builder by negotiated Change Order as provided in Section 1-04.4.

1-07.1(5).2 Taxes

Under certain conditions, WSDOT will adjust payment to compensate for tax changes. First, the changes shall involve Federal or State taxes on materials or fuel used in or consumed for the Project. Second, the changes shall increase or decrease the Design-Builder-paid taxes by more than $500. Third, the tax change must occur after the Proposal opening date. Within these conditions, WSDOT will adjust compensation by the actual dollar amounts of increase or decrease caused by the tax changes. If WSDOT requests it, the Design-Builder shall certify in writing that the Contract Price does not include any extra amount to cover a possible change in taxes.

WSDOT may audit the records of the Design-Builder as provided in Section 1-09.12, to verify any claim for compensation because of changes in laws or taxes.

1-07.2 *State Taxes*

The Design-Builder shall pay all applicable Federal, State and Local sales, consumer, use, and similar taxes, property taxes, and any other taxes, fees, charges, or levies imposed by a governmental entity, whether direct or indirect, relating to, or incurred in connection with, the Project or performance of the Work, including that portion of the Contract Price relating to design services. The Design-Builder shall include all the Design-Builder paid taxes in the Contract Price unless a specific exception applies. The Washington State Department of Revenue has issued special rules on the State sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules.

The Design-Builder should contact the Contract Payment Section of the Division of Accounting & Financial Services of the Department of Transportation, Olympia, for answers to questions regarding sales tax.

WSDOT will not adjust its payment if the Design-Builder based its Proposal on a misunderstood tax liability.

WSDOT may deduct from its payments to the Design-Builder, withhold from the retainage, or place a lien on the retainage bond, in the amount the Design-Builder owes the State Department of Revenue, whether the amount owed relates to the Contract in question or not. Any amount so deducted will be paid into the proper State fund on the Design-Builder's behalf. For additional information on tax rates and application refer to applicable RCWs, WACs, or the Department of Revenue's website.

1-07.2(1) State Sales Tax: WAC 458-20-171 – Use Tax

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

The *State Sales Tax: Rule 170 and 171 Map* (Appendix R) and the Contract Documents will identify those parts of the Project that are subject to Use Tax under this Section.

For Work designated as Rule 171, Use Tax, the Design-Builder shall include Washington State retail sales taxes in the portion of the Contract Price allocable to such Work. Typically, these taxes are collected on materials incorporated into the Project and items such as the purchase or rental of; tools, machinery, equipment, or consumable supplies not integrated into the Project.

1-07.2(2) State Sales Tax: WAC 458-20-170 – Retail Sales Tax

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

The *State Sales Tax: Rule 170 and 171 Map* (Appendix R) and the Contract Documents will identify those parts of the Project that are subject to retail sales tax under this Section.

For Work designated as Rule 170, Retail Sales Tax, the Design-Builder shall collect from WSDOT, Retail Sales Tax on the portion of the Contract Price allocable to such Work. WSDOT will automatically add this Retail Sales Tax to each payment to the Design-Builder and for this reason, the Design-Builder shall not include the Retail Sales Tax in its Contract Price. However, WSDOT will not provide additional compensation to the Design-Builder or Subcontractor for Retail Sales Taxes paid by the Design-Builder in addition to the Retail Sales Tax on the total Contract Price. Typically, these taxes are collected on items such as the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the Project. Such sales taxes shall be included in the Contract Price.

1-07.3 *Fire Prevention and Merchantable Timber Requirements*

1-07.3(1) Fire Prevention

When the Work is in or next to State or Federal forests, the Design-Builder shall know and observe all laws and rules (State or Federal) on fire prevention and sanitation. The Design-Builder shall ask the local forest supervisor or regional manager to outline requirements for permits, sanitation, fire-fighting equipment, and burning.

The Design-Builder shall take all reasonable precautions to prevent and suppress forest fires. In case of forest fire, the Design-Builder shall immediately notify the nearest forest headquarters of its exact site and shall make every effort to suppress it. If needed, the

Design-Builder shall require its employees and those of any Subcontractor to work under forest officials in fire-control efforts.

1-07.3(2) Merchantable Timber Requirements

When merchantable timber is to be cut, the Design-Builder shall obtain a permit from the appropriate regional office of the State Department of Natural Resources and comply fully with the State Forest Practices Act.

No Person may export from the United States or sell, trade, exchange, or otherwise convey to any other Person for the purpose of export from the United States, timber originating from the Project.

The Design-Builder shall comply with the Forest Resources Conservation and Shortage Relief Amendments Act of 1993, (Public Law 103-45), and the Washington State Log Export Regulations, (WAC 240-15).

1-07.4 *Sanitation*

1-07.4(1) General

The Design-Builder shall provide employees with all accommodations required by the State Department of Health and other agencies. These accommodations shall be kept clean, neat, and sanitized, and shall not create any public nuisance. The Design-Builder shall keep all camp sites clean, burn or properly dispose of all refuse, and leave each site in a neat and sanitary condition.

1-07.4(2) Health Hazards

Biological hazards and associated physical hazards may be present in the Work Site. The Design-Builder shall take precautions and perform any necessary Work to provide and maintain a safe and healthful Work Site in accordance with Applicable Laws.

1-07.5 *Vacant*

1-07.6 *Permits and Licenses*

The Design-Builder shall obtain all required permits and licenses that have not been obtained by WSDOT and give all required notices.

WSDOT will support the Design-Builder in efforts to obtain a temporary operating permit in its name if:

1. A local rule or an agency policy prevents issuing the permit to a private firm.
2. The Design-Builder takes all action to obtain the permit.
3. The permit will serve the public interest.
4. The permit applies only to Work under the Contract.
5. The Design-Builder agrees in writing: (a) to comply with all the issuing agency requirements, and (b) to hold WSDOT harmless for any Work-related liability incurred under the permit.

6. The permit cost to WSDOT is zero dollars.

1-07.7 *Load Limits*

1-07.7(1) General

While moving equipment or materials on public highways, the Design-Builder shall comply with all laws that control traffic or limit loads. The Contract neither exempts the Design-Builder from such laws nor licenses overloads. At WSDOT's request, the Design-Builder shall provide the equipment or load data needed to calculate the equipment's weight on the Roadway.

If the sources of materials provided by the Design-Builder necessitate hauling over roads other than State Highways, the Design-Builder shall, at the Design-Builder's expense, make all arrangements for the use of the haul routes.

Except for the load limit restrictions specified in Section 1-07.7(2), the Design-Builder may operate vehicles which exceed the legal gross weight limitations without special permits or payment of additional fees provided such vehicles are employed in the construction and within the limits of this Project.

All Design-Builder movement or storage of materials or equipment within the Project limits, shall conform to all of the following conditions:

1. Legal load limits shall apply on all roads open to and in use by public traffic.
2. Legal load limits shall apply on existing roads not scheduled for major reconstruction under the current Contract.
3. The Design-Builder may haul overloads (not more than 25 percent above load limits) on any newly paved roads (with final lift in place) built under this Contract not open to public traffic if this does not damage completed Work.
4. When moving vehicles or operating equipment on or over Structures designed for direct bearing of live load, buried Structures, culverts, pipes, or retaining walls within the Project limits, the Design-Builder shall meet the load-limit restrictions in Section 1-07.7(2).
5. When storing material on a Structure or retaining wall, the Design-Builder shall meet the load-limit restrictions in Section 1-07.7(2). These requirements are not intended for long term storage of material.
6. The Design-Builder shall remain responsible for and pay all repair costs due to loads that cause damage on newly paved roads, new and existing Structures, culverts, pipes and retaining walls.

Elsewhere on the Project, the Design-Builder may operate equipment with only the load-limit restrictions in 1, 2, and 3 in Section 1-07.7(2). The Design-Builder shall remain responsible, however, for all load-caused damage. All vehicles subject to license on a tonnage basis shall be licensed to maximum legal capacity before operating under these limits.

The Contract Price includes all costs for operating vehicles or storing materials on or over Structures, culverts, pipes, and retaining walls. Nothing in this Section affects the Design-Builder's other responsibilities under the Contract or under public highway laws.

Bridges that are under construction shall meet the load restrictions in Section 6-01.6 of the Standard Specifications.

1-07.7(2) Load-Limit Restrictions

At the request of the WSDOT Engineer, the Design-Builder shall provide supporting documentation of vehicle, equipment or material loads, axle or support dimensions and any additional information used to determine the loads.

1. **Structures Designed for Direct Bearing of Live Loads**

   Construction equipment that is not considered a legal vehicle licensed for legal travel on the public Highway, including, but not limited to, track or steel wheeled vehicles, may operate on a Structure. Gross equipment weight, axle spacing, equipment spacing, and other attributes identified in the plans shall not be exceeded. When loads are not identified in the plans, the construction equipment shall not exceed the following load restrictions:

   (a) The gross vehicle weight or maximum load on each axle shall not exceed the legal load limit, axle spacing nor posted weight limits on a Structure.

   (b) A tracked vehicle with a maximum gross vehicle weight of 40,000 pounds and track contact length no less than 8 feet. The maximum gross vehicle weight may increase by 2,000 pounds for each one foot of track contact length over 8 feet, but shall not exceed 80,000 lbs.

   (c) A tracked vehicle with a maximum gross vehicle weight of 20,000 pounds and track contact length less than 8 feet.

   (d) No single axle shall exceed 20,000 pounds.

   (e) No more than one vehicle shall operate over any Structure at one time.

   Track contact length shall be measured once for two or more parallel tracks.

   The Design-Builder shall not store construction materials on timber Structures or Structures posted for weight limits. When a Structure within the Project limits is not posted for weight limits and there is no other reasonable storage space within the Project limits, the Design-Builder may store construction material on the Structure and shall not exceed the maximum uniformly distributed load and distribution length along the Structure per the following table:

Maximum Uniform Load (psf)		
Maximum Distributed Length Along Structure	Structure Width (curb-to-curb)	
	24 feet or less	greater than 24 feet
15 ft	250	160
40 ft	125	80
80 ft	75	50
Full Structure Length	50	35

The load restrictions for storing material or operating equipment shall not be combined and shall apply to the full Structure length. Materials that are stored in two or more locations on the same Structure shall use the total combined length to determine the maximum load restriction. Vehicle traffic and the Design-Builder's equipment may operate in the adjacent lanes to the stored materials and shall not be allowed on the Structure width that is occupied by the stored materials. Design-Builder's equipment that is used to deliver or remove any stored material with the same Structure width shall be considered in combination with all stored materials. This equipment shall be assumed to be uniformly distributed over the largest axle spacing and average axle width. The Design-Builder shall immediately remove all dirt, rock, or debris that may gather on the Structure's roadway surface.

2. **Buried Structures** - Buried structures shall include reinforced concrete three sided structures, box culverts, split box culverts, structural plate pipe, pipe arch, and underpasses.

   Loads shall not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles spaced less than 10 feet apart. These limits are permitted only if the embankment has: (a) been built to specifications, and (b) reached at least 3 feet above the top of the buried structure.

   When the embankment has reached 5 feet above the top of the buried structure, the Design-Builder may increase per-axle loads up to 100,000 pounds if outside wheel spacing is at least 7 feet on axle centers.

3. **Pipe Culverts and Sewer Pipes** – Pipe culverts and sewer pipes shall include pipe for drainage, storm sewers, and sanitary sewers. Loads over pipe culverts and sewer pipes shall not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles spaced less than 10 feet apart. These limits are permitted only if: (a) the culvert or pipe has been installed and backfilled to specifications and (b) the embankment has reached at least 2 feet above the top limit of pipe compaction.

   When the embankment has reached 5 feet above the top limit of pipe compaction, the Design-Builder may increase per-axle loads up to 100,000 pounds if outside wheel spacing is at least 7 feet on axle centers, except that:

   (a) For Class III reinforced concrete pipes, the embankment shall have risen above the top limit of compaction at least 6 feet.

(b) For Class II reinforced concrete pipes, the maximum load for each axle shall be 80,000 pounds if outside wheel spacing is at least 7 feet on axle centers. In this case, the embankment shall have risen above the top limit of compaction at least 6 feet.

4. **Retaining Walls -** Loads above existing and completed retaining walls designed for vehicular loads, where any part of the load is located within half the retaining wall height, shall not exceed the following load restrictions:

(a) The gross vehicle weight or maximum load on each axle shall not exceed the legal load limit.

(b) Construction equipment and material shall not exceed 250 pounds per square foot.

If necessary and safe to do so, the WSDOT Engineer may allow higher loads than those allowed under these load-limit restrictions. For loads on or over Structures designed for direct bearing of live load, the Design-Builder shall prepare Type 3E Working Drawings consisting of calculations and other supporting information in accordance with the requirements of Section 6-01.6 of the Standard Specifications. For loads on or over pipes, culverts, buried structures, and retaining walls the Design-Builder shall prepare Type 2E Working Drawings. All Working Drawings shall contain the following information: a description of the loading details; arrangement, movement and position of all vehicles, equipment and materials on the Structure, culvert or pipe; and statement that the Design-Builder assumes all risk for damage.

1-07.8 *High Visibility Apparel*

The Design-Builder shall require all personnel under their control (including service providers, Subcontractors, and lower tier Subcontractors) that are on foot in the Work zone and are exposed to vehicle traffic or construction equipment to wear the high visibility apparel described in this Section.

The Design-Builder shall ensure that a competent Person as identified in the MUTCD selects the appropriate high-visibility apparel suitable for the job-site conditions.

High visibility garments shall always be the outermost garments.

High visibility garments shall be labeled as, and in a condition compliant with the ANSI/ISEA 107-(2004 or later version) and shall be used in accordance with manufacturer recommendations.

1-07.8(1) Traffic Control Personnel

All personnel performing the Work described in Section 2.22, *Maintenance of Traffic*, (including TCS, flaggers, spotters, and others performing traffic control labor of any kind), shall comply with the following:

1. During daylight hours with clear visibility, workers shall wear a high-visibility ANSI/ISEA 107 Class 2 or 3 vest or jacket, and hard hat meeting the high visibility headwear requirements of WAC 296-155-305.

2. During hours of darkness (0.5 hour before sunset to 0.5 hour after sunrise) or other low visibility conditions (snow, fog, etc.), workers shall wear a high-visibility ANSI/ISEA 107 Class 2 or 3 vest or jacket, high visibility lower garment meeting ANSI/ISEA 107 Class E, and hard hats meeting the high visibility headwear requirements of WAC 296-155-305.

1-07.8(2) Non-Traffic Control Personnel

All personnel, except those performing the Work described in Section 2.22, *Maintenance of Traffic*, shall wear high visibility apparel meeting the ANSI/ISEA 107 Class 2 or 3 standard.

1-07.9 *Wages*

1-07.9(1) General

This Contract is subject to the minimum wage requirements of RCW 39.12 and to RCW 49.28 (as amended or supplemented). On Federal-aid projects, Federal wage laws and rules also apply. The hourly minimum rates for wages and fringe benefits are listed in the Contract provisions. When Federal wage and fringe benefit rates are listed, the rates match those identified by the U.S. Department of Labor's "Decision Number" shown in the Contract provisions.

The Design-Builder, Subcontractors, and all individuals or firms required by RCW 39.12, WAC 296-127 and the Federal Davis-Bacon and Related Acts (DBRA) to pay minimum prevailing wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits required by RCW 39.12. Higher wages and benefits may be paid.

By including the hourly minimum rates for wages and fringe benefits in the Contract provisions, WSDOT does not imply that the Design-Builder will find labor available at those rates. The Design-Builder shall be responsible for any amounts above the minimums that will actually have to be paid. The Design-Builder shall bear the cost of paying wages above those shown in the Contract provisions.

When the Project is subject to both State and Federal hourly minimum rates for wages and fringe benefits and when the two rates differ for similar kinds of labor, the Design-Builder shall not pay less than the higher rate unless the State rates are specifically preempted by Federal law. When the Project involves highway Work, heavy Work, and building Work, the Contract provisions may list a Federal wage and fringe benefit rate for the highway Work, and a separate Federal wage and fringe benefit rate for both heavy Work and building Work. The area in which the worker is physically employed shall determine which Federal wage and fringe benefit rate shall be used to compare against the State wage and fringe benefit rate.

If employing labor in a class not listed in the Contract provisions on State funded projects only, the Design-Builder shall request a determination of the correct wage and benefits rate for that class and locality from the Industrial Statistician, L&I, and provide a copy of those determinations to the WSDOT Engineer.

If employing labor in a class not listed in the Contract provisions on Federally funded projects, the Design-Builder shall request a determination of the correct wage and benefit

for that class and locality from the U.S. Secretary of Labor through the WSDOT Engineer. The Design-Builder initiates the request by preparing Standard Form 1444, *Request for Authorization of Additional Classification and Rate*, available at www.gsa.gov/reference/forms, and submitting it to the WSDOT Engineer for further action.

The Design-Builder shall ensure that all firms (suppliers, manufacturers, or fabricators) that falls under the provisions of RCW 39.12 because of the definition "Contractor" in WAC 296-127-010 complies with all the requirements of RCW 39.12.

The Design-Builder shall be responsible for compliance with the requirements of the DBRA and RCW 39.12 by all firms (Subcontractors, lower tier Subcontractors, suppliers, manufacturers, or fabricators) engaged in any part of the Work necessary to complete this Contract. Therefore, should a violation of this Subsection occur by any firm that is providing Work or materials for completion of this Contract whether directly or indirectly responsible to the Design-Builder, WSDOT will take action against the Design-Builder, as provided by the provisions of the Contract, to achieve compliance, including, but not limited to withholding payment on the Contract until compliance is achieved.

In the event WSDOT has an error (omissions are not errors) in the listing of the hourly minimum rates for wages and fringe benefits in the Contract provisions, the Design-Builder, Subcontractors, lower tier Subcontractors, or other firms that are required to pay prevailing wages, shall be required to pay the rates as determined to be correct by L&I (or by the U.S. Department of Labor when that agency sets the rates). A Change Order will be prepared to ensure that this occurs. WSDOT will reimburse the Design-Builder for the actual cost to pay the difference between the correct rates and the rates included in the Contract provisions, subject to the following conditions:

1. The affected firm relied upon the rates included in the Contract provisions to prepare its Proposal and certifies that it did so.
2. The allowable amount of reimbursement will be the difference between the rates listed and rates later determined to be correct plus only appropriate payroll markup the employer must pay, such as, social security and other payments the employer must make to the Federal or State Government.
3. The allowable amount of reimbursement may also include some overhead cost, such as, the cost for bond, insurance, and making supplemental payrolls and new checks to the employees because of underpayment for previously performed Work.
4. Profit will not be an allowable markup.

Firms that anticipated when they prepared their Proposals, paying a rate equal to or higher than, the correct rate as finally determined, will not be eligible for reimbursement.

The Federal wage rates incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA20210001.

The State rates incorporated in this Contract are applicable to all construction activities associated with this Contract.

Application of Wage Rates for the Occupation of Landscape Construction

State prevailing wage rates for public works contracts are included in this Contract and show a separate listing for the occupation:

- Landscape Construction, which includes several different occupation descriptions such as: Irrigation and Landscape Plumbers, Irrigation and Landscape Power Equipment Operators, and Landscaping or Planting Laborers.

In addition, Federal wage rates that are included in this Contract may also include occupation descriptions in Federal Occupational groups for work also specifically identified with landscaping such as:

- Laborers with the occupation description, Landscaping or Planting.
- Power Equipment Operators with the occupation description, Mulch Seeding Operator.

If Federal wage rates include one or more rates specified as applicable to landscaping work, then Federal wage rates for all occupation descriptions, specific or general, shall be considered and compared with corresponding State wage rates. The higher wage rate, either State or Federal, becomes the minimum wage rate for the Work performed in that occupation.

The Design-Builder is responsible for determining the appropriate crafts necessary to perform the Contract Work. If a classification considered necessary for performance of the Work is missing from the Federal Wage Determination applicable to the Contract, the Design-Builder shall initiate a request for approval of a proposed wage and benefit rate. The Design-Builder shall prepare and submit Standard Form 1444, *Request for Authorization of Additional Classification and Rate* available at www.wdol.gov/docs/sf1444.pdf, and submit the completed form to the WSDOT Engineer's office. The presence of a classification wage on the Washington State Prevailing Wage Rates For Public Works Contracts does not exempt the use of Standard Form 1444, *Request for Authorization of Additional Classification and Rate* for the purpose of determining a Federal classification wage rate.

The Federal wage rates for Highway Construction incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA170001. These rates are applicable to highway construction.

The Federal wage rates for Heavy Construction incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA68 – WA104. These rates are applicable to heavy construction.

The State rates incorporated in this Contract are applicable to all construction activities associated with this Contract.

1-07.9(2) Posting Notices

Notices and posters shall be placed in areas readily accessible to read by employees and potential applicants. The Design-Builder shall ensure the most current version of the following are posted:

1. EEOC - P/E-1 -Equal Employment Opportunity IS THE LAW published by US Department of Labor. Post in English and Spanish versions for projects with Federal-aid funding.
2. FHWA-1022 - NOTICE Federal-Aid Project published by Federal Highway Administration (FHWA). Post for projects with Federal-aid funding.
3. WH 1321 - Employee Rights Under the Davis-Bacon Act published by US Department of Labor. Post for projects with Federal-aid funding.
4. WHD 1088 - Employee Rights Under the Fair Labor Standards Act published by US Department of Labor. Post on all projects.
5. WHD 1420 - Employee Rights and Responsibilities Under The Family And Medical Leave Act published by US Department of Labor. Post on all projects.
6. WHD 1462 – Employee Polygraph Protection Act published by US Department of Labor. Post on all projects.
7. F416-081-909 - Job Safety and Health Law published by L&I. Post in English and Spanish versions on all projects.
8. F242-191-909 - Notice To Employees published by L&I. Post on all projects.
9. F700-074-000 - Your Rights as a Worker in Washington State by L&I. Post on all projects.
10. EMS 9874- Unemployment Benefits published by Washington State Employment Security Department. Post on all projects.
11. Post one copy of the approved "Statement of Intent to Pay Prevailing Wages" for the contractor, each Subcontractor, each lower tier Subcontractor, and other firms (suppliers, manufacturers, or fabricators) that falls under the provisions of RCW 39.12 because of the definition of "Contractor" in WAC 296-127-010.
12. Post one copy of the prevailing wage rates for the Project.

1-07.9(3) Apprentices

When employing apprentices, the Design-Builder shall supply a link or electronic copy to the WSDOT Engineer of each approved Apprentice Program that shows the ratio of journey level to apprentice workers and the hourly wage rate steps for each craft on a project.

Apprentice workers employed for whom an apprenticeship agreement has been registered and approved with the Washington State Apprenticeship Council must be paid the prevailing hourly rate for an apprentice of that trade. Workers that are not registered shall be considered to be a fully qualified journey level worker, and therefore paid at the prevailing hourly rate for journey level workers of that trade in accordance with Section 1-07.9(1).

1-07.9(3).1 Apprentice Utilization

The Design-Builder shall comply with an Apprentice Utilization Requirement. No less than 15 percent of Project Labor Hours shall be performed by Apprentices.

1-07.9(3).2 Definitions

The following definitions apply to Apprentice Utilization:

1. Apprentice is a person enrolled in a State-approved Apprenticeship Training Program.
2. Apprentice Utilization Requirement is the Apprentice labor hours expressed as a percentage of the Project Labor Hours.
3. Good Faith Effort (GFE) is used if the Design-Builder does not meet the Apprentice Utilization Requirement. It describes the Design-Builder's efforts to meet the Apprentice Utilization Requirement including but not necessarily limited to the specific steps as described elsewhere in this specification.
4. Labor Hours are the total hours performed by all workers receiving an hourly wage who are directly employed upon the Project including hours performed by workers employed by the Design-Builder and all Subcontractors. Labor Hours do not include hours performed by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.
5. State-approved Apprenticeship Training Program is an apprenticeship training program approved by the Washington State Apprenticeship Council.

1-07.9(3).3 Electronic Reporting

The Design-Builder shall use the L&I online Prevailing Wage Intent & Affidavit (PWIA) system to submit the "Apprentice Utilization Plan" and "Good Faith Effort" documentation. Reporting instructions are available in the application.

1-07.9(3).4 Apprentice Utilization Plan

The Design-Builder shall submit an "Apprentice Utilization Plan" by filling out WSDOT Form 424-004, *Apprentice Utilization Plan* within 30 Calendar Days of NTP, demonstrating how and when they intend to achieve the Apprentice Utilization Requirement. The plan shall be sufficient in detail for the WSDOT Engineer to track the Design-Builder's progress in meeting the utilization requirements and be updated and re-submitted as the Work progresses or when ordered by the WSDOT Engineer.

If the Design-Builder is unable to demonstrate ability to meet the Apprentice Utilization Requirement in their Apprentice Utilization Plan, they must submit GFE documentation to the L&I online PWIA system for review and approval with their Apprentice Utilization Plan. The Design-Builder shall actively seek out opportunities to meet the Apprentice Utilization Requirement during the Work.

1-07.9(3).5 Vacant

1-07.9(3).6 Contacts

The Design-Builder may obtain information on State-approved Apprenticeship Training Programs by contacting L&I at:

Specialty Compliance Services Division
Apprenticeship Section
P.O. Box 44530
Olympia, WA 98504-4530
Phone: 360-902-5320

1-07.9(3).7 Compliance

In the event that the Design-Builder is unable to achieve the Apprentice Utilization Requirement, the Design-Builder shall submit to the L&I online PWIA system, GFE documentation for review and approval. The GFE documentation shall be submitted after Substantial Completion but no later than 30 Calendar Days after Physical Completion. If GFE documentation was previously submitted as part of the Apprentice Utilization Plan, it shall be updated and re-submitted after Substantial Completion but no later than 30 Calendar Days after Physical Completion.

If the Design-Builder fails to submit GFE documentation or if the WSDOT Engineer does not approve the GFE, the Design-Builder will be subject to disciplinary actions as allowed under WAC 468-16-180.

1-07.9(3).8 Good Faith Efforts

The GFE documentation shall describe in detail why the Design-Builder is not or was not able to attain the Apprentice Utilization Requirement. The GFE documentation shall address one or more of the following areas:

1. Correspondence on solicitation of Apprentices from a State-approved Apprenticeship Training Program(s), and the response from the solicited State-Approved Apprenticeship Training Program(s) when there is a lack of availability of Apprentices.
2. Provide documentation that shows Contract requirements for Tribal Employment Rights Office, Special Training or Disadvantage Business Enterprise requirements affect the ability to obtain Apprentice Labor Hours on the Contract.
3. Provide documentation demonstrating what efforts the Design-Builder has taken to require Subcontractors to solicit and employ Apprentices. Documentation could be posters placed on site, emphasis in Subcontracts about employing Apprentices, letters, memos or other correspondence from Design-Builder to Subcontractor that put an emphasis on employing Apprentices.

The Design-Builder may receive a GFE credit for graduated Apprentice hours through the end of the calendar year for all projects worked on as long as the Apprentice remains continuously employed with the same contractor they were working for when they graduated. If an Apprentice graduates during employment on a project of significant duration, they may be counted towards a GFE credit for up to one year after their graduation or until the end of the project (whichever comes first). Determination of whether or not Contract requirements were met in good faith will be made by subtracting the hours from the journey-level worker total reported hours for the project and adding them to the apprentice hour total. If the new utilization percentage meets the Contract requirement, the contractor will be reported as meeting the requirement in good faith.

1-07.9(3).9 Apprentice Wages

See Section 1-07.9(3).

1-07.9(4) Disputes

If labor and management cannot agree in a dispute over the proper prevailing wage rates, the Design-Builder shall refer the matter to the Director of L&I (or to the U.S. Secretary of Labor when that agency sets the rates). The Director's (or Secretary's) decision shall be final, conclusive, and binding on all parties.

1-07.9(5) Required Documents

1-07.9(5).1 General

All "Statements of Intent to Pay Prevailing Wages", "Affidavits of Wages Paid" and Certified Payrolls, including a signed Statement of Compliance for Federal-aid projects, shall be submitted to the WSDOT Engineer using the L&I online PWIA system.

1-07.9(5).2 Intents and Affidavit

The Design-Builder shall submit, via the PWIA system, the following documents provided by the Industrial Statistician of the Washington State Department of Labor and Industries (State L&I) for themselves and for each firm covered under RCW 39.12 that will or has provided Work and materials for the Contract:

1. The approved "Statement of Intent to Pay Prevailing Wages." WSDOT will make no payment under this Contract until this statement has been approved by L&I and reviewed by the WSDOT Engineer.
2. The approved, "Affidavit of Wages Paid." WSDOT will not grant Completion until all approved Affidavit of Wages Paid for the Design-Builder and all Subcontractors have been received by the WSDOT Engineer. WSDOT will not release to the Design-Builder any funds retained under RCW 60.28.011 until all of the Affidavit of Wages Paid documents have been approved by L&I and a copy of all the approved forms have been submitted to the WSDOT Engineer for every firm that worked on the Contract.

The Design-Builder shall be responsible for paying any fees required by State L&I.

1-07.9(5).3 Certified Payrolls

Certified payrolls are required to be submitted by the Design-Builder for themselves, all Subcontractors, and all lower tier Subcontractors. The payrolls shall be submitted weekly on all Federal-aid projects and no less than monthly on State funded projects.

1-07.9(5).4 Penalties for Noncompliance

The Design-Builder is advised, if these payrolls are not supplied within the prescribed deadlines, any or all payments may be withheld until compliance is achieved. In addition, failure to provide these payrolls may result in other sanctions as provided by State laws (RCW 39.12.050) or Federal regulations (29 CFR Part 5), or both.

1-07.9(6) Audits

WSDOT may inspect or audit the Design-Builder's wage and payroll records as provided in Section 1-09.12.

1-07.10 *Worker's Benefits*

The Design-Builder shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If payments required by Title 50 or Title 51 is not made when due, WSDOT may retain such payments from any money due the Design-Builder and pay the same into the appropriate fund. Such payment will be made only after giving the Design-Builder 15 Calendar Days prior written notice of WSDOT's intent to disburse the funds to L&I or Washington State Employment Security Department as applicable. The payment will be made upon expiration of the 15 Calendar Day period if no legal action has been commenced to resolve the validity of the claim. If legal action is instituted to determine the validity of the claim prior to the expiration of the 15 Calendar Day period, WSDOT will hold the funds until determination of the action or written settlement agreement of the appropriate parties.

For Work on or adjacent to water, the Design-Builder shall make the determination as to whether workers are to be covered under the LHWCA administered by the U.S. Department of Labor, or the State Industrial Insurance coverage administered by State L&I.

The Design-Builder shall include in the Proposal all costs for payment of unemployment compensation and for providing either or both of the insurance coverages. The Design-Builder will not be entitled to any additional payment for: (1) failure to include such costs, or (2) determinations made by the U.S. Department of Labor or State L&I regarding the insurance coverage.

The Public Works Contract Division of State L&I will provide the Design-Builder with applicable industrial insurance and medical aid classification and premium rates. After receipt of *Revenue Release* from the Washington State Department of Revenue, WSDOT will verify through State L&I that the Design-Builder is current with respect to the payments of industrial insurance and medical aid premiums.

1-07.11 *Requirements for Nondiscrimination*

1-07.11(1).1 General Application

Discrimination in all phases of contracted employment, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964, and other related laws and statutes. These laws (and corresponding regulations) establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this Section.

It is the policy of the Washington State Department of Transportation (WSDOT) that Disadvantaged Business Enterprises (DBEs) and other small businesses, as defined in 49 Federal CFR Part 26, shall have equal opportunity to participate in contracts financed in whole or in part with USDOT funds.

DBE Goals have been assigned to this Project. Accordingly, the Design-Builder shall take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform work on this contract that corresponds with their DBE certification (work descriptors).

1-07.11(1).2 Standard Title VI Statutory/Regulatory Authorities

Reference to the term "Acts and Regulations" within Section 1-07.11 will refer to the following:

1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
2) 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI of the Civil Rights Act Of 19640;
3) 28 C.F.R. section 50.3 (US Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

1-07.11(1).3 Nondiscrimination Authorities

During the performance of this Contract, the Design-Builder, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and C.F.R. Part 21.
2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
3) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et. seq.), as amended, (prohibits discrimination on the basis of sex).
4) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27.
5) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
6) Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
7) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition and terms "programs or activities" to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not).

8) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.

9) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123), (prohibits discrimination on the basis of race, color national origin, and sex).

10) Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which discourages discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, provides that national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Design Builder must take reasonable steps to-ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100).

12) Title IX of the Education Amendments of 1972, as amended, which prohibits Design Builder from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

1-07.11(2) Contractual Requirements

1. The Design-Builder, and its Subcontractors, consultants, Subconsultants, suppliers, and service providers shall maintain a Work site that is free of harassment, humiliation, fear, hostility, and intimidation at all times. Behaviors that violate this requirement include but are not limited to:

   (a) Persistent conduct that is offensive and unwelcome

   (b) Conduct that is considered to be hazing

   (c) Jokes about race, gender, or sexuality that are offensive

   (d) Unwelcome, unwanted, rude or offensive conduct or advances of a sexual nature which interferes with a person's ability to perform their job or creates an intimidating, hostile, or offensive work environment

   (e) Language or conduct that is offensive, threatening, intimidating or hostile based on race, gender, or sexual orientation

   (f) Repeating rumors about individuals in the Work Site that are considered to be harassing or harmful to the individual's reputation

2. This Contract, and all contracts the Design-Builder signs with its Subcontractors, consultants, Subconsultants, suppliers, and service providers shall contain the following assurance (49 CFR 26.13(b)):

The Contractor or Subcontractor shall not discriminate on the basis race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 as well as the FHWA 1273 in the award and administration of USDOT-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 WSDOT deems appropriate, which may include, but is not limited to:

(a) *Withholding monthly progress payments*

(b) *Assessing sanctions*

(c) *Liquidated damages*

(d) *Disqualifying the Contractor from future bidding as nonresponsive*

For this Contract, each occurrence of the terms "Contractor" and "Subcontractor" shall be replaced by "Design-Builder" in the above assurance. In other contracts, each occurrence of the terms "Contractor" and "Subcontractor" in the above assurance shall be replaced by "Subcontractor", "consultant", "Subconsultant", "supplier", or "service provider", depending on tier of contract executed by the Design-Builder.

3. The Design-Builder shall not discriminate against any employee or applicant for contracted employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability.

4. The Design-Builder shall, in all solicitations or advertisements for employees, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.

5. The Design-Builder shall insert the following notification in all solicitations for bids for Work or material subject to the Acts and Regulations and made in connection with all program and activities and, in adapted form in all proposals for negotiated agreements regardless of funding source:

   "The Contractor in accordance with the provisions of Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S.C§ 2000d to 2000d and the Regulations, hereby notifies all that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award."

6. The Design-Builder shall make decisions with regard to selection and retention of Subcontractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.

7. The Design-Builder shall send to each labor union, employment agency, or representative of workers with which the Design-Builder has a collective bargaining agreement or other contract or understanding, a notice advising the labor union,

employment agency or worker's representative, of the Design-Builder's commitments under this Contract with regard to nondiscrimination.

8. The Design-Builder shall permit access to its books, records and accounts by WSDOT for the purpose of investigating to ascertain compliance with these General Provisions. In the event that information required of a Design-Builder is in the possession of another who fails or refuses to furnish this information, the Design-Builder shall describe, in writing, what efforts were made to obtain the information.
9. The Design-Builder shall maintain records with the name and address of each minority, woman, or disadvantaged worker referred to the Design-Builder and what action was taken with respect to the referred worker.
10. The Design-Builder shall notify WSDOT whenever the union with which the Design-Builder has a collective bargaining agreement has impeded the Design-Builder's efforts to effect minority, women, or disadvantaged individuals' workforce utilization. This being the case, the Design-Builder shall show what relief they have sought under such collective bargaining agreements.
11. The Design-Builder is encouraged to participate in WSDOT and Washington State Human Rights Commission approved program(s) designed to train craft-workers for the construction trades.

1-07.11(2).1 Title VI Assurances

During the performance of this Contract, the Design-Builder, for itself, its assignees, and successors in interest (hereinafter referred to as the "Design-Builder") agrees as follows:

1. **Compliance With Regulations** - The Design-Builder, and all Consultants employed by the Design-Builder will comply with the Acts and the Regulations relative to nondiscrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination** - The Design-Builder, with regard to the Work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Design-Builder shall not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment** - In all solicitations, either by competitive bidding or negotiations made by the Design-Builder for Work to be performed under a Subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Design-Builder of the Design-Builder's obligations under this Contract and the Acts and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.

4. **Information and Reports** - The Design-Builder shall provide all information and reports required by the Acts and the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Washington State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Design-Builder is in the exclusive possession of another who fails or refuses to furnish this information, the Design-Builder shall so certify to the Washington State Department of Transportation, or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance** - In the event of the Design-Builder's noncompliance with the nondiscrimination provisions of this Contract, the Washington State Department of Transportation will impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the Design-Builder under the Contract until the Design-Builder complies

   (b) Cancelling, terminating, or suspending the Contract, in whole or in part.

6. **Incorporation of Provisions** – The Design-Builder will include the provisions of paragraphs (1) through (6) in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Design-Builder shall take action with respect to any Subcontract or procurement as the Washington State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or supplier because of such direction, the Design-Builder may request the Washington State Department of Transportation to enter into any litigation to protect the interests of the Washington State Department of Transportation. In addition, the Design-Builder may request the United States to enter into the litigation to protect the interests of the United States.

   Refer to Section 1-07.11(1) 3, Nondiscrimination Authorities, for additional requirements.

1-07.11(3) Equal Employment Opportunity Officer

Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity are set forth in various laws, regulations, and executive orders. The following requirements are applicable to this Project:

The Design-Builder shall officially designate and make known to the WSDOT Engineer during the preconstruction conference and discussions, the firm's EEO Officer. The EEO Officer will also be responsible for making themself known to each of the Design-Builder's employees. The EEO Officer must possess the responsibility, authority, and capability for administering and promoting an active and effective Design-Builder

program of EEO. Form FHWA-1273, *Required Contract Provisions Federal-Aid Construction Contracts* shall also apply. These FHWA provisions are required to be physically incorporated into every contract and Subcontract, regardless of tier.

1-07.11(4) Dissemination of Policy

1-07.11(4).1 Supervisory Personnel

All members of the Design-Builder's staff authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or are substantially involved in such action, shall be fully cognizant of, and shall implement the Design-Builder's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement is met, the following actions shall be taken as a minimum:

1. **EEO Meetings** - Periodic meetings of supervisory and personnel office employees shall be conducted before the start of Work and then not less often than once every 6 months, at which time the Design-Builder's EEO policy and its implementation shall be reviewed and explained. The EEO meetings are to be conducted by the EEO Officer, or another company official who is knowledgeable of the EEO requirements of the contract.
2. **EEO Indoctrination** - All new supervisory or personnel office employees must be provided a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within 30 Calendar Days following their reporting for duty with the Design-Builder.
3. **Internal EEO Procedures** - All personnel who are engaged in direct recruitment for the Project, shall be trained by the EEO Officer (or appropriate designee), in the Design-Builder's procedures for locating and hiring minorities, women, or disadvantaged individuals.

1-07.11(4).2 Employees, Applicants, and Potential Employees

In order to make the Design-Builder's EEO policy known to all employees, prospective employees, and potential sources of employees, e.g., schools, employment agencies, labor unions (where appropriate), college placement officers, and community organizations, the Design-Builder shall take the following actions:

1. **Notices and Posters** - Notices and posters setting forth the Design-Builder's EEO policy shall be located in areas readily accessible to employees, applicants for employment, and potential employees.
2. **EEO Indoctrination** - The Design-Builder's EEO policy and the procedures to implement such policy shall be provided to employees by means of meetings, employee handbooks, or other appropriate means.

1-07.11(5) Sanctions

Immediately upon the WSDOT Engineer's request, the Design-Builder shall remove from the Work Site any employee engaging in behaviors that promote harassment,

humiliation, fear or intimidation including, but not limited to, those described in these General Provisions.

In the event the Design-Builder is found in noncompliance with the provisions of Section 1-07.11, WSDOT may impose such Contract sanctions as it or the Federal Highway Administration may determine necessary to gain compliance including, but not limited to:

1. Progress payments may be withheld until the noncompliance is remedied to the satisfaction of WSDOT.
2. The Contract may be suspended, in whole or in part until such time as the Design-Builder is determined to be in compliance by WSDOT.
3. The Contract may be terminated.
4. The Design-Builder's pre-qualification may be suspended or revoked pursuant to WAC 468-16. WSDOT may refer the matter to the Federal Highway Administration (FHWA) for possible Federal sanctions.
5. The Design-Builder's performance rating may be affected for failure to comply with the civil rights requirements applicable to the Contract.

1-07.11(6) Incorporation of Provisions

The Design-Builder shall include the provisions of Section 1-07.11(2) items 1 through 5 and Section 1-07.11(5) Sanctions in every Subcontract including procurement of materials and leases of equipment. The Design-Builder shall take such action or enforce sanctions with respect to a Subcontractor or supplier as WSDOT or the FHWA may direct as a means of enforcing such provisions. In the event a Design-Builder becomes involved in litigation with a Subcontractor or supplier as a result of such direction, the Design-Builder may request WSDOT enter into such litigation to protect their interests and WSDOT may request the Federal government to enter into such litigation to protect the interests of the United States.

1-07.11(7) Vacant

1-07.11(8) Vacant

1-07.11(9) Subcontracting, Procurement of Materials, and Leasing of Equipment

Nondiscrimination - The Design-Builder shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment.

Solicitation and Utilization - The Design-Builder shall use their best effort to solicit bids from, and to utilize, disadvantaged, minority, and women Subcontractors, or Subcontractors with meaningful disadvantaged, minority, or women representation among their employees.

Subcontractor EEO Obligations - The Design-Builder shall notify all potential Subcontractors and suppliers of the EEO obligations required by the Contract. The

Design-Builder shall use their efforts to ensure Subcontractors compliance with their EEO obligations.

Subcontract Completion - In determining whether satisfactory completion has been achieved, the Design-Builder may require appropriate documentation as required by State or Federal statutes, or by an agency as a required condition of administration of the program for that agency, provided agency requirements align with State or Federal statutes, or both. All other requirements in Section 1-08 shall apply.

1-07.11(10) Records and Reports

1-07.11(10).1 General

The Design-Builder shall keep such records as are necessary to determine compliance with the Design-Builder's EEO obligations. The records kept by the Design-Builder shall be designated to indicate:

1. **Work Force Data** - The number of minority and nonminority group members and women employed in each work classification on the Project.
2. **Good Faith Efforts - Unions** - The progress and efforts made in cooperation with unions to increase employment opportunities for minorities, women, and disadvantaged individuals (applicable only to Design-Builders who rely in whole or in part on unions as a source of their work force).
3. **Good Faith Efforts - Recruitment** - The progress and efforts made in locating, hiring, training, qualifying, and upgrading minorities, women, and disadvantaged individuals employees.
4. **Subcontracting** - The progress and efforts made in securing the services of minority, women, and disadvantaged Subcontractors or Subcontractors with meaningful minorities, women, and disadvantaged individuals representation among their employees.

1-07.11(10).2 Required Records and Retention

All records must be retained by the Design-Builder for a period of 3 years following acceptance of the Contract Work. All records shall be available at reasonable times and places for inspection by authorized representatives of either the WSDOT or the Federal Highway Administration.

Form FHWA-1391, *Federal-aid Highway Construction Contractors Annual EEO Report* – This form is required for all Federally assisted projects provided the Contract is equal to or greater than $10,000 and for every associated Subcontract equal to or greater than $10,000. Each Contract requires separate reports filed for the Design-Builder and each Subcontractor (subject to the above noted criteria). These forms are due by August 25 in every year during which Work was performed in July. The payroll period reflected in the report shall be the last payroll period in July in which Work was performed. This report is required of each Design-Builder and Subcontractor for each Federally assisted Contract on which the Design-Builder or Subcontractor performs Work during the month of July.

WSDOT Form 820-010, *Monthly Employment Utilization Report* – This form (or substitute form as approved by WSDOT) is required for all Federally assisted projects if the Contract is equal to or greater than $10,000 and for every associated Subcontract equal to or greater than $10,000. These monthly reports are to be maintained in the respective Design-Builder or Subcontractor's records.

Requirement for Affirmative Action to Ensure EEO (Executive Order 11246)

1. The Design-Builder's attention is called to the Equal Opportunity Clause and the Standard Federal EEO Construction Contract Specifications set forth herein.
2. The goals and timetables for minority and women participation set by the Office of Federal Contract Compliance Programs, expressed in percentage terms for the Design-Builder's aggregate work force in each construction craft and in each trade on all construction work in the covered area, are as follows:

Women - Statewide

Timetable	***Goal***
Until further notice	6.9%

Minorities - by Standard Metropolitan Statistical Area (SMSA)

Spokane, WA:
SMSA Counties:
Spokane, WA 2.8
WA Spokane.
Non-SMSA Counties 3.0
WA Adams; WA Asotin; WA Columbia; WA Ferry; WA Garfield; WA Lincoln, WA Pend Oreille; WA Stevens; WA Whitman.

Richland, WA
SMSA Counties:
Richland Kennewick, WA 5.4
WA Benton; WA Franklin.
Non-SMSA Counties 3.6
WA Walla Walla.

Yakima, WA:
SMSA Counties:
Yakima, WA 9.7
WA Yakima.
Non-SMSA Counties 7.2
WA Chelan; WA Douglas; WA Grant; WA Kittitas; WA Okanogan.

Seattle, WA:
SMSA Counties:
Seattle Everett, WA 7.2
WA King; WA Snohomish.
Tacoma, WA 6.2
WA Pierce.
Non-SMSA Counties 6.1

WA Clallam; WA Grays Harbor; WA Island; WA Jefferson; WA Kitsap; WA Lewis; WA Mason; WA Pacific; WA San Juan; WA Skagit; WA Thurston; WA Whatcom.

Portland, OR:
SMSA Counties:
Portland, OR-WA 4.5
WA Clark.
Non-SMSA Counties 3.8
WA Cowlitz; WA Klickitat; WA Skamania; WA Wahkiakum.

These goals are applicable to each nonexempt Design-Builder's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, or Federally assisted project, contract, or Subcontract until further notice. Compliance with these goals and timetables is enforced by the U. S. Department of Labor's Office of Federal Contract Compliance Programs.

The Design-Builder's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and women employment and training must be substantially uniform throughout the length of the Contract, in each construction craft and in each trade, and the Design-Builder shall make a GFE to employ minorities and women evenly on each of its projects. The transfer of minority or women employees or trainees from Design-Builder to Design-Builder or from project to project for the sole purpose of meeting the Design-Builder's goal shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Design-Builder shall provide written notification to the Office of Federal Contract Compliance Programs (OFCCP) within 10 Calendar Days of award of any construction Subcontract in excess of $10,000 or more that are Federally funded, at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed. The notification shall be sent to:

U.S. Department of Labor
Office of Federal Contract Compliance Programs Pacific Region
Attn: Regional Director
San Francisco Federal Building
90-7th Street, Suite 18-300
San Francisco, CA 94103
(415) 625-7800 Phone
(415) 625-7799 Fax

Additional information may be found at the U.S. Department of Labor website: https://www.dol.gov/ofccp/Construction/index.html

4. As used in this Notice, and in the contract resulting from this solicitation, the Covered Area is as designated herein.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
   (a) Covered Area means the geographical area described in the solicitation from which this Contract resulted.
   (b) Director means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
   (c) Employer Identification Number means the Federal Social Security number used on the U.S. Department of Treasury – Internal Revenue Service Form 941, *Employer's QUARTERLY Federal Tax Return*.
   (d) Minority includes:
      (i) Black, a person having origins in any of the Black Racial Groups of Africa.
      (ii) Hispanic, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
      (iii) Asian or Pacific Islander, a person having origins in any of the original peoples of the Pacific rim or the Pacific Islands, the Hawaiian Islands, and Samoa.
      (iv) American Indian or Alaskan Native, a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
2. Whenever the Design-Builder, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each Subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and women participation and which is set forth in the solicitations from which this contract resulted.
3. If the Design-Builder is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all Work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Design-Builders must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Design-Builder or Subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a GFE to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or

Subcontractors toward a goal in an approved plan does not excuse any covered Design-Builder's or Subcontractor's failure to take GFE to achieve the plan goals and timetables.

4. The Design-Builder shall implement the specific affirmative action standards provided in paragraphs 7a through 7p below. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and women utilization the Design-Builder should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and women goals established for the geographical area where the work is being performed. The Design-Builder is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Design-Builder has a collective bargaining agreement, to refer either minorities or women shall excuse the Design-Builder's obligations under these General Provisions, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Design-Builder during the training period, and the Design-Builder must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Design-Builder shall take specific affirmative actions to ensure EEO. The evaluation of the Design-Builder's compliance with these General Provisions shall be based upon its effort to achieve maximum results from its action. The Design-Builder shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Design-Builder's employees are assigned to work. The Design-Builder, where possible, will assign two or more women to each construction project. The Design-Builder shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Design-Builder's obligation to maintain such a working environment, with specific attention to minority or women individuals working at such sites or in such facilities.

   (b) Establish and maintain a current list of minority and women recruitment sources, provide written notification to minority and women recruitment sources and to community organizations when the Design-Builder or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses, and telephone numbers of each minority and women off-the-street applicant and minority or women referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Design-Builder by the union or, if referred, not employed by the Design-Builder, this shall be documented in the file with the reason therefore, along with whatever additional actions the Design-Builder may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Design-Builder has a collective bargaining agreement has not referred to the Design-Builder a minority person or women sent by the Design-Builder, or when the Design-Builder has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.

(e) Develop on-the-job training opportunity, participate in training programs, or both, for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Design-Builder's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Design-Builder shall provide notice of these programs to the sources compiled under 7b above.

(f) Disseminate the Design-Builder's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Design-Builder in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and women employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the Design-Builder's EEO policy externally by including it in any advertising in the news media, specifically including minority, women, disadvantaged news media, and providing written notification to minority, women, disadvantaged individual’s and discussing the Design-Builder's EEO policy with other contractors and Subcontractors with whom the Design-Builder does or anticipates doing business.

(i) Direct its recruitment efforts to minority, women and community organizations, to schools with minority and women students, and to minority and women recruitment and training organizations serving the Design-Builder's recruitment

area and employment needs. Not later than 1 month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Design-Builder shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority, women, and disadvantaged employees to recruit other minority, women, and disadvantaged individuals and where reasonable, provide after school, summer, and vacation employment to minority and women youth both on the site and in other areas of a Design-Builder's work force.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation of all minority, women, and disadvantaged personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Design-Builder's obligations under these specifications are being carried out.

(n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for Subcontracts from minority, women, and disadvantaged construction contractors and suppliers, including circulation of solicitations to minority, women, and disadvantaged Design-Builder associations and other business associations.

(p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Design-Builder's EEO policies and affirmative action obligations.

8. Design-Builders are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a Design-Builder association, joint Design-Builder-union, Design-Builder-community, or other similar group of which the Design-Builder is a member and participant, may be asserted as fulfilling any one or more of the obligations under 7a through 7p above provided that the Design-Builder actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Design-Builder's minority, women, and disadvantaged individuals work-force participation, makes a GFE to meet its individual goals and timetables, and can provide access to documentation which demonstrate the effectiveness of actions taken on behalf of the Design-Builder. The obligation to

comply, however, is the Design-Builder's and failure of such a group to fulfill an obligation shall not be a defense for the Design-Builder's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Design-Builder, however, is required to provide EEO and to take affirmative action for all minority, women, and disadvantaged individuals. Consequently, the Design-Builder may be in violation of the Executive Order if a particular group is employed in substantially disparate manner.

10. The Design-Builder shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Design-Builder shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Design-Builder shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspensions, terminations, and cancellations of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Design-Builder who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Design-Builder, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 above, so as to achieve maximum results from its efforts to ensure EEO. If the Design-Builder fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Design-Builder shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include, for each employee, their name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, the Design-Builders will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. Additional assistance for Federal Construction Contractors on contracts administered by Washington State Department of Transportation or by Local Agencies may be found at:

    Washington State Dept. of Transportation
    Office of Equal Opportunity
    PO Box 47314
    310 Maple Park Ave. SE
    Olympia WA
    98504-7314
    Ph: 360-705-7090
    Fax: 360-705-6801
    www.wsdot.wa.gov/equalopportunity/default.htm

1-07.11(11) Vacant

1-07.11(12) Disadvantaged Business Enterprise Participation

The DBE requirements of 49 CFR Part 26 and USDOT's official interpretations (i.e., Questions & Answers) applies to this Contract.

DBE Goal

WSDOT has established DBE Goals in the amount of ***16*** percent for the design portion and ***20*** percent for the construction portion of the Contract.

In order to fulfill the DBE Goal, the firms named as DBE Subcontractors, consultants, Subconsultants, suppliers or service providers in the Proposer's DBE Performance Plan must have been certified as a DBE in the specific work classification (work descriptor), by the Office of Minority and Women's Business Enterprises (OMWBE) prior to release of the RFP. For Subcontracts awarded subsequent to the selection of a Design-Builder, a firm must be certified as a DBE, in the appropriate work classification (work descriptor), prior to the date of the Subcontract on which it is committed to perform is executed.

Crediting DBE Participation

In accordance with 49 CFR 26.55, WSDOT will utilize the following guidelines in determining the amount of DBE participation to apply towards the Contract's DBE Goals.

Contracts/Subcontracts/leases/agreements with DBEs shall be evidenced in writing; shall comply with the requirements of 49 CFR Part 26; shall include a description of the distinct elements of work/materials that the DBE has agreed (and is certified) to perform/supply (along with respective dollar amounts).

To receive credit for DBE participation, DBEs must perform at least 30 percent of the total cost of its contract with its own forces.

The participation of a DBE toward the Design-Builder's DBE Goals will not be counted until the amounts owed the DBE(s) for work performed (including return of retainage) has been paid to the DBE and it has been determined, by WSDOT, that the DBE(s) has performed a Commercially Useful Function (CUF).

The DBE Performance Plan shall not include work that is speculative, such as work that might be performed under the warranty requirements of Section 1-05.10 or 1-05.16. This is without regard to whether the warranty work is expected to occur before or after Physical Completion.

DBE participation is only credited upon payment to the DBE.

The following are some definitions of what may be counted as participation.

Joint Venture

When a DBE performs as a participant in a joint venture, only that portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces will be eligible for DBE credit.

DBE Design-Builder

A DBE Design-Builder may only take credit for that portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work that the DBE Design-Builder performs with its own forces and is certified to perform.

DBE Subcontractor

A DBE Subcontractor may only take credit for that portion of the total dollar value of the Subcontract that is equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces and is certified to perform. The value of work performed by the DBE includes the cost of supplies and materials purchased by the DBE and equipment leased by the DBE, specifically for performance of their scope of work.

DBE credit cannot be applied to supplies/materials or equipment that are obtained from a DBE who is not certified by OMWBE as a supplier or equipment leasing company.

The Design-Builder may not take credit for supplies, materials, and equipment the DBE Subcontractor purchases or leases from the Design-Builder or its affiliate, including any Design-Builder resources available to the DBE Subcontractors at no cost.

DBE credit will not be given in instances where the equipment lease includes the operator. The DBE is expected to operate the equipment used in the performance of its work under the contract with its own forces. Situations where equipment is leased and used by the DBE, but payment is deducted from the Design-Builder's payment to the DBE is not allowed.

The entire value of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance specifically required for the performance of the contract, will be considered for DBE credit provided that the DBE is certified in the respective work type(s), and the fee/commission is deemed reasonable. For more information, see "DBE Service Provider" below.

When a DBE Subcontracts to another firm, the value of the Subcontracted Work may be eligible for DBE credit only if the DBE's lower tier Subcontractor is also a certified DBE. Work Subcontracted to a lower tier Subcontractor that is a DBE may be counted toward the DBE Goal only if the lower tier Subcontractor self performs a minimum of 30 percent of the Work Subcontracted to them. Work Subcontracted to a non-DBE does not count as towards the DBE Goal.

When a non-DBE Subcontractor further Subcontracts to a lower tier Subcontractor or supplier who is a certified DBE, then that portion of the Work further Subcontracted may be considered for credit as DBE participation, provided it is a distinct clearly defined portion of the Work that the DBE is certified by OMWBE to perform and the DBE Subcontractor performs a CUF.

DBE Subcontract and Lower Tier Subcontract Documents

There must be a Subcontract agreement that complies with 49 CFR Part 26 and fully describes the distinct elements of Work committed to be performed by the DBE.

Prior to a DBE performing Work on the Contract, an executed Subcontract between the DBE and the Design-Builder shall be submitted to the WSDOT Engineer. The executed Subcontracts shall be submitted by email to the following email address for the region administering the Contract:

Eastern Region – ERegionOEO@wsdot.wa.gov

Northcentral Region – NCRegionOEO@wsdot.wa.gov

Northwest Region – NWRegionOEO@wsdot.wa.gov

Olympic Region – ORegionOEO@wsdot.wa.gov

Southcentral Region – SCRegionOEO@wsdot.wa.gov

Southwest Region – SWRegionOEO@wsdot.wa.gov

DBE Service Provider

Fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance specifically required for the performance of the contract will only be credited DBE participation if the fee is determined by WSDOT to be reasonable and the firm has performed a CUF. In addition to these requirements, a DBE Broker Agreement shall be submitted in accordance with Section 1-08.1.

DBE credit for DBE Brokers/transaction expediters, or DBEs acting in the manner of a Broker/transaction expediter, is limited to the fee/commission that it receives for its services. The cost of materials and supplies procured by a DBE Broker/packager/Manufacturer representative do not count towards DBE Goals (only the fee, if reasonable). If the DBE does not perform a CUF (i.e., is an extra participant in the transaction), then no DBE credit can be counted.

Temporary Traffic Control

If the DBE only provides "Flagging", the DBE must provide a TCS and flagger(s), which are under the direct control of the DBE. The DBE shall also provide all flagging equipment for its employees (e.g., paddles, hard hats, and vests).

If the DBE provides "Traffic Control Services", the DBE must provide a TCS, flaggers, and traffic control items (e.g., cones, barrels, signs, etc.) and be in total control of all items it uses in implementing the traffic control work under its subcontract on the Project.

Trucking

The following applies to counting participation of DBE trucking firms:

DBE trucking firm participation may only be credited as DBE participation for the value of the hauling services, not for the materials being hauled unless the DBE trucking firm is also certified as a supplier of those materials. In situations where the DBE's work is priced per ton, the value of the hauling service must be calculated separately from the value of the materials in order to determine DBE credit for hauling.

The DBE trucking firm must own and operate at least one licensed, insured and operational truck on the contract. The truck must be of the type that is necessary to perform the hauling duties required under the Contract. The DBE trucking firm receives credit for the value of the transportation services it provides on the Contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs.

The DBE trucking firm may lease additional trucks from another DBE. The DBE trucking firm who leases additional trucks from another DBE receives credit for the value of the transportation services the lessee DBE provides on the Contract.

Trucking Work Subcontracted to any non-DBE trucking firm will not receive credit for Work done on the Project.

The DBE may lease trucks from a truck leasing company (recognized truck rental center), but can only receive credit towards DBE participation if the DBE uses its own employees as drivers.

The Design-Builder shall submit WSDOT Form 272-058, *DBE Trucking Credit Form* in accordance with Section 1-08.1, if applicable.

DBE credit for DBE trucking participation is dependent upon submission of required supporting documentation.

DBE Manufacturer and DBE Regular Dealer

If materials or supplies are obtained from a DBE who has been certified by OMWBE as a DBE Manufacturer, 100 percent of the cost of materials or supplies may be credited towards the DBE Goal.

If materials or supplies are obtained from a DBE who has been approved by WSDOT as a DBE Regular Dealer for the Project, 60 percent of the cost of materials or supplies purchased from a DBE Regular Dealer may be credited towards the DBE Goal. If the role of the DBE Regular Dealer is determined to be that of a Broker, then DBE credit will be limited to the fee or commission it receives for its services. Documentation will be required to support the DBE Reasonable Fee charged by the DBE.

Purchase of materials or supplies from a DBE which is neither a manufacturer nor a regular dealer, (i.e., Broker) only the fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, may count towards the DBE Goal provided the fees are not excessive as compared with fees customarily allowed for similar services. Documentation will be required to support the fee/commission charged by the DBE. The cost of the materials and supplies themselves cannot be counted toward the DBE Goal.

To participate as a Regular Dealer, the DBE must have received an onsite visit and review from WSDOT's Office of Equal Opportunity (OEO) to determine whether or not the firm meets Regular Dealer program requirements. Once recognized by WSDOT as a Regular Dealer, the DBE must apply for Regular Dealer status per contract. DBE proposed to be used as a Regular Dealer on a contract must submit a DBE Regular Dealer Project Request to WSDOT's OEO and be approved no later than 5 Calendar Days prior to being used/listed as a DBE Commitment in the DBE Performance Plan.

Disadvantaged Business Enterprise Written Confirmation Document(s)

The Design-Builder shall submit WSDOT Form 422-031, *DBE Written Confirmation Document* (completed and signed by the DBE) for each DBE listed in the Design-Builder's updated DBE Performance Plan. Failure to do so will result in the associated participation being disallowed.

WSDOT Form 422-031, *DBE Written Confirmation Documents* provides confirmation from the DBEs that they are participating in the Contract as provided in the Design-Builder's DBE Commitment. WSDOT Form 422-031, *DBE Written Confirmation Documents* must be consistent with the updated DBE Performance Plan.

It is prohibited for the Design-Builder to require a DBE to submit WSDOT Form 422-031, *DBE Written Confirmation Document* with any part of the form left blank. Should WSDOT determine that an incomplete WSDOT Form 422-031, *DBE Written Confirmation Document* was signed by a DBE, the validity of the document comes into question. The associated DBE participation may not receive credit.

Disadvantaged Business Enterprise Good Faith Efforts

The Design-Builder must submit an initial DBE Performance Plan (with its proposal) and subsequent monthly updates, which demonstrates how the Design-Builder intends to achieve the Project's DBE Goals.

Achieving the DBE Goals may be accomplished by either:

1. Meeting the DBE Goal, as evidenced by DBE Commitments (subcontracts/agreements) identified in the Design-Builder's initial DBE Performance Plan (and subsequent monthly updates)
2. Documenting that the Design-Builder has made adequate GFE to meet the DBE Goal. The DBE Performance Plan (initial and subsequent monthly updates) must include a description of the Design-Builder's ongoing GFE to achieve the DBE Goal (in addition to its DBE Commitments).

Good Faith Effort Documentation

GFE is evaluated as part of proposals; whenever a DBE Commitment is proposed to be terminated; and throughout the life of the Project. The efforts utilized by the Design-Builder should be those that would reasonably be expected if the Design-Builder were actively and aggressively trying to achieve sufficient DBE participation to meet the Project goals.

The following is a list of the type of actions that could be considered as part of the Design-Builder's GFE. This is neither a mandatory checklist nor is it an all-inclusive list of GFE. Other factors or types of efforts may be relevant in appropriate cases.

1. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising or written notices, or both) the interest of all certified DBEs who have the capability to perform the Work of the Contract. The Design-Builder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Design-Builder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the Work to be performed by DBEs in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out Contract Work items into economically feasible units to facilitate DBE participation, even when the Design-Builder might otherwise prefer to perform these Work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, Specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.
   (a) Negotiating in good faith with interested DBEs. It is the Design-Builder's responsibility to make a portion of the Work available to DBE Subcontractors and suppliers and to select those portions of the Work or material needs consistent with the available DBE Subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the Work selected for Subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the Work.
   (b) A Design-Builder using good business judgment would consider a number of factors in negotiating with Subcontractors, including DBE Subcontractors, and would take a firm's price and capabilities as well as the DBE Goal into consideration. However, the fact that there may be some additional costs

involved in finding and using DBEs is not in itself sufficient reason for a Design-Builder's failure to meet the DBE Goal, as long as such costs are reasonable. Also, the ability or desire of a Design-Builder to perform the Work of the Contract with its own organization does not relieve the Design-Builder of the responsibility to make GFE. Design-Builders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

4. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Design-Builder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Design-Builder's efforts to meet the DBE Goal.
5. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Design-Builder.
6. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
7. Effectively using the services of available minority, women, and disadvantaged individuals community organizations; minority, women, and disadvantaged individuals contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
8. Documentation of GFE must include copies of each DBE and non-DBE Subcontractor quotes submitted to the Design-Builder when a non-DBE Subcontractor is selected over a DBE for Work on the Contract. (ref. updated DBE regulations – 26.53(b)(2)(vi) & App. A)

Administrative Reconsideration of Good Faith Effort Documentation

A Design-Builder has the right to request reconsideration if the GFE documentation submitted was determined to be inadequate.

1. The reconsideration decision on the adequacy of the Design-Builder's GFE documentation shall be made by an official who did not take part in the original determination.
2. The Design-Builder shall not introduce new documentation at the reconsideration hearing.
3. The Design-Builder shall have the opportunity to meet in person with the official for the purpose of setting forth the Design-Builder's position as to why the GFE documentation demonstrates a sufficient effort.
4. The reconsideration official shall provide the Design-Builder with a written decision on reconsideration within 5 Calendar Days of the hearing explaining the basis for their finding.

Disadvantaged Business Enterprise Trucking Credit Form

The Design-Builder shall submit WSDOT Form 272-058, *DBE Trucking Credit Form* for DBEs listed on the updated DBE Performance Plan.

Note: The WSDOT Form 272-058, *DBE Trucking Credit Form* is only required for a DBE firm listed on the DBE Performance Plan as a Subcontractor for "Trucking" or "Hauling". For example, if the item of Work is "Structure Excavation including Haul", and another firm is doing the excavation and the DBE trucking firm is doing the haul, the form is required. For a DBE Subcontractor that is responsible for an entire item of work that may require some use of trucks, the form is not required.

Commercially Useful Function

The Design-Builder is responsible for ensuring that all DBEs on the Project are performing a CUF. However, in order to count DBE participation towards the DBE Goal, WSDOT must have performed and documented a CUF review on each DBE, per contract. The Design-Builder may take credit for payments made to a DBE towards the DBE Goal on the Contract, only if the DBE has performed a CUF on the Contract, as determined by WSDOT.

A DBE performs a CUF when it is responsible for execution of the Work of the contract and is actually performing, managing, and supervising the work it is Subcontracted to perform. The DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing, and paying for the material itself. If a DBE has not performed "all" of these functions on a furnish-and-install contract, it has not performed a CUF and therefore, the cost of the materials cannot be counted toward the DBE Goal.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or Project through which funds are passed in order to obtain the appearance of DBE participation.

In regards to CUF and DBE traffic control companies, the DBE must be in control of its Work inclusive of supervision. In other words, the DBE shall employ a TCS who is on-site actively managing the work that the traffic control company is contracted to perform, and is supervising the firm's traffic control employees and the services that they provide.

The following are some of the factors that WSDOT will utilize in determining whether a DBE trucking firm is performing a CUF:

- The DBE trucking firm shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on the contract. The owner demonstrates business related knowledge, shows up on-site, and is determined to be actively running the business (not a contrived arrangement).
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The truck must be of the type that is necessary to perform the hauling duties required under the contract. The drivers of the trucks owned and leased by the DBE (in performance of their work on the contract), must be exclusively employed by the DBE, and reflected on the DBE's payroll.

- Lease agreements for trucks must indicate that the DBE has exclusive use of and control over the truck(s). This does not preclude the leased truck from working for others, provided it is with the consent of the DBE and the lease provides the DBE absolute priority for use of the leased truck.
- Leased trucks shall display the name and identification number of the DBE.
- Leasing of equipment from a leasing company is allowed. However, leasing/purchasing equipment from the Design-Builder is not allowed. Lease agreements shall be provided prior to the Subcontractor beginning Work. Any use of the Design-Builder's equipment by a DBE may not be credited as countable participation.

UDBE/DBE/FSBE Truck Unit Listing Log

In addition to the Subcontracting requirements of Section 1-08.1, each DBE trucking firm shall submit supplemental information consisting of a completed primary WSDOT Form 350-077, *UDBE/DBE/FSBE Truck Unit Listing Log*, and all Rental/Lease agreements (if applicable). The supplemental information shall be submitted in an electronic format to the WSDOT Engineer prior to any trucking services being performed for DBE credit. Incomplete or incorrect supplemental information will be returned for correction. The corrected primary WSDOT Form 350-077, *UDBE/DBE/FSBE Truck Unit Listing Log* and any updated WSDOT Form 350-077, *UDBE/DBE/FSBE Truck Unit Listing Log* shall be submitted and accepted by the WSDOT Engineer no later than 10 Calendar Days prior to utilizing applicable trucks. Failure to submit or update the primary WSDOT Form 350-077, *UDBE/DBE/FSBE Truck Unit Listing Log* may result in trucks not being credited as DBE participation.

Each DBE trucking firm shall complete a daily WSDOT Form 350-077, *UDBE/DBE/FSBE Primary Truck Unit Listing Log* for each day that the DBE performs trucking services for DBE credit. The daily WSDOT Form 350-077, *UDBE/DBE/FSBE Truck Unit Listing Log* forms shall be submitted by Friday of the week after the Work was performed by email to the following email address for the region administering the Contract:

Eastern Region - ERegionOEO@wsdot.wa.gov

North Central Region - NCRegionOEO@wsdot.wa.gov

Northwest Region - NWRegionOEO@wsdot.wa.gov

Olympic Region - ORegionOEO@wsdot.wa.gov

South Central Region - SCRegionOEO@wsdot.wa.gov

Southwest Region - SWRegionOEO@wsdot.wa.gov

Washington State Ferries - FerriesOEO@wsdot.wa.gov

Joint Checking

Joint checks must be made available to all Subcontractors. For purposes of the DBE program, a joint check is a two-party check between a DBE, a Design-Builder, and the supplier of materials/supplies. The check is issued by the Design-Builder as payor to the

DBE Subcontractor and the material supplier jointly (to guarantee payment to the supplier) for items to be incorporated by the DBE into the Project. The DBE must release the check to the supplier, while the Design-Builder acts solely as the guarantor.

A joint check arrangement shall be short term (i.e., 1 year), sufficient to allow the DBE to establish/increase a credit line with the material supplier.

Prior to its use, a joint check agreement, signed by all parties involved, must be submitted to the WSDOT Engineer for review and written approval. The DBE must use WSDOT Form 272-053, *DBE Joint Check Request Form* when submitting the request. The form shall be accompanied by the DBE Joint Check Agreement, which describes the conditions of the arrangement and expected use of the joint checks.

The DBE must be responsible for both furnishing and installing the materials. To receive DBE credit for performing a CUF with respect to obtaining materials and supplies, a DBE shall be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. The supplies/materials must be specific to the performance of the DBE's work under its Subcontract, (i.e., cannot be a non-proportionate ratio of the DBE's normal capacity to size of contract and quantity of material to be provided under the contract). In addition, the joint check cannot be applied to purchases by the DBE for work on other projects.

Material costs paid by the Design-Builder directly to the material supplier are not allowed. If proper procedures are not followed or WSDOT determines that the arrangement results in lack of independence for the DBE involved, no DBE credit will be given for the DBE's participation as it relates to the material cost.

Joint checks are not allowed to be used to pay for equipment purchases, union dues, or other items not physically incorporated into the Project.

Prompt Payment

Prompt payment to all Subcontractors shall be in accordance with Section 1-08.1(1) of this Section. Prompt payment requirements apply to progress payments as well as return of retainage.

Procedures after Execution

After execution of the Contract, the Design-Builder shall provide the additional information described below.

The Design Builder was required to submit a DBE Performance Plan as part of a responsive Proposal. Following the execution of the Contract and during both the design and construction portions of the Project, the Design-Builder shall implement the DBE Performance Plan by submitting a monthly update to the DBE Performance Plan Section 3, *Diverse Business Subcontractors,* Section 5, *Plan To Meet DBE Contract Goals, and Section 6, Plan For Reporting Goal Attainment* on the 10th of each month for review and approval of DBE Commitments. The monthly updated DBE Performance Plan shall be submitted before the execution of a DBE Subcontract.

DBE Performance Plan Section 3, *Diverse Business Subcontractors*, shall contain at a minimum:

(a) A summary of all DBE Subcontracts/agreements entered into to date

(b) The name of each DBE (and their respective contact person), address, telephone number

(c) Dollar amount of the Subcontract/agreement Commitment

(d) A description of work to be performed under the Subcontract/agreement

(e) The duration of the Subcontract/agreement

(f) List of firms (DBE and non-DBE) who submit a bid or quote in an attempt to participate in this the Project, whether they were successful or not

1. The firms identified by the Design-Builder may be contacted by WSDOT to solicit general information as follows: age of the firm and average of its gross annual receipts over the past three years.

DBE Performance Plan Section 5**,** *Plan To Meet SVBE Contract Goals*, shall contain at a minimum:

(a) Action plan for making up lagging participation, if necessary

(b) A tally comparing DBE Commitments to payments

(c) Additional strategies to meet the DBE Contract Goal(s)

(d) Pending commitments or opportunities

DBE Performance Plan Section 6, *Plan For Reporting Goal Attainment,* shall contain at a minimum:

(a) A forecast of upcoming DBE opportunities

Failure to submit an updated DBE Performance Plan and receive approval will result in the associated participation being disallowed.

If trucking is listed on the DBE Performance Plan, the following is required for each DBE trucking firm prior to hauling services being performed:

(a) WSDOT Form, 272-058, DBE Trucking Credit Form

(b) A list of trucks by license plate number and vehicle identification number (VIN) that the DBE owns. Include the size and type of each truck and the year/make of each truck.

(c) If applicable, a list of trucks to be leased and the information listed in “a)” above for each truck and a copy of the lease agreement.

(d) Number of hours contracted

(e) Quantities to be hauled

The Design-Builder and all Subcontractors/Subconsultants/suppliers/service providers that utilize DBEs to perform work on the Project, shall maintain appropriate records that will enable WSDOT to verify DBE participation throughout the life of the Project.

Before execution of a DBE Subcontract, the Design-Builder, Subcontractor, or lower tier Subcontractor shall submit the following items to the WSDOT Engineer:

- An updated DBE Performance Plan
- Federal employee identification number (EIN) (if available) and mailing address.
- WSDOT Form 272-058, *DBE Trucking Credit Form*, if applicable
- WSDOT Form 422-031, *DBE Written Confirmation Document.* Written confirmation from each DBE that it is participating in the Contract in the kind and amount of work provided in the Design-Builder's DBE Commitment.

Reporting

The Design-Builder is required to report payments (including return of retainage) made to all Subcontractors/Subconsultants/suppliers/service providers who have performed work on the Project. This report shall be submitted monthly to the WSDOT Engineer between Execution of the Contract and Physical Completion of the Contract. For WSDOT projects, the Design-Builder must use the application available at: https://omwbe.diversitycompliance.com

The monthly report is due 20 Calendar Days following the end of the month. A monthly report shall be submitted for every month regardless of whether payments were made or Work occurred.

After Execution of the Contract, the Design-Builder shall send an email to CRP@wsdot.wa.gov containing the following information: the first and last name, email address, title, and phone number of the person that will be submitting the above documents for their company. The email shall include the WSDOT contract number they will be reporting on. After receipt of this information by WSDOT, the Design-Builder will receive an email containing their username and password for the application and a link to the application. Reporting instructions are available in the application. In the event that payments were made to a DBE by a lower tier Subcontractor or supplier, the Design-Builder shall obtain the certification from the paying entity and submit these payments to WSDOT with their monthly reports using the application available at: https://omwbe.diversitycompliance.com.

Changes in Work Committed to DBE

A change in Work that was committed to a DBE requires WSDOT's prior written approval by the WSDOT Engineer and may be subject to the termination and substitution requirements described below. The Design-Builder shall not be entitled to any payment for Work or material by the Design-Builder or Subcontractors that was committed to a DBE, in the DBE Performance Plan.

Owner-Initiated Changes

In instances where the WSDOT Engineer changes Work that impacts the Work of a DBE, WSDOT will evaluate the impact on DBE participation. In such instances, WSDOT may direct DBE participation or solicitation of DBEs.

Design-Builder-Initiated Changes

The Design-Builder cannot change the scope or reduce the amount of Work committed to a DBE without good cause. Reducing DBE Commitment is viewed as partial DBE termination, and therefore subject to the termination procedures

below. A change in a DBE's scope of Work from that which is listed in the DBE Performance Plan shall be considered a DBE termination.

Original Work Commitment

In the event that Work committed to a DBE is reduced, the Design-Builder is encouraged to look at other work scopes where DBE opportunities may be available.

Design-Builder Proposed DBE Substitutions

Requests to substitute a DBE shall follow the same process as described below for DBE termination. The Design-Builder may only replace a DBE with another certified DBE. When changes are encountered between Contract Award and Execution that result in substitution of a DBE, the substitute DBE shall have been certified prior to execution of its Subcontract.

DBE Termination

Termination of a DBE (or an approved substitute DBE) is only allowable for good cause and with prior written approval of WSDOT. If the Design-Builder terminates a DBE without prior written approval by WSDOT, the Design-Builder is not entitled to any payment for work or material that was committed to the DBE, but not performed/supplied by the DBE, nor will the Design-Builder receive DBE credit towards the DBE Goal for that work.

Prior to requesting approval to terminate a committed DBE, the Design-Builder shall provide written notice to the DBE, with a copy to the WSDOT Engineer, of its intent to request to terminate and substitute and the reasons for doing so. The DBE shall have 5 Calendar Days to respond to the Design-Builder's notice. The DBE's response shall either support the termination or advise WSDOT and the Design-Builder of the reasons it objects to the termination of its Subcontract. When a DBE is terminated or fails to complete its Work on the Contract for any reason, the Design-Builder shall make GFE and follow the process to substitute with another DBE for the same amount of work under the original contract that was terminated. The Design-Builder shall submit substitution information or documented GFE to WSDOT within 2 Calendar Days of the approval of termination. Replacement of the DBE Commitment shall include a description of the Work and include the same detail as is required in the DBE Performance Plan.

For purposes of the DBE program, good cause may exist if:

- The DBE fails or refuses to execute a written contract.
- The DBE fails or refuses to perform the Work of its Subcontract in a way consistent with industry standards.
- The DBE fails or refuses to meet the Design-Builder's reasonable nondiscriminatory bond requirements.
- The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness.

- The DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to Federal law or applicable State law.
- The DBE is ineligible to receive DBE credit for the type of work involved.
- The DBE voluntarily withdraws from the Project and provides written notice of its withdrawal.
- The DBE's owner dies or becomes disabled with the result that the DBE is unable to complete its Work on the Contract.

Good cause does not exist if:

- The Design-Builder seeks to terminate a DBE so that the Design-Builder can self-perform the Work.
- The Design-Builder seeks to terminate a DBE so the Design-Builder can substitute another DBE or non-DBE after execution of the DBE Subcontract.
- The failure or refusal of the DBE to perform its Work on the Subcontract results from the bad faith or discriminatory action of the Design-Builder (e.g., the failure of the Design-Builder to make timely payments or the unnecessary placing of obstacles in the path of the DBE's Work).

Decertification

When a DBE is "decertified" (no longer qualifies under the DBE program) from the DBE program during the course of the Contract, the participation of that DBE shall continue to count towards the DBE Goal as long as the Subcontract with the DBE was executed prior to the decertification notice. If a contract/Subcontract/agreement was not executed with the DBE prior to the decertification notice, the Design-Builder will be required to meet the DBE Goal by obtaining participation with another certified DBE firm or provide documentation of its GFE.

Consequences of Non-Compliance

Breach of Contract

Failure to carry out the DBE requirements of 49 CFR Part 26 and those specified in the Contract Documents constitutes a breach of contract. WSDOT will notify the Design-Builder and the USDOT of such breach, including notification that the breach may result in termination of the Contract by WSDOT or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR Part 26.

Notice

If the Design-Builder or any Subcontractor, consultant, Subconsultant, supplier or service provider is deemed to be in non-compliance, the Design-Builder will be informed in writing, by WSDOT, that sanctions will be imposed for failure to meet DBE Goals and submit documentation of GFE. The notice will state the

specific sanctions to be imposed which may include impacting a Design-Builder's or other entity's ability to participate in future contracts.

Sanctions

If it is determined that the Design-Builder's failure to meet all or part of the DBE Goal is due to the Design-Builder's inadequate GFE throughout the life of the Contract, including failure to submit timely, required GFE information and documentation, the Design-Builder may be required to pay a DBE penalty equal to the amount of the unmet DBE Goal, in addition to the sanctions outlined in Section 1-07.11(5) of this Section.

Payment

Compensation for all costs involved with complying with the conditions of this Section and any other associated DBE requirements is included in the Proposal Price, except as otherwise provided in the Contract Documents.

Warranty Work Performed After Physical Completion

Payments to DBE's, for work that otherwise meets the requirements for being counted towards participation, that is for warranty work which occurs after the date of Physical Completion will not count as DBE participation and shall not be reported.

1-07.11(13) Special Training Provisions

General Requirements

The Design-Builder's EEO, affirmative action program shall include the requirements set forth below. The Design-Builder shall provide On-the-Job Training (OTJ) aimed at developing trainees to journey-level worker status in the trades involved. The number of training hours shall be ***36,000***. Trainees shall not be assigned less than 400 hours per individual per contract. The Design-Builder may elect to accomplish training as part of the Work of a Subcontractor; however, the Design-Builder shall retain the responsibility for complying with these General Provisions (achieving the training goal). When the Design-Builder's training plan includes trainees for Subcontractors or lower-tier Subcontractors, this training provision shall be included in the Subcontract.

Trainee Approval

The Design-Builder shall make every effort to employ/enroll minority, women, and disadvantaged trainees to the extent such Persons are available within a reasonable recruitment area. This training provision is not intended and shall not be used to discriminate against any applicant for training, whether that Person is a minority, women, and disadvantaged individuals. A non-minority male trainee or apprentice may be approved provided the following requirements are met:

1. The Design-Builder is otherwise in compliance with the Contract's EEO and OJT Training requirements and provides documentation of the efforts taken to fill the specific training position with minority, women, or disadvantaged individuals.
2. If not otherwise in compliance, furnishes evidence of his/her systematic and direct recruitment efforts in regard to the position in question and in promoting the

enrollment, or employment, or minority, women, or disadvantaged individuals in the craft which the proposed trainee is to be trained.

3. The Design-Builder has made GFE toward recruiting of minorities, women, and disadvantaged individuals in accordance with this Section.

No employee shall be employed as a trainee in any classification in which the employee has successfully completed training leading to journey-level worker status or in which the employee has been employed as a journey-level worker. The Design-Builder's records shall document the methods for determining the trainee's status and findings in each case. When feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

For the purpose of this specification, acceptable training programs are those employing trainees/apprentices registered with the following:

1. L&I — State Apprenticeship Training Council (SATC) approved apprenticeship agreement:

   (a) Pursuant to RCW 49.04.060, an apprenticeship agreement shall be:

      (i) An individual written agreement between an employer and apprentice

      (ii) A written agreement between (an employer or an association of employers) and an organization of employees describing conditions of employment for apprentices

      (iii) A written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization

   All such agreements shall conform to the basic standards and other provisions of RCW Chapter 49.04.

2. Apprentices must be registered with U.S. Department of Labor - Apprenticeship Training, Employer, and Labor Services (ATELS) approved program.

   Or

3. Non-ATELS/SATC programs that have been submitted to WSDOT for approval by FHWA for the specific project.

Obligation to Provide Information

Upon starting a new trainee, the Design-Builder shall furnish the trainee a copy of the approved program the Design-Builder will follow in providing the training. Upon completion of the training, the Design-Builder shall provide WSDOT with a certification showing the type and length of training satisfactorily completed by each trainee.

The Design-Builder will report monthly the name of the trainee/apprentice, total hours trained under the program, and the apprentice trade of the trainee. The Design-Builder will also report the effort to enroll minorities, women, and disadvantaged individuals when a new enrollment occurs.

Training Program Approval

The Training Program shall meet the following requirements:

1. WSDOT Form 272-049, *Training Program* must be submitted to the WSDOT Engineer for approval prior to commencing contract Work and shall be re-submitted when modifications to the program occur.
2. The minimum length and type of training for each classification will be as established in the training program as approved by WSDOT.
3. The Training Program shall contain the trades proposed for training, the number of trainees, the hours assigned to the trade and the estimated beginning work date for each trainee.
4. Unless otherwise specified, Training Programs will be approved if the proposed number of training hours equals the training hours required by Contract.
5. After approval of the training program, information concerning each individual trainee and GFE documentation shall be submitted on WSDOT Form 272-050, *Apprentice/Trainee Approval Request*.
6. Flagging programs will not be approved. Other programs that include flagging training will only be approved if the flagging portion is limited to an orientation of not more than 20 hours.
7. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower-level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some off-site training is permissible as long as the training is an integral part of an approved training program.
8. It is normally expected that a trainee will begin training on the Project as soon as feasible after start of work, utilizing the skill involved and remain on the Project as long as training opportunities exist in the work classification or the trainee reaches journey-level worker status. It is not required that all trainees be on board for the entire length of the Contract. The number trained shall be determined on the basis of the total number enrolled on the Contract for a significant period.
9. Wage Progressions: Trainees will be paid at least the applicable ratios or wage progressions shown in the apprenticeship standards published by L&I. In the event that no training program has been established by L&I, the trainee shall be paid in accordance with the provisions of RCW 39.12.021, which reads as follows:

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

Compliance

In the event that the Design-Builder is unable to accomplish the required training hours but can demonstrate GFE to meet the requirements as specified, then WSDOT may

consider an adjustment to the training goals. Noncompliance with the Special Training Provisions may also result in suspension of qualifications per WAC 468-16-180.

Noncompliance and Sanctions

When a Design-Builder violates EEO provisions of the Contract, WSDOT may impose damages in accordance with WSDOT's Equal Opportunity Compliance Program and the FHWA 1273. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations, as well as loss of federal funding, if any. Damages attributable to a Design-Builder's violations of the EEO provisions may be deducted from progress payments due the Design-Builder. Before any money is withheld, the Design-Builder will be provided with a notice of the basis of the violations, the amount to be withheld and provided an opportunity to respond. The monetary value of the sanction will be calculated on a case-by-case basis and based on the damages incurred by WSDOT.

WSDOT's decision to recover damages for an EEO violation does not limit its ability to suspend or revoke the Design-Builder's pre-qualification status or seek other remedies as allowed by federal or State law. In appropriate circumstances, WSDOT may also refer the Design-Builder to other State or federal authorities for additional sanctions.

Good Faith Efforts for Special Training

If the Design-Builder is not successful recruiting minorities, women, or disadvantaged individuals or is unable to accomplish the required training hours, the Design-Builder shall document their GFE and submit the documentation to the WSDOT Engineer. The documentation shall describe in detail why the Design-Builder is not or was not able to accomplish the special training.

For recruiting of minorities, women, and disadvantaged individuals, GFE shall include at a minimum the following:

1. Distribution of written notices of available employment opportunities with the Design-Builder and enrollment opportunities with its unions. Distribution should include, at a minimum, minority, women, and disadvantaged individual recruitment sources, WSDOT's OJT Support Services Coordinator, and minority, women, and disadvantaged community organizations.
2. Records documenting the Design-Builder's efforts and the outcome of those efforts, to employ minority, women, and disadvantaged individual applicants, refer them to unions, or both.
3. Records reflecting the Design-Builder's efforts in participating in developing minority, women, and disadvantaged individual on-the-job training opportunities, including upgrading programs and apprenticeship opportunities;
4. Distribution of written notices to unions and training programs disseminating the Design-Builder's EEO policy and requesting cooperation in achieving EEO and OJT obligations (and their written responses). For assistance in locating trainee candidates, the Design-Builder may call WSDOT's OJT Support Services Coordinator at (360) 704-6314 or email ojtssinfo@wsdot.wa.gov.

5. Recruitment efforts shall reflect two-way communications.

For training hours, GFE shall include records documenting the name of the trainee/apprentice, total hours trained under the program, and the apprentice trade of the trainee.

Requirements for Non ATELS/SATC Approved Training Programs

Design-Builders who are not affiliated with a program approved by ATELS or SATC may have their training program approved (by FHWA) provided that the program is submitted for approval on WSDOT Form 272-049, *Training Form*, and the following standards are addressed and incorporated in the Design-Builder's program:

1. The program establishes minimum qualifications for Persons entering the training program.
2. The program shall outline the work processes in which the trainee will receive supervised work experience and training on-the-job and the allocation of the approximate time to be spent in each major process. The program shall include the method for recording and reporting the training completed shall be stated.
3. The program shall include a numeric ratio of trainees to journey-level worker consistent with proper supervision, training, safety, and continuity of employment. The ratio language shall be specific and clear as to application in terms of job site and workforce during normal operations (normally considered to fall between 1:10 and 1:4).
4. The terms of training shall be stated in hours. The number of hours required for completion to journey-level worker status shall be comparable to the apprenticeship hours established for that craft by the SATC. The following are examples of programs that are currently approved:

CRAFT	HOURS
Laborer	4,000
Ironworker	6,000
Carpenter	5,200-8,000
Construction Electrician	8,000
Operating Engineer	6,000-8,000
Cement Mason	5,400
Teamster	2,100

5. The method to be used for recording and reporting the training completed shall be stated.

1-07.11(14) Federal Small Business Enterprise Participation

This Section is intentionally omitted.

1-07.12 *Federal Agency Inspection*

Federal laws, rules, and regulations shall be observed by the Design-Builder on Federal-aid projects. This work is subject to inspection by the appropriate Federal agency. The Design-Builder shall cooperate with the Federal agencies in these inspections. These

inspections shall not make the Federal government a party to the Contract and shall not constitute an interference with the rights of WSDOT or the Design-Builder.

Required Federal Aid Provisions

Form FHWA-1273, *Required Contract Provisions Federal Aid Construction Contracts* (Appendix B) Revised July 5, 2022, supersedes any conflicting provisions of the Standard Specifications and are made a part of this Contract; provided, however, that if any of the provisions of Form FHWA-1273, *Required Contract Provisions Federal Aid Construction Contracts* are less restrictive than Washington State Law, then the State law shall prevail.

The provisions of Form FHWA-1273, *Required Contract Provisions Federal Aid Construction Contracts* included in this Contract require that the Design-Builder insert Form FHWA-1273, *Required Contract Provisions Federal Aid Construction Contracts* in each Subcontract, together with the wage rates which are part of the Form FHWA-1273 *Required Contract Provisions Federal Aid Construction Contracts*. Also, a clause shall be included in each Subcontract requiring the Subcontractors to insert the Form FHWA-1273, *Required Contract Provisions Federal Aid Construction Contracts* thereto in any lower tier Subcontracts, together with the wage rates. The Design-Builder shall also ensure that this form is inserted in each Subcontract for Subcontractors and lower tier Subcontractors. For this purpose, upon request to the WSDOT Engineer, the Design-Builder will be provided with extra copies of the Form FHWA-1273, the applicable wage rates, and this Special Provision.

1-07.13 *The Design-Builder's Responsibility for Work*

1-07.13(1) General

All Work and material for the Contract, including Change Order work, shall be at the sole risk of the Design-Builder until the entire improvement has been completed as determined by WSDOT, except as provided in this Section.

The Design-Builder shall maintain, rebuild, repair, restore, or replace all Work that is injured or damaged prior to the date of acceptance of Physical Completion by WSDOT or third parties and shall bear all the expense to do so, except damage to the permanent Work caused by: (a) acts of God, such as earthquake, floods, or other cataclysmic phenomenon of nature, or (b) acts of the public enemy or of governmental authorities provided, however, that these exceptions shall not apply should damages result from the Design-Builder's failure to take reasonable precautions or to exercise sound engineering and construction practices in conducting the Work.

If the performance of the Work is delayed as a result of damage for which the Design-Builder is not responsible under the Contract, an extension of time will be evaluated in accordance with Section 1-08.8. Nothing contained in this Section shall be construed as relieving the Design-Builder of responsibility for, or damage resulting from, the Design-Builder's operations or negligence, nor shall the Design-Builder be relieved from full responsibility for making good defective Work or materials as provided for under Section 1-05.7.

WSDOT will review the Design-Builder's submittals and issue comments. The Design-Builder shall resolve the comments in accordance with the QMP.

If WSDOT does not issue comments or propose changes within the time periods set forth in the Contract, the Design-Builder may proceed with the use and application of such RFC document, design reports, and other submittals as applicable. However, WSDOT's lack of comment shall in no event constitute a concurrence or approval of the Design-Builder's submittal or prevent WSDOT from subsequent comment and/ or disapproval at a later time. The Design-Builder inherently retains the risk for contractual compliance.

1-07.13(2) Relief of Responsibility for Completed Work

Upon written request, the Design-Builder may be relieved of the duty of maintaining and protecting certain portions of the Work, as described below, which have been completed in all respects in accordance with the requirements of the Contract. If WSDOT provides written approval, the Design-Builder will be relieved of the responsibility for damage to said completed portions of the Work resulting from use by public traffic or from the action of the elements or from other causes, but not from damage resulting from the Design-Builder's operations or negligence.

Portions of the Work for which the Design-Builder may be relieved of the duty of maintenance and protection as provided in the above paragraph include the following:

1. The completion of a logical section of roadway, such as interchange to interchange, as approved by WSDOT, of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection Work, lighting, and traffic control and access facilities.
2. A bridge or other Structure of major importance.
3. A complete unit of a traffic control signal system or of a highway lighting system.
4. A complete unit of permanent highway protection Work.
5. A building which is functionally complete and open to the public.

1-07.13(3) Relief of Responsibility for Damage by Public Traffic

When it is necessary for public traffic to utilize a highway facility during construction, the Design-Builder will be relieved of responsibility for damages to permanent improvements caused by public traffic under the following circumstances:

1. The improvements conform to applicable Contract requirements.
2. The improvements are on a section of roadway required by the Contract to be opened to public traffic.
3. The traffic control is in accordance with the approved Traffic Control Plans.

If traffic is relocated to another section of roadway, the Design-Builder shall resume responsibility for the Work until such time as the section of roadway is again open to public traffic or the Design-Builder submits a written request for Work that is completed to a point where relief can be granted in accordance with Section 1-07.13(2).

1-07.13(4) Repair of Damage

The Design-Builder shall promptly repair all damage to either temporary or permanent Work as directed by WSDOT. For damage qualifying for relief under Sections 1-07.13(1), 1-07.13(2) or 1-07.13(3), payment will be made in accordance with Section 1-09.4.

In the event the WSDOT pays for damage to the Design-Builder's Work or for damage to the Design-Builder's equipment caused by third parties, claims the Design-Builder had or may have had against the third party shall be deemed assigned to WSDOT, to the extent of WSDOT's payment for such damage.

Payment will be limited to repair of damaged Work only. No payment will be made for delay or disruption of Work.

1-07.14 *Responsibility for Damage*

The State, Commission, Secretary, and all officers and employees of the State, including those of WSDOT, will not be responsible in any manner: for any loss or damage that may happen to the Work or any part; for any loss of material or damage to any of the materials or other things used or employed in the performance of Work; for injury to or death of any persons, either workers or the public; or for damage to the public for any cause which might have been prevented by the Design-Builder, or the workers, or anyone employed by the Design-Builder.

The Design-Builder shall be responsible for any liability imposed by law for injuries to, or the death of, any Persons or damages to property resulting from any cause whatsoever during the performance of the Work, or before Final Acceptance.

1-07.14(1) General Indemnities

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify, and hold harmless the State, Governor, Commission, Secretary, and all officers and employees of the State, the State's agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents, and employees, (collectively referred to in this Section as the "Indemnified Parties") from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of Persons or damage to or loss of property (including damage to Utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from:

(a) The breach of the Contract (or any representation or Warranty herein) by the Design-Builder, its employees, agents, officers, Subcontractors, or any other Persons performing any of the Work for whom the Design-Builder may be contractually or legally responsible. (The requirement to provide an indemnity for breach of contract set forth in Section 1-07.14(1) (a) is intended to provide protection to WSDOT with respect to third party claims associated with such breach. It is not intended to provide WSDOT with an alternative cause of action for damages incurred directly by WSDOT with respect to such breach).

(b) The failure or alleged failure by the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible, to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Materials) or Governmental Approvals in performing the Work.

(c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights, or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to WSDOT or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from WSDOT's failure to comply with specific written instructions regarding use provided to WSDOT by the Design-Builder.

(d) The alleged negligent act or omission or willful misconduct of the Design-Builder, its employees, agents, officers, Subcontractors, or any other Persons performing any of the Work for whom the Design-Builder may be contractually or legally responsible.

(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases, or sales, the use of any property or income of the Design-Builder or any of its Subcontractors or any of their respective agents, officers, or employees with respect to any payment for the Work made to or earned by the Design-Builder or any of its Subcontractors or any of their respective agents, officers, or employees under the Contract Documents.

(f) Any and all stop notices, Liens, or both filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any stop notice or Lien, provided that WSDOT is not in default in payments owing to the Design-Builder with respect to such Work.

(g) Any release or threatened release of a Hazardous Materials:

(i) Attributable to the negligence, willful misconduct, or breach of contract by the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible.

(ii) Which was brought onto the Site by the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible.

(h) The claim or assertion by any contractor of inconvenience, disruption, delay, or loss caused by interference by the Design-Builder (or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible) with or hindering the progress or completion of work being performed by other contractors as described in Section 1-05.14, or failure of the Design-Builder or its employees, agents, officers, Subcontractors, or any other Persons for whom the Design-Builder may be contractually or legally responsible to cooperate reasonably with other contractors in accordance therewith.

Within 60 Calendar Days following the date a claim is sent by WSDOT to the Design-Builder, the Design-Builder shall notify both the Claimant, as specified on the Claimant's contact information, and WSDOT by responding to the tendering email.

(a) Whether the claim is allowed or is denied in whole or in part, and, if so, the specific reasons for the denial of the individual claim, and if not denied in full, when payment has been or will be made to the claimant(s) for the portion of the claim that is allowed.

(b) If resolution negotiations are continuing. In this event, status updates will be reported no longer than every 60 Calendar Days until the claim is resolved or a lawsuit is filed.

If the Design-Builder fails to provide the above notification within 60 Calendar Days, then the Design-Builder shall yield to WSDOT sole and exclusive discretion to allow all or part of the claim on behalf of the Design-Builder, and the Design-Builder shall be deemed to have WAIVED any and all defenses, objections, or other avoidances to WSDOT's allowance of the claim, or the amount allowed by WSDOT, under common law, constitution, statute, or the Contract and these General Provisions. If all or part of a claim is allowed, WSDOT will notify the Design-Builder that it has allowed all or part of the claim and make appropriate payments to the claimant(s) with State funds.

Payments of State funds by WSDOT to claimant(s) under this Section will be made on behalf of the Design-Builder and at the expense of the Design-Builder, and the Design-Builder shall be unconditionally obligated to reimburse WSDOT for the "total reimbursement amount", which is the sum of the amount paid to the claimant(s), plus all costs incurred by WSDOT in evaluating the circumstances surrounding the claim, the allowance of the claim, the amount due to the claimant, and all other direct costs for WSDOT's administration and payment of the claim on the Design-Builder's behalf. WSDOT will be authorized to withhold the total reimbursement amount from amounts due the Design-Builder, or, if no further payments are to be made to the Design-Builder under the Contract, the Design-Builder shall directly reimburse WSDOT for the amounts paid within 30 Calendar Days of the date notice that the claim was allowed was sent to the Design-Builder. In the event reimbursement from the Design-Builder is not received by WSDOT within 30 Calendar Days, interest shall accrue on the total reimbursement amount owing at the rate of 12 percent per annum calculated at a daily rate from the date the Design-Builder was notified that the claim was allowed. WSDOT's costs to enforce recovery of these amounts are additive to the amounts owing.

1-07.14(1).1 Design Defects

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs, and expenses, including attorneys' fees, arising out of, relating to, or resulting from errors, omissions, inconsistencies, or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies, or other defects were also included in the Basic Configuration, Conceptual Design, or Reference Documents, except to the extent that an error, omission, inconsistency, or other defect in the Design Documents is directly attributable to an error, omission, inconsistency, or

other defect in the Basic Configuration and the Design-Builder did not act negligently in finalizing the design of the Project. The Design-Builder agrees that, because the Basic Configuration, Conceptual Design, and Reference Documents are subject to review and modification by the Design-Builder, except as provided otherwise in this Section, it is appropriate for the Design-Builder to assume liability for errors, omissions, inconsistencies, and other defects in the completed Project even though they may be related to errors, omissions, inconsistencies, and other defects in the Basic Configuration, Conceptual Plans, or Reference Documents.

1-07.14(1).2 Losses Due to Negligence of Indemnified Parties

The Design-Builder will not be required to indemnify, defend, or hold harmless an Indemnified Party as provided in this Section if the claim, suit, or action is caused by the sole negligence or willful misconduct of such Indemnified Party. Where such claims, suits, or actions result from the concurrent negligence of (a) an Indemnified Party or the Indemnified Party's agents or employees and (b) the Design-Builder or the Design-Builder's agent or employees, the indemnity provisions provided in this Section shall be valid and enforceable only to the extent of the Design-Builder's negligence or the negligence of its agents and employees.

1-07.14(1).3 Claims by Employees

In claims by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a Subcontractor under the Washington State Industrial Insurance Act, Title 51 RCW, workers' compensation, disability benefit, or any other employee benefits laws. In addition, for purposes of indemnification only, the Design-Builder specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. The Design-Builder's waiver of immunity by the provisions of this Section does not extend to claims by the Design-Builder's employees directly against the Design-Builder.

1-07.14(1).4 Reliance on the Design-Builder's Performance

The Design-Builder hereby acknowledges and agrees that it is the Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Design-Builder's performance of such obligation. The Design-Builder further agrees that any review, approval, or both by WSDOT and others hereunder shall not relieve the Design-Builder of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

1-07.14(1).5 WSDOT Hazardous Materials Indemnity

Except with respect to the Design-Builder's responsibility for Hazardous Materials pursuant to Section 1-07.14(1) item (g), WSDOT shall indemnify, protect, defend, and

hold harmless Design-Builder including Subcontractors and their respective shareholders, directors, officers, employees, agents, and representatives from all third party claims (including, at a minimum, claims for response and remediation costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery, or similar actions brought by a governmental or private party, including costs incurred in connection with an independent remedial action under MTCA and including third party tort liability) arising, directly or indirectly, from any presence or release of any Hazardous Materials on the Project Right of Way, and including any claims that arise out of the transport and disposal of any Hazardous Materials for which WSDOT has been identified as the generator. Except with respect to Design-Builder responsible Hazardous Materials as designated in Section 1-07.14(1) item (g)(ii), WSDOT shall be identified as the generator of any Hazardous Waste manifest for the transport or disposal of Hazardous Materials present at, on, in, or under the Project Right of Way and transported or disposed of by Design-Builder or a Subcontractor in connection with and during the course of performance of the design and construction Work.

1-07.14(1).6 Indemnification for Regrade

The following indemnification applies to only those fish passages which are required to be designed for Regrade. See 2.30, *Water Crossings* for the definition and requirements for Regrade.

1. WSDOT agrees to defend, indemnify, and hold harmless the Design-Builder, its officers, employees, and agents, from and against any and all claims, demands, losses, and/or liabilities or by third parties for bodily injury or property damage arising from, resulting from, or connected with, the Project, which may occur as a result of both (i) the contractually required Regrading of certain fish passages identified in Section 2.30, *Water Crossings*, and (ii) the effects of Regrading which occur outside of the existing State right of way. Such indemnification shall be provided to the fullest extent permitted by law and subject to the limitations provided below.
2. WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set forth in item 1 above, shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Design-Builder, including its officers, employees, and agents. Further, WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set out in item 1 above, for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) WSDOT, including its officers, employees, and agents, and (b) Design-Builder, its employees, officers and agents, shall apply only to the extent of negligence of the WSDOT, its officers, agents, or employees.
3. The defense and indemnity obligations identified in items 1 and 2 above have no effect on, and makes no changes to, the contract regarding the Parties' liability for damages arising out of bodily injury to persons or damage to property occurring within the State right of way.

4. WSDOT agrees that its obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of WSDOT's officers, officials, employees or agents. For this purpose only, WSDOT hereby waives, with respect to Design-Builder only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.

1-07.14(1).7 Indemnification For Flooding

The following indemnification applies to each fish passage that is required to be made fish passable on this Contract.

1. WSDOT agrees to defend, indemnify, and hold harmless the Design-Builder, its officers, employees, and agents, from and against any and all claims, demands, losses, and/or liabilities or by third parties for bodily injury or property damage arising from, resulting from, or connected with, the Project, which may occur as a result of (i) the contractual requirement to increase the flow capacity of all fish passages identified in Section 2.30, *Water Crossings*, and (ii) the effects of flooding, both upstream and downstream of each new fish passage structure, which occur outside of the existing State right of way. Such indemnification shall be provided to the fullest extent permitted by law and subject to the limitations provided below.
2. WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set forth in item 1 above, shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Design-Builder, including its officers, employees, and agents. Further, WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set out in item 1 above, for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) WSDOT, including its officers, employees, and agents, and (b) Design-Builder, its employees, officers and agents, shall apply only to the extent of negligence of the WSDOT, its officers, agents, or employees.
3. The defense and indemnity obligations identified in items 1 and 2 above have no effect on, and makes no changes to, the contract regarding the Parties' liability for damages arising out of bodily injury to persons or damage to property occurring within the State right of way.
4. WSDOT agrees that its obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of WSDOT's officers, officials, employees or agents. For this purpose only, WSDOT hereby waives, with respect to Design-Builder only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.

1-07.15 *Vacant*

1-07.16 *Protection and Restoration of Property*

1-07.16(1) Private/Public Property

The Design-Builder shall protect private or public property on or in the vicinity of the Work Site. The Design-Builder shall ensure that it is not removed, damaged, destroyed, or prevented from being used unless the Contract so specifies.

Property includes land, utilities, trees, landscaping, improvements legally on the Right of Way, markers, monuments, buildings, Structures, pipe, conduit, sewer or water lines, signs, and other property of all description whether shown in the Contract Documents or not.

If WSDOT requests in writing, or if otherwise necessary, the Design-Builder shall install protection, acceptable to WSDOT, for property such as that listed in the previous paragraph. The Design-Builder is responsible for protecting all property that is subject to damage by the construction operation.

If the Design-Builder (or agents/employees of the Design-Builder) damage, destroy, or interfere with the use of such property, the Design-Builder shall restore it to original condition. The Design-Builder shall also halt interference with the property's use. If the Design-Builder refuses or does not respond immediately, the WSDOT Engineer may have such property restored by other means and subtract the cost from money that will be or is due the Design-Builder.

The Design-Builder may access the Work Site from adjacent properties. The Design-Builder shall not use or allow others to use this access to merge with public traffic. During non-working hours, the Design-Builder shall provide a physical barrier that is either locked or physically unable to be moved without equipment. The access shall not go through existing Structures. The access may go through fencing. The Design-Builder shall control or prevent animals from entering the Work Site to the same degree that they were controlled before the fence was removed. The Design-Builder shall prevent Persons not involved in the Contract Work from entering the Work Site through the access or through trails and pathways intersected by the access. If the Contract Documents require that existing trails or pathways be maintained during construction, the Design-Builder will ensure the safe passage of trail or pathway users. The Design-Builder shall effectively control airborne particulates that are generated by use of the access. The location and use of the access shall not adversely affect wetlands or Sensitive Areas in any manner. The Design-Builder shall be responsible for obtaining all haul road agreements, permits, and easements associated with the access. The Design-Builder shall replace any fence, repair any damage, and restore the Site to its original state when the access is no longer needed. The Design-Builder shall bear all costs associated with this Work Site access.

1-07.16(2) Vegetation Protection and Restoration

Where shown in the Conceptual Plans, as indicated elsewhere in the Contract Documents, and where further designated in the Design-Builders' Proposal and RFC Documents,

existing wetlands and other Sensitive Areas shall be saved and protected through the life of the Contract. Prior to any construction, the Design-Builder shall designate the vegetation to be saved and protected by high visibility construction fencing, individual flagging, or both.

Damage which may require replacement of vegetation includes bark stripping, broken branches, exposed root systems, cut root systems, poisoned root systems, compaction of surface soil and roots, puncture wounds, drastic reduction of surface roots or leaf canopy, changes in grade greater than 6 inches, or any other changes to the location that may jeopardize the survival or health of the vegetation to be preserved.

When large roots of trees designated to be saved are exposed by the Design-Builder's operation, they shall be wrapped with heavy burlap for protection and to prevent excessive drying. The burlap shall be kept moist and securely fastened until the roots are covered to finish grade. All burlap and fastening material shall be removed from the roots before covering. All roots 1 inch or smaller in diameter, which are damaged, shall be pruned with a sharp saw or pruning shear. Damaged, torn, or ripped bark shall be removed as directed by the WSDOT Engineer.

If due to, or for any reason related to the Design-Builder's operations, any tree, shrub, ground cover, or herbaceous vegetation designated to be saved is destroyed, disfigured, or damaged to the extent that continued life is questionable as determined by the WSDOT Engineer, it shall be removed by the Design-Builder at the direction of the WSDOT Engineer.

The Design-Builder will be assessed damages equal to triple the value of the vegetation as determined in the *Guide for Plant Appraisal*, 9th Edition, published by the International Society of Arboriculture or the estimated cost of restoration with a similar species. Shrub, ground cover, and herbaceous plant values will be determined using the Cost of Cure Method. Any damage so assessed will be deducted from the monies due or that may become due the Design-Builder.

1-07.16(3) Fences, Mailboxes, Incidentals

The Design-Builder shall maintain all temporary fencing to preserve livestock, crops, or property when working through or adjacent to private property. The Design-Builder is liable for all damages resulting from not complying with this requirement.

The usefulness of existing mail or paper boxes shall not be impaired. If the Contract anticipates removing and reinstalling the mail or paper boxes, the provisions of Section 8-18 of the Standard Specifications will apply. If the mail or paper boxes are rendered useless solely by acts (or inaction) of the Design-Builder or for the convenience of the Design-Builder, the Work shall be performed in accordance with Section 8-18 of the Standard Specifications at the Design-Builder's expense.

1-07.16(4) Archaeological and Historical Objects

Archaeological or historical objects, such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from a historical or scientific standpoint, which may be encountered by the Design-Builder, shall not be further

disturbed. The Design-Builder shall immediately notify the WSDOT Engineer of any such finds.

The WSDOT Engineer will determine if the material is to be salvaged. The Design-Builder may be required to stop Work in the vicinity of the discovery until such determination is made. The WSDOT Engineer may require the Design-Builder to suspend Work in the vicinity of the discovery until salvage is accomplished.

If the WSDOT Engineer finds that the suspension of Work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the Work under this Contract, the WSDOT Engineer will make an adjustment in the Contract Price, the Contract Time, or both required for the performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

1-07.16(5) Wells

1-07.16(5).1 Protection of Wells

The Design-Builder shall save and protect existing wells throughout the life of the Contract at the locations identified in Section 2.6, Geotechnical. For the definition of wells types see WAC 173-160-111 and WAC 173-160-410.

The existing wells shall not be disturbed during any construction activity.

1-07.16(5).2 Discovery of Unidentified Wells

If unidentified wells are encountered by the Design-Builder, they shall not be further disturbed. The Design-Builder shall ensure any unidentified wells encountered are protected from all construction activities including spills. The Design-Builder shall follow the procedures set forth in Section 1-04.7. The WSDOT Engineer will determine if the well will be protected in accordance with Section 1-07.1 and 1-07.16 or the well will be decommissioned as part of the Work.

1-07.17 *Utilities Relocations*

This Section 1-07.17 and Technical Requirements Section 2.10, *Utilities and Relocation Agreements,* address;

(a) The Prior Relocations (anticipated to be completed by the Utility Owners prior to issuance of the Notice to Proceed, except as may be otherwise specified in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*),

(b) All other work remaining to be performed (by either the Design-Builder or the Utility Owner) with respect to existing Utilities impacted by the Project, and

(c) How the risks associated with Utility Relocations are allocated between WSDOT and the Design-Builder. Utilities impacted by the Project are categorized based on whether the Utility Owner has legal responsibility for the costs of Relocation (“Type #1 Utilities”), or does not have legal responsibility for the costs of Relocation (“Type #2 Utilities”), or disputes legal responsibility for the costs of Relocation (“Type #3 Utilities”). Cost responsibility for Type #3 Utilities shall be allocated by

the Design-Builder as described in Technical Requirement Section 2.10, *Utilities and Relocation Agreements*.

WSDOT has performed investigations in order to identify and locate existing Utilities within the Project's Right of Way or otherwise potentially impacted by the Project. Utilities identified by WSDOT are described in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*. Utilities are identified as Prior Relocations, Protection in Place or Relocation, or both by Design-Builder. Additional Relocation Work may become necessary, if the Design-Builder finds that any impacted Utilities were incorrectly identified or located, or both (or not identified at all) by WSDOT's investigations. The circumstances under which the Design-Builder may be entitled to an increase in the Contract Price or extension of the Contract Time on account of such additional Relocation Work are described in Section 1-07.17(9).

As necessary for any Type #1 Utilities requiring Relocation Work, WSDOT will assign certain rights (including the right to require Relocation at the Utility Owner's expense) and delegate certain obligations under the applicable franchises or permits to the Design-Builder (see Assignment/Delegation of Utility Permit/Franchise Rights and Obligations, Contract Appendix U), and the Design-Builder shall seek reimbursement of any costs it incurs for designing or constructing, or both, such a Relocation directly from the Utility Owner. By its execution of the Contract, the Design-Builder shall be deemed to have certified that the Contract Price does not include any amounts covering Relocation Costs to be incurred or paid for by the Design-Builder for any Type #1 Utility. See Form L, *Utility Certification*.

With respect to Type #2 Utilities, except as otherwise specified in this Section 1-07.17 or in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*:

(a) All Relocation Costs shall be the Design-Builder's responsibility, and

(b) The Design-Builder shall reimburse such Utility Owners for their Relocation Costs. The Contract Price shall include this reimbursement obligation as well as any Relocation Costs incurred by the Design-Builder with respect to Type #2 Utilities.

1-07.17(1) Design-Builder's Responsibility for Utility Work

The Design-Builder shall be responsible for all "Utility Work" as described herein and in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*.

The Design-Builder will be entitled to a Change Order relating to Utility Relocations only as specified in this Section 1-07.17, subject to Sections 1-04.4 and 1-08.8. In all other respects, the Design-Builder assumes all risk of, is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs, time, or both, resulting from Utilities affecting or affected by the Project.

1-07.17(1).1 General Scope

The Design-Builder is responsible for performing, and the scope of the Utility Work includes, all Relocation Work except for (a) any efforts and costs which are identified as the responsibility of the Utility Owners or of WSDOT or are otherwise specifically excluded from the Utility Work in Section 1-07.17 or in Section 2.10, *Utilities and*

Relocation Agreements, and (b) those efforts and costs which are allocated to the Utility Owners in the Utility Agreements or in the Utility MOUs, if any.

Without limiting the generality of the foregoing, the Design-Builder is responsible for performing, and the scope of the Utility Work includes:

(a) All investigative work necessary to confirm the exact location, size, and type of each Utility (including Prior Relocations) located within the Project Right of Way or otherwise potentially impacted by the Project

(b) The Incidental Utility Work

(c) Reimbursement of Utility Owners for their Relocation Costs for Type #2 Utilities

(d) All tasks, obligations and duties, and all costs, if any, that are the responsibility of the Design-Builder pursuant to any Utility Agreements (unless otherwise specified in the Contract Documents)

(e) Any Betterments added to the Utility Work pursuant to Section 1-07.17(6)

(f) Any other efforts and costs by the Design-Builder that are necessary in order to accomplish the Work described in Section 1-07.17, Section 2.10, *Utilities and Relocation Agreements*, or both

The Utility Work does not include acquisition of Utility Easements, but it does include the obligation to reimburse Utility Owners for costs of acquiring Utility Easements, if necessary for the Relocation of any Type #2 Utilities hereunder.

Utility Relocations may be necessitated by: (a) a physical conflict between the Utility and the Project (including their respective construction, operation, maintenance, or use), and (b) an incompatibility between the Project as designed and the Utility based on the applicable Utility Standards and applicable Governmental Rules (even though there is no physical conflict). The limits of Relocation of existing Utilities extend as far as is necessary to accommodate or permit construction of the Project in accordance with the foregoing, whether inside or outside the Project's Right of Way boundaries. The Design-Builder shall ensure that all Utility Relocations are compatible with and interface properly with the Project.

The Design-Builder shall coordinate and cooperate with WSDOT and Utility Owners to ensure that all Relocation Work, whether performed or furnished by Utility Owners or by the Design-Builder, is completed in a timely fashion in accordance with the Contract Schedule.

For all Utilities at the Site (whether or not they are being Relocated pursuant to this Section 1-07.17) the Design-Builder shall minimize disruption in services provided by Utility Owners by (a) coordinating planned outages, (b) incorporating and implementing a contingency plan for unplanned outages, (c) developing a framework for coordination between Utility Owners, the Design-Builder, and any affected property owners, as well as a framework for handling of questions and claims, and (d) coordinating with Utility Owners to develop a plan so that the Utility Owners can access their facilities during Project construction.

1-07.17(1).2 Prior Relocations

If any Prior Relocation is not completed prior to issuance of the Notice to Proceed, then the Utility Work includes such coordination between the Design-Builder and the affected Utility Owner as may be necessary for orderly completion of such Prior Relocation, including assisting in the determination of an appropriate location for installation of the Relocated Utility (if not yet determined).

1-07.17(1).3 Incidental Utility Work

Notwithstanding any contrary provision of the Contract Documents, the Design-Builder shall be responsible for performing all Incidental Utility Work, without regard to the allocation of responsibility for performing Relocation Work otherwise established in Section 1-07.17. The Design-Builder shall make all arrangements and perform all work necessary to accomplish the Incidental Utility Work, including locating Utilities, identifying conflicts, performing any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with all required Governmental Approvals and WSDOT franchises/permits.

If a Utility Owner accepts the responsibility to perform certain Incidental Utility Work, the Design-Builder shall confirm that the Utility Owner in fact timely performs such Incidental Utility Work, or the Design-Builder shall perform such Incidental Utility Work itself in accordance with the Contract Schedule.

1-07.17(1).4 Design-Builder's Responsibility to Perform

The Design-Builder shall perform all Utility Work without regard to any of the following: (a) whether an impacted Utility was indicated in the Utility Information, or if indicated, whether the Utility was accurately indicated therein; (b) the feasibility, estimated duration of work time, cost or any other characteristic of the proposed disposition (e.g., Relocation, Protection in Place) for the Utility (if any) stated in the Utility Information; (c) whether the Design-Builder is entitled to additional compensation or an extension of the Contract Time with respect to such Work; and (d) whether the Utility Work is the Utility Owner's Cost Responsibility.

1-07.17(2) Utility Agreements

Utility Agreements may include but are not limited to (a) Memorandum of Understanding (MOU) between WSDOT and the Utility Owners that are included in the Contract, (b) the Relocation Agreements that will be entered into by the Design-Builder and the Utility Owners, (c) the Intergovernmental Agreements, and (d) the Prior Relocation Agreements.

1-07.17(2).1 Memoranda of Understanding

The Design-Builder acknowledges that the purpose of the Utility MOUs is to promote cooperation by the Utility Owners with the Project. Nevertheless, the Design-Builder is required to comply with all Utility MOUs included in the Contract, unless otherwise directed by WSDOT. In the event of any conflict between the terms of any Utility MOU and the terms of the Contract Documents, the Contract Documents shall prevail as

between WSDOT and the Design-Builder. WSDOT will have no obligation to enter into a Utility MOU with any Utility Owner.

1-07.17(2).2 Relocation Agreements

Each Relocation performed pursuant to this Section 1-07.17 (not subject to a Prior Relocation Agreement or an Intergovernmental Agreement) shall be addressed in a Relocation Agreement between the Design-Builder and the Utility Owner. A single Relocation Agreement may address more than one Utility Relocation for the same Utility Owner, unless otherwise directed by WSDOT. The Design-Builder shall prepare and negotiate its Relocation Agreements and obtain execution thereof. Although WSDOT will not be a party to the Relocation Agreements, (a) WSDOT will have the right to participate in Relocation Agreement negotiations in its sole discretion, (b) each such Relocation Agreement shall be subject to review by WSDOT as more particularly provided in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*, and (c) each such Relocation Agreement shall provide that WSDOT is a third-party beneficiary thereof and that the Design-Builder may assign its rights and obligations hereunder to WSDOT without the Utility Owner's consent. The Design-Builder shall keep WSDOT informed of the status of all negotiations and shall deliver to WSDOT, within 10 Calendar Days after its execution, a true and complete copy of each Relocation Agreement. The Design-Builder shall comply with the terms and conditions of all Relocation Agreements. The Design-Builder shall have no right to enter into any agreement with a Utility Owner that purports to bind WSDOT to its terms. Relocation Agreements entered into by the Design-Builder shall not be considered Contract Documents. In no event shall any Relocation Agreement be deemed to amend the terms of any other agreement to which WSDOT is a party, provided that a Relocation Agreement may deviate from the requirements of a Utility MOU if WSDOT has agreed to such deviation in writing. In the event of any conflict between the terms of any Relocation Agreement and the terms of the Contract Documents, the Contract Documents shall prevail as between WSDOT and the Design-Builder.

1-07.17(2).3 Intergovernmental Agreements and Prior Relocation Agreements

The Design-Builder shall comply with the Intergovernmental Agreements and the Prior Relocation Agreements, all of which are Contract Documents.

1-07.17(3) Work Responsibility and Cost Responsibility

1-07.17(3).1 Work Responsibility

Section 2.10, *Utilities and Relocation Agreements*, of the Technical Requirements allocates the responsibility for performing particular Relocation Work between the Design-Builder and the affected Utility Owner. Any modification of work responsibility for a Utility subject to an Intergovernmental Agreement or a Prior Relocation Agreement shall be decided by WSDOT (together with the Utility Owner), and implemented through an amendment to the applicable Intergovernmental Agreement or Prior Relocation Agreement and in accordance with Section 1-04.4. The Design-Builder and the affected Utility Owner may modify the allocation in Section 2.10 of the Technical Requirements for any other Utility by mutual agreement and shall also determine the responsibility for

performing any other Relocation Work, in the course of negotiating the applicable Relocation Agreement. Any such changes in work allocation shall be addressed in accordance with Section 1-07.17(13).1.

Regardless of the arrangements made with the Utility Owners, except as may be otherwise provided in this Section 1-07.17, the Design-Builder shall continue to be the responsible party to WSDOT for timely performance of all Relocation Work in accordance with the requirements of the Contract Documents.

1-07.17(3).2 Cost Responsibility

For each Utility identified in the Utility Information, the determination of whether the Utility is a Type #1 Utility or a Type # 2 Utility or a Type #3 Utility shall be as identified in the Existing Utility Listing in Appendix U. If the Type is not specified in the Existing Utility Listing, then the determination of the Utility Type shall be made in accordance with Section 2.10, *Utilities and Relocation Agreements*. If the type is not specified in the Existing Utility Listing or Section 2.10, then in accordance with the applicable Utility Agreement included in the Contract, if any. Except for Incidental Utility Work, if the Cost Responsibility for a particular Utility is not indicated in either location, then the Utility shall initially be in Type #1.

Any changes in the determination of Cost Responsibility with respect to Utilities will be addressed directly between WSDOT and the respective Utility Owner. Consequently, any changes in Cost Responsibility which may occur in regards to Utilities will not affect either the scope of the Utility Work or Design-Builder's compensation hereunder.

1-07.17(4) Payment to and Collection from Utility Owners

1-07.17(4).1 Collection from Utility Owners

In regards to a Type #1 Utility, unless otherwise noted in the Technical Requirements, the Design-Builder shall collect the appropriate reimbursement directly from the Utility Owner for any Relocation Work the Design-Builder performs. The Design-Builder also shall collect the appropriate reimbursement directly from the Utility Owner for any increased costs the Design- Builder may sustain as a result of actions or inactions on the part of the Utility Owner. If the Design-Builder asserts that any Utility Owner has failed to comply with its obligation under a Relocation Agreement or has otherwise hindered or interfered with the progress or completion of the Work, then except as otherwise set forth in Sections 1-07.17(11) and 1-07.17(12), the Design- Builder’s sole remedy shall be to seek recourse against the Utility Owner.

1-07.17(4).2 Failure to Pay

If for any reason the Design-Builder is unable to collect amounts due from a Utility Owner pursuant to Section 1-07.17(4).1, the Design-Builder shall notify WSDOT and shall resolve such dispute directly with the Utility Owner, subject to the requirements of Section 1-07.17(7).

1-07.17(4).3 Reimbursements to Utility Owners

Except with respect to any Prior Relocations, or as provided otherwise in the Technical Requirements, the Design-Builder shall reimburse Utility Owners for all Relocation Costs for Type #2 Utilities. The Design-Builder shall also make any other reimbursements to Utility Owners required under any Relocation Agreement (for example, for damage to a Utility Owner's facilities caused by the Design-Builder's work). The Design-Builder shall make all payments required by this Section 1-07.17(4) in accordance with the time and other requirements of the applicable Utility Agreement(s). The provisions of this Section 1-0 7.17 (4) shall not limit any other obligations of the Design-Builder to WSDOT pursuant to the Contract Documents, for damage caused to Utility Owner facilities or otherwise.

1-07.17(5) Reliance on Utility Information

WSDOT has performed preliminary investigations of existing Utilities located within the Project ROW, as described in Section 2.10, *Utilities and Relocation Agreements*. The Design-Builder acknowledges that (a) the Utility Information does not identify Service Lines impacted by the Project, and (b) information contained in the Utility Information, including the descriptions of the affected Utilities and their locations is preliminary and may not be accurate. The Design-Builder shall verify all Utility Information included in the Contract, and shall perform its own investigations in accordance with the Contract Documents. The Design-Builder shall not proceed with any construction Work at any location until such investigations have been completed for that location.

If the Design-Builder’s investigations identify Utilities (excluding Service Lines) not described in the Utility Information, or if the Design-Builder determines that any Major Underground Utility was not described in the Utility Information with Reasonable Accuracy (as defined in Section 1-07.17(9).3 the Design-Builder shall notify WSDOT immediately upon such discovery. If any such unidentified Utility is installed within the Project’s ROW pursuant to a franchise or permit, WSDOT will execute an assignment of rights and delegation of obligations there under in the same form as Contract Appendix U, in favor of the Design-Builder. The Design-Builder shall be responsible for confirming the exact location (horizontal and vertical) of each Utility (including Prior Relocations) potentially affected by the Project, regardless of whether information with respect to such Utility has been provided by WSDOT or by the Utility Owner.

The Design-Builder shall comply with all of the requirements of chapter 19.122 RCW regarding underground Utilities. In accordance with this RCW and in particular RCW 19.122.030, the Design-Builder shall, among its other duties and obligations required under this RCW, call the one-number locator service (Washington Utility Notification Center) for field location of Utilities. If no locator service is available for the area, notice shall be provided individually to those Utility Owners known to, or suspected of, having underground facilities within the area of the proposed excavation. The Design-Builder shall refresh and maintain the location ground markings in all areas on a daily basis where excavation is in progress.

1-07.17(6) Betterments and Utility Owner Projects

1-07.17(6).1 Betterments

The Design-Builder may agree in a Relocation Agreement to design or construct, or both, a Betterment for a Utility at the Utility Owner's sole expense, subject to compliance with Section 1-07.17(6).3. Such Betterment shall be treated as an addition to the scope of the Utility Work upon WSDOT's approval of the executed Relocation Agreement; however, such addition shall not be treated as a change in the Work directed by WSDOT, and the Design-Builder shall not be entitled to any increase in the Contract Price or extension of the Contract Time on account thereof. Instead, the Design-Builder shall arrange to collect payment for such work directly from the Utility Owner.

Work identified in the Contract Documents as part of the Design-Builder's original scope shall not be considered a Betterment unless expressly identified as such in the Contract Documents. Except as may be otherwise set forth in this Section 1-07.17(6) or in Technical Requirements Section 2.10, all the terms and conditions of the Contract Documents that apply to the Utility Work shall apply to any Betterment added to the Work pursuant to this Section 1-07.17(6).1.

1-07.17(6).2 Utility Owner Projects

The Design-Builder may enter into an agreement with a Utility Owner to design or construct, or both, a Utility Owner Project at the Utility Owner's expense, subject to compliance with Section 1-07.17(6).3. Any such Utility Owner Project shall be considered to be work outside of the Contract and the Work. The Design-Builder's compensation for a Utility Owner Project shall not involve WSDOT. Utility Owner Projects within the Project Right of Way are subject to normal WSDOT permitting requirements.

1-07.17(6).3 Restrictions on Betterments and Utility Owner Projects

Except as may be otherwise set forth in Section 1-07.17(6) or in Section 2.10, *Utilities and Relocation Agreements*, all the terms and conditions of the Contract Documents that apply to the Utility Work shall also apply to any Betterment added to the Work.

The Design-Builder shall not proceed with any Utility Betterment or Utility Owner Project that is incompatible with the Project or cannot be performed within the constraints of applicable Governmental Rules, Governmental Approvals, any applicable franchises/permits, and the Contract Documents, including the contractual deadline for Substantial Completion. The Design-Builder shall not be entitled to any additional compensation from WSDOT or any extension of the Contract Time on account of any Betterment or Utility Owner Project.

The Design-Builder shall promptly notify WSDOT of any request or requirement by a Utility Owner that the Design-Builder considers to give rise to a Betterment, and shall keep WSDOT informed as to the status of negotiations with the Utility Owners concerning such requests. If the Design-Builder and a Utility Owner disagree as to whether a particular Utility Owner request or requirement constitutes a Betterment, the Design-Builder shall notify WSDOT and shall resolve such dispute directly with the

Utility Owner, subject to the requirements of Section 1-07.17(7). The Design-Builder shall provide WSDOT with such information, analyses and certificates as WSDOT may request in order to determine compliance with this Section 1-07.17(6).

1-07.17(7) Failure of Utility Owners to Cooperate

1-07.17(7).1 Disputes

The Design-Builder shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. The Design-Builder shall notify WSDOT in writing immediately if (a) the Design-Builder is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement within a reasonable time with a Utility Owner on a necessary Relocation Agreement, (b) the Design-Builder believes that any Utility Owner would not undertake or permit a Relocation in a manner consistent with the timely completion of the Project, (c) the Design-Builder becomes aware that a Utility Owner is not cooperating in providing needed work or approvals, (d) a Utility Owner fails to timely pay amounts due to the Design-Builder as described in Section 1-07.17(4), or (e) any other dispute arises between the Design-Builder and any Utility Owner with respect to the Project, including any dispute as to whether or not a particular Utility Owner request or requirement constitutes a Betterment.

After giving notice in accordance with the preceding paragraph, the Design-Builder shall remain responsible for coordination with the Utility Owner, shall continue to diligently pursue the Utility Owner’s cooperation, and may request WSDOT's assistance for such purpose. Subject to Section 1-07.17(7).2, WSDOT will provide assistance as reasonably requested by the Design-Builder; provided that such assistance shall be at no cost to WSDOT other than the time of its staff, and WSDOT will have no obligation to pursue any legal proceedings against the Utility Owner. Any notice provided to WSDOT or assistance requested from WSDOT, provided by WSDOT, or both, shall not relieve the Design-Builder of its responsibility hereunder for the satisfaction of its obligations and timely completion of all Relocations. WSDOT will take the lead in resolving any disputes relating to Relocations subject to a Prior Relocation Agreement or an Intergovernmental Agreement.

WSDOT also may, in its sole discretion, participate in the resolution of any other dispute between the Design-Builder and a Utility Owner, whether or not requested to do so by the Design-Builder, and may, in its sole discretion, take the lead in resolving any such dispute involving a Type #2 Utility.

As requested by WSDOT, the Design-Builder shall cooperate with WSDOT in any efforts to resolve disputes in accordance with the preceding paragraph, including in connection with any lawsuit or alternate proceedings undertaken by WSDOT for such purpose. Such cooperation shall include the Design-Builder's staff and consultants acting as witnesses in such lawsuits and proceedings and providing testimony, information, reports, graphs, photos, plans, renderings, and similar materials to WSDOT's counsel at the Design-Builder's expense. WSDOT will remit to the Design-Builder any amounts collected on the Design-Builder's behalf as a result of any such action or proceeding, after first deducting there from all costs (including attorneys’, courts’ and expert witness fees and costs) incurred by WSDOT in pursuing such action or proceeding.

1-07.17(7).2 Conditions to WSDOT's Assistance

WSDOT shall not be obligated to provide assistance requested by the Design-Builder pursuant to Section 1-07.17(7).1 unless all of the following conditions are satisfied:

1. The Design-Builder has provided to WSDOT a written report explaining the nature and history of the dispute, the names and contact information for the representatives of each disputant, a description of the assistance requested by the Design-Builder, and such other information as WSDOT may reasonably request.
2. The Design-Builder has provided evidence reasonably satisfactory to WSDOT that:
   (a) The Design-Builder has made diligent efforts to obtain the Utility Owner's cooperation or to otherwise resolve the dispute, but that such efforts have not succeeded
   (b) Any assistance requested by the Design-Builder from WSDOT is reasonable
   (c) If applicable, the Design-Builder has provided a reasonable Relocation plan and Relocation completion schedule to the Utility Owner that has been submitted to WSDOT for Review and Comment.
   (d) The Design-Builder or the Utility Owner has obtained, or is in a position to timely obtain, any Governmental Approvals and WSDOT franchises/permits required in order to implement the Relocation plan proposed by the Design-Builder
   (e) The Design-Builder's position in the dispute is otherwise reasonable

1-07.17(8) Avoiding Relocations and Minimizing WSDOT Costs

The Design-Builder shall consider the location of Utilities and the potential impact of Utility Relocations in finalizing the design of the Project, with the goals of minimizing Relocation Costs, related construction and disruption to the public, and avoiding schedule delay, to the extent practical and at all times conforming to requirements of the Contract Documents. Notwithstanding the foregoing, the Design-Builder shall take all reasonable steps, including revising the Design Documents to work around a newly identified Utility as reasonably applicable, to minimize costs for which the Design-Builder is entitled to additional compensation pursuant to Section 1-07.17.

The Design-Builder shall endeavor to avoid multiple Relocations of the same Utility, whether by the Utility Owner or by the Design-Builder. Accordingly, after a Utility has been relocated once in order to accommodate the Project, the Design-Builder shall be responsible for all Relocation Costs incurred by either the Design-Builder or the Utility Owner in order to subsequently relocate such Utility to accommodate the Project. Notwithstanding any contrary provision of the Contract Documents, the Design-Builder shall not receive any extension of the Contract Time or increase in the Contract Price on account of or in connection with such subsequent relocation. This Section 1- 07.17(8) relating to multiple relocations shall not apply to Temporary Relocations that are necessary for construction of the Project.

1-07.17(9) Price Adjustments and Time Extensions for Inaccurate Utility Information

1-07.17(9).1 Eligibility for Change Orders –General

Subject to Sections 1-07.17(9).4, 1-07.17(12), and 1-07.17(13) and to any other Contract requirements relating to entitlement to Change Orders, if any Major Underground Utility not addressed in Section 1-07.17(9).2 is not identified in the Utility Information with Reasonable Accuracy, then the Design-Builder shall be entitled to:

(a) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to the correction of such inaccurate information.

(b) Delay and disruption damages that are directly attributable to the inaccuracy.

(c) For Type #1 Utilities only, an increase in the Contract Price on account of any other increased costs of the Work (excluding Relocation Costs) which are directly attributable to the correction of such inaccurate information and

(d) For Type #2 Utilities only, an increase in the Contract Price on account of any other increased costs of the Work (including Relocation Costs) which are directly attributable to the correction of such inaccurate information.

WSDOT shall be entitled to a credit if a Type #2 Major Underground Utility is not described in the Utility Information with Reasonable Accuracy and the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(9).2 Eligibility for Change Orders –Utilities Subject to Intergovernmental Agreements and Prior Relocation Agreements

Subject to Sections 1-07.17(9).4, 1-07.17(12), and 1-07.17(13) and to any other Contract requirements relating to entitlement to Change Orders, if any Major Underground Utility not addressed in Section 1-07.17(9).1 is not identified in the Utility Information with Reasonable Accuracy, then the Design-Builder shall be entitled to:

(a) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to the correction of such inaccurate information

(b) Delay and disruption damages that are directly attributable to the inaccuracy

(c) An increase in the Contract Price on account of any other increased costs of the Work which are directly attributable to the correction of such inaccurate information

WSDOT shall be entitled to a credit if any such Major Underground Utility is not described in the Utility Information with Reasonable Accuracy and the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(9).3 Reasonable Accuracy Defined

"Reasonable Accuracy" shall mean that a Major Underground Utility is referenced in the Utility Information, and

1. The Utility's actual centerline location is within 10 feet of the horizontal centerline location indicated in the Utility Information (with no limitation on vertical location).

2. One of the following applies, with regard to any difference (whether larger or smaller) between the Utility's actual inside diameter, excluding casings and any other appurtenances (the "actual size") and the inside diameter for such Utility in the Utility Information (the "stated size"):

Stated size (pipe style)	Actual size
12 inches or less	not more than 24"
greater than 12" but less than or equal to 36"	stated size ± 50%
greater than 36" but less than or equal to 72"	stated size ± 25%
greater than 72"	stated size ± 15%

For example, if the stated size of an underground pipeline listed in the Utility Information is 36 inches, but the pipeline's actual size is 48 inches and its centerline is actually located 8 feet away from the horizontal centerline location shown in the Utility Information, such pipeline shall be deemed indicated with Reasonable Accuracy and the Design-Builder shall not be entitled to a Change Order for any increased costs or delays resulting from the increased size or differing location of the pipeline. As a further example, if the stated size of a Type #2 underground pipeline listed in the Utility Information is 36 inches, but the pipeline's actual size is 60 inches and its centerline is actually located 8 feet away from the horizontal centerline location shown (without regard to vertical location), then such pipeline shall be deemed not indicated with Reasonable Accuracy, and the Design-Builder shall be entitled to a Change Order for any increased costs or delays resulting from the increased size (but not from the differing location) of the pipeline.

Stated size (duct bank style)	Actual size
4 to 16 conduits	Nominal cross section ± 50%
16 to 36 conduits	Nominal cross section ± 25%
More than 36 conduits	Nominal cross section ± 15%

Duct bank size calculations are performed as follows: the nominal duct bank cross section is calculated based on number, size, and orientation of conduit with 2-inch edge to edge spacing between conduit, 3-inch outside cover; and 6-inch over pour to sides and top. Example calculation:

For a 2 by 3 duct bank with 5-inch conduit the nominal cross section is calculated as follows:

width = 3+5+2+5+3+6 = 24 inches

depth = 3+5+2+5+2+5+3+6 = 31 inches

Nominal cross section area = 24 x 31 inches = 744 in^2

Actual cross section may be (744 in^2 x 0.5) = 372 in^2 to (744 in^2 x 1.5) = 1116 in^2

Location accuracy standards for duct bank style Utilities are determined in the same manner as for pipe style Utilities noted above.

In case of any discrepancy between the information provided by one component of the Utility Information and information provided by another component of the Utility

Information, only the more accurate information shall be relevant in determining Reasonable Accuracy.

1-07.17(9).4 Limitations and Exclusions

The Design-Builder shall not be entitled to a Change Order pursuant to this Section for any of the following:

1. Any inaccuracies in the Utility Information to the extent that the correct information:
   (a) Was known to the Design-Builder as of the Proposal Due Date
   (b) Would have been apparent during a surface inspection of the area conducted prior to the Proposal Due Date
   (c) Could have been inferred from the presence of other facilities or surface features, such as buildings, meters, junction boxes, manholes, vaults, or identifying markers
2. Increased costs or time attributable to inaccuracies in the Utility Information, to the extent that such costs could have been avoided by timely identifying the correct information and addressing the actual field conditions in the "RFC" Design Documents for the Work in question
3. Any inaccuracies in the Utility Information regarding Utilities other than Major Underground Utilities

1-07.17(10) Certain Other Price Adjustments

1-07.17(10).1 Determination of Cost Responsibility

WSDOT may, at any time, notify the Design-Builder of a change in the determination of Cost Responsibility for a particular Utility. Such change in the Work directed by WSDOT shall be treated in accordance with Section 1-04.4, resulting in either an increase or a decrease in the Contract Price, as applicable.

1-07.17(10).2 Early Relocation Work

If, prior to issuance of NTP, WSDOT reimburses a Utility Owner for Relocation Work performed on a Type #2 Utility (other than with regards to a Prior Relocation), the resulting reduction in the scope of the Work shall be treated as a change in the Work directed by WSDOT in accordance with Section 1-04.4, entitling WSDOT to a decrease in the Contract Price.

1-07.17(11) Delayed Prior Relocations

Subject to Sections 1-04.4, 1-07.17(13), and 1-08.8, and to any other Contract requirements relating to entitlement to Change Orders, if the Utility Owner fails to complete a Prior Relocation on or before the date of issuance of the NTP then the Design-Builder shall be entitled to:

(a) An increase in the Contract Price on account of any increased costs of the Work directly resulting from such failure.

(b) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to such failure.

1-07.17(12) Utility Delays

Except as specified in this Section 1-07.17(12) or in Section 1-07.17(11), any time frames for completion of the Relocation Work or components thereof included in the Contract are estimates only and shall not be relied upon by the Design-Builder.

The provisions of Section 1-07.17(12) shall not apply to any Prior Relocations and are subject in all cases to the conditions and applicable limitations stated in Section 1-07.17(9), Sections 1-07.17(10), 1-04.4, and 1-08.8, and to any other Contract requirements relating to entitlement to Change Orders.

1-07.17(12).1 Utility Delays – General

1-07.17(12).1.1 Type #1 Utilities Subject to an Assigned Franchise/Permit, Relocation Agreement, or Both

Design-Builder shall not be entitled to any extension in Contract Time or to any increase in the Contract Price for Project delays or increased costs incurred by Design-Builder resulting from a Utility Owner's failure to timely complete any task for Relocation of a Type #1 Utility that is accommodated by a franchise/permit, Relocation Agreement, or both.

1-07.17(12).1.2 Type #1 Utilities Not Subject to an Assigned Franchise/Permit and not Addressed in a Relocation Agreement

For purposes of Section 1-07.17(12).1.2, the term “Utility Delay” means an unavoidable delay to a Critical Path that is directly attributable to a Utility Owner’s failure to complete any task necessary for Relocation of its Type #1 Utility (excluding Prior Relocations) not accommodated by an assigned franchise/permit before the deadline for performance of such task under the applicable Utility Agreement (if there is no applicable Utility Agreement or it does not specify a deadline, the time reasonably scheduled by Design-Builder for such task as stated in the Contract Schedule approved by WSDOT), where the Design-Builder has been unable with due diligence to enter into a Relocation Agreement with the Utility Owner covering such Relocation.

The Design-Builder shall be entitled to:

(a) An increase in the Contract Price on account of any increased costs of the Work that are directly attributable to a Utility Delay as defined in Section 1-07.17(12).1.2.

(b) An extension of the Contract Time based on the number of days of Critical Path delay that are directly attributable to such Utility Delay.

Section 1-07.17(12).1.2 does not apply to any Type #1 Utilities that are addressed in a Relocation Agreement between the Design-Builder and the respective Utility Owner regardless of the existence of a franchise/permit addressing said Utility.

1-07.17(12).1.3 Type #2 Utilities

For purposes of Section 1-07.17(12).1.3 the term "Utility Delay" means an unavoidable delay to a Critical Path that is directly attributable to a Utility Owner's failure to complete any task necessary for Relocation of its Type #2 Utility before the later to occur of: (a) the deadline for performance of such task under the applicable Utility Agreement (or if there is no applicable Utility Agreement or it does not specify a deadline, the time reasonably scheduled by the Design-Builder for such task as stated in the Contract Schedule approved by WSDOT), and (b) the deadline in the applicable Relocation Agreement.

The Design-Builder shall be entitled to an extension of the Contract Time based on the number of days of Critical Path delay that are directly attributable to a Utility Delay, but any such delay shall not be grounds for any increase in the Contract Price.

1-07.17(12).2 Vacant

1-07.17(12).3 Conditions to Time Extension for Utility Delays

The Design-Builder shall not be entitled to any time extension for a Utility Delay unless all of the following conditions are satisfied:

1. The Design-Builder has provided evidence reasonably satisfactory to WSDOT that:
   (a) The Design-Builder took advantage of Float available early in the Contract Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates.
   (b) The Design-Builder has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such Utility Delay.
   (c) The Design-Builder has otherwise made diligent efforts to obtain timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.
2. If applicable, the Design-Builder has provided a reasonable Relocation plan to the Utility Owner that has been submitted to WSDOT for Review and Comment.
3. The Design-Builder or the Utility Owner has obtained, or is in a position to timely obtain, all Governmental Approvals and any WSDOT franchises/permits required in order to design and construct such Relocation.
4. There exist no circumstances which have delayed or are delaying the affected Relocation, other than those that fit within the definition of a Utility Delay.
5. The time extension is otherwise allowable under Section 1-08.8.

1-07.17(13) Additional Provisions Concerning Utility Change Orders

The Design-Builder's entitlement to any increase in the Contract Price or extension of the Contract Time relating to Utility Relocations shall be subject to the restrictions and limitations set forth in this Section 1-07.17(13), in addition to the other specified requirements and limitations.

1-07.17(13).1 Changes in Work Allocation

The Work includes responsibility for causing all Relocation Work to occur in a timely fashion, including reimbursing the Utility Owners for their Relocation Costs for Type #2 Utilities (except as may be otherwise provided in Section 1-07.17) and scheduling all Relocation Work (whether performed by the Design-Builder or by the affected Utility Owner) so as to attain Substantial Completion by the contractual deadline. Accordingly, if a Utility Owner performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Design-Builder, or if the Design-Builder performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Utility Owner, the following shall apply:

(a) There shall be no resulting extension of the Contract Time for Type #1 or Type #2 Utilities.

(b) For Type #2 Utilities, any resulting increase or decrease in the costs of the Work shall be reflected in an increase or decrease in the Contract Price, as applicable, in accordance with Section 1-04.4.

(c) For Type #1 Utilities, there shall be no resulting change in the Contract Price (either up or down).

The provisions of Section 1-07.17(13).1 shall not apply to any delayed Prior Relocations.

1-07.17(13).2 Changes in Utility Standards

There shall be no increase or decrease in the Contract Price pursuant to Section 1-07.17 on account of any change in Utility Standards, whether or not such change qualifies as a Betterment. However, any change in Utility Standards that constitutes or results from a change in Governmental Rules may be grounds for a Change Order under other Contract provisions.

1-07.17(13).3 Unavoidable Costs and Delays Only

The Design-Builder shall not be entitled to a Change Order for any cost or delay that could have been avoided by timely request for information under the Underground Utilities One Number Locating Service Statute (chapter 19.122 RCW), or for any amount that the Design-Builder has the right to obtain from a Utility Owner under said statute.

The Design-Builder shall provide documentation satisfactory to WSDOT evidencing compliance with Section 1-07.17(8). The Design-Builder shall be responsible for any increased costs of the Work and any time that could have been avoided by such compliance.

1-07.17(13).4 Incremental Costs Only

Any increase in the Contract Price pursuant to this Section 1-07.17 shall include only the incremental costs arising from the circumstances giving rise thereto; i.e., the amount payable shall take into account the costs that would have been incurred absent such circumstance and a credit shall be allowed for any avoided costs.

1-07.17(13).5 No Adjustment for Incidental and Coordination Work

All Incidental Utility Work and all costs of coordinating with Utility Owners as necessary for the Project are included in the Contract Price, regardless of whether or not (a) the Utility Information reveals the circumstances requiring such Incidental Utility Work or coordination, or both, or (b) the Utility is the subject of a Prior Relocation. Accordingly, no adjustment in the Contract Price or extension of the Contract Time will be allowed on account of costs incurred, cost savings, or delays associated with the performance of Incidental Utility Work by the Design-Builder or by any Utility Owner, regardless of whether or not the Utility Information reveals the circumstances requiring such Incidental Utility Work. Furthermore, the Design-Builder shall not be entitled to any increase in the Contract Price for any costs of coordinating with Utility Owners.

1-07.17(13).6 No Adjustment for Voluntary Action by Design-Builder

If the Design-Builder elects to make payments to Utility Owners or to undertake any other efforts with respect to Relocation of Utilities that are not required by the terms of the Contract Documents, then unless the Design-Builder has received direction from WSDOT in accordance with Section 1-04.4, to do so, the Design-Builder shall not be entitled to any extension of the Contract Time or increase in the Contract Price in connection therewith. The Design-Builder shall promptly notify WSDOT of the terms of any such arrangements.

1-07.17(14) Federal Highway Administration Utility Requirements

The provisions of this Section apply to the Project unless WSDOT advises the Design-Builder otherwise. The Project is subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies, and accordingly all Relocation Agreements shall incorporate by reference 23 CFR Part 645 Subpart A. The Design-Builder shall be responsible for preparing and processing any submittals to FHWA that may be required with respect to the Utility Relocations. The Design-Builder shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subpart A as necessary for any Utility Relocation Costs to be eligible for reimbursement from any Federal financing or funding.

1-07.18 *Public Liability and Property Damage Insurance*

The Design-Builder shall procure and maintain insurance as specified in Section 1-07.18. The insurance provided hereunder shall be available for the benefit of the Indemnified Parties and the Design-Builder with respect to covered claims, but shall not be interpreted to relieve the Design-Builder of any obligations hereunder. Unless otherwise specified in the Contract, all insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by WSDOT and with companies or through sources approved by the State Insurance Commissioner pursuant to Chapter 48.05 RCW. If an insurer is not an admitted carrier (unauthorized insurer), the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC. Unless otherwise indicated below, the policies shall be kept in force from

the execution date of the Contract until the date of Final Acceptance, as determined pursuant to Section 1-05.12.

Under no circumstances shall a "wrap up" policy be obtained to satisfy all or part of the insurance requirements under this section. A "wrap up" policy is defined as "an insurance agreement or arrangement under which all of the parties working on a specified or designated project are insured under one policy for liability arising out of that specified or designated project."

1-07.18(1) Minimum Insurance Requirements

1-07.18(1).1 Workers' Compensation

The Design-Builder and each Related Entity shall provide industrial insurance and medical aid as required under Title 51 RCW. The Design-Builder shall also provide coverage for claims asserted under the LHWCA and the Jones Act, as required. The Design-Builder shall maintain such insurance through the expiration of the Warranty periods described in Section 1-05.16. The Design-Builder shall be the named insured on these policies. A Design-Builder who is self-insured under Title 51 RCW shall also provide an endorsement extending coverage to all State operations on an "if any" basis.

To the extent not provided under a Design-Builder's multi–state workers' compensation policy, the Design-Builder shall also provide "stop-gap" liability insurance under its commercial general liability (for bodily injury or disease) with minimum limits of $1,000,000 per accident for bodily injury by accident, $1,000,000 per employee for bodily injury by disease, and $1,000,000 aggregate limit for bodily injury by disease. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise.

1-07.18(1).2 Commercial General Liability

The Design-Builder shall provide commercial general liability coverage (CGL), on a primary basis, for bodily injury, property damage, personal injury, and advertising injury liability written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office form CG 00 01 04 13. The Design-Builder shall maintain such insurance through the Physical Completion Date, and during any Warranty Work.

The commercial general liability insurance shall include, at a minimum, coverage for liability arising out of: (i) fire legal liability in an amount not less than ***$50,000***; (ii) blanket contractual; (iii) independent contractors; (iv) premises operations; (v) products and completed operations for a minimum of three years following Completion; and (vi) the acts, errors, and omissions in the rendering or failure to render professional services under the Contract Documents or in the performance of the Work. This coverage shall have an annual minimum limit of ***$3,000,000*** per occurrence, ***$3,000,000*** general annual aggregate, and ***$3,000,000*** products/completed operations aggregate. If commercial general liability insurance with a general aggregate

limit and products and completed operations aggregate limit is used, then the general liability aggregate limits shall apply separately and exclusively to the Project, or the Design-Builder may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the Design-Builder. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise.

The Design-Builder shall be the named insured. Each of the Indemnified Parties shall also be added to the CGL as either (a) named insured or (b) additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity, whether occurring on or off of the Site. If the State is added to this policy as a named insured, then the Design-Builder is not required to obtain the owners and contractors protective (OCP) coverage pursuant to Section 1-07.18(1).11.

1-07.18(1).3 Automobile Liability

The Design-Builder shall provide commercial automobile liability insurance covering the ownership, maintenance, or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, both on and off the Site, including loading and unloading, with limits of not less than ***$3,000,000*** per accident, combined single limit for bodily injury and property damage liability. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise. The Design-Builder shall maintain such insurance through Completion; provided, however, that such coverage shall be maintained for vehicles used in the performance of Warranty Work until the expiration of the Warranty periods described in Section 1-05.16. Coverage shall be provided on Insurance Services Office form number CA 0001 or an equivalent and shall include endorsement CA 9948 (in transit pollution risks coverage). The Design-Builder shall be the named insured and the Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity. The required limits can be satisfied by a combination of a primary policy and an excess policy.

1-07.18(1).4 Pollution/Environmental Liability

The Design-Builder shall provide pollution/environmental liability coverage, on an occurrence or claims made basis, with annual limits of not less than ***$5,000,000*** per claim and in the aggregate, including liability arising out of transportation and non-owned disposal sites. The policy shall include as additional insureds (if a corporate practice policy is used) or named insureds (if a project-specific policy is used) the State, the Design-Builder, and any Related Entity of any tier performing Work for which such coverage is appropriate. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those

additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise. The remaining Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site.

The policy shall have a 5-year extended reporting period and cover claims made on and prior to Final Acceptance and claims made after Final Acceptance, but within the extended reporting period. The required limits can be satisfied by a combination of a primary policy and an excess policy.

1-07.18(1).5 Excess Liability

Design-Builder shall provide excess liability insurance with annual limits not less than ***$7,000,000*** which will provide coverage at least as broad as the primary coverages set forth herein, including Workers' Compensation, Commercial General Liability, Automobile Liability, and Aircraft Liability, in excess of the amounts set forth in Sections 1-07.18(1).1 (for Jones Act and LHWCA liability), 1-07.18(1).2, 1-07.18(1).3, 1-07.18(1).9, and 1-07.18(1).10, respectively. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise The Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site to the extent that they are not named on any of the foregoing policies as named insureds.

1-07.18(1).6 Professional Liability

The Design-Builder shall provide evidence to WSDOT that the Design-Builder or its lead engineering firm shall maintain or cause to be maintained the appropriate Professional Liability Insurance coverage with total limits not less than ***$5,000,000*** per claim and policy or annual aggregate for any negligent act, error, or omission arising out of any and all architectural and engineering services or professional services performed, per RCW 39.80.020(5), under this Project. If a corporate practice professional liability policy is used to satisfy this requirement, the evidence shall take the form of a sworn certification (Form U, *Professional Liability Insurance Certification*) from an officer of the Design-Builder that the insurance required under this section has been issued and will remain in full force and effect as required hereunder, and shall be submitted at the time of execution of the Contract.

The policy shall have a retroactive date no later than the date on which the RFP was issued and shall remain in place through Physical Completion. The policy shall be continuously renewed for a period of 6 years following Physical Completion or provide an extended reporting period of not less than 6 years after Physical Completion. This policy may be excess over coverage for claims, which may also be covered pursuant to the commercial general liability policy required in Section 1-07.18.

Should project specific coverage be obtained for the Project, such coverage shall also include an indemnity endorsement to provide coverage for the Indemnified Parties for liability arising out of any negligent act, error, or omission of any Related Entity providing professional services hereunder. Such project specific coverage policy shall be submitted to WSDOT in accordance with Section 1-07.18(2).2.

Should corporate practice policies be utilized to satisfy this requirement, coverage not less than the total coverage limits specified above shall apply for liability arising out of the Project.

1-07.18(1).7 Builder's Risk

This Section is intentionally omitted.

1-07.18(1).8 Railroad Protective Liability

This Section is intentionally omitted.

1-07.18(1).9 Aircraft Liability

This Section is intentionally omitted.

1-07.18(1).10 Marine Liability

This Section is intentionally omitted.

1-07.18(1).11 Owners and Contractors Protective Liability Insurance

The Design-Builder shall either include the State as a named insured under the CGL policy required above or provide owners and contractors protective (OCP) liability insurance, with an annual minimum limit of ***$3,000,000*** per occurrence, ***$3,000,000*** general annual aggregate, providing bodily injury and property damage liability coverage until the Completion date, as determined pursuant to Section 1-08.5. Such coverage shall be provided exclusively under Insurance Services Office form CG 0009, together with WSDOT Amendatory Endorsement No. CG 29 08, specifying the State as named insured. Such coverage shall be provided to the State on a primary and non-contributory basis, and no portion of the coverage limit required shall be provided pursuant to an excess policy.

1-07.18(2) General Insurance Requirements

1-07.18(2).1 Premiums and Deductibles

The Owners and Contract Protective Insurance policy issued to the State as Named Insured shall not be subject to a deductible or contain provisions for a deductible. The Commercial General Liability Insurance, Professional Liability, Pollution/Environmental Liability, and Commercial Automobile Liability Insurance policies may, at the discretion of the Design-Builder, include a deductible amount, or may contain provisions for deductibles. No policy, with the exception of the professional liability coverage, shall contain an amount or provision for a self-insured retention (SIR). If a deductible or SIR applies to any claim under these policies, then payment of that deductible or SIR shall be

the responsibility of the Design-Builder, or the lead engineering firm if applicable, notwithstanding any claim of liability against WSDOT. The deductible limits for these policies are as follows: (i) the Commercial General Liability Insurance policy deductible shall not exceed ***$500,000***, (ii) the Professional Liability Insurance policy deductible or SIR shall not exceed ***$500,000***, (iii) the Pollution/Environmental Liability Insurance policy deductible shall not exceed ***$500,000***, and (iv) the Commercial Automobile Liability Insurance policy deductible shall not exceed ***$500,000***.

1-07.18(2).2 Verification of Coverage

With the exception of any corporate practice professional liability policy used to satisfy the requirements of Section 1-07.18(1).6, the Design-Builder shall file with WSDOT, Contract Payment Section, P.O. Box 47420, Olympia, WA 98504-7420, certified copies of all policies required hereunder evidencing the minimum insurance coverages required to be provided, at least 10 Calendar Days prior to Contract execution. If the 10 Calendar Day requirement cannot be met, WSDOT will accept an email with a delivery receipt and read receipt from the Design-Builder's insurance broker stating that the certified copies of the policies will be provided as soon as they are received from the insurance carriers. WSDOT shall have no duty to pay or perform under the Contract Documents until such policies, in compliance with all requirements of Section 1-07.18, have been provided. By accepting the policies as required hereunder, WSDOT does not acknowledge or represent that the insurance requirements of Section 1-07.18 have been satisfied. WSDOT expressly reserves all rights against the Design-Builder to assert claims for breach of the terms and conditions of Section 1-07.18 at any time in the future. The Design-Builder shall promptly deliver to WSDOT a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificates shall be delivered to WSDOT not less than 30 Calendar Days prior to the expiration date of any policy and bear a notation evidencing payment of the premium therefore. If requested by WSDOT, certified duplicate copies of any renewal policy shall also be provided.

1-07.18(2).3 Subcontractor Insurance Requirements

The Design-Builder shall require each Subcontractor to provide and maintain insurance that complies with the requirements for the Design-Builder-provided insurance set forth in Section 1-07.18 in circumstances where the Subcontractor is not covered by the Design-Builder-provided insurance; provided that the Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by the Subcontractors (if any), which determination shall be made in accordance with reasonable and prudent business practices. The Design-Builder shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractors' insurance policies obtained pursuant to Sections 1-07.18(1).2, 1-07.18(1).3, 1-07.18(1).4, 1-07.18(1).5, 1-07.18(1).9, and 1-07.18(1).10 above. The Design-Builder shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by WSDOT, the Design-Builder shall promptly provide certificates of

insurance evidencing coverage for each Subcontractor. WSDOT will have the right to contact the Subcontractors directly in order to verify the above coverage.

1-07.18(2).4 Endorsements and Waivers

All insurance policies required to be provided by the Design-Builder hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only subsections (d) and (g) shall be applicable:

(a) For claims covered by the insurance specified herein, all insurance coverage shall be primary insurance and non-contributory with respect to the named insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants, and shall specify that coverage continues notwithstanding the fact that the Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an Indemnified Party, additional insured, or their members, directors, officers, employees, agents, and consultants shall be in excess of, and shall not contribute with, the insurance required herein.

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of Warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents, and consultants).

(c) All liability insurance to be provided herein shall include a "separation of insureds" clause and shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. No policy shall contain any provision or exclusion, except for the Professional Liability Insurance policy (including a "cross-liability" or similar exclusion) that in effect would prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim that would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy. The requirements of this subsection do not apply to claims by the Design-Builder against any of its Subcontractors or suppliers or to claims between Subcontractors and/or suppliers.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified, or reduced in coverage or in limits except after 45 Calendar Days (10 Calendar Days for non-payment of premium) prior written notice has been given to WSDOT. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All general Liability endorsements adding additional insureds to required policies shall only be provided pursuant to form CG-20-10 (1985 edition) or a combination of the following: CG 2010 entitled "Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization" and CG 2037 entitled "Additional Insured - Owners, Lessees or Contractors - Completed Operations"; or CG 2033

entitled "Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You" and CG 2037 entitled "Additional Insured - Owners, Lessees or Contractors - Completed Operations". No form shall contain limitations or exclusions with respect to "products/completed operations" or ongoing operations coverage. No additional insured endorsement shall seek to limit coverage for the additional insureds for their own negligence with respect to liability arising out of Project operations and/or solely to vicarious liability arising out of the ongoing or completed operations of the named insured, its contractors, subcontractors of any tier, consultants, agents or employees. The coverage afforded to the additional insureds shall be primary and non-contributory with respect to any other insurance maintained by the additional insured. Any insurance or self-insurance that is maintained by an additional insured, or their members, directors, officers, employees, agents, and consultants shall be in excess of, and shall not contribute with, the insurance required herein.

(f) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous Materials clean up (MCS-90) or its equivalent and Form CA 2048.

(g) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of pollution liability, professional liability, and earth movement policies).

(h) The commercial general liability insurance policy shall not exclude coverage for the additional insureds for bodily injury to Related Entity employees.

1-07.18(2).5 Waivers of Subrogation

The Design-Builder waives all rights against the Indemnified Parties, against each of their agents and employees and against Subcontractors and suppliers and their respective members, directors, officers, employees, agents, and consultants for any claims arising out of the performance of Work under this Contract. The Design-Builder shall require all Subcontractors and any Related Entity to provide similar waivers in writing each in favor of the Indemnified Parties. The waivers required in this subsection do not apply to claims between Subcontractors and/or Subconsultants of the Design-Builder or those claims asserted by the Design-Builder against any Subcontractors or suppliers, or both. Each insurance policy required under this section, including workers' compensation coverage, but excluding owners and contractors protective liability insurance, shall include a waiver of any right of subrogation against the Indemnified Parties and any other additional insureds (and their respective members, directors, officers, employees, agents, and consultants).

1-07.18(2).6 Changes in Requirements

WSDOT will notify the Design-Builder in writing of any changes in the requirements applicable to insurance required to be provided by the Design-Builder. Except as set forth in Section 1-07.18(2), any additional cost from such change shall be paid by WSDOT and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

1-07.18(2).7 No Recourse

All costs for insurance shall be considered incidental to and included in the Contract Price and no additional payment will be made by WSDOT unless expressly specified in Section 1-07.18(2).

1-07.18(2).8 Support of Indemnifications

The insurance coverage provided hereunder by the Design-Builder shall support but is not intended to limit the Design-Builder's indemnification obligations under the Contract Documents.

1-07.18(2).9 Commercial Unavailability of Required Coverages

If, through no fault of the Design-Builder, any of the coverages required in Section 1-07.18 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, WSDOT will consider in good faith alternative insurance packages and programs proposed by the Design-Builder, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. The Design-Builder must demonstrate to WSDOT's reasonable satisfaction that it has used diligent efforts in the global insurance markets to obtain the required insurance coverages, and shall advise WSDOT of the specific results of those efforts. The Design-Builder shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. WSDOT shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the EPD escrowed pursuant to Section 1-03.15 (or based on other evidence of insurance premiums as of the Proposal Due Date if the EPD do not provide adequate information).

1-07.18(3) WSDOT's Right to Remedy Breach by Design-Builder

The Design-Builder shall provide WSDOT with notice of any cancellation of a policy required hereunder within 2 Calendar Days of receipt. Failure on the part of the Design-Builder to maintain the insurance as required hereunder shall constitute a material breach of the Contract, upon which WSDOT may, after giving 5Calendar Days' notice to the Design-Builder to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to WSDOT on demand, or at the sole discretion of WSDOT, offset against funds due to the Design-Builder from WSDOT.

1-07.18(4) Insurance Proceeds and Prosecution of Claims

Unless otherwise directed by WSDOT in writing, the Design-Builder shall be responsible for reporting and processing all potential claims by WSDOT or the Design-Builder against the insurance required to be provided under Section 1-07.18. Except as noted otherwise, the Design-Builder shall not be entitled to receive a Change Order for any costs, which it could have recovered from the insurer. The Design-Builder agrees to report timely to the insurer(s) any and all matters, which may give rise to an insurance

claim and to promptly and diligently pursue any and all insurance claims on behalf of WSDOT, the Indemnified Parties, and any additional insureds, whether for defense or indemnity or both. WSDOT agrees to promptly notify the Design-Builder of WSDOT's incidents, potential claims, and matters, which may give rise to an insurance claim by WSDOT, to tender its defense of the claim to the Design-Builder, and to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

1-07.18(5) Claims Relating to Differing Site Conditions

The Design-Builder shall be responsible for reporting and processing all potential insurance claims relating to Differing Site Conditions. The proceeds of all such claims shall be paid directly to WSDOT. The Design-Builder agrees to report timely to the insurer(s) any such matters which may give rise to an insurance claim and to promptly and diligently pursue such claims on behalf of WSDOT. The Design-Builder shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending a determination by the insurance company regarding the claim. WSDOT agrees to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

1-07.18(6) Commencement of Work

The Design-Builder shall not commence Work under this Contract until it has obtained the insurance required under Section 1-07.18, has furnished original policies of insurance evidencing the required coverage as required hereunder, nor shall Design-Builder allow any Subcontractor to commence Work under any Subcontract until the insurance required of the Subcontractor has been obtained and approved by Design-Builder.

1-07.18(7) Disclaimer

The Design-Builder and each Subcontractor shall have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. Nothing in this Contract shall be construed as limiting in any way the extent to which the Design-Builder may be held responsible for any claims resulting from its performance of the Work hereunder. The Design-Builder's obligations to procure insurance are separate and independent of its contractual defense and indemnity obligations. The coverage limits set forth in Section 1-07.18 are minimum requirements and WSDOT does not represent that the minimum coverages and limits required hereunder will necessarily be adequate to protect the Design-Builder.

1-07.19 *Gratuities*

The Design-Builder shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of WSDOT. The Design-Builder shall not rent or purchase any equipment or materials from any employee or officer of WSDOT. Before payment of the final estimate will be made, the Design-Builder shall execute and furnish WSDOT an affidavit certifying compliance with these provisions of the Contract.

The Design-Builder shall comply with all applicable Sections of the State Ethics law, RCW 42.52, which regulates gifts to State officers and employees. Under that statute, any

WSDOT officer or employee who has or will participate with the Design-Builder regarding any aspect of this Contract is prohibited from seeking or accepting any gift, gratuity, favor, or anything of economic value from the Design-Builder. Accordingly, neither the Design-Builder nor any agent or representative of the Design-Builder shall offer anything of economic value as a gift, gratuity, or favor directly or indirectly to any such officer or employee.

1-07.20 *Patented Devices, Materials, and Processes*

The Design-Builder shall assume all costs arising from the use of patented devices, materials, or processes used on or incorporated in the Work, and agrees to indemnify, defend, and save harmless the State, Commission, Secretary, and their duly authorized agents and employees from all actions of any nature for, or on account of the use of any patented devices, materials, or processes.

1-07.21 *Rock Drilling Safety requirements*

It shall be the Design-Builder's responsibility to maintain safe working conditions during rock drilling, by keeping dust concentration below the threshold limit value or by providing those protective devices that may be required by L&I.

1-07.22 *Use of Explosives*

When using explosives, the Design-Builder shall use the utmost care to protect life and property, to prevent slides, and to leave undisturbed all materials, outside the neat lines of the cross-section.

Explosives shall be handled, marked, stored, and used in compliance with WAC 296-52 and such local laws, rules, and regulations that may apply. The stricter provisions shall apply.

All explosives shall be stored securely as required by all laws and ordinances that apply. Each storage place shall be clearly marked: "Dangerous-Explosives". No explosives shall be left unprotected.

If Utilities or railroads own equipment near the blast site, the Design-Builder shall notify the owners of the location, date, time, and approximate duration of the blasting. This notice shall be given sufficiently in advance to enable all owners to take any steps as they deem necessary to protect their property from injury.

Blasting near proposed Structures shall be completed before Work on them begins. When the Design-Builder uses explosives, the Design-Builder's insurance shall contain a special clause permitting the use of explosives.

1-07.23 *Public Convenience and Safety*

The Design-Builder shall be responsible for providing adequate safeguards, safety devices, protective equipment, and any other needed actions to protect the life, health, and safety of the public, and to protect property in connection with the performance of the Work covered by the Contract. The Design-Builder shall perform any measures or actions necessary to protect the public and property. The responsibility and expense to provide this protection shall be the Design-Builder's except that, if any, which is to be

furnished by WSDOT as specified in this Contract. Nothing contained in this Contract is intended to create any third-party beneficiary rights in favor of the public or any individual utilizing the highway facilities being constructed or improved under this Contract. See Section 2.22, *Maintenance of Traffic*.

1-07.24 *Rights of Way*

WSDOT has supplied sufficient ROW to construct the Project. In the event the Design-Builder requests additional ROW, WSDOT shall cooperate with the Design-Builder; however, all responsibilities for all costs and delays are the responsibility of the Design-Builder. (See Section 2.24, *Right of Way*.)

1-07.25 *Opening of Sections to Traffic*

WSDOT reserves the right to use and open to traffic any portion of the Work before the Physical Completion Date of the entire Project without constituting acceptance of any of the Work. This action will not cause WSDOT to incur any liability to the Design-Builder except as may otherwise be provided in the Contract.

If WSDOT opens any portion of the Project prior to the Physical Completion Date of the entire facility because early opening is specified in the Contract or when the Design-Builder has failed to prosecute the Work continuously and efficiently, any Work remaining shall be performed by the Design-Builder without any right to an increase in the Contract Price. No additional payment will be made for costs incurred by the Design-Builder because of:

1. Inconvenience, additional length of travel to conform to established traffic patterns, and planned access features
2. Compliance with statutes governing traffic regulations and limitations of loads
3. Additional flagging costs necessary to protect the operations and the traveling public. The Design-Builder acknowledges and agrees that it took all costs due to traffic using portions of the Work into account when submitting the Proposal, and that the Contract Price includes all such costs

1-07.26 *Personal Liability of Public Officers*

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

1-07.27 *No Waiver of State's Legal Rights*

The Design-Builder and the State recognize that the impact of overcharges to the State by the Design-Builder resulting from antitrust law violations by the Design-Builder's suppliers or Subcontractors adversely affects the State rather than the Design-Builder. Therefore, the Design-Builder agrees to assign to the State any and all claims for such overcharges.

1-07.27(1) No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

1-07.27(2) Custom Does Not Constitute Waiver

No act, delay, or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

1-07.27(3) Waivers Must Be in Writing

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

1-08 Prosecution and Progress

1-08.1 *Subcontracting*

The Design-Builder's records pertaining to the requirements of this provision shall be open to inspection or audit by representatives of WSDOT and FHWA during the life of the Contract. Work done by the Design-Builder's own organization shall account for at least 30 percent of the awarded Contract Price. Before computing this percentage, however, the Design-Builder may subtract (from the Contract Price at award) the costs of any subcontracted Work on items the Contract designates as specialty items.

The Design-Builder shall carry out applicable requirements of 49 CFR Part 26; insert in each Subcontractor's, consultant's, Subconsultant's, supplier's, and service provider's contract Form FHWA-1273, *Required Contract Provisions Federal Aid Construction Contracts*, and submit each contract in writing. The Design-Builder shall not Subcontract Work unless WSDOT approves in writing. The Design-Builder shall submit all requests to Subcontract on the form WSDOT provides. If WSDOT requests, the Design-Builder shall provide proof that the Subcontractor has the experience, ability, and equipment the Work requires. Along with the request to sublet, the Design-Builder shall submit the names of any contracting firms that the Subcontractor proposes to Subcontract Work to.

Prior to subcontracting any Work, the Design-Builder shall verify that every first tier Subcontractor meets the responsibility criteria stated below at the time of Subcontract execution. The Design-Builder shall include these responsibility criteria in every Subcontract, and require every Subcontractor to:

1. Possess any electrical contractor license required by 19.28 RCW or elevator contractor license required by 70.87 RCW, if applicable
2. Have a certificate of registration in compliance with chapter 18.27 RCW
3. Have a current state unified business identifier number
4. If applicable, have:
   (a) Industrial insurance coverage for the Design-Builder's employees working in Washington (Title 51 RCW)
   (b) An employment security department number (Title 50 RCW)
   (c) A state excise tax registration number (Title 82 RCW)
5. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3)
6. Verify these responsibility criteria for every lower tier Subcontractor at the time of Subcontract execution
7. Include these responsibility criteria in every lower tier Subcontract
8. DBE Broker Agreement
9. WSDOT Form 272-058, *DBE Trucking Credit Form*

Along with the request to sublet, the Design-Builder shall submit the names of any contracting firms the Subcontractor proposes to use as lower tier subcontractors.

Collectively, these lower tier subcontractors shall not do Work that exceeds 25 percent of the total amount subcontracted to a Subcontractor. When a Subcontractor is responsible for construction of a specific Structure or Structures, the following Work may be performed by lower tier Subcontractors without being subject to the 25 percent limitation:

1. Furnishing and driving of piling
2. Furnishing and installing concrete reinforcing and post-tensioning steel

The 25 percent limitation in this Section does not apply to lower tier subcontracting of professional services for Design Work.

Except for the 25 percent limit, lower tier subcontractors shall meet the same requirements as Subcontractors. The Design-Builder shall require each Subcontractor to comply with Section 1-07.9 and to furnish all certificates and statements required by the Contract.

Subcontracting shall not:

1. Relieve the Design-Builder of any responsibility to carry out the Contract
2. Relieve the Design-Builder of any obligations or liability under the Contract and the Contract Bond
3. Create any Contract between WSDOT and the Subcontractor
4. Convey to the Subcontractor any rights against WSDOT

WSDOT will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the Work Site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies hired by those commercial plants. However, L&I may determine that RCW 39.12 applies to the employees of such firms identified in 1 and 2 above in accordance with WAC 296-127. If this should occur, the provisions of Section 1-07.9, as modified or supplemented shall apply.

The Design-Builder shall not use businesses (material suppliers, vendors, subcontractors, etc.) with Federal purchasing exclusions. Businesses with exclusions are identified using the System for Award Management web page (SAM.gov).

On all projects, the Design-Builder shall certify to the actual amounts paid to all firms that were used as Subcontractors, lower tier subcontractors, manufacturers, regular dealers, or service providers on the Contract. This includes all DBEs and MSVWBEs. This Certification shall be submitted to the WSDOT Engineer on a monthly basis each month between Execution of the Contract and Physical Completion of the Contract using the application available at: https://omwbe.diversitycompliance.com. A monthly report shall be submitted for every month between Execution of the Contract and Physical Completion regardless of whether payments were made or work occurred.

The Design-Builder shall comply with the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040, in particular regarding prompt payment to Subcontractors. Whenever the Design-Builder withholds payment to a Subcontractor for any reason

including disputed amounts, the Design-Builder shall provide notice within 10 Calendar Days to the Subcontractor with a copy to the WSDOT Engineer identifying the reason for the withholding and a clear description of what the Subcontractor must do to have the withholding released. Retainage withheld by Design-Builder prior to completion of the Subcontractor's Work is exempt from reporting as a payment withheld and is not included in the withheld amount. The Design-Builder must report when withheld retainage is paid after all of the Subcontractor's Work is complete.

If dissatisfied with any part of the subcontracted Work, WSDOT may request in writing that the Subcontractor be removed. The Design-Builder shall comply with this request at once and shall not employ the Subcontractor for any further Work under the Contract.

Prior to any Subcontractor or lower tier Subcontractor beginning Work, the Design-Builder shall submit to the WSDOT Engineer WSDOT Form 420-004, *Contractor and Subcontractor or Lower Tier Subcontractor Certification for Federal-Aid Projects* that a written agreement between the Design-Builder and the Subcontractor or between the Subcontractor and any lower tier Subcontractor has been executed. Such agreements shall follow the standard form developed by the DBIA for "Design-Builder and Design Consultant" and for "Design-Builder and Subcontractor". This certification shall also guarantee that these Subcontract agreements include all the documents required by Section 1-07.12, Federal Agency Inspection.

A Subcontractor or lower tier Subcontractor will not be permitted to perform any work under the Contract until the following documents have been completed and submitted to the WSDOT Engineer:

1. WSDOT Form 421-012, Request to Sublet Work
2. WSDOT Form 420-004, Contractor and Subcontractor or Lower Tier Subcontractor Certification for Federal-Aid Projects

The Design-Builder shall submit a completed Monthly Retainage Report within 15 Calendar Days after receipt of every monthly progress payment until every Subcontractor and lower tier Subcontractor's retainage has been released. This form shall be submitted to the Engineer by email to the following email address for the region administering the Contract:

Eastern Region – ERegionOEO@wsdot.wa.gov

Northcentral Region – NCRegionOEO@wsdot.wa.gov

Northwest Region – NWRegionOEO@wsdot.wa.gov

Olympic Region – ORegionOEO@wsdot.wa.gov

Southcentral Region – SCRegionOEO@wsdot.wa.gov

Southwest Region – SWRegionOEO@wsdot.wa.gov

The Design-Builder's records pertaining to the requirements of this provision shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than 3 years after the date of Final Acceptance of the Contract. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that these records of all Subcontractors and lower tier

Subcontractors shall be available and open to similar inspection or audit for the same time period.

The Design-Builder shall ensure that WSDOT Form 272-040, *Certification for Federal-Aid Contracts* is included in every contract with any Subcontractor whose contract exceeds $100,000. By signing the contract any Subcontractor will be deemed to have signed and agreed to the conditions and requirements of the Certification for Federal-Aid Contracts. The Design-Builder shall keep evidence in their files that such Subcontractor has committed to this requirement.

The Design-Builder shall require any Subcontractor or lower tier Subcontractor whose contract exceeds $100,000 to submit Standard Form LLL, *Disclosure of Lobbying Activities*, in accordance with the instructions on the form, except that, Standard Form LLL, *Disclosure of Lobbying Activities* shall be submitted to the Design-Builder for submittal to WSDOT.

1-08.1(1) Subcontract Completion and Return of Retainage Withheld

The following procedure shall apply to all Subcontracts entered into as a part of this Contract:

Requirements

1. Upon request, the WSDOT Engineer will provide a copy of any or all progress payment estimates, with regard to Contract payments to any interested party to the Project.
2. The Design-Builder or Subcontractor shall make payment to the Subcontractor or lower tier Subcontractor not later than 10 Calendar Days after receipt of payment for Work satisfactorily completed by the Subcontractor or lower tier Subcontractor, to the extent of the Subcontractor's or lower tier Subcontractor's interest therein.
3. In the event the Design-Builder believes they have the right under the Contract or Subcontract to withhold payment in part or whole from a lower tier Subcontractor they shall provide notification to that lower tier Subcontractor and the WSDOT Engineer within 10 Calendar Days after receipt of payment for Work satisfactorily completed by the Subcontractor. The notice shall include an accounting of payments to date, the value and reason for the withheld amount, and an explanation of what must be done to have the withheld amount released. The lower tier Subcontractor shall be paid within 8 Calendar Days after the Subcontractor completes the remedial action identified.
4. Every Subcontract and lower tier Subcontract shall have a dispute resolution process incorporated for resolving issues between the parties to the subcontract, or one shall be established, as necessary.
5. If the parties agree, the WSDOT Engineer will make a third party neutral available provided the parties to the dispute agree that the cost of doing so is split between them.
6. The WSDOT Engineer will withhold the same amount of funds from the Design-Builder as was withheld if the issue is not resolved by the next progress estimate.

7. Failure by a Design-Builder or Subcontractor to comply with these requirements may result in one or more of the following:
   (a) Reflected in the Design-Builder's Performance Evaluation
   (b) Cancellation, termination, or suspension of the Contract, in whole or in part
   (c) Sanctions as provided by the Contract, subcontract, or by law under applicable prompt payment statutes including RCW 39.04.250
8. The Subcontractor shall make a written request to the Design-Builder for the release of the Subcontractor's retainage or retainage bond.
9. Within 10 Calendar Days of the request, the Design-Builder shall determine if the Subcontract has been satisfactorily completed including any required lien releases, documentation, and material testing and shall inform the Subcontractor, in writing, of the Design-Builder's determination.
10. If the Design-Builder determines that the Subcontract has been satisfactorily completed, the Subcontractor's retainage or retainage bond shall be released by the Design-Builder within 10 Calendar Days from the date of the written notice. If the Design-Builder determines that the Subcontractor has not achieved satisfactory completion of the Subcontract, the Design-Builder shall provide the Subcontractor with written notice, stating specifically why the Subcontract Work is not satisfactorily completed and what has to be done to achieve completion. The Design-Builder shall release the Subcontractor's retainage or retainage bond within 10 Calendar Days after the Subcontractor has satisfactorily completed the Work identified in the notice.
11. In determining whether satisfactory completion has been achieved, the Design-Builder may require the Subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower tiered Subcontractors, suppliers of material and equipment, and others involved in the Subcontractor's Work have been paid in full. The Design-Builder may also require any documentation from the Subcontractor that is required by the Subcontract or by the Contract between the Design-Builder and WSDOT or by law such as affidavits of wages paid, and material acceptance certifications to the extent that they relate to the Subcontractor's Work.
12. If the Design-Builder fails to comply with the requirements of the General Provisions and the Subcontractor's retainage or retainage bond is wrongfully withheld, The Design-Builder will be subject to the actions described in No. 7 listed above. The Subcontractor may also seek recovery against the Design-Builder under applicable prompt pay statutes in addition to any other remedies provided for by the Subcontract or by law.

Conditions

1. This clause does not create a contractual relationship between WSDOT and any Subcontractor as stated in Section 1-08.1. Also, it is not intended to bestow upon any Subcontractor, the status of a third-party beneficiary to the Contract between WSDOT and the Design-Builder.
2. This Section of the Contract does not apply to retainage withheld by WSDOT from monies earned by the Design-Builder. WSDOT shall continue to process the release

of that retainage based upon the Completion Date of the Project as defined in Section 1-08.5, Time for Completion and in accordance with the requirements and procedures set forth in RCW 60.28.

Payment

The Design-Builder shall be solely responsible for any additional costs involved in paying retainage to the Subcontractors prior to Completion. Those costs shall be deemed included in the Contract Price.

1-08.2 *Assignment*

The Design-Builder shall not assign all or any part of the Work unless WSDOT approves in writing. WSDOT will not approve any proposed assignment that would relieve the original Design-Builder or Surety of responsibility under the Contract.

Money due (or that will become due) to the Design-Builder may be assigned. If given written notice, WSDOT will honor such an assignment to the extent the law permits. Any such assignment shall be subject to all setoffs, withholdings, and deductions required by law and the Contract.

1-08.3 *Contract Schedule*

1-08.3(1) General

The Design-Builder shall create and maintain a price loaded design and construction schedule for its own use as well as for use by WSDOT. WSDOT will use this schedule and periodic updates thereof to evaluate the Design-Builder's progress in performing the Work. In addition, WSDOT will use the price-loaded features on the Baseline Contract Schedule and the monthly update schedules to calculate progress payments. (See Section 1-09.9 Payments.)

During the course of the Project, the Design-Builder shall provide a variety of schedules and schedule reports to satisfy specific Contract needs. The Design-Builder shall submit a Preliminary 90-Day Look Ahead Schedule, a Baseline Contract Schedule, Monthly Contract Schedule Updates, and an As Built Contract Schedule each as provided herein.

The Design-Builder shall have the right to modify the schedule, as it deems necessary to properly represent the progress of the Work and the remaining Work to Completion. Notwithstanding the foregoing, WSDOT will retain final authority to accept or reject every schedule described herein.

WSDOT's acceptance of any schedule shall not relieve the Design-Builder from its responsibilities for adjusting workforces, equipment, and Work schedules to ensure Completion of the Project within the time specified in the Contract. Similarly, WSDOT's acceptance of any schedule does not in any way relieve the Design-Builder from its responsibility to produce and utilize a complete, accurate, and appropriate schedule for managing its Work.

If WSDOT deems that any schedule fails to provide the information required in this Section, WSDOT may withhold progress payments until the schedule containing the

required information has been submitted by the Design-Builder and accepted by WSDOT.

1-08.3(2) Scheduling Requirements

Except as noted elsewhere in this Section, all schedules shall:

1. Not have any activity duration greater than 30 Calendar Days unless approved by WSDOT.
2. Identify self-imposed, regulatory, or both non-work periods arising out of climatological, environmental, or other concerns. The Design-Builder may constrain Work scheduling in these periods by using special calendars or other equally effective means.
3. Incorporate the following specific restrictions, constraints, activities, and milestones:
   (a) Milestones including those reported on Form D, *Contract Time/Milestone Completion Deadlines* of the Design-Builders Proposal
   (b) Definition of Project calendars as they apply to scheduled activities
   (c) Procurement of any materials critical for the performance of specific activities
   (d) Submittal dates and durations for review of Design Documents by WSDOT
   (e) Dates for delivery of access to Rights of Way by WSDOT and for delivery of WSDOT furnished materials, if any
   (f) Schedules for identification and Relocation of Utilities and for the Design-Builder's acquisition of temporary easements and other real property interests necessary for construction of the Work
   (g) Allocations of the Contract Price among the scheduled activities as described in this Section and Section 1-09.9
   (h) Dates for obtaining Governmental Approvals for which the Design-Builder is responsible
   (i) Durations for traffic signal testing and turn on, if applicable
   (j) Testing for temporary and permanent illumination and electrical systems, if applicable
4. Show the sequence in which the Design-Builder intends to perform the Work from NTP through Completion.
5. Be prepared using precedence diagram methodology, which clearly delineates the relationship between Contract activities.
6. Show activities which contain all attributes normally associated with contemporary critical path schedules, such as ID number, description, early and late dates, original and remaining durations, float, and percent complete. In addition, each activity shall include the following calculated or assigned attributes:
   (a) The activity calendar that identifies Work days and non-Work days

(b) All activities shall have both predecessor(s) and successor(s) assigned except Project start/finish may only have one as appropriate

(c) Budget price, periodic, and total to date contract value as required in Section 1-08.3(9)

(d) Resources, cost accounts, roles, and other codes as required for grouping, sorting, and reporting as required in Sections 1-08.3 and 1-09.9

7. Sequence design submittals to enable design packages to build upon previous submittals. The sequence of design submittals shall enable designs to be reviewed for consistency with previous submittals and for compliance with Technical Requirements.

8. Incorporate Utility Work, as well as Relocation Work to be performed, if applicable.

No schedule shall conflict with any time and sequencing requirement in the Contract. All schedules shall be submitted electronically. Schedule submittals shall be in accordance with Section 1-08.3(4) below.

1-08.3(3) Software Requirements

The scheduling software that will be utilized by WSDOT on this Project is Oracle Primavera P6 version 16.2 or newer compatible format. In order to ensure 100 percent compatibility with WSDOT, the Design-Builder shall use the same program, revision number, and service pack. If the Design-Builder wishes to use an alternative schedule program it must demonstrate 100 percent compatibility to WSDOT's satisfaction and obtain written acceptance by WSDOT pre-bid.

The Design-Builder shall maintain and provide a computer generated log report listing all changes made between every submitted schedule and its last submitted predecessor schedule using the Oracle Primavera P6 Visualizer schedule comparison module provided in the Primavera Project Management software bundle.

At a minimum, this report shall show changes for:

- General Project Data
- General Work Breakdown Structure Data
- Project Budget Data
- Scheduling Options
- Added/Deleted Activities
- General Activity Data
- Added/Deleted Assignments
- General Resource Assignment Data
- Added/Deleted Expenses
- Constraints
- General Expense Data

- Relationships
- Activity Code Assignments
- Notebook Topics and Steps

The Design-Builder shall submit these schedules and reports in accordance with Section 1-08.3(4).

1-08.3(3).1 Schedule Software Settings and Restrictions

The Design-Builder shall comply with the following software settings and restrictions:

1. **Activity Constraints** - Date constraint(s), other than those required by the Contract, will not be allowed unless approved by WSDOT. The Design-Builder shall identify any constraints proposed and provide an explanation for the purpose of the constraint.
2. **Lags** - Lags shall not be used when the creation of an activity will perform the same function (e.g., concrete cure time). The Design-Builder shall identify any lag proposed and provide an explanation for the purpose of the lag.
3. **Default Progress Data Disallowed** - Actual Start and Actual Finish dates shall not be automatically updated by default mechanisms that may be included in the scheduling software system. Actual Start and Actual Finish dates on the schedule shall match the dates contained in the Design-Builder's QA/QC documentation. Work activities shall be updated by actual work progression rather than being cash flow driven. If used, labor and equipment hours associated with activities shall be derived from the Design-Builder's contemporaneous Project diaries and daily reports.
4. Software Settings shall include:
   (a) The updating of "cost percent complete" and "activity percent complete" of any activity shall be independent functions; program features that calculate one of these parameters from the other shall be disabled
   (b) All activity durations and float values shall be shown in days; time shall not be shown in the duration display. Date format shall be dd-mmm-yy (i.e., 11-DEC-02)
   (c) Duration type shall be "Fixed Duration and Units"
   (d) Percent complete type shall be "Physical"
   (e) Activity type shall be set to "Task Dependent"
   (f) Prices allocated to schedule activities shall be assigned to the non-labor cost category
5. Schedule Calculations shall include:
   (a) Ignore relationships to and from other projects
   (b) Make open-ended activities critical
   (c) Use Expected Finish Dates
   (d) When scheduling progressed activities use: Retained Logic

(e) Calculate start-to-start lag from: Early Start

(f) Define critical activities as: Longest Path

(g) Compute Total Float as: Finish Float = Late Finish – Early Finish

(h) Calendar for scheduling Relationship Lag: Successor Activity Calendar

6. **Calendars** - The Design-Builder shall not change, add, or delete calendars used in the Baseline Contract Schedule, or any Working or Monthly Contract Schedule Update, without prior agreement from WSDOT.

7. Resource curves (if used) shall be linear unless otherwise agreed to by WSDOT.

1-08.3(4) Submittal Requirements

Except for the Preliminary 90-Day Look-Ahead Schedule, all schedules, reports, and supporting data shall be submitted to WSDOT in electronic PDF file format as further described below:

1. All required or voluntary schedule submittals shall include a Primavera PM (XER) 16.2 or later compatible format file.

2. For each schedule submit one (1) Gantt Chart of the entire schedule in the following format:

   (a) Formatting

   - Activities in early start sequence within logical grouping such as WBS or activity code
   - Minimum font size 8-pt at 85 percent normal
   - Distinctive pattern, colored bars, or both for critical path, completed Work, remaining (non-critical) Work, level of effort, and expected finish date activities

   (b) Contents

   - Activity ID Number and Description
   - Activity Calendar
   - Original and Remaining or Actual Duration
   - Total Float
   - Early Start, Early Finish or Actual Dates

3. For each update schedule submit a Gantt Chart of the entire schedule in the above format on a 11 x 17-inch or 8.5 x 11-inch page, as an electronic text searchable PDF file.

4. For each Oracle Primavera P6 Visualizer report described in Section 1-08.3(3) submit one electronic HTML file.

5. For each required narrative report submit on a 11 x 17-inch or 8.5 x 11-inch page as an electronic text searchable PDF file.

6. For each tabular report submit on a 11 x 17-inch or 8.5 x 11-inch page as an electronic text searchable PDF file.
7. For monthly Invoice Data Sheets, submit one Primavera-generated tabular report as required in Section 1-09.9(1).6 on a letter-size page, text searchable PDF electronic file format, and in comma-delimited ASCII electronic file format.
8. At the request of WSDOT, but not more often than once a month, submit one Gantt Chart printed on large-format media suitable for display in the Project conference room.

1-08.3(5) Preliminary 90-Day Look-Ahead Schedule

The Design-Builder shall submit a Preliminary Schedule within 14 Calendar Days of effective NTP. This may be a 90-Day Look-Ahead Schedule meeting the following requirements or a full-featured critical path schedule meeting the requirements of Section 1-08.3(6) below. The purpose of this schedule is to facilitate early Project planning and coordination and to provide a vehicle for progress payments prior to acceptance of the Design-Builder's Baseline Contract Schedule. Accordingly, this schedule shall be price-loaded and shall be sufficiently detailed to facilitate an understanding of the Design-Builder's mobilization plans and early Work and the consistency of those plans with the overall Project schedule goals.

This schedule may be developed and submitted in manual, bar-chart format and the price loading may be accomplished by spreadsheet software compatible with Microsoft Office Excel. This schedule must show Mobilization activities which shall be price loaded consistent with Section 1-09.7. Other activities must be price loaded consistent with Section 1-08.3(9).

The proposed Preliminary 90-Day Look-Ahead Schedule shall be submitted for WSDOT's acceptance. The Gantt Chart and a tabular report of the proposed price-loading shall be a PDF file and a Microsoft Excel-compatible spreadsheet.

Upon submission of the Preliminary 90-Day Look-Ahead Schedule, WSDOT will review and accept or reject the submittal within 7 Calendar Days. If rejected, the Design-Builder shall re-submit the Preliminary 90-Day Look-Ahead Schedule within 7 Calendar Days. Each subsequent re-submittal (if necessary) will allow WSDOT 5 Calendar Days to review and accept or reject and the Design-Builder will have 5 Calendar Days to re-submit after a rejection.

Upon acceptance of the Preliminary 90-Day Look-Ahead Schedule, said schedule shall be used for monthly progress updating and progress payments until the Design-Builder's Baseline Contract Schedule is accepted. In this regard, monthly updates and progress payments using the Preliminary 90-Day Look-Ahead Schedule shall conform as closely as practical to the detail requirements in the update and payment provisions of this Section and of Section 1-09.9.

Schedule Updates and Payment requests based on the Preliminary 90-day Schedule shall include the updated Gantt Chart plus a tabular report showing the period and total to date amount requested for each activity together with the total accepted value of the activity.

The tabular report shall be electronic, text searchable, PDF file and a Microsoft Excel compatible spreadsheet.

1-08.3(6) Baseline Contract Schedule

Within 60 Calendar Days after the effective date of the NTP, the Design-Builder shall prepare and submit for WSDOT's acceptance a comprehensive critical path method Baseline Contract Schedule for the performance of the Work. The Baseline Contract Schedule shall be a logic-driven activity network developed as an outgrowth of the Preliminary Baseline Contract Schedule included in the Design-Builder's Proposal. It shall be price-loaded, and shall include, in addition to construction activities, activities for Design Work (including all aspects of design review), submittal review, traffic control, environmental compliance, QA construction inspection, and other activities required to be performed by the Design-Builder or others in order to achieve Substantial Completion.

The Baseline Contract Schedule shall reflect use of all Contract Time, shall not provide for early Substantial Completion, and must conform to any milestone schedule included in the Proposal unless WSDOT directs otherwise. Schedule activity float is the number of days the activity can be delayed without delaying the Project Substantial Completion, any Contract milestone dates, or both. All float contained in the Baseline Contract Schedule shall be considered a Project resource available to either party or both parties as needed. Contingency activities shall not be used in the Baseline Contract Schedule or any Monthly Contract Schedule Updates. The Baseline Contract Schedule and successor Monthly Contract Schedule Updates, when accepted by WSDOT, will form the basis of payment and the basis from which to measure delay for the Project.

Upon submission of the Baseline Contract Schedule, WSDOT will have 30 Calendar Days to review and accept or reject the submittal. If rejected, the Design-Builder shall have 14 Calendar Days to re-submit the Baseline Contract Schedule. WSDOT will then have 14 Calendar Days to review and accept or reject the re-submittal. Each subsequent re-submittal will follow the 14 Calendar Day time requirement.

If the Baseline Contract Schedule is not accepted within 4 months of the NTP date, the monthly progress payment may be withheld until said schedule has been accepted by WSDOT.

The initial schedule submittal will be known as "Baseline Candidate 0." Subsequent re-submittals will be called Candidates 1, 2, 3, and 4 as required. The form and content of these submittals shall be as follows:

1. For the initial Baseline Candidate (Candidate 0):

   (a) A summary narrative report generally describing the similarities and differences from the Preliminary Baseline Contract Schedule submitted with the Design-Builder's original Proposal. This narrative shall specifically address any change in philosophy and Work sequence from that shown in the Preliminary schedule

   (b) The Baseline Candidate shall show and meet the milestone dates included in the Design-Builder's Proposal. Nonetheless, the narrative shall also describe the basis for any changes in the start, duration, or completion of major elements of

the Work that vary more than 3 months from that shown in the Preliminary schedule

(c) The price loading scheme proposed by the Design-Builder under the provisions of Section1-08.3(9)

(d) The data backup, schedule archiving, and baseline establishment and maintenance plan the Design-Builder proposes to implement

(e) Description of all variances and deviations from the requirements of Sections 1-08.3(2), 1-08.3(3), and 1-08.3(4) with justification therefore together with a detailed list of activities affected

(f) A tabular Primavera-generated report that details all price loaded activities as described in Section 1-09.9(1)

(g) A letter or ledger size Gantt Chart of the proposed schedule in the format described in Section 1.08.3(4)

2. For subsequent Baseline Candidate Submittals:

(a) A summary narrative report describing changes from the previous submittal

(b) Tabular detail of additions or deletions to the list of requested variations/deviations

(c) An updated tabular, Primavera-generated report that details all price loaded activities as described in Section 1-09.9(1)

(d) A letter or ledger size Gantt Chart of the proposed schedule as described in Section 1-08.3(4)

Once accepted, the Baseline Contract Schedule shall not be modified in any way. It shall be archived and a copy known as the "Working Schedule" shall be used on the Project. Updated Working Schedules shall be used to report progress, logic, and activity changes, and earnings as further described below.

1-08.3(7) Monthly Contract Schedule Updates

Immediately following acceptance of the Baseline Contract Schedule, and before proceeding with monthly updates, the Design-Builder shall modify the Working Schedule copy of the Baseline by adding Work and price progress reported and paid through the most recent update period. An update shall be required for each past pay period. Beginning with the first payment, Work and payment information shall be added to the Working Schedule and period performance will be stored before proceeding to the next pay period. In this manner a cumulative Past Period Performance record from the beginning of the Project will be built and carried forward with the remaining Monthly Updates as follows.

WSDOT will establish the cutoff date for Progress Payments. Based on this cutoff date, the Design-Builder shall update the then current Working Schedule based on its progress to date, changes to Work sequence and activity durations and earnings for Work completed and in place. The Design-Builder and WSDOT will agree upon the updated Work and price completed. The agreed updates shall be submitted with the Design-

Builder's monthly invoices as provided in Section 1-09.9. Upon acceptance of a Monthly Contract Schedule Update, said schedule shall be archived by the Design-Builder before making any further changes and before storing period performance, by exporting to an XER format file. The exported file shall be uniquely identified with the schedule period that it represents. A copy of the XER file shall be submitted to WSDOT with the monthly update.

In addition, the Design-Builder may update a current Working Schedule at any time that it deems appropriate. Should the Design-Builder initiate an interim update separate and apart from the Monthly Contract Schedule Updates, the Design-Builder shall submit said update to WSDOT for review and acceptance. WSDOT may also request an interim Contract Schedule Update, in which case, the Design-Builder shall update the then current Working Schedule and submit said update to WSDOT within 14 Calendar Days of receipt of a written request from WSDOT. All requirements of this Section applicable to Monthly Contract Schedule Updates shall apply to any interim update.

The Design-Builder shall document and make appropriate changes to the Monthly Contract Schedule Updates to allow said schedules to accurately reflect progress to date and the remaining Work of the Contract. At a minimum, the Design-Builder shall examine any activity, or chain of activities, whose finish date contributes to the apparent completion of Contract milestones later than the accepted schedule dates. The narrative progress summary submitted with each update shall describe in detail the reason for all changes in logic and duration. In addition, the Design-Builder shall explain reasons for not updating any activity that appears to be driving the late completion of any Contract milestone.

The Design-Builder is expected to do all things necessary in order to achieve Substantial Completion within the Contract Time. Accordingly, it is anticipated the Design-Builder will take special measures as necessary to meet the Substantial Completion date. These measures may include such things as applying additional resources, working longer or additional shifts, or other measures chosen by the Design-Builder. If a Monthly Contract Schedule Update includes such special measures, the accompanying narrative shall describe those measures and their anticipated impact.

All Monthly Contract Schedule Update Submittals shall include:

1. Calculations, Reports, and Narratives listed in Section 1-08.3(4) Submittal Requirements.
2. Description of any changes from last month's variances and deviations from the requirements of Sections 1-08.3(2), 1-08.3(3), and 1-08.3(4) with justification therefore together with a detailed list of activities affected.
3. A Schedule-specific narrative generally describing changes in this period's schedule from the previous period including:
   (a) A statistical comparison of the current schedule to the previous and expected final schedule.
   (b) Work in any area, which is different from the previous report sequence.
   (c) Changes to activity logic and durations and expected impact of the changes.

(d) Discussion of milestones that are being calculated to finish later than the Contract milestone completion dates and how they might be improved.

(e) Discussion of schedule recovery techniques (if any) incorporated into the current schedule.

The Monthly Contract Schedule Update Submittal package shall be submitted with the Progress Report described in Section 1-09.9(1).4.

Submittal and approval of a working schedule, with supporting Project narrative, does not constitute or substitute for any notice the Design-Builder is required, under the terms of the Contract, to provide to WSDOT.

1-08.3(8) As Built Contract Schedule

An As Built Contract Schedule shall be submitted within 30 Calendar Days following Physical Completion of the Project. All activities shall have accurate start and completion dates and all associated contract values paid completely. All dates shall be consistent with dates contained in the Design-Builder's QA/QC documentation. In addition, the total of all prices in the schedule must be reconciled to the total amount paid to the Design-Builder.

This As Built Contract Schedule Submittal shall include:

1. One (1) electronic *.xer file of the As Built Contract Schedule in accordance with Section 1-08.3(4) (USB flash drive).
2. One (1) letter or ledger size electronic text searchable PDF file of a Gantt Chart showing the As Built schedule for the entire Project, in the format described in Section 1.08.3(4).

1-08.3(9) Price Loading

The periodic compensation due the Design-Builder throughout the performance of the Contract shall be calculated using the price-loaded Baseline Contract Schedule or Monthly Contract Schedule Updates, as applicable, in effect during each respective payment period. In developing the Baseline Contract Schedule, the Design-Builder shall apportion its Contract Price across multiple activities that, in aggregate, represent all of the Contract Work.

The Design-Builder shall select a price loading method and scheme compatible with the Primavera version selected for the Project. The Design-Builder's method must have the ability to, at the schedule activity level, track each price-loaded activity value as a "budget" against periodic, total to date, and final Contract earnings for that activity. The price-loading structure will be reviewed by WSDOT for concurrence.

The Design-Builder shall devise a system for tracking, grouping and sorting price-loaded activities using alpha-numeric codes compatibles with WSDOT's Contract Administration and Payment System (CAPS). The system shall also be able to simultaneously distinguish as between activity prices subject to Revenue Rules 170 and 171. The Design-Builder shall allocate the total Contract Price among these activities as

further described below. Each line item on the Schedule of Items shall include one or more price-loaded activities scheduled on the Baseline Contract Schedule.

The Design-Builder shall devise an account structure representing the major categories of the Work in consultation with WSDOT. The Design-Builder shall allocate the total Contract Price among the accounts as further described below. Each account will include one or more price-loaded activities scheduled on the Baseline Contract Schedule. The price for each activity shall accurately represent the value of the Work identified in the activity. The price-loaded activities shall not be front-end loaded. No single schedule activity may be assigned a value greater than $500,000 without the approval of the WSDOT Engineer. The sum of the prices of all activities in the Baseline Contract Schedule shall equal the total Contract Price. Prices assigned to activities in the Baseline Contract Schedule shall include, and reconcile with, prices included with the 90-Day Look-Ahead Schedule. Once the Baseline Contract Schedule has been accepted, no changes to any allocated amount may be made without WSDOT approval.

The Contract includes provisions for payment of Mobilization. The Design-Builder shall price load one or more mobilization activities so that the budget allocation for these items is in compliance with Section 1-09.7. Similarly, the Contract includes provisions for separate payment of materials to be incorporated into the Work. If the Design-Builder so desires, and it is consistent with Section 1-09.8, it shall identify separate and distinct procurement activities to be price-loaded with the value of materials to be incorporated into the Work.

All payments to the Design-Builder under this Contract will be represented by price-loaded activities in the schedule. In addition to the original Contract price shown in the Baseline Contract Schedule it is possible that there may be some adjustments to the Contract Price. These adjustments might include:

- Unit Price Change Orders (see Section 1-09.3)
- Equitable Adjustments (see Section 1-09.4)
- Deleted Work (see Section 1-09.5)
- Force Account (see Section 1-09.6)
- Other adjustments such as material price adjustments and incentive/disincentive awards and other items shown on the Schedule of Items and described elsewhere in this Contract.

See Section 1-09.9(1).6.

1-08.4 *Prosecution of Work*

1-08.4(1) General

The Design-Builder shall begin Work within 14 Calendar Days from the date of NTP, unless otherwise approved in writing. The Design-Builder shall diligently pursue the Work to Completion within the time specified in the Contract. Voluntary shutdown or slowing of operations by the Design-Builder shall not relieve the Design-Builder of the responsibility to complete the Work within the time(s) specified in the Contract.

The Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Contract milestones and Completion within the specified time and in accordance with the Contract Schedule, including furnishing such employees, materials, facilities, and equipment and working such hours (including extra shifts, overtime operations, Sundays, and Holidays) as may be necessary to achieve such goal, all at the Design-Builder's own expense, except as otherwise specifically provided in the Contract.

1-08.4(2) Prerequisites for Start of Construction

The Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed:

1. The QMP has had all comments from its review resolved to the satisfaction of the WSDOT Engineer and all preconstruction requirements have been completed.
2. All Governmental Approvals (including environmental permits) necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals which are a prerequisite to commencement of such construction shall have been performed.
3. All identified environmental requirements and commitments have been met, including, but not limited to, installation of construction fencing at all Sensitive Areas and installation of all applicable TESC measures.
4. All required insurance and bonds are in full force and effect.
5. WSDOT or the Design-Builder shall have obtained all necessary rights of access for such portion of the Project.
6. The Design-Builder shall have completed all required reviews in accordance with Section 1-05.3.
7. All applicable traffic control plans have been RFC.

1-08.5 *Time for Completion*

The Design-Builder shall complete all Work necessary to achieve Contract milestones and Substantial Completion within the Contract Time, and all Work necessary to achieve Physical Completion and Completion of the Project within the times specified in the Contract. The grounds upon which the Design-Builder may obtain a Change Order granting a time extension are set forth in Section 1-08.8.

1-08.5(1) Substantial Completion

1-08.5(1).1 Notice by Design-Builder

As a prerequisite to Substantial Completion, the Design-Builder shall provide notice to WSDOT when all of the following have occurred:

(a) The Design-Builder has completed all Site Work such that WSDOT and the traveling public have full and unrestricted use and benefit of the facilities from both the

operational and safety standpoint, and only minor incidental Work, replacement of temporary substitute facilities, or correction or repair remains for the Physical Completion of the total Contract.

(b) The Design-Builder has ensured that all Work completed to achieve Substantial Completion has been performed in accordance with the requirements of the Contract Documents.

(c) The Design-Builder has ensured that the facilities may be operated without damage to the Project or any other property on or off the Project Site, and without injury to any Person.

(d) The Design-Builder has obtained all design and construction approvals by Utility Owners.

1-08.5(1).2 Response by WSDOT

Promptly after receipt of the above referenced notice, and in no event later than 30 Calendar Days thereafter, WSDOT will advise the Design-Builder in writing of any of the following of which WSDOT has knowledge:

(a) Defects in the Work

(b) Deficiencies in the Project relating to the items described in clauses (a) through (e) of Section 1-08.5(1).1

(c) Deviations of any installed equipment, materials, and workmanship from the requirements of the Contract Documents. The Design-Builder shall, at its own cost and expense, promptly correct such defects, deficiencies, and deviations

1-08.5(1).3 Requirements for Substantial Completion

Substantial Completion shall be deemed to have occurred when:

(a) The Design-Builder has corrected, pursuant to the provisions of Section 1-08.5(1).2 all defects, deficiencies, and deviations with respect to the Project and WSDOT has notified the Design-Builder in writing of its acceptance (or waiver pending Physical Completion) of such corrections; provided that Final Cleanup, Initial Planting has received approval by the WSDOT Engineer Landscaping Warranty Areas, and the items described in Section 1-08.5(2) shall not be required to be performed as a condition to Substantial Completion.

(b) Every fish passage has achieved its Fish Passage Operationally Complete Date.

(c) The Design-Builder has received all applicable Governmental Approvals required to be obtained by the Design-Builder pursuant to the Contract.

(d) The Design-Builder has obtained all design and construction approvals by Utility Owners.

(e) The Design-Builder has furnished the Channelization/Intersection/Interchange Plan Package in compliance with Section 2.12, *Project Documentation.*

(f) A Punch List for the Project to be performed after Substantial Completion has been mutually agreed to by WSDOT and the Design-Builder.

Upon compliance with all requirements, the WSDOT Engineer will give the Design-Builder written notice of the Substantial Completion Date.

1-08.5(2) Physical Completion

The Design-Builder shall achieve Physical Completion within ***90*** Calendar Days of Substantial Completion. Physical Completion shall be deemed to have occurred when:

(a) Design-Builder has completed all construction Work correction of any defects, deficiencies, and deviations with respect to the Project which were waived pending Physical Completion, and completion of all Punch List items.

(b) Design-Builder has satisfied all conditions of acceptance by Utility Owners.

(c) Design-Builder has satisfied all requirements regarding Final Cleanup pursuant to Section 1-04.11.

(d) Design-Builder has furnished the Design Documentation Package and Project file in compliance with Section 2.12, *Project Documentation*.

(e) Design-Builder has submitted the Environmental Commitment Close Out Report, and resolved all comments, in compliance with Section 2.8, *Environmental*.

The Design-Builder shall provide notice to WSDOT when all of the above referenced conditions have been met. Upon receipt of the notice, WSDOT will perform Final Inspection pursuant to Section 1-05.11. Should WSDOT identify any defects or deficiencies in the Work, the Design-Builder shall immediately remedy such defects or deficiencies at no additional cost. Upon full compliance with items (a) through (d) listed above in this Section, the WSDOT Engineer will give the Design-Builder written notice of the Physical Completion Date for the Project.

1-08.5(3) Completion

WSDOT will give the Design-Builder written notice of the Completion Date of the Contract after all of the Design-Builder's obligations under the Contract (with the exception of Warranty Work) have been performed by the Design-Builder. Completion of the Contract shall occur within 90 Calendar Days of Physical Completion. The following events must occur before the Completion Date can be established:

(a) The Work on the Project must be complete pursuant to the Contract Documents.

(b) The Design-Builder must furnish all documentation required by the Contract and required by law.

1-08.5(4) Completion of Interim Milestones

This Section is intentionally omitted.

1-08.6 *Suspension of Work*

WSDOT may, at any time and for any reason, order the Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that WSDOT deems appropriate for the convenience of WSDOT. Such a suspension shall be deemed a suspension for convenience.

WSDOT may order suspension of all or any part of the Work under the Contract Documents if the Design-Builder does not comply with the Contract or WSDOT orders. Such a suspension shall be deemed a suspension for cause.

When ordered by WSDOT to suspend or resume Work, the Design-Builder shall do so immediately.

If the performance of all or any part of the Work is suspended, delayed, or interrupted for an unreasonable period of time by an act of WSDOT in the administration of the Contract, or by failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), WSDOT will make an adjustment for any increase in the cost and time for the performance of the Contract (excluding profit) necessarily caused by the suspension, delay, or interruption. However, no adjustment will be made for any suspension, delay, or interruption if (1) the performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Design-Builder, or (2) an equitable adjustment is provided for or excluded under any other provision of the Contract.

If the Design-Builder believes that the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time and such suspension, delay, or interruption is the responsibility of WSDOT, the Design-Builder shall submit a written notice of protest to the WSDOT Engineer within 14 Calendar Days of the start of the suspension delay or interruption requesting an equitable adjustment. No adjustment shall be allowed for any costs incurred more than 14 Calendar Days before the date the WSDOT Engineer receives the Design-Builder's written notice of protest. The WSDOT Engineer will issue a Written Determination to the Design-Builder and adjust payment and time in accordance with this section, if warranted. If the Design-Builder does not agree with the Written Determination, then the Design-Builder shall pursue the protest procedures in accordance with Section 1-04.5. The Design-Builder shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit WSDOT to have access to those records and any other records as may be deemed necessary by WSDOT to assist in evaluating the protest.

WSDOT will determine if an equitable adjustment in cost, time, or both is due as provided in this Section. The equitable adjustment for increase in costs, if due, shall be subject to the limitations provided in Section 1-09.4, provided that no profit of any kind will be allowed on any increase in cost necessarily caused by the suspension, delay, or interruption.

Request for extensions of time will be evaluated in accordance with Section 1-08.8.

WSDOT's determination as to whether an adjustment should be made will be final as provided in Section 1-05.1.

By failing to follow procedures of Section 1-04.5, the Design-Builder completely waives any claims for protested Work.

1-08.7 *Maintenance During Suspension*

Before and during any suspension (as described in Section 1-08.6) the Design-Builder shall protect the Work from damage or deterioration. Suspension shall not relieve the Design-Builder from anything the Contract requires unless this Section states otherwise.

At no expense to WSDOT, the Design-Builder shall provide through the construction area safe, smooth, and unobstructed roadways and pedestrian access routes for public use during the suspension (as required in Section 1-07.23 or the Technical Requirements). This may include a temporary road, alternative pedestrian access route, or detour.

If WSDOT determines that the Design-Builder failed to pursue the Work diligently before the suspension, or failed to comply with the Contract or WSDOT's orders, then the Design-Builder shall maintain the temporary roadway in use during suspension. In this case, the Design-Builder shall bear the maintenance costs. If the Design-Builder fails to maintain the temporary roadway, WSDOT will perform the maintenance and deduct all resulting costs from payments due to the Design-Builder.

If WSDOT determines that the Design-Builder has pursued the Work diligently before the suspension, then WSDOT will maintain the temporary Roadway (and bear its cost). This WSDOT-provided maintenance work will include only routine maintenance of:

1. The traveled way, auxiliary lanes, shoulders, and detour surface
2. Roadway drainage along and under the traveled roadway or detour
3. All barricades, signs, and lights needed for directing traffic through the temporary roadway or detour in the construction area

The Design-Builder shall protect and maintain all other Work in areas not used by traffic. All costs associated with protecting and maintaining such Work shall be the responsibility of the Design-Builder. After any suspension during which WSDOT has done the routine maintenance, the Design-Builder shall accept the traveled roadway or detour as is when Work resumes. The Design-Builder shall make no claim against WSDOT for the condition of the roadway or detour.

After any suspension, the Design-Builder shall retain all responsibilities the Contract assigns for repairing or restoring the roadway, its slopes, and its drainage system to conform to the approved Design Documents.

1-08.8 *Extensions of Time*

The Design-Builder shall submit any requests for time extensions to the WSDOT Engineer in writing no later than 14 Calendar Days after the delay occurs. No adjustment shall be allowed for any contract time incurred more than 14 Calendar Days prior to the date the WSDOT Engineer receives the Design-Builder's written request of time extension. The request shall be limited to demonstrable delays in the Critical Path attributable to the change or event giving rise to the request.

The WSDOT Engineer may request additional information regarding the request, to ascertain the basis and amount of the time requested. In addition, the WSDOT Engineer may request, and the Design-Builder shall provide within 14 Calendar Days after WSDOT Engineer's request, an updated schedule that supports the request and

demonstrates that the change or event: (1) had a specific impact on the critical path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the Work or by using other reasonable alternatives. The Design-Builder may request additional time to respond to the supplemental information requested by the WSDOT Engineer. If a request combined with previous extension requests, equals 20 percent or more of the original Contract time then the Design-Builder's letter of request must bear consent of Surety. In evaluating any request, the WSDOT Engineer will consider how well the Design-Builder used the time from Contract execution up to the point of the delay and the effect the delay has on any completion times included in the Contract. The WSDOT Engineer will evaluate and issue a Written Determination within 21 Calendar Days of receiving the request or supplemental information.

Extensions of Contract Time will be allowed only for that period equal to the time the WSDOT Engineer determines the Critical Path was delayed because of:

1. Any action, neglect, or default of WSDOT, its officers, or employees, or of any other contractor or Design-Builder employed by WSDOT
2. Fire or other casualty for which the Design-Builder is not responsible
3. Strikes
4. Any other conditions for which these General Provisions permit time extensions such as:
   (a) In Section 1-04.4 if a change directed by WSDOT increases the time necessary to achieve Substantial Completion
   (b) In Section 1-04.5 if increased time is part of a protest that is found to be a valid protest
   (c) In Section 1-04.7 if a changed condition is determined to exist which caused a delay in achieving Substantial Completion
   (d) In Section 1-07.13 if the performance of the Work is delayed as a result of damage for which the Design-Builder is not responsible under the Contract
   (e) In Section 1-07.17 with respect to Utility Delays and Major Underground Utilities not identified with Reasonable Accuracy
   (f) In Section 1-07.24 if a delay results because of WSDOT's failure to provide access to Right of Way necessary for the construction by the date specified in the Contract
   (g) In Section 1-08.6 if the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of WSDOT
   (h) In Section 1-09.11 if a dispute or claim also involves a delay in completing the Contract and the dispute or claim proves to be valid
5. Exceptional causes not specifically identified in items 1 through 4, provided the request letter proves the Design-Builder had no control over the cause of the delay

and could have done nothing to avoid or mitigate the delay, and that the delay did not result from a risk allocated to the Design-Builder under the Contract.

The Design-Builder shall not be entitled to an extension of the Contract Time for Project delays unless such delays impact the ability of the Design-Builder to achieve Substantial Completion by the specified deadline. Delays that impact the Design-Builder's ability to achieve planned early achievement of a Substantial Completion Date shall not be the subject of a time extension.

WSDOT will not allow a time extension for any cause listed above if it resulted from the Design-Builder's default, collusion, action or inaction, or failure to comply with the Contract.

The Design-Builder stipulates the Contract Time to be sufficient to do all the Work. For this reason, WSDOT will not grant a time extension for:

1. Unsuitable weather.
2. Failure to obtain all materials and workers unless the failure was the result of exceptional causes as provided above in Section 1-08.5.
3. Changes, protest, or changed conditions (Section 1-04) that do not delay the completion of the Work or prove to be an invalid or inappropriate time extension request.
4. Delays caused by WSDOT's disapproval of Design or RFC Documents as provided in Section 1-05.3 or the Technical Requirements.
5. Rejection of faulty or inappropriate equipment as provided in Section 1-05.7.
6. The Design-Builder's failure to meet the requirements of the Contract Documents.
7. Delays related to Relocations, except as provided in Section 1-07.17.
8. Delays that do not affect the Design-Builder's ability to meet the Substantial Completion deadline.
9. Delays in obtaining Governmental Approvals that are required to be obtained by the Design-Builder.

If the Design-Builder does not agree with the WSDOT Engineer's Written Determination, the Design-Builder shall pursue the protest procedures in accordance with Section 1-04.5. By failing to follow the procedures of Section 1-04.5, the Design-Builder completely waives any claims for protested Work.

1-08.9 *Liquidated Damages*

Time is of the essence of the Contract. Delays inconvenience the traveling public, obstruct traffic, interfere with and delay commerce, impeded toll collections, and increase risk to highway users. Delays also cost taxpayers undue sums of money, adding time needed for administration, engineering, inspection, and supervision. Accordingly, the parties agree to the assessment of liquidated damages for such delays as specified herein.

1-08.9(1) Liquidated Damages for Late Completion

In the event the Design-Builder fails to meet the completion deadlines specified herein, the Design-Builder agrees to pay WSDOT liquidated damages in the following amounts:

1. For failure to achieve Substantial Completion by the Substantial Completion Date: ***$12,500*** per day until the date Substantial Completion is achieved.
2. For failure to achieve Physical Completion by the Physical Completion Date: ***$8,300*** per day, until the date Physical Completion is achieved.
3. For failure to achieve Completion by the Completion Date: ***$6,250*** per day until the date Completion is achieved.

WSDOT is authorized to deduct these liquidated damages from any money due or coming due to the Design-Builder.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Design-Builder from further obligations and liabilities pursuant to the Contract.

1-08.9(2) Liquidated Damages for Failure to Open Lanes and Roadway

In addition to any liquidated damages that may be payable by Design-Builder under Section 1-08.9(1), the Design-Builder agrees to pay WSDOT liquidated damages in the following amounts in the event of any failure by the Design-Builder to open any lane, ramp, or street by the scheduled opening times specified in Section 2.22, *Maintenance of Traffic*. Payment in accordance with this Section shall liquidate all damages for failure to open lanes as specified.

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1. Liquidated damages shown in the table below will be assessed for each 15-minute period (prorated to the nearest 5 minutes) that all lanes of I-5 in the direction of closure are not open by the scheduled opening time following a closure specified in the tables of Section 2.22, *Maintenance of Traffic*.

Table Row	Liquidated Damages (per 15-minute period)	I-5 Direction	Following:
1	$5,000	Northbound	1-lane closure specified in tables of Sections 2.22.4.3.1.2, 2.22.4.3.1.3, 2.22.4.3.2 and 2.22.4.3.3.1
2	$7,500	Northbound	2-lane closure specified in tables of Sections 2.22.4.3.1.2, 2.22.4.3.1.3, 2.22.4.3.2, and 2.22.4.3.3.1
3	$11,250	Northbound	3- or all-lane closure specified in tables of Sections 2.22.4.3.1.2, 2.22.4.3.1.3, 2.22.4.3.2 and 2.22.4.3.3.1

Table Row	Liquidated Damages (per 15-minute period)	I-5 Direction	Following:
4	$14,060	Northbound	4- or all-lane closure specified in tables of Sections 2.22.4.3.1.2, 2.22.4.3.1.3 and 2.22.4.3.3.1
5	$9,500	Southbound	1-lane closure specified in tables of Sections 2.22.4.3.1.1, 2.22.4.3.1.2, 2.22.4.3.1.3, and 2.22.4.3.3.1
6	$14,250	Southbound	2-lane closure specified in tables of Sections 2.22.4.3.1.1, 2.22.4.3.1.2, 2.22.4.3.1.3, and 2.22.4.3.3.1
7	$21,380	Southbound	3- or all-lane closure specified in tables of Sections 2.22.4.3.1.1, 2.22.4.3.1.2, 2.22.4.3.1.3, and 2.22.4.3.3.1
8	$32,070	Southbound	4- or all-lane closure specified in tables of Sections 2.22.4.3.1.1, 2.22.4.3.1.2, 2.22.4.3.1.3, and 2.22.4.3.3.1

2. $100,000 liquidated damages will be assessed for each additional day a linear long-term closure (24-hour closure) of northbound I-5 extends beyond the number of Calendar Days specified in the tables of Sections 2.22.4.3.3.2.2 and 2.22.4.3.3.2.3 or committed to on Form T. For the purpose of liquidated damages assessments associated with linear long-term closures, a Calendar Day shall be understood to begin at 4:00 a.m. The liquidated damages will be assessed for each additional day if all lanes of northbound I-5 are not open by 4:00 a.m. following the linear long-term closure.
3. $140,000 liquidated damages will be assessed for each additional day a linear long-term closure (24-hour closure) of southbound I-5 extends beyond the number of Calendar Days specified in the tables of Sections 2.22.4.3.3.2.1, 2.22.4.3.3.2.2 and 2.22.4.3.3.2.3 or committed to on Form T. For the purpose of liquidated damages assessments associated with linear long-term closures, a Calendar Day shall be understood to begin at 4:00 a.m. The liquidated damages will be assessed for each additional Calendar Day if all lanes of southbound I-5 are not open by 4:00 a.m. following the linear long-term closure.
4. Liquidated damages shown in the table below will be assessed for each 15-minute period (prorated to the nearest 5 minutes) that all lanes of the ramps listed in the table below are not open by the scheduled opening time following a full ramp roadway closure specified in Section 2.22, *Maintenance of Traffic*.

Table Row	Liquidated Damages (per 15-minute period)	Ramps
1	$4,580	• SB I-5 to James St. (Marion) off-ramp • Howell St./Yale Ave. to SB I-5 on-ramp • SB I-5 to Boylston Ave. E off-ramp
2	$970	• SB I-5 to Stewart St./Eastlake Ave. off-ramp • SB I-5 to I-5 SBCD off-ramp
3	$480	• SB I-5 to Corliss Ave. N off-ramp • SB I-5 to Northgate Way off-ramp
4	$240	• NB I-5 to N 85th St. (Banner Way NE) off-ramp • Banner Way NE (N 80th St.) to NB I-5 on-ramp • SB I-5 to NE 71st St./ NE 65th St. off-ramp • Corliss Ave. N to SB I-5 on-ramp
5	$120	• NB I-5 to NE 45th St. & NE 50th St. off-ramp • NE 70th St. to NB I-5 on-ramp • N 85th St. to SB I-5 on-ramp • I-5 NB to 1st Ave. NE off-ramp • 1st Ave. NE at 107th Ave. NE to NB I-5 on-ramp • Northgate Way to NB I-5 on-ramp • SB I-5 to N 85th St. off-ramp • N Northgate Way to SB I-5 on-ramp • SB I-5 to Northgate Way off-ramp

***

The Design-Builder authorizes WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder.

1-08.9(3) Liquidated Damages for Intelligent Transportation Systems and Signal Disruptions

***Intelligent Transportation System (ITS) equipment allows for more efficient operation of the highway system, more effective response times to incidents, and the ability to communicate directly with the traveling public to provide advance warning of potential hazards and inconveniences. The inability to operate ITS will result in impacts to the traveling public, increase fuel consumption, vehicle operating costs, pollution, and other inconveniences and harm.

Since this equipment operates as a system, liquidated damages for ITS are assessed based on system impacts rather than individual units and include impacts to equipment outside of the Project Limits due to work within the Project Limits.***

Accordingly, the Design-Builder agrees:

1. To pay ***$1,050.00*** liquidated damages per ***15 minutes*** for each ***15-minute period***, prorated to the nearest ***5 minutes***, when any CCTV camera is not fully operational due to an unplanned disruption or not restored to being fully operational following a planned disruption as specified in Sections 2.17, *Traffic Signals*, and 2.18, *Intelligent Transportation Systems*. This rate increases to ***$3,500.00*** if two or more cameras are affected.
2. To pay ***$1,050.00*** liquidated damages per ***15 minutes*** for each ***15-minute period***, prorated to the nearest ***5 minutes***, when any Data Station is not fully operational due to an unplanned disruption or not restored to being fully operational following a planned disruption as specified in Sections 2.17, *Traffic Signals,* and 2.18, *Intelligent Transportation Systems*. This rate increases to ***$3,500.00*** if two or more Data Stations are affected.
3. To pay ***$1,050.00*** liquidated damages per ***15 minutes*** for each ***15-minute period***, prorated to the nearest ***5 minutes***, when any Variable Message Sign (VMS) is not fully operational due to an unplanned disruption or not restored to being fully operational following a planned disruption as specified in Sections 2.17, *Traffic Signals*, and 2.18, *Intelligent Transportation Systems*. This rate increases to *** $3500.00 *** if two or more VMS are affected.
4. To pay ***$900.00*** liquidated damages per ***15 minutes*** for each ***15-minute period***, prorated to the nearest ***5 minutes***, when any ATMS gantry is not fully operational due to an unplanned disruption or not restored to being fully operational following a planned disruption as specified in Sections 2.17, *Traffic Signals*, and 2.18, *Intelligent Transportation Systems*. This rate increases to ***$3,000.00*** if two or more ATMS gantries are affected.
5. To authorize WSDOT to deduct these liquidated damages from any money due or coming to the Design-Builder.

The ITS communications system ensures operation of multiple devices. In the event of an unplanned communication system outage or the communication system not being fully restored following a planned disruption at the time specified in the Subsection Existing System Disruption and Restoration of the Special Provision ILLUMINATION, TRAFFIC SIGNALS, INTELLIGENT TRANSPORTATION SYSTEMS, and ELECTRICAL, the liquidated damages described here will be applied to all devices that are not operational from the region Traffic Management Center (TMC). This applies to any work that affects any fiber-optic line or roadside network communications cabinet or hub (such as fiber-optic termination cabinets and communications hubs).

1-08.9(4) Liquidated Damages for Intelligent Transportation Systems and Signal Disruptions for Tunnels

Tunnel operations and fire-life safety (FLS) system equipment reduce the risk of hazards to the traveling public when traveling through tunnels, particularly fires. The inability to operate these systems results in a significant safety risk to the traveling public due to not being able to identify incidents, not being able to respond to incidents quickly, and not being able to operate safety systems such as fire detection, firefighting, and ventilation.

Accordingly, the Design-Builder agrees:

1. To pay ***$5,000.00*** liquidated damages per ***15 minutes*** for each ***15-minute period***, prorated to the nearest ***5 minutes***, when any part of a tunnel operations and FLS system is not fully operational due to an unplanned disruption or not restored to being fully operational following a planned disruption as specified in Sections 2.17, *Traffic Signals*, and 2.18, *Intelligent Transportation Systems*.
2. To authorize WSDOT to deduct these liquidated damages from any money due or coming due the Design-Builder.

1-08.9(5) Liquidated Damages for Intelligent Transportation Systems and Signal Disruptions for Express Lanes

Express lanes operations equipment is required to attain full functionality of the express lanes and ensure the safety of the traveling public on a reversible direction facility of this type. When this equipment is not available, the lanes may not be able to be opened, verified clear for reversing operations, or reversed, rendering these lanes unusable to the traveling public and introducing significant delays and potential safety hazards. Affected equipment includes, but is not limited to, gates, signs, and access point cameras. System impacts may be due to work directly on express lanes operations equipment or loss of communications to any part of the system.

Accordingly, the Design-Builder agrees:

1. To pay ***$5,000.00*** liquidated damages per ***15 minutes*** for each ***15-minute period***, prorated to the nearest ***5 minutes***, when any part of the express lanes operation system is not fully operational due to an unplanned disruption or not restored to being fully operational following a planned disruption as specified in Sections 2.17, *Traffic Signals*, and 2.18, *Intelligent Transportation Systems*.
2. To authorize WSDOT to deduct these liquidated damages from any money due or coming due the Design-Builder.

1-08.9(6) Liquidated Damages for Key Personnel

Key Personnel Damages – The Design-Builder shall make all Key Personnel identified in the Proposal and Statement of Qualifications (SOQ) available at all times and places required under the terms of the Contract and shall ensure that such Key Personnel devote all efforts necessary for all periods of time necessary or required under the terms of the Contract, to timely fulfill all Contract obligations.

If an individual filling a Key Personnel role is not available for the Work, or does not maintain active involvement in the prosecution and performance of the Work, the Design-Builder acknowledges that WSDOT, the Work, and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to determine the actual damages that would accrue in such an event. Therefore, if for any reason a substitution of Key Personnel identified in the Proposal and SOQ is either requested by the Design-Builder or replacement is required by WSDOT, the Design-Builder agrees to pay liquidated damages in the amount identified below, per substitution, in addition to obtaining the required approval of the substituted Key Personnel from WSDOT. To qualify for WSDOT's approval, a written request must be submitted to the WSDOT Engineer demonstrating how the proposed change will be equal to or better than the Key Personnel identified in the Proposal and SOQ. The written request shall include a resume (limit to two pages per Person) for Key Personnel and a side-by-side comparison of the original Key Personnel (as identified in the SOQ) and the Key Personnel. This side-by-side comparison shall relate relevant experience to the Project goals identified in Section 7.5.3 of the Request for Qualifications. Side-by-side comparisons shall demonstrate that the proposed change is equal or better. WSDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its sole discretion. The Design-Builder understands and agrees that any damages payable in accordance with this Section are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances. WSDOT may waive the assessment of liquidated damages if the Proposer provides sufficient documentation that demonstrates that the Key Personnel substitution has equal or better qualifications to the Key Personnel identified in the SOQ.

Key Personnel	Liquidated Damage Amount
Project Manager	***$200,000***
Construction Manager	***$150,000***
Work Zone Traffic Engineering Manager	***$100,000***
Communications Manager	***$100,000***
DBE Program Administrator	***$100,000***

1-08.10 *Termination of Contract*

1-08.10(1) Termination for Default

WSDOT may terminate the Contract upon the occurrence of any one or more or the following events:

1. If the Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment
2. If the Design-Builder refuses or fails to prosecute the Work with such diligence as will ensure its Substantial Completion within the original Contract Time and any

extensions of time which may have been granted to the Design-Builder by Change Order or otherwise

3. If the Design-Builder is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Design-Builder or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Design-Builder, or if a trustee or receiver is appointed for the Design-Builder or for any of the Design-Builder's property on account of the Design-Builder's insolvency, and the Design-Builder or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within 15 Calendar Days of receipt of a request for assurance from WSDOT
4. If the Design-Builder disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction
5. If the Design-Builder disregards the authority of WSDOT
6. If the Design-Builder performs Work which deviates from the Contract, and neglects or refuses to correct rejected Work
7. If the Design-Builder otherwise violates in any material way any provisions or requirements of the Contract

Once WSDOT determines that sufficient cause exists to terminate the Contract, written notice shall be given to the Design-Builder and its Surety indicating that the Design-Builder is in breach of the Contract and that the Design-Builder is to remedy the breach within 15 Calendar Days after the notice is sent. In case of an emergency such as potential damage to life or property, the response time to remedy the breach after the notice may be shortened. If the remedy does not take place to the satisfaction of WSDOT, WSDOT may, by serving written notice to the Design-Builder and Surety either:

1. Transfer the performance of the Work from the Design-Builder to the Surety.
2. Terminate the Contract and at WSDOT's option prosecute it to Completion by contract or otherwise. Any extra costs or damages to WSDOT shall be deducted from any money due or coming due to the Design-Builder under the Contract.

Should WSDOT elect to terminate the Contract, the Design-Builder shall immediately deliver to WSDOT, upon request, possession of any or all Design Documents of whatsoever nature and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files, and other documents and facilities related to the Project that WSDOT deems necessary for completion of the Work. WSDOT shall have the unequivocal right to use said documents to complete the Work. Irrespective of the termination, the Design-Builder shall remain fully responsible and liable for all errors or omissions of any nature in completed, stamped Design Documents or 'RFC' drawings as said errors or omissions exist at the time of termination, or as negotiated under the termination.

If WSDOT elects to pursue one remedy, it will not bar WSDOT from pursuing other remedies on the same or subsequent breaches.

Upon receipt of a notice that the Work is being transferred to the Surety, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances for the purpose of completing the Work included under the Contract and employ by contract or otherwise any Person or Persons satisfactory to WSDOT to finish the Work and provide the materials without termination of the Contract. Such employment shall not relieve the Surety of its obligations under the Contract and the Contract Bond. If there is a transfer to the Surety, payments on estimates covering Work subsequent to the transfer shall be made to the extent permitted under law to the Surety or its agent without any right of the Design-Builder to make any claim.

If WSDOT terminates the Contract or provides such sufficiency of labor or materials as required to complete the Work, the Design-Builder shall not be entitled to receive any further payments on the Contract until all the Work contemplated by the Contract has been fully performed. The Design-Builder shall bear any extra expenses incurred by WSDOT in completing the Work, including all increased costs for completing the Work, and all damages sustained, or which may be sustained, by WSDOT by reason of such refusal, neglect, failure, or discontinuance of Work by the Design-Builder. If liquidated damages are provided in the Contract, the Design-Builder shall be liable for such liquidated damages until such reasonable time as may be required for Physical Completion of the Work. After all the Work contemplated by the Contract has been completed, WSDOT will calculate the total expenses and damages for the completed Work. If the total expenses and damages are less than any unpaid balance due the Design-Builder, except as provided below, the excess will be paid by WSDOT to the Design-Builder. If the total expenses and damages exceed the unpaid balance, the Design-Builder and the Surety shall be jointly and severally liable to WSDOT and shall pay the difference to WSDOT on demand.

In exercising WSDOT's right to prosecute the Physical Completion of the Work, WSDOT shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. In the event that WSDOT or the Surety takes bids for remedial Work or Physical Completion of the Project, the Design-Builder shall not be eligible for the award of such contracts.

In the event the Contract is terminated, the termination shall not affect any rights of WSDOT against the Design-Builder. The rights and remedies of WSDOT under the Termination Clause are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Design-Builder by WSDOT will not release the Design-Builder from liability.

If a notice of termination for default has been issued and it is later determined for any reason that the Design-Builder was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 1-08.10(2). The foregoing shall include a termination for default predicated upon a failure to prosecute the Work where the underlying delay was found to be excusable under the provisions of Section 1-08.8.

1-08.10(2) Termination for Public Convenience

WSDOT may terminate the Contract in whole, or from time to time in part, whenever:

1. The Design-Builder is prevented from proceeding with the Work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources
2. The Design-Builder is prevented from proceeding with the Work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of Persons or agencies other than the Design-Builder
3. WSDOT determines that such termination is in the best interests of WSDOT

1-08.10(3) Termination for Public Convenience Payment Request

After receipt of a notice of Termination under Section 1-08.10(2), the Design-Builder shall submit to WSDOT a request for costs associated with the termination. The request shall be prepared in accordance with the claim procedures outlined in Sections 1-09.11 and 1-09.12. The request shall be submitted promptly but in no event later than 90 Calendar Days from the effective date of termination.

The Design-Builder agrees to make all records available to the extent deemed necessary by WSDOT to verify the costs in the Design-Builder's payment request.

1-08.10(4) Payment for Termination for Public Convenience

Whenever the Contract is terminated in accordance with Section 1-08.10(2), payment will be made in accordance with Section 1-09.5 for the actual Work performed.

If WSDOT and the Design-Builder cannot agree as to the proper amount of payment, then the matter will be resolved as outlined in Section 1-09.13 except that, if the termination occurs because of the issuance of a restraining order as provided in Section 1-08.10(2), the matter will be resolved through mandatory and binding arbitration as described in Sections 1-09.13(3) A and B, regardless of the amount of the claim.

1-08.10(5) Responsibility of the Design-Builder and Surety

Termination of the Contract shall not relieve the Design-Builder 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 or retainage bond for Work performed.

1-08.11 *Incentives and Disincentives*

This Section is intentionally omitted.

1-08.12 *Other Incentives and Disincentives*

This Section is intentionally omitted.

1-09 Measurement and Payment

1-09.1 *Measurement of Quantities*

In measuring all acceptably completed Work, WSDOT will:

1. Use United States standard measure
2. Make all measurements as described in this Section, unless individual specifications require otherwise
3. Follow methods generally recognized as conforming to good engineering practice
4. Conform to the usual practice of WSDOT by carrying measurements and computations to the proper significant figure or fraction of units for each item
5. Measure horizontally or vertically (unless otherwise specified)

The terms listed below shall be defined as follows in all measurements under this Section:

"Lump Sum" (when used as an item of payment): complete payment for the Work described for that item in the Contract.

"Gage" (in measurement of plates): the U.S. Standard Gage.

"Gage" (in measurement of galvanized sheets used to manufacture corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing): that specified in AASHTO M 36, M 167, M 196, M 197, or M 219.

"Gage" (in measurement of wire): that specified in AASHTO M 32.

"Ton:" 2,000 pounds of avoirdupois weight.

Items of payment, that have "Lump Sum" or "Force account" in the bid item of Work shall have no specific unit of measurement requirement.

For each basis of measurement listed below, WSDOT will use the method of measurement described. For Work measured on the basis of:

Square Yard or Square Foot - the measurement shall be a calculation from the neat dimensions shown in the Design Documents or as altered pursuant to the Contract. If there is an exception within the measured area where the item of Work is not performed (such as a drainage vault within a measured sidewalk) and if the exception area is greater than 9 square feet, then the area of the exception will be subtracted from the payment area calculated from the neat dimensions.

Linear Foot (pipe culverts, guard rail, underdrains, etc.) - measured parallel to the Structure's base or foundation, unless the plans require otherwise.

Weight - weighed as required in Section 1-09.2.

Volume (of excavation and embankment) - measured by the average-end-area method or by the finite element analysis method utilizing digital terrain modeling techniques. All or some computations may be based on ground elevations and other data derived photogrammetrically. WSDOT may correct for curvature.

Volume (in the hauling vehicle) - measured at the point of delivery. Hauling vehicles may be of any size or type WSDOT approves provided that the body is of such shape that the actual contents may be readily and accurately determined. If WSDOT requires, the Design-Builder shall level loads at the delivery point to facilitate measurement.

For each item listed below, the WSDOT Engineer will use the method of measurement described.

Structures - measured on the neat lines shown in the Design Documents or as altered by the Contract. When a complete Structure or structural unit is specified as the unit of measurement, the unit shall include all fittings and accessories.

Timber - measured by the thousand board feet (MBM) actually used in the Structure. Measurements will be based on nominal widths and thicknesses and the extreme length of each piece.

Standard Manufactured Items (fence, wire, plates, rolled shapes, pipe conduit, etc., when specified) - measured by the manufacturer's identification of gage, unit weight, section dimension, etc. The WSDOT Engineer will accept manufacturing tolerances set by each industry unless cited specifications require more stringent tolerances.

Cement - measured by the pound, ton, or sack. A sack shall be 94 pounds.

Asphalt - measured by the gallon or ton. If measured by gallon, measurement will be made at 60ºF (or will be corrected to the volume at 60ºF in keeping with ASTM D 1250). If shipped by rail, truck, or transport, measurement will be by net certified scale masses or certified volumes (corrected for material lost in route or not actually incorporated into the Work). No measurement will be made for:

1. Work performed or materials placed outside lines shown in the Design Documents
2. Materials wasted, used, or disposed of in a manner contrary to the Contract
3. Rejected materials (including those rejected after placement if the rejection resulted from the Design-Builder's failure to comply with the Contract)
4. Hauling and disposing of rejected materials
5. Material remaining on hand after the Work is completed, except as provided in Section 1-09.5
6. Any other Work or material contrary to any Contract provision

1-09.2 *Weighing Equipment*

1-09.2(1) General Requirements for Weighing Equipment

Unless specified otherwise, any Highway or Bridge construction materials to be proportioned or measured and paid for by weight shall be weighed on a scale.

Scales

Scales shall:

1. Be accurate to within 0.5 percent of the correct weight throughout the range of use

2. Not include spring balances
3. Include beams, dials, or other reliable readout equipment
4. Be built to prevent scale parts from binding, vibrating, or being displaced and to protect all working parts from falling material, wind, and weather
5. Be carefully maintained, with bunkers and platforms kept clear of accumulated materials that could cause errors and with knife edges given extra care and protection

Scale Operations

The Design-Builder provided scale operations are defined as operations where a scale is set up by the Design-Builder specifically for the Project and most, if not all, material weighed on the scale is utilized for Contract Work. In this situation, the Design-Builder shall provide a Person to operate the Project scale, generate e-tickets, perform scale checks, and prepare reports.

Commercial scale operations include the use of established scales used to sell materials to the public on a regular basis. In addition, for the purposes of this specification, all batch, hopper, and belt scales are considered to be commercial scales. When a commercial scale is used as the Project scale, the Design-Builder may utilize a commercial scale operator provided it is at no additional cost to WSDOT.

In addition, the Design-Builder shall ensure that:

1. WSDOT is allowed to observe the weighing operation and check the daily scale weight record.
2. Scale verification checks are performed at the direction of WSDOT (see Section 1-09.2(5)).
3. Several times each day, the scale operator records and makes certain the platform scale balances and returns to zero when the load is removed.
4. Test results and Daily Summary Reports for each day's hauling operations are provided to the WSDOT Engineer daily.

Trucks and E-Tickets

Each truck to be weighed shall bear a unique identification number. This number shall be legible and in plain view of the scale operator. The Design-Builder shall provide e-tickets for all weighed materials. All e-tickets shall, at a minimum, contain the following information:

1. Date of haul
2. Contract number
3. Work item/activity number and material description
4. Unit of measure
5. Identification number of hauling vehicle
6. Weight delivered
   (a) Net weight in the case of batch and hopper scales

(b) Gross weight, tare weight (a.m. and p.m. minimum), and net weight in the case of platform scales

(c) Approximate load out weight in the case of belt conveyor scales

The e-ticket shall be uploaded to a designated site so that it can be accessed by the material receiver at the material delivery point. The material delivery point is defined as the location where the material is incorporated into the permanent Work. The Design-Builder's representative shall make report summaries available to the WSDOT Engineer's designated receiver, not later than the end of shift, for reconciliation. E-tickets for loads not verified as delivered will receive no pay.

Electronic Delivery Management System (E-Ticketing)

No fewer than 30 Calendar Days prior to delivery or placement activities, the Design-Builder shall submit a Type 1 Working Drawing to the WSDOT Engineer detailing E-Ticketing Systems (ETS) used to provide the required information. It is recognized that multiple systems may be used to accommodate the Design-Builder and material supplier capabilities. The Working Drawings shall explain how partial loads will be tracked, and include contingency plans for lost internet connectivity or phone reception or both. The Design-Builder shall provide on-site technical assistance and training during the initial setup to all parties requiring access to the e-ticket information. The Design-Builder shall provide ETS support as necessary during the Work to ensure effective ongoing utilization.

Equipment

The Design-Builder shall demonstrate that the ETS can provide the following:

1. The ETS shall be fully integrated with the Design-Builder's load read-out scale system at the material source site. In the absence of a fully integrated system, digital data can be captured by a photo of the ticket (PDF ticket) generated at the scale at load out. The information shall be immediately uploaded to a designated site so the information can be accessed by the Inspector located at the material delivery site.
2. The ETS shall be accessible by real-time monitoring with a mobile communication device such as a tablet, smartphone, etc.

The material source site (point of load out) shall have a reliable, stable internet connection, with a local Wi-Fi device (hot spot) in areas with poor or no cell service.

The Design-Builder shall install and operate equipment in accordance with their accepted ETS. The submitted information shall identify an alternative method for manually capturing and electronically delivering data if internet access or cell phone service, or both, is temporarily unavailable at the load out site.

E-Tickets

The e-tickets must provide, at a minimum, the information required in this section for truck weight measurement and Section 6-02.3(5)B of the Standard Specifications for concrete delivery.

Daily Summary Report

The Design-Builder shall provide to the WSDOT Engineer a means in which to gather report summaries using mobile communication devices. The following summary of information shall be provided to the WSDOT Engineer electronically, in a file format that cannot be edited, at the end of the days hauling operation or as agreed to by the WSDOT Engineer. The summary report shall include:

1. For each Material:
   (a) List of Individual Loads including:
      (i) Contractor Name and Material Producer
      (ii) Project number and county
      (iii) Truck number
      (iv) Net weight for payment (nearest 0.1 tons) or volume for payment
      (v) Date placed
      (vi) Time loaded

1-09.2(2) Specific Requirements for Batching Scales

Each batching scale shall be designed to support a weighing container. The arrangement shall make it convenient for the operator to remove material from the weighing container while watching readout devices. Any weighing container mounted on a platform scale shall have its center of gravity directly over the platform center line. Batching scales used for Portland cement concrete or hot mix asphalt shall not be used for batching other materials.

Readout devices used for batching or hopper scales shall be marked at intervals evenly spaced throughout and shall be based on the scale's nominal rated capacity. These intervals shall not exceed 0.1 percent of the nominal rated capacity. Before use at a new site and then at 6-month intervals, all batching and hopper scales shall be approved under rules of the Weights and Measures section of the Washington State Department of Agriculture, or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In either case, the Design-Builder shall provide WSDOT with a copy of the final test results.

1-09.2(3) Specific Requirements for Platform Scales

Each platform scale shall be able to weigh the entire hauling vehicle or combination of connected vehicles at one time. No part of the vehicle or vehicle combination will be permitted off the platform as it is weighed. A tare weight shall be taken of each hauling vehicle at least once daily.

Any platform scale shall be installed and maintained with the platform level and with rigid bulkheads at either end to prevent binding or shifting. The readout device shall be marked at intervals of no more than 40 pounds. Test records shall show results to the nearest 20 pounds. During weighing operations, weights shall be read and recorded to the nearest 100 pounds. Before use at a new site and then at 6-month intervals, any platform

scale shall be: approved under rules of the Washington State Department of Agriculture's Weights and Measures section, or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In either case, the Design-Builder shall provide WSDOT with a copy of the final test results.

1-09.2(4) Specific Requirements for Belt Conveyor Scales

WSDOT may approve conveyor-belt weighing of untreated materials if the method and device meet all general requirements for weighing equipment. The recording tape, odometer, totalizer, calibration adjustment, and clock-time imprinter shall be kept locked and the WSDOT Engineer shall retain all keys. All belt-conveyor scales shall comply with the requirements for Belt-Conveyor Scales in the National Institute of Standards and Technology (NIST) Handbook No. 44, except where these specifications modify those requirements.

A static load test shall be made: each day after the belt-conveyor has run continuously for about 30 minutes, and again, immediately after the air temperature changes significantly. If the static load test reveals a need for adjustment, the Design-Builder shall perform a chain test. The Design-Builder shall make the computation of the test chain calibration, the calibration procedures and results, and related records available for the WSDOT Engineer's review. The test chain shall be clearly marked with its calibration, carried in a suitable container, and kept immediately available for testing.

1-09.2(5) Measurement

Scale Verification Checks

The Design-Builder shall verify the accuracy of each batch, hopper or platform scale. The frequency of verification checks will be such that at least one test weekly is performed for each scale used in weighing Contract items of Work.

The Design-Builder shall notify WSDOT at least 24 hours in advance of a scale verification.

Verification checks may not be routinely conducted for weighed material, whose proposal quantity multiplied by the Material Unit Price as shown in Table 5, Section 2.25, *Control of Materials*, has a value less than $20,000.

The verification will consist of one of the following methods and be at the Design-Builder's option:

- Weigh a loaded truck on a separate certified platform scale designated by the Design-Builder, for the purpose of scale verification.
- Weigh a vehicle that weighs at least 10,000 pounds on a separate certified scale and then check the Project scale with it.
- Establish a certified fixed load weighing at least 10,000 pounds as a check-weight. The certification shall consist of an affidavit affirming the correct weight of the fixed load.

Should the scale verification check reveal a weight difference of more than 0.5 percent, a second scale verification check shall be performed immediately. If the weight differences

of both comparison checks exceed the 0.5-percent limit, the Design-Builder shall immediately stop weighing and the scale shall be recertified at the Design-Builder's expense.

Belt Scales

To test the accuracy of a belt-conveyor scale, the Design-Builder shall weigh five or more payloads from sequential hauling units and compare these weights with weights of the same payloads taken on a separate certified platform scale. If the test results fluctuate, WSDOT may require more than five check loads. Conveyor weights will be based on tonnage values taken from the sealed odometer at the beginning and end of each check period.

If scale verification checks show the scale has been under weighing, it shall be adjusted immediately.

If scale verification checks show the scale has been overweighing, its operation will cease immediately until adjusted.

Minor Construction Items

If the specifications and plans require weight measurement for minor construction items, the Design-Builder may request permission to convert volume to weight. If WSDOT approves, an agreed factor may be used to make this conversion and volume may be used to calculate the corresponding weight for payment.

1-09.2(6) Payment

Unless specified otherwise WSDOT will pay for no materials received by weight unless they have been weighed as required in this Section or as required by another method WSDOT has approved in writing.

The Design-Builder shall not be compensated for any loss from under weighing that is revealed by scale verification checks.

If scale verification checks reveal that the scale is over weighing, then payment for all material weighed since the last valid scale verification check will be adjusted. WSDOT will calculate the combined weight of all materials weighed after the last verification check showing accurate results. This combined weight will then be reduced for payment by the percentage of scale error that exceeds 0.5 percent unless the Design-Builder demonstrates to the satisfaction of WSDOT that the defect in the scale was present for a lesser period of time.

The Contract Price covers all costs related to weighing and proportioning materials for payment. These costs include but are not limited to:

1. Furnishing, installing, certifying, and maintaining scales
2. Providing a weigher to operate a Design-Builder provided scale
3. Providing a weigher to operate a commercial scale, if necessary
4. Providing self-printing tickets, if necessary
5. Rerouting a truck for verification weighing

6. Assisting WSDOT with scale verification checks
7. Any other related costs associated with meeting the requirements of this Section

All costs to comply with this section, unless otherwise stated, are the responsibility of the Design-Builder.

1-09.3 *Scope of Payment*

The payment provided for in the Contract shall be full payment to the Design-Builder for:

1. Performing all design services, furnishing all materials and performing all construction and other Work under the Contract (including changes in the Work) in a complete and acceptable manner
2. All risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the Work
3. All expense incurred resulting from a suspension or discontinuance of the Work as specified under the Contract

Payment hereunder shall not relieve the Design-Builder of the obligation to make good any defective Work or materials.

1-09.3(1) Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 1-09.1. Unit prices shall be deemed to include all costs for labor, material, overhead, and profit; and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, WSDOT will issue a modified Change Order setting forth the final adjustment to the Contract Price.

1-09.4 *Equitable Adjustment*

The equitable adjustment provided for elsewhere in the Contract shall be determined in one or more of the following ways:

1. If the parties are able to agree, the price will be determined by using:
   (a) Unit prices
   (b) Other agreed-upon prices
2. If the parties cannot agree, the price will be determined by WSDOT using:
   (a) Unit Prices
   (b) Other means to establish costs

The following limitations shall apply in determining the amount of the equitable adjustment:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement in effect at the time the Work is performed, as referred to in Section 1-09.6.

2. To the extent any delay of performance was concurrently caused by WSDOT and the Design-Builder, the Design-Builder shall be entitled to a time extension to the extent of such concurrent delay, provided the Design-Builder complies with the provisions of Section 1-08.8. The Design-Builder shall not be entitled to an adjustment in the Contract Price for any concurrent delay.
3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be allowed.
4. No claim for consequential damages of any kind will be allowed.

1-09.5 *Deleted or Terminated Work*

WSDOT may delete portions of the Work by Change Order as provided in Section 1-04.4 or may terminate the Contract in whole or part as provided in Section 1-08.10(2). When the Contract is terminated in part, the partial termination shall be treated as a deletion Change Order for payment purposes under this Section.

When any item is deleted in whole or in part by Change Order or when the Contract is terminated in whole or in part, payment for deleted or terminated Work will be made as follows:

1. Payment for partially completed lump sum items will be as mutually agreed. If the parties cannot agree, the WSDOT Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4.
2. To the extent not paid for by the portion of the Contract Price allocated to completed Work, WSDOT will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Design-Builder in anticipation of performing the Work that has been deleted or terminated.
3. The total payment for any one item in the case of a deletion or partial termination shall not exceed the Contract Price as modified by approved Change Orders less the estimated cost (including overhead and profit) to complete the Work and less any amount paid to the Design-Builder for the item.
4. The total payment where the Contract is terminated in its entirety shall not exceed the total Contract Price as modified by approved Change Orders less those amounts paid to the Design-Builder before the effective date of the termination.
5. No claim for damages of any kind or for loss of anticipated profits on deleted or terminated Work will be allowed because of the termination or Change Order.

Contract Time shall be adjusted as the parties agree. If the parties cannot agree, WSDOT will determine the equitable adjustment for Contract Time.

Acceptable materials ordered by the Design-Builder prior to the date the Work was terminated as provided in Section 1-08.10(2) or deleted as provided in Section 1-04.4 by WSDOT, will either be purchased from the Design-Builder by WSDOT at the actual cost and shall become the property of WSDOT, or WSDOT will reimburse the Design-Builder for the actual costs connected with returning these materials to the suppliers.

1-09.6 *Force Account*

The terms of the Contract or of a Change Order may call for Work or material to be paid for by force account. If so, then the objective of this specification is to reimburse the Design-Builder for all costs associated with the Work, including costs of design, engineering, labor, small tools, supplies, equipment, specialized services, materials, applicable taxes and overhead, and to include a profit commensurate with those costs. The amount to be paid shall be determined as shown below for Construction forces:

1. **For Labor** - Labor reimbursement calculations shall be based on a "Project Labor List" (List) prepared and submitted by the Design-Builder and by any Subcontractor before that firm commences Force Account Work. Once a List is approved by WSDOT, it shall be used to calculate force account labor payment until a new List is submitted and approved. WSDOT may compare the List to payrolls and other documents and may, at any time, require the Design-Builder to submit a new List. The Design-Builder may submit a new List at any time without such a requirement. Prior payment calculations shall not be adjusted as a result of a new List.

   To be approved, the List must be accurate and meet the requirements of this Section. It shall include regular time and overtime rates for all employees (or work classifications) expected to participate in Force Account Work. The rates shall include the basic wage and fringe benefits, the current rates for Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA), the company's present rates for Medical Aid and Industrial Insurance premiums and the planned payments for travel and per diem compensation.

   In the event that an acceptable initial List or requested revised List is not received by the time that force account calculations are begun, the WSDOT Engineer will develop a List unilaterally, utilizing the best data available, that will be used until the Design-Builder's List is received and approved. Again, prior calculations, prepared using the WSDOT List, will not be revised as a result of differences with the Design-Builder's List.

   In addition to compensation for direct labor costs defined above, WSDOT will pay the Design-Builder 29 percent of the sum of the costs calculated for labor reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance required by Sections 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred, except paid sick leave. WSDOT will pay the Design-Builder an additional 2 percent of the sum of the costs calculated for labor reimbursement to cover the cost of paid sick leave. This amount will include any costs of safety training and health tests, but will not include such costs for unique Force Account Work that is different from typical Work and which could not have been anticipated at time of Proposal.

2. **For Materials** - WSDOT will reimburse invoice cost for Design-Builder-supplied materials. For the purpose of this provision, "Materials" shall include those items incorporated into the Work, supplies used during the Work, and items consumed. This cost shall include freight and handling charges and applicable taxes. Before Work is started, the WSDOT Engineer may require the Design-Builder to obtain

multiple quotations for the materials to be utilized and select the vendor with prices and terms most advantageous to WSDOT.

WSDOT will provide a list of the types and quantities of Design-Builder-supplied materials witnessed by WSDOT as being utilized in Force Account Work. The list will be furnished promptly after the material is incorporated, on a daily basis unless agreed otherwise. The Design-Builder may propose corrections to the list and will supply prices for the materials and other costs and return the list to WSDOT. To support the prices, the Design-Builder shall attach valid copies of vendor invoices. If invoices are not available for materials from the Design-Builder's stocks, the Design-Builder shall certify actual costs (at a reasonable level) by affidavit. WSDOT will review the prices and any Design-Builder-proposed corrections and, if reasonable, approve the completed list. Once approved, the prices will be utilized in the calculation of force account reimbursement for materials.

If, in the case of non-invoiced materials supported by the Design-Builder's affidavit, the price appears to be unreasonable, WSDOT will determine the cost for all or part of those materials, utilizing the best data available.

WSDOT reserves the right to provide materials. In this case, the Design-Builder will receive no payment for any costs, overhead, or profit arising from the value of the materials themselves. Additional costs to handle and place the Agency-furnished material shall be compensated as described in this specification.

In addition to compensation for direct materials cost, WSDOT will pay the Design-Builder 21 percent of the sum of the costs calculated for materials reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred.

3. **For Equipment** - WSDOT will reimburse the Design-Builder for the cost of equipment utilized in the Work. The equipment provided by the Design-Builder shall be of modern design and in good working condition. For the purpose of this provision, "provided" shall mean that the equipment is owned (either through outright ownership or through a long-term lease) and operated by the Design-Builder or Subcontractor or that the equipment is rented and operated by the Design-Builder or Subcontractor. Equipment that is rented with operator shall not be included here, but shall be considered a service and addressed according to Section 1-09.6 (item 4) below.

The amount of payment for any Design-Builder-owned equipment that is utilized shall be determined according to the version of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized. The rates listed in the Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental Agreement) shall be full compensation for all fuel, oil, lubrication, ordinary repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

Payment for rented equipment will be made on the basis of a valid invoice, covering the time period of the Work. Before Work is started, WSDOT may require the

Design-Builder to obtain multiple quotations for the rental of equipment to be utilized and select the vendor with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the vendor is not a firm independent from the Design-Builder or Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of submitted invoice.

In addition to the payments for Design-Builder-owned and rented equipment, one or more lump-sum payments may be made for small tools. The amount to be paid shall be determined as outlined in the AGC/WSDOT Equipment Rental Agreement.

WSDOT will add 21 percent to equipment costs to cover Project overhead, general company overhead, profit, bonding, insurance required by Sections 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred. This markup will be over and above those equipment costs and will not be adjusted for any equipment overhead amounts included in the Blue Book rates.

Current copies of the Rental Rate Blue Book and the AGC/WSDOT Equipment Rental Agreement will be maintained on WSDOT's website at www.wsdot.wa.gov

4. **For Services** - Compensation under force account for specialized services shall be made on the basis of an invoice from the providing entity. A "specialized service" is a work operation, which is not typically done by worker classifications as defined by L&I and by the Davis Bacon Act, and therefore bills by invoice for work in road, bridge and municipal construction. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the service to be utilized and select the provider with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the service invoice is submitted by a Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of the submitted invoice.

Except as noted below, WSDOT will pay the Design-Builder an additional 21 percent of the sum of the costs included on invoices for specialized services to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

When a supplier of services is compensated through invoice, but acts in the manner of a Subcontractor, as described in item 6 of this Section, then markup for that invoice shall be according to item 6. "For the Design-Builder Markup on Subcontractor's Work."

The cost of labor for non-construction-related Work (including design, surveying, utility coordination, permits, professional environmental services, and similar aspects of the Work), whether provided by the Design-Builder or a Subcontractor, will equal the sum of (1) actual wages (i.e. the base wage paid to the employee exclusive of fringe benefits), plus (2) a labor surcharge of 150 percent on such amount, which shall constitute full compensation for all state and Federal payroll, unemployment and other taxes, workers' compensation, fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and all other payments made to,

or on behalf of, the workers, in excess of actual wages, as well as for overhead. This amount shall be considered full compensation and no further markups will be allowed.

5. **For Mobilization** - Force account mobilization is defined as the preparatory Work performed by the Design-Builder including procurement; loading and transportation of tools and equipment; and personal travel time (when such travel time is a contractual obligation of the Design-Builder or a customary payment for the Design-Builder to all employees). Mobilization also includes the costs incurred during demobilization. Pro-rata adjustments may be made when the mobilization applies to both force account and other Contract Work. WSDOT will pay for mobilization for off-site preparatory Work for force account items provided that notice has been provided sufficiently in advance to allow WSDOT to witness the activity, if desired.

   Any costs experienced during mobilization activities for labor, equipment, materials, or services shall be listed in those Sections of the force account summary and paid accordingly. Note that no additional mobilization expense will be paid for any Equipment presently on-site.

6. **For The Design-Builder Markup on Subcontractor's Work** - When Work is performed on a force account basis by one or more approved Subcontractors, by lower tier Subcontractors or suppliers, or through invoice by firm(s) acting in the manner of a Subcontractor, the Design-Builder will be allowed an additional markup, from the table below, applied to the costs computed for Work done by each Subcontractor through items 1, 2, 3, 4, and 5 of this Section, to compensate for all administrative costs, including Project overhead, general company overhead, profit, bonding, insurance required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

   A firm may be considered to be acting as a Subcontractor when WSDOT observes one or more of the following characteristics:

   (a) The Person in charge of the firm's activities takes an active role in managing the overall Project, including extensive coordination, interpretation of plans, interaction with WSDOT, or management of a complex and interrelated operation.

   (b) Rented equipment is provided fueled, operated, and maintained by the firm. Operators of rented equipment are supervised directly by the firm's representative. There is little interaction between the Design-Builder and the employees of the firm.

   (c) The firm appears to be holding the risk of performance and quality of the Work.

   (d) The firm appears to be responsible for liability arising from the Work.

Markups on Work Performed by Subcontractor(s):

1. On amounts paid for work performed by each Subcontractor on each force account and calculated through items 1 - 5 up to $25,000	12 percent
2. On amounts greater than $25,000 up to $100,000	10 percent

3. On amounts greater than $100,000 7 percent

The amounts and markup rates shall be calculated separately for each Subcontractor on each force account item established.

The payments provided above shall be full payment for all Work done on a force account basis. The calculated payment shall cover all expenses of every nature, kind, and description, including those listed above and any others incurred on the work being paid through force account.

Nothing in this provision shall preclude the Design-Builder from seeking an extension of time or time-related damages to unchanged Work arising as a result of the Force Account Work. The amount and costs of any Work to be paid by force account shall be computed by WSDOT, and the result shall be final as provided in Section 1-05.1.

An item which was included in the original scope of the Work will not be paid as force account unless a change as defined in Section 1-04.4 has occurred and the provisions require a payment adjustment.

Force Account Work may, at any time and by agreement of the parties, be converted to agreed unit prices or lump sums applicable to the remaining Work.

1-09.6(1) Daily Reports

The Design-Builder shall furnish daily, on forms approved by WSDOT, reports of Force Account Change Order Work. The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs to date for the Force Account Change Order Work. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation. All such records and reports shall be made immediately available to WSDOT upon its request. The cost of furnishing such reports shall be included in the Design-Builder's overhead and fee percentages.

1-09.6(2) Reports As Basis for Payment

All Force Account Change Order reports shall be signed by the Design-Builder or its authorized representative. WSDOT will compare its records with the Design-Builder's reports, make the necessary adjustments and compile the costs of Force Account Change Order work. When such reports are agreed upon and signed by both parties, they will become the basis of payment.

1-09.7 *Mobilization*

The mobilization payment is intended to compensate the Design-Builder for certain start-up expenses associated with performance of design and construction Work hereunder. Items which are not to be included in mobilization include, but are not limited to, profit, interest on borrowed money, overhead, or management costs.

The Design-Builder shall identify, in the price loaded Contract Schedule, a dollar amount for mobilization. This amount shall be represented by price loaded schedule activities in the Design-Builder's 90-Day Look-Ahead Schedule and its Baseline Contract Schedule (See Section 1-08.3).

Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.

1-09.8 *Payment for Material on Hand*

WSDOT may reimburse the Design-Builder for materials purchased before their incorporation into the Project if they:

1. Are identified as separate and distinct activities in the accepted price loaded Baseline Contract Schedule
2. Have substantiated prices assigned to the schedule activities as set forth in Section 1-08.3(9)
3. Are invoiced as described in Section 1-09.9
4. Consist of reinforcing steel, bronze plates, structural steel, machinery, piling, timber and lumber (not including forms or falsework), large signs unique to the Project, prestressed concrete beams or girders, or other materials WSDOT may approve

WSDOT may reimburse the Design-Builder for traffic signal controllers when the accepted Baseline Contract Schedule contains price-loaded activities as follows:

1. 50 percent when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory
2. 100 percent when the traffic signal controller is approved for shipment to the Project by the State Materials Laboratory

The Design-Builder shall provide sufficient written evidence of production costs to enable WSDOT to compute the cost of Design-Builder produced materials (such as sand, gravel, surfacing material, or aggregates). For other materials, the Design-Builder shall provide invoices from material suppliers, detailed sufficiently to enable WSDOT to determine the actual costs. Payment for materials on hand shall not exceed the amount allocated thereto in the CPM and Payment Schedule.

If payment is based upon an unpaid invoice, the Design-Builder shall provide WSDOT with a paid invoice within 60 Calendar Days after WSDOT's initial payment for materials on hand. If the paid invoice is not furnished in this time, any payment WSDOT had made will be deducted from the next progress estimate and withheld until the paid invoice is supplied.

WSDOT will not pay for material on hand when the invoice cost is less than $2,000. As materials are used in the Work, credits equaling the partial payments for them will be taken on future estimates. Partial payment for materials on hand shall not constitute acceptance. Any material will be rejected if found to be faulty even if partial payment for it has been made.

1-09.9 *Payments*

1-09.9(1) Invoicing Requirements

The Design-Builder shall submit monthly invoices to the WSDOT on a mutually agreed date consistent with the progress payment cutoff date set by WSDOT.

State Fiscal Year End Closure Requirements (RCW 43.88) – The Design-Builder shall submit an invoice for all un-invoiced work completed through June 30th (end of State fiscal year) by July 15th of the same year.

If the Design-Builder is unable to provide an invoice for such cost by this date, an ESTIMATE of what is owed by WSDOT through June 30th must be submitted by July 15th of the same year for the most probable invoice amount. The estimated invoice must be labeled "ESTIMATE". WSDOT will accrue this estimated invoice amount. To release accrued amounts, a final invoice for the period accrued must be submitted as soon as all final payments are known. This requirement applies to invoices from the Design-Builder and all subs providing services under the contract and includes any direct expense which applies to the final fiscal year invoice.

Failure to comply with these requirements may result in the need for WSDOT to file for an approval of belated claims pursuant to chapter 43.88 RCW, which may significantly delay payment. WSDOT shall not be required to pay to the Design-Builder late payment fees, interest, or incidental cost incurred by the Design-Builder or any other cost related to a delayed payment if the Design-Builder fails to comply with the invoice requirements of this Section.

Partial Payments - No payment item shall be included on an invoice for Work that has been documented as deficient by the QA staff, or Work that is not being performed in accordance with the Contract.

Reimbursement - If requested by WSDOT, the Design-Builder shall provide separate invoices for Work subject to reimbursement by the Federal government or third parties. Such invoices shall be organized to meet all applicable reimbursement requirements and to facilitate the reimbursement process.

1-09.9(1).1 Maximum Rate of Payment

In this Section, the word "payment" refers to payments from WSDOT to the Design-Builder, and includes not only progress payments for the Contract Price, but also includes payments by WSDOT to the Design-Builder for all other causes including, but not limited to incentives, disincentives, and Change Orders.

1-09.9(1).2 Invoicing Documents

No invoice will be processed until WSDOT has received the documents listed in this Contract.

The invoice value will be based on the agreed-upon progress for the Contract Schedule activities as outlined in Section 1-08.3 and on other exception items as expressly detailed in the Payments Section.

Submit the following documents with each invoice:

1. Invoice cover sheet
2. Progress report including accepted, updated price-loaded schedule
3. Certification by Design and Construction QA Managers

4. Invoice data sheet(s) and supporting documents based on the price loaded Contract Schedule
5. Monthly design exception report

Make all invoices and progress reports consistent with the accepted Baseline Contract Schedule or the applicable accepted Monthly Contract Schedule Update.

Obtain the signatures of the Design-Builder's Project Manager, the Design QA Manager and the Construction QA Manager on the progress report.

1-09.9(1).3 Invoice Cover Sheet

Indicate the following on the invoice cover sheet:

1. Project number and title
2. Invoice number (numbered consecutively, starting with "1")
3. Period covered by the invoice (specific beginning and ending Calendar Days)
4. For each Contract compensation item:
   (a) Current approved Contract amount
   (b) Previous period total to date
   (c) This period earnings
   (d) New total to date earnings
5. Subtotal each column above
6. Add applicable sales tax
7. Deduct retention, (if any)
8. Total net earned to date for the Project as a whole
9. Authorized signature, title of signer, and date of signature
10. Signature of the Design and Construction QA Managers

1-09.9(1).4 Progress Report

The Design-Builder shall submit a Monthly Progress Report to WSDOT along with its Monthly Invoice. This Report will consist of two parts: a narrative report addressing progress of the Work and performance of the parties, and a technical report concerning operation and maintenance of the Project schedule as set forth in Section 1-08.3(7).

The Narrative Report will include the following:

1. An "executive summary" of the Project achievements and difficulties for the period just ended and an overview of the goals for the period just beginning.
2. An analysis of the Project condition with respect to on time and on budget performance:
   (a) Include discussion of Contract milestones and critical path.

(b) Describe plans to achieve Contract completion dates including any special measures that may be necessary.

3. A more detailed review for design and for construction of each discipline past performance and future goals.
4. Discuss areas of special concern such as quality management, environmental protection, utility coordination, public relations, and cooperation with adjacent contractors.
5. Address status of required submittals, requests for information, design approvals, and other administrative issues that may impact timely performance.
6. Review past period safety performance and issues for forthcoming period.
7. Offer a self-assessment of performance against incentive performance issues.
8. Review pending and potential changes to determine actions required for early resolution.

Attach the Monthly Contract Schedule Update Submittal Package as required in Section 1-08.3(7).

1-09.9(1).5 Certification by Design and Construction Quality Assurance Managers

Each invoice shall include a certificate signed by the Design and Construction QA Managers that certifies:

1. All Work (including that of designers, Subcontractors, suppliers, fabricators, and builders) has been tested and inspected by the Design-Builder's Design QA staff and Construction QA staff.
2. All Work, except as specifically noted in the certification, conforms to the requirements of the Contract.
3. The design and construction QMPs and all of the measures and procedures provided therein are functioning properly and are being followed.
4. All As Built Plans and documentation are complete, current, and conform to the QMP requirements.

1-09.9(1).6 Invoice Data Sheets and Supporting Documents

WSDOT and the Design-Builder agree to the process, requirements, exceptions, and format of invoice data sheets and supporting documents as described in this Section.

General - With the exception of force account or other "exception" items, WSDOT will base payments on an estimate of the percentage of Work completed as mutually agreed with the Design-Builder, and not on measured quantities. For each activity, the Design-Builder shall describe how the percent complete was determined. Payments for any activity shall not exceed 95% until all close out documents for that activity have been reviewed and approved by WSDOT Engineer. The Design-Builder shall design a Primavera report to WSDOT's satisfaction that can be submitted in a text searchable PDF electronic file format and comma-delimited ASCII electronic file format. The report shall contain an individual line entry for each price-loaded activity in the Contract Schedule.

For each activity, it will show the total percent complete, the percent completed this period, and the total dollar billing for the activity. The report data will be grouped and subtotaled by Cost Account with activities sorted in start sequence within the groups.

Exception Items - WSDOT will pay the Design-Builder for items not included in the price-loaded schedule. These include, but are not necessarily limited to Force Account Work, Incentives, Disincentives, and Price Adjustments provided in the Contract. For each of these, the Design-Builder will assemble the required supporting documents, tally the value of the various items and include them as a separate sub-total line(s) on its monthly invoice.

Format - The Design-Builder shall present the format of the invoice data sheets for WSDOT approval at least 14 Calendar Days before the submittal of the first invoice. Once WSDOT has approved the invoice format, the format shall not be changed unless the change is approved in writing by WSDOT.

1-09.9(2) Payment

WSDOT and the Design-Builder agree to the payment process as described in this Section.

General - WSDOT will simultaneously review each invoice and progress report in detail and process the invoice for payment. Partial Payments will be made once each month. If WSDOT questions or disputes any item, it will redline the item and refer the item back to the Design-Builder for resolution before payment. WSDOT will deduct from the payment the value of the items not resolved to its satisfaction before the payment date.

Incorrect Invoices - If problems persist in obtaining correct invoices and the required accompanying documents from the Design-Builder, WSDOT reserves the right to withhold payment until correct and complete invoices and documents have been submitted.

Failure to perform any of the obligations under the Contract by the Design-Builder may be decreed by WSDOT to be adequate reason for withholding any payments until compliance is achieved.

Upon Completion and after Final Inspection (Section 1-05.11), the amount due the Design-Builder under the Contract will be paid based upon the final estimate made by WSDOT and presentation of a Final Contract Voucher Certification to be signed by the Design-Builder. The Design-Builder's signature on such voucher shall be deemed a release of all claims of the Design-Builder unless a Certified Claim is filed in accordance with the requirements of Section 1-09.11 and is expressly accepted from the Design-Builder's certification on the Final Contract Voucher Certification. The date the Secretary signs the Final Contract Voucher Certification constitutes the Final Acceptance Date (Section 1-05.12).

If the Design-Builder fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for Completion and Final Acceptance of the Contract, WSDOT reserves the right to establish a Completion Date (for the purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract. Unilateral Final Acceptance will occur only after the Design-Builder has been

provided the opportunity, by written request from the WSDOT Engineer, to voluntarily submit such documents. If voluntary compliance is not achieved, formal notification of the impending establishment of a Completion Date and unilateral Final Acceptance will be provided by email with a delivery confirmation from the Secretary to the Design-Builder, which will provide 30 Calendar Days for the Design-Builder to submit the necessary documents. The 30 Calendar Day period will begin on the date the email with a delivery confirmation is received by the Design-Builder. The date the Secretary unilaterally signs the Final Contract Voucher Certification shall constitute the Completion Date and the Final Acceptance date (Section 1-05.12). The reservation by WSDOT to unilaterally accept the Contract will apply to contracts that are physically completed in accordance with Section 1-08.5, or for contracts that are terminated in accordance with Section 1-08.10. Unilateral Final Acceptance of the Contract by WSDOT does not in any way relieve the Design-Builder of its responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

Payment to the Design-Builder of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

1-09.9(2).1 Asphalt Cost Price Adjustment

WSDOT will make an asphalt cost price adjustment, either a credit or a payment, for qualifying changes in the reference cost of asphalt binder. The adjustment will be applied to partial payments made according to Section 1-09.9 for the following items of work:

- All classes of HMA used on the Project

The adjustment is not a guarantee of full compensation for changes in the cost of asphalt binder. WSDOT does not guarantee that asphalt binder will be available at the reference cost.

WSDOT will establish the asphalt binder reference cost twice each month and post the information on the Agency website at: https://wsdot.wa.gov/business-wsdot/how-do-business-us/public-works-contracts/payments-reporting/asphalt-binder-reference-cost. The reference cost will be determined using posted prices furnished by Poten & Partners, Inc. If the selected price source ceases to be available for any reason, then WSDOT will select a substitute price source to establish the reference cost.

The base cost established for this Contract is the reference cost posted on the WSDOT website for the “Date Effective” immediately preceding the Proposal Due Date.

Adjustments will be based on the most current reference cost for Western Washington or Eastern Washington as posted on the Agency website, depending on where the work is performed. For work completed after the completion times specified in the Contract, the adjustment will be based on the posted reference cost for the month during which contract time was exhausted. The adjustment will be calculated as follows:

No adjustment will be made if the reference cost is within 5 percent of the base cost.

If the reference cost is greater than or equal to 105 percent of the base cost, then

$$\text{Adjustment} = (\text{Current Reference Cost} - (1.05 \times \text{Base Cost})) \times (Q \times 0.056)$$

If the reference cost is less than or equal to 95 percent of the base cost, then

Adjustment = (Current Reference Cost – (0.95 x Base Cost)) x (Q x 0.056)

Where Q = total tons of all classes of HMA paid in the current month's progress payment.

The Design-Builder shall perform all calculations and accounting, and provide all documentation required to support the price adjustment for WSDOT approval. This includes submission of HMA quantity amounts along with supporting documentation such as HMA quantity tickets as part of the Invoicing Documents, for each month that HMA is used on the Project.

1-09.9(3) Vacant

1-09.10 *Partnering*

WSDOT encourages partnering among WSDOT, the Design-Builder, and its Subcontractors. The partnering process is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals, including achieving completion of the Work on time, within budget, and in accordance with its intended purpose. A primary consideration of partnering is the prompt and equitable resolution of issues affecting the conduct of the Work under the Contract and the rights and responsibilities of the respective parties.

Participation in partnering shall be bilateral and completely voluntary. Any cost associated with this partnering will be agreed to by both parties and will be shared equally between WSDOT and the Design-Builder, except for travel expenses, which will be borne by each party.

Within 30 Calendar Days of the NTP, WSDOT and the Design-Builder shall mutually select a third-party facilitator to conduct a team building workshop for the attendees. The initial workshop should be held within 90 Calendar Days of the NTP. The workshop is expected to last approximately 1 day. The Design-Builder's and the major Subcontractor's key staff as well as WSDOT's key staff responsible for the management and administration of the Contract should attend the workshop. During the initial workshop, a program for the continuation and maintenance of the partnering initiative will be developed for use through the duration of the Project.

Follow-up sessions may be held periodically throughout the duration of the Contract, as agreed to by WSDOT and the Design-Builder.

Each party may withdraw from partnering upon written notice to the other. However, no claim or dispute settled or change approved through partnering may be revived. The establishment of partnering and any charter will not change the legal relationship of the parties to the Contract, nor relieve either party from any terms of the Contract. Neither the language of this Section, nor any statements made nor documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

1-09.11 *Claims*

1-09.11(1) Vacant

1-09.11(2) Claims

If the Design-Builder claims that additional payment is due and the Design-Builder has pursued and exhausted all the means provided in Section 1-04.5 and 1-04.5(1) to resolve a dispute, the Design-Builder may file a claim as provided in this Section. If either WSDOT or the Design-Builder does not accept the Dispute Review Board recommendation pursuant to Section 1-04.5(1), the Design-Builder shall submit to the WSDOT Engineer a written notification of intent to file a Certified Claim, within 14 Calendar Days of the acceptance of Board recommendation. If a Dispute Review Board was not utilized, the Design-Builder shall submit to the WSDOT Engineer written notification of intent to file a Certified Claim within 14 Calendar Days from the issuance of the WSDOT Engineer's determination on merit of the protest pursuant to Section 1-04.5. The Design-Builder agrees to waive any claim for additional payment if the written notifications provided in Section 1-04.5 are not given, or if WSDOT is not afforded reasonable access by the Design-Builder to complete records of actual cost and additional time incurred as required by Section 1-04.5, or if a claim is not filed as provided in this Section. The fact that the Design-Builder has provided a proper notification, provided a properly filed claim, or provided WSDOT access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the Certified Claim.

All Certified Claims filed by the Design-Builder shall be in writing and in sufficient detail to enable WSDOT to ascertain the basis and amount of compensation and time claim, if any. All claims shall be submitted to the WSDOT Engineer as provided in Section 1-05.15. At a minimum, the following information must accompany each claim submitted:

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 WSDOT individual, official, or employee involved in or knowledgeable about the claim
4. The specific provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim
5. If the claim relates to a decision of WSDOT, which the Contract leaves to WSDOT's discretion or as to which the Contract provides that WSDOT's decision is final, the Design-Builder shall set out in detail all facts supporting its position relating to the decision of WSDOT
6. The identification of any documents and the substance of any oral communications that support the claim
7. Copies of any identified documents, other than WSDOT documents and documents previously furnished to WSDOT by the Design-Builder, that support the claim

(manuals which are standard to the industry, used by the Design-Builder, may be included by reference).

8. If an extension of time is sought:
   (a) The specific days and dates for which it is sought
   (b) The specific reasons the Design-Builder believes a time extension should be granted
   (c) The specific provisions of Section 1-08.8 under which it is sought
   (d) The Design-Builder's analysis of its progress schedule to demonstrate entitlement to a time extension
9. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
   (a) Labor
   (b) Materials
   (c) Direct equipment - The actual cost for each piece of equipment for which a claim is made or in the absence of actual cost, the rates established by the AGC/WSDOT Equipment Rental Agreement, which was in effect when the Work was performed. In no case shall the amounts claimed for each piece of equipment exceed the rates established by that Equipment Rental Agreement even if the actual cost for such equipment is higher. WSDOT may audit the Design-Builder's cost records as provided in Section 1-09.12 to determine actual equipment cost. The following information shall be provided for each piece of equipment:
      (i) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12 "G," Tractor Crawler ROPS & Dozer Included Diesel, etc.).
      (ii) The hours of use or standby.
      (iii) The specific day and dates of use or standby.
   (d) Job overhead.
   (e) Overhead (general and administrative).
   (f) Subcontractor's claims.
   (g) Other categories as specified by the Design-Builder or WSDOT.
10. A statement shall be submitted to the WSDOT Engineer containing the following language:

    _____, _____
    (name) (title)

    of _____
    (company)

    Under the penalty of law for perjury or falsification, the undersigned hereby certifies that the claim for extra compensation and time, if any, made herein for Work on this

Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between the parties.

Dated _____/s/_____

If the Certified Claim, after consideration by the WSDOT Engineer, is found to have merit, the WSDOT Engineer will make an equitable adjustment either in the amount of costs to be paid in accordance with Section 1-09.4 or in the time required for the Work, in accordance with Section 1-08.8 or both. If the WSDOT Engineer finds the Certified Claim to be without merit, no adjustment will be made. If the Design-Builder does not accept the WSDOT Engineer's determination as to its Certified Claim, then the Design-Builder shall pursue its remedies in accordance with Section 1-09.13.

It will be the responsibility of the Design-Builder to keep full and complete records of the costs and additional time incurred for any alleged claim. The Design-Builder shall permit WSDOT to have access to those records and any other records as may be required by WSDOT to determine the facts or contentions involved in the claim. The Design-Builder shall retain those records for a period of not less than 3 years after Final Acceptance.

The Design-Builder shall pursue administrative resolution of any claim with WSDOT or the designee of WSDOT.

When the Design-Builder fails to submit such Certified Claim information and details as described in this Section with the Final Contract Voucher Certification or prior to the WSDOT's unilateral Final Acceptance, all claims, including Certified Claims shall be waived as provided in Section 1-09.9.

Provided that the Design-Builder is in full compliance with all the provisions of this Section and after the formal Certified Claim document has been submitted, WSDOT will respond, in writing, to the Design-Builder as follows:

1. Within 45 Calendar Days from the date the claim is received by WSDOT if the claim amount is less than $200,000.
2. Within 90 Calendar Days from the date the claim is received by WSDOT if the claim amount is equal to or greater than $200,000.
3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Design-Builder will be notified within 14 Calendar Days from the date the claim is received by WSDOT as to the amount of time, which will be necessary for WSDOT to prepare its response.

Full compliance by the Design-Builder with the provisions of this Section is a contractual condition precedent to the Design-Builder's right to seek judicial relief.

1-09.11(3) Time Limitation and Jurisdiction

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Design-Builder has against WSDOT arising from the Contract shall be brought within 180 Calendar Days from the date of Final Acceptance (Section 1-05.12) of the Contract by WSDOT; and it is further agreed that any such claims or causes of action shall be brought, unless otherwise noted, only in the Superior Court of Thurston County unless otherwise agreed in writing by the parties. The

parties understand and agree that the Design-Builder's failure to bring an action in the proper forum within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Design-Builder asserts against WSDOT arising from the Contract are filed with WSDOT, initiated in arbitration, or initiated in court, the Design-Builder shall permit WSDOT to have timely access to any records deemed necessary by WSDOT to assist in evaluating the claims or action.

1-09.12 *Audits*

1-09.12(1) General

The Design-Builder's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than 3 years after the date of Final Acceptance. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that the wage, payroll, and cost records of all Subcontractors and all lower tier Subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of WSDOT or by an auditor under contract with WSDOT. The Design-Builder, Subcontractors, or lower tier Subcontractors shall provide adequate facilities, acceptable to the WSDOT Engineer, for the audit during normal business hours. The Design-Builder's Subcontractors or lower tier Subcontractors shall make GFE to cooperate with the auditors. If an audit is to be commenced more than 60 Calendar Days after the Final Acceptance, the Design-Builder will be given 20 Calendar Days' notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is completed.

1-09.12(2) Audit Claims

All Certified Claims filed against WSDOT shall be subject to audit at any time following the filing of the claim. Failure of the Design-Builder, Subcontractors, or lower tier Subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of the Design-Builder, Subcontractors, or lower tier Subcontractors shall constitute a waiver of a claim and shall bar any recovery thereunder.

1-09.12(3) Required Documents for Audits

At a minimum, the auditors shall have available to them the following electronic documents:

1. Daily time sheets and supervisor's daily reports
2. Collective Bargaining Agreements
3. Insurance, welfare, and benefits records
4. Payroll registers
5. Earnings records

6. Payroll tax forms
7. Material invoices and requisitions
8. Material cost distribution worksheet
9. Equipment records (list of company equipment, rates, etc.)
10. Vendors', rental agencies', Subcontractors', and lower tier Subcontractors' invoices
11. True and complete copies or originals of all contracts (including leases and purchase orders), between the Design-Builder and each of its Subcontractors and suppliers, and all lower tier Subcontractor contracts and all supplier contracts
12. Subcontractors' and lower tier Subcontractors' payment certificates
13. Canceled checks (payroll and vendors)
14. Job cost reports, including monthly totals
15. Job payroll ledger
16. General ledger
17. Cash disbursements journal
18. Financial statements for all years reflecting the operations on this Contract. In addition, WSDOT may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 3 years following Final Acceptance
19. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others
20. If a source other than depreciation records is used to develop costs for the Design-Builder's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents
21. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim
22. Worksheets 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
23. Worksheets, software, and all other documents used by the Design-Builder to prepare its Proposal

An audit may be performed by employees of WSDOT or a representative of WSDOT. The Design-Builder and its Subcontractors shall provide adequate facilities acceptable to WSDOT for the audit during normal business hours. The Design-Builder and all Subcontractors shall cooperate with WSDOT's auditors.

1-09.13 *Claims Resolution*

1-09.13(1) General

Any claims or causes of action which the Design-Builder has against WSDOT arising from the Contract shall be resolved, as prescribed herein, through binding arbitration or litigation.

The Design-Builder and WSDOT mutually agree that those claims or causes of action which total $1,000,000 or less, which are not resolved by mediation, shall be resolved through mandatory and binding arbitration as described herein, subject to the limitations described in Section 1-09.13(3).3.

The Design-Builder and WSDOT mutually agree that those claims or causes of action in excess of $1,000,000, which are not resolved by mediation, shall be resolved through litigation unless the parties mutually agree in writing to resolve the claim through binding arbitration.

1-09.13(1).1 Conditions Precedent to Binding Arbitration or Litigation

Prior to seeking claims resolution through arbitration or litigation, the Design-Builder shall proceed in accordance with Sections 1-04.5 and 1-09.11. The provisions of Sections 1-04.5 and 1-09.11 must be complied with in full as a condition precedent to the Design-Builder's right to seek claim resolution through binding arbitration or litigation.

1-09.13(1).2 Time Limitation

For the convenience of the parties to the Contract, it is mutually agreed by the parties that any arbitration or litigation shall be initiated within 180 Calendar Days from the "acceptance date" described in Section 1-05.12. Arbitration shall be deemed to be initiated on the date the Design-Builder has successfully completed the requirements of Section 1-09.13(3).2. Litigation shall be deemed to be initiated on the date the Design-Builder files a cause of action with the Thurston County Superior Court, or such other Superior Court as mutually agreed to in writing by the parties. The parties understand and agree that the Design-Builder's failure to initiate arbitration or initiate litigation within the time period provided shall be a complete bar to any such claims or causes of action.

1-09.13(2) Mediation

After WSDOT has been given the time and opportunity to respond to the Design-Builder as provided in Section 1-09.11(2), mediation may be used upon mutual agreement of the Design-Builder and WSDOT. When parties mutually agree to use mediation, the following conditions apply:

1. The cost of the mediation process shall be shared equally by both parties with each party bearing its own preparation costs.
2. The mediation shall be agreed upon by the parties and shall be conducted within the State at a time and place agreeable.
3. The Design-Builder agrees that the participation in mediation does not in any way waive the requirement that binding arbitration or litigation proceedings must

commence within 180 Calendar Days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

1-09.13(3) Arbitration

1-09.13(3).1 Arbitration General

Arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. For Certified Claims with an amount less than or equal to $250,000 the current version of the *Construction Industry Arbitration Rules and Mediation Procedures Fast Track Procedures* shall be used.
2. For Certified Claims with an amount greater than $250,000 and less than or equal to a $1,000,000, the current version of the *Construction Industry Arbitration Rules and Mediation Procedures Fast Track Procedures* shall be subject to the limitation in Section 1-09.13(3).3.

Certain aspects of the arbitration may be held by video conference if agreed by the parties and the arbitrator. If aspects of the arbitration require the parties to be at the same physical location, the locale shall be as agreed by the parties and the arbitrator, but in any case within the State. If the parties and the arbitrator are unable to agree, the locale shall be in the city in which the WSDOT's headquarters is located.

WSDOT and the Design-Builder mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of Thurston County or such other Superior Court as mutually agreed to in writing by the parties. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

1-09.13(3).2 Procedures to Initiate Arbitration

The Design-Builder shall file a demand with the AAA in accordance with item (a) "Filing a Demand", of Section R-4 "Filing Requirements Under Arbitration Agreement in a Contract", of The Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association, amended effective July 1, 2015. The fee schedule used shall be the fee schedule effective on the date of filing. The Design-Builder shall notify the WSDOT Engineer, in writing, that a demand has been filed with the AAA.

1-09.13(3).3 Limitations on Arbitration Related to Physical Completion

Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to binding arbitration prior to Physical Completion of the Project, provided the Design-Builder certifies in writing that claims for delays or impacts to the Work will not result from the dispute.

Unless WSDOT and the Design-Builder agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from the Contract must be brought in a single arbitration hearing and only after Physical Completion has occurred. The total of those unresolved claims cannot be greater than $1,000,000 to be eligible for arbitration.

The Design-Builder and WSDOT mutually agree that those Certified Claims in excess of $1,000,000, submitted in accordance with Section 1-09.11 and not resolved by nonbinding Alternative Disputes Resolution (ADR) processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.

1-09.13(4) Venue for Litigation

Litigation shall be brought in the Superior Court of Thurston County or such other Superior Court as mutually agreed to in writing by the parties. It is mutually agreed by the parties that when litigation occurs, the Design-Builder shall permit WSDOT to have timely access to any records deemed necessary by WSDOT to assist in evaluating the claims or action.