Request for Proposal

TEMPLATE

April 1, 2013

Chapter 1: General Provisions

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TABLE OF CONTENTS

1-01 Definitions and Terms 1
1-01.1 General 1
1-01.2 Abbreviations 1
1-01.3 Definitions 4

1-02 Certifications and Representations 17
1-02.1 Responsibility For Design 17
1-02.2 Disclaimer Regarding Documentation 17
1-02.3 Design Professional Licensing Requirement 18
1-02.4 Examination of Site of Work 18
1-02.5 Further Assurances 20
1-02.6 Intentionally Omitted 21
1-02.7 Intentionally Omitted 21
1-02.8 Noncollusion Declaration and Lobbying Certification 21

1-03 Interpretation of Contract Documents 22
1-03.1 Contract Documents 22
1-03.2 Order of Precedence 22
1-03.3 Integration of WSDOT Standard Specifications and Cited References into Contract 23
1-03.4 Contract Bond 23
1-03.5 Ambiguities 24
1-03.6 Interpretations 25
1-03.7 Approvals and Acceptances 25
1-03.8 Computation of Periods 26
1-03.9 Waiver 26
1-03.10 Limitation on Third Party Beneficiaries 26
1-03.11 Severability 27
1-03.12 Headings 27
1-03.13 Amendments 27
1-03.14 Governing Law 27
1-03.15 Escrowed Proposal Documents (EPD) 27

1-04 Scope of the Work 30
1-04.1 Intent of Contract 30
1-04.2 Intentionally Omitted 32
1-04.3 Intentionally Omitted 32
1-04.4 Changes 32
1-04.5 Procedure and Protest by the Design-Builder 38
1-04.6 Intentionally Omitted 39
1-04.7 Differing Site Conditions (Changed Conditions) 39
1-04.8 Progress Estimates and Payments 40
1-04.9 Intentionally Omitted 40
1-04.10 Use of Materials Found on the Project 40
1-04.11 Final Cleanup 41

1-05 Control of Work 42
1-05.1 Authority of WSDOT 42
1-05.2 Authority of Assistants and Inspectors 43
1-05.3 Plans and Working Drawings 43
1-05.4 Performance 44
1-05.5 Intentionally Omitted 44
1-05.6 Inspection of Work and Materials 44
1-05.7 Removal of Defective Work 45

1-05.8 Intentionally Omitted ... 46
1-05.9 Intentionally Omitted ... 46
1-05.10 Guarantees ... 46
1-05.11 Final Inspection ... 46
1-05.12 Final Acceptance ... 46
1-05.13 Superintendents, Labor, and Equipment of The Design-Builder ... 47
1-05.14 Cooperation With Other Contractors ... 48
1-05.15 Method of Serving Notices ... 48
1-05.16 General Warranties ... 48

1-06 Control of Materials ... 53

1-07 Legal Relations and Responsibilities to the Public ... 54
1-07.1 Laws to be Observed ... 54
1-07.2 State Taxes ... 55
1-07.3 Forest Protection and Merchantable Timber Requirements ... 56
1-07.4 Sanitation ... 56
1-07.5 Intentionally Omitted ... 56
1-07.6 Permits and Licenses ... 56
1-07.7 Load Limits ... 57
1-07.8 High Visibility Apparel ... 58
1-07.9 Wages ... 59
1-07.10 Worker's Benefits ... 64
1-07.11 Requirements for Nondiscrimination ... 65
1-07.12 Federal Agency Inspection ... 94
1-07.13 The Design-Builder's Responsibility for Work ... 95
1-07.14 Responsibility for Damage ... 97
1-07.15 Temporary Water Pollution/Erosion Control ... 99
1-07.16 Protection and Restoration of Property ... 100
1-07.17 Utilities and Similar Facilities ... 102
1-07.18 Public Liability and Property Damage Insurance ... 118
1-07.19 Gratuities ... 126
1-07.20 Patented Devices, Materials, and Processes ... 126
1-07.21 Rock Drilling Safety requirements ... 126
1-07.22 Use of Explosives ... 126
1-07.23 Public Convenience and Safety ... 127
1-07.24 Rights-of-Way ... 127
1-07.25 Opening of Sections to Traffic ... 127
1-07.26 Personal Liability of Public Officers ... 127
1-07.27 No Waiver of State's Legal Rights ... 127
1-07.28 Apprentice Utilization ... 128

1-08 Prosecution and Progress ... 131
1-08.1 Subcontracting ... 131
1-08.2 Assignment ... 134
1-08.3 Contract Schedule ... 134
1-08.4 Prosecution of Work ... 143
1-08.5 Time for Completion ... 143
1-08.6 Suspension of Work ... 145
1-08.7 Maintenance During Suspension ... 146
1-08.8 Extensions of Time ... 147
1-08.9 Liquidated Damages ... 148
1-08.10 Termination of Contract ... 150
1-08.11 Incentives and Disincentives ... 152

1-09 Measurement of Payment ... 158

1-09.1 Measurement of Quantities 158
1-09.2 Weighing Equipment 159
1-09.3 Scope of Payment 163
1-09.4 Equitable Adjustment 163
1-09.5 Deleted or Terminated Work 164
1-09.6 Force Account 165
1-09.7 Mobilization 169
1-09.8 Payment for Material on Hand 169
1-09.9 Payments 170
1-09.10 Partnering 174
1-09.11 Disputes and Claims 174
1-09.12 Audits 181
1-09.13 Claims Resolution 182

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
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADO	Award Determination Official
ADR	Alternative Dispute Resolution
AGA	American Gas Association
AGC	Associated General Contractors of America
AI	Asphalt Institute
AIA	American Institute of Architects
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
ARA	American Railway Association
AREA	American Railway Engineering 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
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BAT	Bureau of Apprenticeship Training
BAFO	Best and Final Offer
BMP	Best Management Practice
CFR	Code of Federal Regulations
CLI	Chain Link Institute
COA	Condition of Award
CRAB	County Road Administration Board
CRSI	Concrete Reinforcing Steel Institute

CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DIPRA	Ductile Iron Pipe Research Association
EEI	Edison Electric Institute
EEO	Equal Employment Opportunity
EIA	Electronic Industries Alliance
EPA	Environmental Protection Agency
EPD	Escrow Proposal Documents
ESAL	Equivalent Single Axle Loads
FHWA	Federal Highway Administration
FOP	Field Operating Procedure
FSS	Federal Specifications and Standards, General Services Administration
GBR	Geotechnical Baseline Report
GDR	Geotechnical Data Report
HAC	High Accident Corridor
HAL	High Accident Location
HUD	United States Department of Housing and Urban Development
ICEA	Insulated Cable Engineers Association
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
LID	Local Improvement District
LPI	Lighting Protection Institute
MOU	Memorandum of Understanding
MSHA	Mine Safety and Health Act
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
PPI	Plastic Pipe Institute
P/PCI	Precast/Prestressed Concrete Institute
QA	Quality Assurance
QPL	Qualified Products List
RAM	Request for Approval of Material
RCW	Revised Code of Washington (Laws of the State)

RID	Road Improvement District
ROW	Right of Way
SAE	Society of Automotive Engineers
SATC	State Apprenticeship Training Council
SEPA	State Environmental Policy Act
SGDR	Supplemental Geotechnical Data Report
SOP	Standard Operating Procedure
SPUI	Single Point Urban Interchange
SSPC	Steel Structures Painting Council
TESC	Temporary Erosion and Sediment Control
TIA	Telecommunications Industry Association
TIB	Transportation Improvement Board
TR	Technical Requirements
TRB	Transportation Research Board
UL	Underwriters Laboratory
ULID	Utility Local Improvement District
UMTA	Urban Mass Transit Administration
WAC	Washington Administrative Code
WAQTC	Western Alliance for Quality Transportation Construction
WCLIB	West Coast Lumber Inspection Bureau
WISHA	Washington Industrial Safety and Health Administration
WRI	Wire Reinforcement Institute
WSDOE	Washington State Department of Ecology
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
Culv.	Culvert
cy or cu yd.	Cubic Yard
Diam.	Diameter
DBH	Diameter at Breast Height
ESAL	Equivalent Single Axle Loads
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
M	Thousand
MBM	Thousand Feet Board Measure
MUTS	Minimum Ultimate Tensile Strength
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
VC	Vitrified Clay
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:

Alternative Technical Concept (ATC) - Concepts proposed by the Design-Builder and approved by WSDOT pursuant to the Instructions to Proposers which modify the Basic Configuration or other Contract requirement.

Applicable Law - All applicable 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.

Basic Configuration - The following elements of the Project (as shown in the Conceptual Plans (RFP Appendix M1) and/or as such elements may have been modified by Pre-Approved Design Deviations (RFP Appendix O8), and/or (with WSDOT's permission) in the Proposal:

Comment [GMG1]: Verify

Comment [GMG2]: Verify

- Horizontal and vertical alignments of mainline.
- Number/type/location of ramps/overpasses/underpasses/ /interchanges.
- Number of highway lanes.
- Number/type of signalized intersections.
- Number/location/length and top elevation of noise walls.
- Approximate Project limits.
- Right-of-way limits.

Betterment - With respect to the Technical Proposal, any item included in the Design-Builder's Technical Proposal which 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, however, that the following are not considered Betterments:

(a) Any upgrade necessary for safe and effective construction of the Project.

(b) Replacement devices or materials that meet equivalent standards although they are not identical.

(c) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size.

(d) Any upgrading required by applicable Governmental Rules.

(e) Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase).

(f) Any upgrading required by the Utility Owner's Utility Standards in effect (i) as of the date of execution of the applicable Relocation Agreement.

(g) 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 and/or the definition of "Betterment" set forth above, and the determination of applicable Utility Standards and/or the definition of Betterment in the Relocation Agreement applicable to a particular Utility, the terms of the Relocation Agreement shall apply.

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

Category #1 Utility - A Private Utility for which the Utility Owner has Cost Responsibility.

Category #2 Utility - A Private Utility for which the Utility Owner does not have Cost Responsibility.

Change Order - A written 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.

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

Conceptual Design - Preliminary design concept, including the Basic Configuration, presented in the RFP Appendix M1 and M2 and the conceptual Utility Relocation plans presented in Appendix U, if any.

Comment [GMG3]: Verify

Comment [GMG4]: Verify

Comment [GMG5]: Verify

Conceptual Plans - The plans included in RFP Appendix M1 and M2.

Contract - Depending on the context, either (a) the written agreement (Contract Form) between WSDOT and the Design-Builder and/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, Contract - 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 shortest time path for completion of the Project.

DBE Performance Plan means the plan submitted by Design-Builder with its Proposal pursuant to the Instructions to Proposers.

DBE Progress Reports has the meaning set forth in Section 1-07.11(2).1

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

Design-Builder - The firm, partnership, joint venture or organization that contracts with the Washington State Department of Transportation to perform the Work.

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

Design Deviation - A documented decision by WSDOT granting approval to the Proposer or Design-Builder at project-specific locations to differ from the design level specified in the WSDOT Design Manual (see WSDOT Design Manual Section 300.03).

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.

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

Disadvantaged Business Enterprise (DBE) – The meaning set forth in Section 1-07.11(2).1.

Disputes Review Board (DRB) - Three member board created as part of the dispute resolution process pursuant to Section 1-04.5.

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

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 ground water 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 but not limited to 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, 70.105D RCW; and the Washington Hazardous Waste Management Act, 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.

Environmentally Sensitive Areas - Wetlands, wetland buffers, streams, stream buffers, riparian vegetation, and specified tree areas as depicted in the Conceptual Plans.

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

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.

Comment [GMG6]: Verify

Final Contract Voucher Certification - DOT Form 134-146 EF available from WSDOT.

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

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.

Geotechnical Baseline Report (GBR) - The Contract Document set forth in Appendix G1 identifying the geotechnical conditions that Design-Builder should expect to encounter during underground and subsurface construction.

Comment [GMG7]: Verify

Geotechnical Data Report (GDR) - The written summary set forth in Appendix G2 of geotechnical surveying performed by WSDOT upon which WSDOT developed the Geotechnical Baseline Report.

Comment [GMG8]: Verify

Geotechnical Memoranda - Reference document(s), providing an interpretation of available geologic data and preliminary engineering analyses and recommendations that shall not be used for any of the following: form the basis for Design-Builder design, determine Differing Site Conditions, resolve contractual disputes, or in any way interpret the Contract, intents, or obligations of the parties.

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 PCBs in structures and/or 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.

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

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

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

(a) Service Line Relocations.

(b) The adjustment of Utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work.

(c) All work necessary to remove or abandon in place any Utility that was taken out of service prior to the Proposal Due Date, in accordance with TR Section 2.10.

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

Independent Assurance (IA) - The meaning set forth in TR Section 2.28.

Instructions to Proposers - The WSDOT-issued document included in the RFP, providing instructions regarding the preparation and submission of the Proposal.

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

Intergovernmental Agreement (IGA) - A (binding) agreement between WSDOT and another Governmental Body that is included in the RFP, addressing Utility Work, roadway design, engineering studies, construction, maintenance, or other services, as the same may be amended. IGAs pertaining to roadway design, engineering studies, construction, maintenance, or other services are located in Appendix N. IGAs pertaining to Utility Work are located in Appendix U8.

Comment [GMG9]: Verify

Comment [GMG10]: Verify

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

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.

Local Agency – A Governmental Body that is not a federal or state government.

Major Underground Utility - Any Utility that is buried or placed below ground, other than Service Lines, any street lighting, traffic signals, or irrigation facilities.

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

Necessary Basic Configuration Change - Any change 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.

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).

Pre-Approved Design 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.

Prior Relocation - Utility Relocations to be undertaken by either the Utility Owner or a third party contractor identified as such in TR Section 2.10.

Prior Relocation Agreement - An agreement (as the same may be amended) between WSDOT and a Utility Owner, included in the RFP 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.

Private Utility - A Utility that is owned or operated by a Private Utility Owner.

Private Utility Owner - A Utility Owner that is not a Public Utility Owner.

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.

Public Utility - A Utility that is owned or operated by a Public Utility Owner**.**

Public Utility Owner - A Utility Owner that is a Governmental Body.

Qualification (Personnel) - The characteristics or abilities gained through documented training or documented experience or both, as measured against established standards, written tests, and/or 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 the Department 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 Quality Assurance performed under the direction of or by the Construction QA Manager. 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 Quality Control, 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 Quality Control and Quality Assurance programs across all aspects of the Project.

Quality Verification - 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).3.

Reference Documents - The documents designated as such by WSDOT in Appendix A1.

Comment [GMG11]: Verify

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

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

Relocation/Relocate - Each removal, relocation, reconstruction, abandonment, or Temporary Relocation, provision of temporary services as necessary, 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 Private 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) after applying any customary credits for salvage and/or depreciation. 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 and fees, inspection, real property acquisition, and administrative and overhead costs.

Request for Proposals (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.

Right-of-Way - Land, property, or property interest, usually in a strip, acquired for or devoted to transportation purposes. The term specifically excludes any Utility Easements and any 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 and/or (b) Relocations.

Secretary, Secretary of Transportation - The chief executive officer of the Department.

Service Line - A line, also referred to as a service lateral or lateral, the function of which is to connect directly the improvement(s) on an individual property, either public or private, 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 any cable, conduit 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.

Significant Revision - modifications to RFC plans or documents during construction that require typical standard of care EOR approval such as engineering calculations, modifications to drawings, or change orders.

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.

Standard Plans - A manual of specific plans or drawings adopted by WSDOT such as the Standard Plans for Road, Bridge, and Municipal Construction (M21-01), which show frequently recurring components of work that have been standardized for use.

Standard Specifications - Divisions 2 through 9 of the Standard Specifications for Road, Bridge and Municipal Construction 2010 (M41-10): published by WSDOT, subject to the modifications set forth in Section 1-03.3 and any modifications contained in the Special Provisions. Division 1 of said publication is superseded in its entirety by these General Provisions.

Comment [GMG12]: Verify

State - The State of Washington acting through its elected officials and their authorized representatives, including, but not limited to, WSDOT, or the State of Washington in the geographic sense, depending on the context.

Statistical-based Verification - Verification of the Design-Builder's QA test results through statistical comparison, performed by the Design-Builder, with the Department's Quality Verification (QV) test results.

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

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

Subcontractor - Any Person with whom the Design-Builder has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier. Suppliers and materialmen are excluded from the term.

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

Subsurface Utility Engineering or 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.

Supplemental Geotechnical Data Report (SGDR)- The Contract Document developed pursuant to the ITP that contains factual subsurface data collected prior to the Proposal Date, and which is included in Appendix G9.

Comment [GMG13]: Verify

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 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 and used by the Engineer of Record.

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.

Utility - A privately, publicly, or cooperatively owned line, facility or system (including municipal and/or 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) storm water facilities that provide drainage solely for the Project ROW, (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 and/or other interest in real property outside the Project Right-of-Way (excluding a franchise or permit) that is necessary for a Relocation.

Utility Information - The information regarding Utilities included in RFP Appendix U, the information about known Utilities included in TR Section 2.10 and any other information WSDOT includes in the RFP 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.

Comment [GMG14]: Verify

Utility MOU - A non-binding agreement or memorandum of understanding (as the same may be amended) between WSDOT and a Private 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 MOU's, if any, are located in Appendix U9.

Comment [GMG15]: Verify

Utility Owner - Any private entity or public body (including city, county, state, public corporation or public district) that owns and/or 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 a 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 Design-Builder's responsibility pursuant to the Contract Documents, as more particularly described in Section 1-07.17 and TR Section 2.10.

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 - Shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam, cribbing and shoring plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data.

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

1-01.3(2) OTHER DEFINITIONS

The following terms, whether lower cased or capitalized, shall have the following meanings:

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.

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.

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.

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

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

Hold Point - Mandatory inspection points identified in the Design-Builder's QMP beyond which Work cannot proceed until required QA inspection has been performed and a written release is granted by the Design-Builder's Quality Assurance organization.

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.

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.

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.

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.

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.

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

Substructure - The part of the structure below:

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

Superstructure – The part of the structure above:

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

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, or

(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 when such Superstructure components are not otherwise covered by separate unit measured or lump sum bid items.

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

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

Warranty - 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.

1-02 CERTIFICATIONS AND REPRESENTATIONS

1-02.1 RESPONSIBILITY FOR DESIGN

It is the intent of the Contract Documents that 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/or 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 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 and/or extension of Contract Time 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 Released for Construction 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. Any 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 this 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 attached and referenced documents provided by WSDOT, including the GDR, GBR, SGDR (if any), and hydrology reports, if any, 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; and,

(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 RFP and information made a part of the Contract; and

4. The adequacy of time allowed for the completion of the Work.

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 Released for Construction 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.

Any 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. The Department 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, jobsite 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 Longshoremen's and Harbor Worker's Compensation Act (administered by U.S. Department of Labor); and/or

2. The State Industrial Insurance (administrated by the Washington State Department of Labor and Industries).

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

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

1. The Design-Builder discovers an ambiguity but fails to notify WSDOT; and/or
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

WSDOT has made subsurface investigation of the Site of the proposed Work and has provided the results in the GBR, GDR, and SGDR (if any). However, WSDOT makes no representation or warranty expressed or implied that:

1. The Design-Builder's interpretations from the boring logs are correct; or
2. The ground at the location of the borings has not been physically disturbed or altered after the boring was made.

The GBR describes the baseline geotechnical and Hazardous Materials conditions that Design-Builder should expect to encounter during subsurface construction Work. In the event the GBR is silent with respect to a particular geotechnical condition, Design-Builder may rely upon the GDR and/or SGDR (if any) as describing such geotechnical condition. Whenever there is an inconsistency between geotechnical conditions described in the GBR and the geotechnical conditions described in the GDR or SGDR (if any), 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. Design-Builder acknowledges that the Contract Price and the Contract Schedule were developed with full consideration given to the contents of the GBR, GDR, and SGDR (if any), and that it 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 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 RFP does not represent Site conditions for an ATC. As noted in the 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. The geotechnical investigation, including the geotechnical basis of design 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.

1-02.5 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 INTENTIONALLY OMITTED

1-02.7 INTENTIONALLY OMITTED

1-02.8 NONCOLLUSION DECLARATION AND LOBBYING CERTIFICATION

1-02.8(1) NONCOLLUSION DECLARATION

When required by Section 112(c) Title 23, United States Code, a declaration shall be provided certifying that the bidder 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 bidder 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 bidders 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 signing the Proposal, the bidder will be deemed to have signed and agreed to the requirements of the Noncollusion 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. A Certification for Federal-Aid Contracts (Form DOT 272-040) 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 a Certification for Federal-Aid Contracts (Form DOT 272-040) 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 shall be submitted to the Design-Builder for processing to WSDOT.

Audits will be conducted to ensure compliance with this Section. The Certification for Federal-Aid Contracts (Form DOT 272-040) may be reproduced from the Proposal form. The disclosure form is

available from WSDOT's Pre-Contract Office, Transportation Building, Olympia, Washington 98504.

Comment [ST16]: Use in all Federal Aid projects. Otherwise Delete.

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 and supplemental agreements.
2. The 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 Contract Documents in RFP Appendix A1.
7. Design-Builder's Proposal.

Comment [GMG17]: Verify

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.
3. If the Proposal includes statements or incorporates approved Alternative Technical Concepts ("ATCs") 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 WSDOT Standard Plans, calculated dimensions shall take precedence over scaled dimensions.

1-03.3 INTEGRATION OF WSDOT STANDARD SPECIFICATIONS AND CITED REFERENCES INTO CONTRACT

The Standard Specifications - Division 2 thru 9, excluding 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)" 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 successful Proposer shall provide an executed Contract Bond in an amount equal to 100% of the Contract Price allocable to the cost of the Project construction and post-construction phase of the Work.

This Contract Bond shall:

1. Be on the WSDOT furnished form provided in Appendix F2.

Comment [GMG18]: Verify

2. Be signed by an approved Surety (or Sureties) that:
   (a) Is registered with the Washington State Insurance Commissioner, and
   (b) Appears on the current Authorized Insurance List in the State of Washington 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; and
4. 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, or
   (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.

Release of Contract Bond will be 60 days following Contracting Agency Final Acceptance of Contract, provided following conditions are met:

1. Payment to the State with respect to taxes imposed pursuant to Title 82, RCW on Contracts totaling more than $ 35,000, a release has been obtained from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Contractor and all Subcontractors are on file with the Contracting Agency (RCW 39.12.040).
3. A certificate of Payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
4. Washington State Department of Labor and Industries (per Section 1-07.10) shows the Contractor, Subcontractor(s) and any lower tier Subcontractor(s) are current with payments of industrial insurance and medical aid premiums.
5. All claims, as provided by law, filed against the Contract Bond have been resolved.

Comment [ST19]: Use in all Federal Aid projects. Otherwise Delete.

(Source GSP 1-03.4.OPT1.GR1 dated June 27, 2011. Supplements Section 1-03.4)

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 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 shall promptly 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; and
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 or consents are required to be provided by WSDOT or the Design-Builder under the Contract Documents, such approvals or consents 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 acceptance of the materials or Work inspected 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 and/or identify additional Work

which must be done to bring the Project into compliance with requirements of the Contract Documents, 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, 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 of Washington.

1-03.15 ESCROWED PROPOSAL DOCUMENTS (EPD)

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 copy of all EPD documentation to an escrow company designated by WSDOT. Such documentation shall be placed in escrow with the escrow company and preserved by that institution as specified in this specification.

1-03.15(2) EPD DOCUMENTATION

The "EPD" documentation as used in this specification means any writings, working papers, computer printouts, 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. The Design-Builder shall submit its EPD documentation in hardcopy and whenever possible shall also provide electronic copies. The EPD documentation shall include, but is not limited to, equipment rates, overhead rates, labor rates, efficiency and/or productivity factors, and arithmetic extensions. The EPD documentation 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 documentation 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 documentation by reference. The EPD documents do not include documents provided by WSDOT for use by the Design-Builder in developing the Proposal.

1-03.15(3) SUBMITTAL OF EPD DOCUMENTATION

The EPD documentation shall be submitted to the designated escrow company within 7 Calendar Days after the Contract has been executed by WSDOT. The EPD documents shall be submitted in a sealed container. The container shall be clearly marked "EPD Documents" and shall also show on the face of the container the Design-Builder's name, the date of submittal, the Project title, and the Contract number.

1-03.15(4) AFFIDAVIT

The sealed container shall contain, in addition to the Proposal documentation, an affidavit signed under oath by an individual authorized by the Design-Builder to execute Proposals. The affidavit shall list each EPD document with sufficient specificity so a comparison can be made between the list and the EPD documentation to ensure that all the EPD documents listed in the affidavit have been enclosed in the sealed container. The affidavit shall show that the affiant has personally examined the EPD documents 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 sealed container.

1-03.15(5) VERIFICATION

The escrow company upon receipt of the sealed container shall place the container in a safety deposit box, vault, or other secure place, and immediately notify WSDOT in writing that the container has been received. Upon receipt of such notice, WSDOT will promptly notify the Design-Builder in writing that WSDOT will open the sealed container to verify that the affidavit has been enclosed and to compare the EPD documents listed in the affidavit with the actual documentation enclosed in the container to ensure that all of the EPD documents have been submitted and that the copies are legible. The notification will advise the Design-Builder of the date and time the container will be opened and the name of the WSDOT employee who will verify the contents of the container. The WSDOT employee verifying the contents of the escrow container 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 documents listed in the affidavit but not enclosed in the sealed container through error or oversight shall be submitted in a sealed container within 5 Calendar Days after the opening of the original container. Also, any EPD documents that are illegible shall be replaced with legible copies and furnished within 5 Calendar Days after the opening of the original container. The face of the container shall be marked "Supplemental EPD Documents". The same procedure used in verifying the contents of the original container shall be used in verifying the contents of the supplemental submittal.

1-03.15(7) DURATION AND USE

The EPD documentation and affidavit shall remain in escrow during the life of the Contract and will be returned to the Design-Builder by the escrow 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 documentation 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 banking institution, in writing, to release the EPD documents 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 banking institution to deliver the EPD documents and affidavit in escrow to WSDOT. The banking institution shall release the EPD documents and affidavit as follows:

1. To WSDOT upon receipt of a letter 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; and
4. The EPD documents 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 sealed container placed in escrow and any supplemental sealed container placed 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 documentation shall 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 documentation 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 documentation 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 documentation and affidavit other than to verify the contents and legibility of the EPD documentation 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 documentation 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 documentation and affidavit as provided in Section 1-03.15(7).

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 escrow 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/or 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, 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 Acceptance, and by the deadlines specified herein, and

(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, and

(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 ATC(s) 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/or 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, and

(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 Quality Management Plan;

(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 reasonably designated by WSDOT;

(i) Cooperate with WSDOT in its oversight of the design of the Project, its oversight and 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 and 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 resequencing, 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 ATC(s) incorporated into the Contract Documents; and

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

1-04.2 INTENTIONALLY OMITTED

1-04.3 INTENTIONALLY OMITTED

1-04.4 CHANGES

1-04.4(1) WSDOT-INITIATED CHANGES

WSDOT reserves the right to authorize and/or 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, and
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 costs 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 time as WSDOT deems appropriate. Extensions of time will be evaluated in accordance with Section 1-08.8. WSDOT's decision concerning equitable adjustment and extension of 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, or
2. A written order from WSDOT before actually receiving the written Change Order.

The Design-Builder shall obtain written consent of the Surety or Sureties if WSDOT requests such consent.

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 1-04.4(2) 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 three categories:

1. Changes that require either a Design Deviation and/or 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 Contract Price Adjustments Split Between Parties does not apply to this category of change.

3. Changes that do not meet the requirements of either items 1 or 2 above. Any cost savings derived from this change shall be shared as the parties mutually agree. Section 1-04.4(2).3 Contract Price Adjustments Split Between Parties 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/or 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 shall 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 WSDOT as to rejection or approval of any Design-Builder Initiated Change shall be at the sole discretion of WSDOT and shall 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% of any additional costs incurred by WSDOT resulting from the Design-Builder Initiated Change plus (b) 50% of estimated net savings, provided that the Design-Builder's profit shall not be reduced by application of the Design-Builder Initiated Change.

Design-Builder Initiated Changes Affecting ROW 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); and

(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; and

(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 a written order from WSDOT specifically authorizing the change prior to receiving a written 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 and/or time to perform the Work, the Design-Builder shall be entitled to an increase in the Contract Price and/or an extension of the Contract Time, excluding any costs and/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 and/or time to perform the Work, the Contract Price and/or Contract Time shall be decreased accordingly.

1-04.4(4) MINOR CHANGES

Payments or credits for any change amounting to $15,000 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 otherwise give rise to a right to 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) Groundwater levels or subsurface moisture content

(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; and

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

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 AND PROTEST BY THE DESIGN-BUILDER

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

1. Endorsing it,
2. Writing a separate acceptance, or
3. Not protesting in the way this section provides.

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 as this section provides, the Design-Builder also waives any additional entitlement and accepts from WSDOT any written order (including directions, instructions, interpretations, and determinations).

If in disagreement with anything required in a Change Order, or any other written order from the WSDOT Engineer, including any direction, instruction, interpretation, or determination by WSDOT, the Design-Builder shall:

1. Immediately give a signed written notice of protest to WSDOT before doing the Work;
2. Supplement the written protest within 30 Calendar Days 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; and
3. If the protest is continuing, the information required above shall be supplemented monthly until the protest is resolved.

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

WSDOT will evaluate all protests provided the procedures in this Section are followed. If WSDOT determines that a protest is valid, WSDOT 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 an invalid protest.

If WSDOT determines that the protest is invalid, that determination, with an explanation, shall be provided in writing to the Design-Builder. The determination will be provided within 30 calendar days after receipt of the Contractor's supplemental written statement (including any additional information requested by the Project 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 1-09.11.

In spite of any protest, the Design-Builder shall proceed promptly with the Work as WSDOT orders.

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

1-04.6 INTENTIONALLY OMITTED

1-04.7 DIFFERING SITE CONDITIONS (CHANGED 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 conditions identified in the GBR, the GDR or the SGDR 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, 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, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

Shaft obstructions as defined in Appendix B5 Bridge Shaft Mandatory Standard shall not be considered a Differing Site Condition.

Comment [GMG20]: Verify

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 and if it determines that the 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 notify the Design-Builder of its determination whether or not 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 $***** *fill in dollar value* *****. The responsibility for the first $***** *fill in dollar value* ***** worth of Differing Site Conditions shall rest solely with the Design-Builder.

Comment [DEC21]: Fill in

Comment [DEC22]: Fill in

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.

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 this 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 INTENTIONALLY OMITTED

1-04.10 USE OF MATERIALS FOUND ON THE PROJECT

With the WSDOT Engineer's written approval, the Design-Builder may use 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; or
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, camp buildings, temporary structures, equipment, and debris; and
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 WSDOT

WSDOT shall be satisfied that all the Work is being done in accordance with the requirements of the Contract. The Contract and specifications give WSDOT authority over the Work. Whenever it is so provided in this Contract, the decision of WSDOT shall be final: provided, however, that if an action is brought within the time allowed in this Contract challenging WSDOT's decision, that decision shall be subject to the scope of judicial review provided in such cases under Washington case law.

WSDOT'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, and
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, and
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 WSDOT'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 WSDOT to provide the Design-Builder with direction or advice on how to do the Work. If WSDOT 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; or

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 WSDOT in a diligent manner and without delay, shall abide by WSDOT 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.

1-05.2 AUTHORITY OF ASSISTANTS AND INSPECTORS

The WSDOT Engineer may appoint assistants and inspectors to assist in determining that the Work and materials meet the Contract requirements. Assistants and inspectors have the authority to 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 or approval.

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 resubmittal, 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

When submittals require review by the railroad, WSDOT will require up to 60 Calendar Days from the date the submittals are received until they are returned to the Design-Builder.

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 Released for Construction Documents.

1-05.3(5) WORKING DRAWINGS

The Design-Builder shall submit supplemental Working Drawings as required by the Contract Documents. Except as noted, all drawings and other submittals shall be delivered directly to the WSDOT Engineer. The drawings shall be on sheets measuring 22-inches x 34-inches, 11-inches x 17-inches, or on sheets with dimensions in multiples of 8 ½-inches x 11-inches. If the WSDOT Engineer elects to offer any comments, they will be submitted to the Design-Builder within 14 Calendar Days.

All the Design-Builder's submittals shall be in English units. Submittal, review procedures, and review times of supplemental Working Drawings and specifications shall be as described in the Scope of Work.

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 of Washington, 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 INTENTIONALLY OMITTED

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.

When WSDOT requests, the Design-Builder shall (without charge) provide samples of materials used or to be used in the Work. WSDOT may order the Design-Builder to remove and replace, at the Design-Builder's expense, any materials used without documented Quality Assurance measures on the part of the Design-Builder's Quality Assurance 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; or
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; and
6. Can be adjusted to take samples of about 100 pounds as often as the QA Inspector or WSDOT Engineer requires.

No material from the crushing or screening operation will be accepted until after WSDOT has approved the design and operation of the sampling equipment. 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 and/or identify additional Work which must be done to bring the Project into compliance with Contract requirements 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 and/or materials that do not conform to the Contract. At WSDOT's order, 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 and/or obtain reimbursement from the Design-Builder for such cost.

1-05.8 INTENTIONALLY OMITTED

1-05.9 INTENTIONALLY OMITTED

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/or 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) INTENTIONALLY OMITTED

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 released for construction 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 of Washington, 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 Released for Construction 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, and
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 thirty (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 WSDOT no later than five Calendar Days after the date the Contract is executed. The list shall include, at a minimum, the Design-Builder's Project Manager, or equivalent, the Construction Manager, the Erosion and Sediment Control (ESC) Lead, and the Traffic Control Supervisor. 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 TR Sections 2.1 and 2.18 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 written notice to the Design-Builder required under the Contract may be served on the Design-Builder either personally or by mailing or by delivery to the last post office address known to WSDOT.

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 GENERAL 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 of Washington.

- 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 and/or drawings 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 Project Physical Completion. The general Warranty shall remain in effect until 1 year after Project 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.

Comment [DEC23]: One year general warranty listed. Not to exceed three years.

Within 7 Calendar Days of receipt of notice from WSDOT specifying a failure of any work required to satisfy 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-day period, or if the Design-Builder and WSDOT fail to reach an agreement within the 7-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/or 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/or 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/or 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 one-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 and/or deterioration outside allowable limits specified in the Contract shall not be considered normal wear and tear.
- Failure to perform routine maintenance consistent with polices and/or procedures established by WSDOT or other maintenance agencies, including Utility Owners, or in the absence of such policies and/or 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, and/or 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

The Design-Builder shall provide a landscaping Warranty covering all on-site stream and wetland mitigation, roadside restoration, and landscaping requirements described in Sections 2.8 and 2.15,

and the Commitments List. The Landscaping Warranty period for wetland mitigation and roadside restoration shall be for three years and as described below.

1-05.16(9).1 Planting Areas and Acceptance of Initial Planting

Design-Builder shall designate large, discrete areas as "planting areas" as indicated in TR Section 2.15.5.1 for purposes of acceptance of initial planting and management of the Landscaping Warranty. When Design-Builder's QA Manager has determined that a given planting area is complete and meets all Contract requirements, Design-Builder may request such area to be accepted by WSDOT for initial planting. Upon concurrence by WSDOT that an area has met all Contract requirements, such area shall be deemed as accepted for initial planting, and the Landscaping Warranty shall commence for that planting area.

Comment [GMG24]: Verify

1-05.16(9).2

1-05.16(9).3 Landscaping Warranty Inspection

WSDOT and the Design-Builder shall conduct joint annual Landscaping Warranty Inspections of the Project commencing one year after the first planting area is accepted for initial planting, and continuing until three years after the last planting area is accepted for initial planting. The measurements and/or tests for those Landscaping Warranty items that require specific remedies shall be taken during the scheduled joint inspections.

1-05.16(10) WARRANTY FOR ILLUMINATION, TRAFFIC SIGNALS, AND ITS

Refer to TR Sections 2.16, 2.17, and 2.18 for Warranty requirements regarding Illumination, Traffic Signals, and ITS.

Comment [DEC25]: Verify

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 CONTROL OF MATERIALS

Refer to TR Section 2.25 for requirements for acceptance of materials. Note that "Buy America" applies to this contract, pursuant to TR Section 2.25.3.

Comment [DEC26]: Delete this sentence if Buy America doesn't apply.

1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 LAWS TO BE OBSERVED

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 be responsible to immediately report to the 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.

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, but not limited to, those promulgated under the Washington Industry Safety and Health Act RCW Chapter 49.17 (WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). In particular, the Contractor'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.

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.

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

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.

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. For items in the original Contract, the tax change must occur after the Proposal opening date. For negotiated Contracts or items in a supplemental agreement, the tax change must take place after the execution date of the Contract or agreement. 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

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. In some cases, however, State retail sales tax will not be included. Section 1-07.2(1) and 1-07.2(2) describes this exception.

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 will pay the retained percentage only if the Design-Builder has obtained from the State Department of Revenue a certificate showing that all Contract-related taxes have been paid (RCW 60.28.050). WSDOT may deduct from its payments to the Design-Builder any amount the Design-Builder may owe the State Department of Revenue, whether the amount owed relates to this Contract or not. Any amount so deducted will be paid into the proper State fund.

Comment [ST27]: For Federal Aid projects, delete this paragraph (next paragraph is used instead).

WSDOT will release the Contract Bond only if the Design-Builder has obtained from the State Department of Revenue a certificate showing that all Contract-related taxes have been paid.

Comment [ST28]: Use in all Federal Aid projects. Otherwise Delete.

(Source GSP 1-07.2.OPT4.GR1 dated June 27, 2011)

1-07.2(1) STATE SALES TAX: WORK PERFORMED ON CITY, COUNTY, OR FEDERALLY-OWNED LAND

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

Appendix W will identify those parts of the Project that require Work on land owned by:

Comment [GMG29]: Verify

1. A municipal corporation;
2. A political subdivision of the State; or
3. The United States of America.

WSDOT will not defer state and local sales and use taxes for work done on land governed by State Department of Revenue Rule 171. For Work performed on such land, the Design-Builder shall include Washington State retail sales taxes in the portion of the Contract Price allocable to such Work. These retail sales taxes shall include those the Design-Builder pays on purchases of materials, equipment, and supplies used or consumed in performing such Work.

1-07.2(2) STATE SALES TAX: WORK ON STATE-OWNED OR PRIVATE LAND

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

Appendix W will identify those parts of the Project that require Work on State-owned or private land.

Comment [GMG30]: Verify

For Work performed on State-owned or private land, 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 sales tax to each payment to the Design-Builder. For this reason, the Design-

Builder shall not include such retail sales tax on Work performed on State-owned or private land in its Contract Price, the unit Proposal prices or in any other Contract amount.

However, WSDOT will not add in sales tax the Design-Builder or Subcontractor pays on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the Project. Such sales taxes shall be included in the Contract Price whether the State owns the construction site or not.

1-07.3 FOREST PROTECTION AND MERCHANTABLE TIMBER REQUIREMENTS

1-07.3(1) FOREST 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 Worksite. The Design-Builder shall take precautions and perform any necessary Work to provide and maintain a safe and healthful Worksite in accordance with Applicable Laws.

1-07.5 INTENTIONALLY OMITTED

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 any notices these permits call for.

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 requires, and (b) to hold WSDOT harmless for any Work-related liability incurred under the permit; and
6. The permit costs WSDOT nothing.

1-07.7 LOAD LIMITS

1-07.7(1) GENERAL

While moving equipment or materials on any public highway, 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 any facts needed to demonstrate that the weight of equipment used on the Project meets the requirements of 1-07.7(1) and 1-07.7(2).

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.

When the Design-Builder moves equipment or materials within the Project Limits, legal load limits shall apply on:

1. Any existing road not scheduled for major reconstruction under the current Contract; or
2. Any newly paved road (with final lift in place) built under this Contract. The Design-Builder may haul overloads (not more than 25% above load limits) on such roads not open to public traffic if this does not damage completed work. The Design-Builder shall pay all repair costs of any overload damage.

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.

If necessary and safe to do so, and if the Design-Builder requests it in writing, WSDOT may approve higher load limits than those in the load-limit restrictions in 1, 2, and 3 in Section 1-07.7(2). The written request shall:

1. Describe loading details;
2. Describe the arrangement, movement, and position of equipment on the structure or over culverts and pipes; and
3. State that the Design-Builder assumes all risk for damage.

The Contract Price includes all costs for operating over bridges and culverts. Nothing in this section affects the Design-Builder's other responsibilities under the Contract or under public highway laws.

1-07.7(2) LOAD-LIMIT RESTRICTIONS

1. **Structures Designed for Direct Bearing of Live Loads -** The gross or maximum load on each vehicle axle shall not exceed the legal load limit by more than 35%. No more than one vehicle shall operate over any structure at one time. The Design-Builder shall immediately remove any dirt, rock, or debris that may gather on the structure's roadway surface.

2. **Underpasses and Reinforced Concrete Box Culverts Under Embankments -** 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 underpass or culvert.

   When the embankment has reached 5 feet above the top of the underpass or culvert, 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 -** 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.

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 in a condition compliant with the ANSI 107-2004 and shall be used in accordance with manufacturer recommendations.

1-07.8(1) TRAFFIC CONTROL PERSONNEL

All personnel performing the Work described in TR Section 2.22 (including traffic control supervisors, 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 107-2004 Class 2 or 3 vest or jacket, and hardhat meeting the high visibility headwear requirements of WAC 296-155-305; and

2. During hours of darkness (1/2-hour before sunset to 1/2-hour after sunrise) or other low visibility conditions (snow, fog, etc.), workers shall wear a high-visibility ANSI/ISEA 107-2004 Class 2 or 3 vest or jacket, high visibility lower garment meeting ANSI/ISEA 107-2004 Class E, and hardhats 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 TR Section 2.22, shall wear high visibility apparel meeting the ANSI/ISEA 107-2004 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, any Subcontractor, and all individuals or firms required by RCW 39.12, WAC 296-127, or 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 or the DBRA. Higher wages and benefits may be paid.

Comment [ST31]: Use in all Federal Aid projects. Otherwise Delete.

Comment [ST32]: Use in all Federal Aid projects. Otherwise Delete.

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.

Comment [ST33]: Use in all Federal Aid projects. Otherwise Delete.

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, Washington State Department of Labor and Industries (State L&I), and provide a copy of those determinations to the Project 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 Project Engineer. Generally, the Design-Builder initiates the request by preparing standard form 1444 Request for Authorization of Additional Classification and Rate, available at www.wdol.gov/docs/sf1444.pdf, and submitting it

to the Project Engineer for further action.

Comment [ST34]: Use in all Federal Aid projects. Otherwise Delete.

The Design-Builder shall ensure that any firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition "Design-Builder" 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, WSDOTWSDOT 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.

Comment [ST35]: Use in all Federal Aid projects. Otherwise Delete.

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, any Subcontractor, any lower tier subcontractor, or any other firm that is required to pay prevailing wages, shall be required to pay the rates as determined to be correct by State 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 Bid 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; and
4. Profit will not be an allowable markup.

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

Listing Recovery Act (and other) new hire opportunities with the Employment Security Department.

There are many talented people currently unemployed. As the signs on WSDOT's projects advertise, the Recovery Act is about creating jobs and putting people back to work. As a companion effort, the Employment Security Department has been charged with giving people the opportunity to compete for these jobs. Their tool for doing so is WorkSource. WorkSource is a free service located across the State that screens, shortlists, and refers qualified candidates.

WorkSource employees are aware that the Design-Builder has other commitments as part of your business practices and as part of the Contract. Design-Builders may be subject to hiring commitments such as Equal Employment Opportunity or union commitments. However, utilizing WorkSource can be an essential effort as part of their various good faith efforts.

WorkSource is a resource that is available across the State. Design-Builders who have been awarded WSDOT Contracts shall be prepared to discuss their recruitment plans and how

WorkSource will be incorporated into that effort at the preconstruction conference. WorkSource has a simple process for requesting and reporting new hires.

The Design-Builder may contact the ARRA Business Unit at 877-453-5906 (toll free) or ARRA@esd.wa.gov. There is additional information available on the website at https://fortress.wa.gov/esd/worksource/.

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. WA120001.

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

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. WA120001. These rates are applicable to highway construction.

The Federal wage rates for Building Construction incorporated in this contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. *** $$1$$ ***. These rates are applicable to building construction.

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

The Federal wage rates for Building Construction incorporated in this contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. *** $$1$$ ***. These rates are applicable to building construction.

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, or

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, must 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.

Contractors are 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 Wage Rate available at http://www.wdol.gov/docs/sf1444.pdf, and submit the completed form to the Project

Comment [ST36]: Use in all Federal Aid projects consisting of highway construction and/or landscaping. Otherwise delete.

(Source GSP 1-07.9(1).OPT1.GR1 dated January 10, 2012)

Comment [ST37]: Fill in

Comment [ST38]: Use in all Federal Aid projects consisting of both highway and building construction. Otherwise delete.

(Source GSP 1-07.9(1).OPT2.FR1 dated January 10, 2012)

Comment [ST39]: Fill in

Comment [ST40]: Use in all Federal Aid projects consisting of only building construction. Otherwise delete.

(Source GSP 1-07.9(1).OPT3.FR1 dated May 11, 2010)

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 form 1444 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. WA120001. 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. *** $$1$$ ***. These rates are applicable to heavy construction.

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

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. WA120001. 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. *** $$1$$ ***. These rates are applicable to heavy construction.

The Federal wage rates for Building Construction incorporated in this contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. *** $$2$$ ***. These rates are applicable to building construction

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

Comment [ST41]: Use in Federal Aid projects that include wage rates for the occupation Landscape Construction. This would be projects with seeding and fertilizing, or landscape work. Otherwise delete.

(Source GSP 1-07.9(1).OPT4.GR1 dated April 2, 2007)

Comment [ST42]: Fill in

Comment [ST43]: Use in all Federal Aid projects consisting of both highway and heavy construction.

(Source GSP 1-07.9(1).OPT5.FR1 dated January 10, 2012)

Comment [ST44]: Fill in

Comment [ST45]: Fill in

Comment [ST46]: Use in all Federal Aid projects consisting of highway, heavy, and building construction.

(Source GSP 1-07.9(1).OPT6.FR1 dated January 10, 2012)

1-07.9(2) POSTING NOTICES

Notices and posters shall be placed in areas readily accessible to read by employees. The Design-Builder shall ensure the following is posted:

1. EEOC - P/E-1(revised 11/09) -Equal Employment Opportunity IS THE LAW published by US Department Of Labor. Post for projects with federal-aid funding.
2. FHWA-1022 (revised 11/11) - NOTICE Federal-Aid Project published by Federal Highway Administration (FHWA). Post for projects with federal-aid funding.
3. WH 1321 (revised 04/09) - Employee Rights Under the Davis-Bacon Act published by US Department Of Labor. Post for projects with federal-aid funding.
4. WHD 1088 (revised 07/09) - Employee Rights Under the Fair Labor Standards Act published by US Department Of Labor. Post on all projects.
5. WHD - 1420 (revised 01/09) - Employee Rights and Responsibilities Under The Family And Medical Leave Act published by US Department Of Labor. Post on all projects.
6. WHD-1462 (revised 01/12) – Employee Polygraph Protection Act published by US Department Of Labor. Post on all projects.
7. F416-081-909 (revised 12/12) - Job Safety and Health Law published by Washington State Department of Labor and Industries. Post on all projects.
8. F242-191-909 (revised 12/12) - Notice To Employees published by Washington State Department of Labor and Industries. Post on all projects.
9. F700-074-909 (revised 12/12) - Your Rights as a Worker in Washington State by

Washington State Department of Labor and Industries (L&I). Post on all projects.

10. EMS 9874 (revised 04/12) - Unemployment Benefits published by Washington State Employee 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 any other firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition of "Contractor" in WAC 296-127-010;

1-07.9(3) 12. POST ONE COPY OF THE PREVAILING WAGE RATES FOR THE PROJECT.APPRENTICES

If employing apprentices, the Design-Builder shall submit to the Engineer written evidence showing:

1. Each apprentice is enrolled in a program approved by the Washington State Apprenticeship and Training Council;

2. The progression schedule for each apprentice; and

3. The established apprentice-journey level ratios and wage rates in the project locality upon which the Design-Builder will base such ratios and rates under the Contract. Any worker for whom an apprenticeship agreement has not been registered and approved by the Washington State Apprenticeship and Training Council shall be paid at the prevailing hourly journey level rate as provided in RCW 39.12.021.

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 State 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

On forms provided by the Industrial Statistician of State L&I, the Design-Builder shall submit to the Engineer the following for itself and for each firm covered under RCW 39.12 that provided Work and materials for the Contract:

1. A copy of an approved "Statement of Intent to Pay Prevailing Wages" State L&I's form number F700-029-000. WSDOT will make no payment under this Contract for the Work performed until this statement has been approved by State L&I and a copy of the approved form has been submitted to the Engineer.

2. A copy of an approved "Affidavit of Prevailing Wages Paid", State L&I's form number F700-007-000. The Contracting Agency will not grant Completion until all approved Affidavit of Wages paid for the Design-Builder and all Subcontractors have been received by the Project Engineer. The Contracting Agency will not release to the Design-Builder any funds retained under RCW 60.28.011 until all of the "Affidavit of Prevailing Wages Paid" forms have been approved by State L&I and a copy of all the approved forms have been submitted to the Engineer.

The Design-Builder shall be responsible for requesting these forms from State L&I and for paying any approval fees required by State L&I.

Certified payrolls are required to be submitted by the Design-Builder to the Engineer, for the

Design-Builder and all Subcontractors or lower tier subcontractors, on all Federal-aid projects and, when requested in writing by the Engineer, on projects funded with only Contracting Agency funds. If these payrolls are not supplied within 10 calendar days of the end of the preceding weekly payroll period for Federal-aid projects or within 10 calendar days from the date of the written request on projects with only Contracting Agency funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12). All certified payrolls shall be complete and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with the labor descriptions listed on the minimum wage schedule in the Contract unless the Engineer approves an alternate method to identify the labor used by the Design-Builder to compare with the labor listed in the Contract Provisions. When an apprentice is shown on the certified payroll at a rate less than the minimum prevailing journey wage rate, the apprenticeship registration number for that employee from the State Apprenticeship and Training Council shall be shown along with the correct employee classification code.

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 any payment 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 the Washington State Department of Labor and Industries 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 Longshoremen's and Harbor Worker's Compensation Act administered by the U.S. Department of Labor, or the State Industrial Insurance coverage administered by the Washington State Department of Labor and Industries.

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 the Washington State Department of Labor and Industries regarding the insurance coverage.

The Public Works Contract Division of the Washington State Department of Labor and Industries 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, the contracting agency will verify through the Department of Labor and Industries 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) 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, Section 162(a) of the Federal-Aid Highway Act of 1973, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Justice System Improvement Act of 1979, the American with Disabilities Act of 1990, the Civil Rights Restoration Act of 1987, 49 CFR Part 21, RCW 49.60 and other related laws and statutes. The referenced legal citations establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this Section of these *Standard Specifications*.

1-07.11(2) CONTRACTUAL REQUIREMENTS

1. 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.

2. 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.

3. The Design-Builder shall insert the following notification in all solicitations for bids for Work or material subject to federal laws and regulations and made in connection with all program and activities and, in adapted form in all proposals for negotiated agreements:

   The Design-Builder in accordance to Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S. Code 2000d to 2000d-4, and Title 49 Code of Federal Regulations, Part 21, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color national origin and sex in consideration for an award.

4. 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.

5. 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.

6. The Design-Builder shall permit access to its books, records and accounts by WSDOT for the purpose of investigating to ascertain compliance with these Specifications. 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.

7. The Design-Builder shall maintain records with the name and address of each minority/female worker referred to the Design-Builder and what action was taken with respect to the referred worker.

8. 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/female workforce utilization. This being the case, the Design-Builder shall show what relief they have sought under such collective bargaining agreements.

9. The Design-Builder is encouraged to participate in Contracting Agency and Washington State Human Rights Commission approved program(s) designed to train craft-workers for the construction trades.

1-07.11(2).1 Equal Employment Opportunity (EEO) Responsibilities

Title VI Responsibilities

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 shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), 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, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Design-Builder shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

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 Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. **Information and Reports** – The Design-Builder shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall 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 Regulations, orders 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 shall 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 shall 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, and/or;

    b. Cancellation, termination, or suspension of the Contract, in whole or in part.

6. **Incorporation of Provisions** – The Design-Builder shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Design-Builder shall take such action with respect to any Subcontractor 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, however, that in the event a Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Design-Builder may request the Washington State Department of Transportation enter into such litigation to protect the interests of the state and, in addition, the Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

1-07.11(3) EQUAL EMPLOYMENT OPPORTUNITY OFFICER

The Design-Builder shall officially designate and make known to the Engineer during the preconstruction conference and discussions the firm's Equal Employment Opportunity Officer (hereinafter referred to as the EEO Officer). The EEO Officer will also be responsible for making him/herself 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 equal employment opportunity.

1-07.11(4) DISSEMINATION OF POLICY

1-07.11(4).1 Supervisory Personnel

All members of the Design-Builder's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, shall be made fully cognizant of, and shall implement the Design-Builder's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be 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 equal employment opportunity policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or other knowledgeable company official.

2. **EEO Indoctrination** – All new supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Design-Builder's equal employment opportunity obligations within 30 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 instructed by the EEO Officer or appropriate company official in the Design-Builder's procedures for locating and hiring minority group and female employees.

1-07.11(4).2 Employees, Applicants, and Potential Employees

In order to make the Design-Builder's equal employment opportunity 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 equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

2. **EEO Indoctrination** – The Design-Builder's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

1-07.11(5) SANCTIONS

In the event of 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 payment requests may not be honored 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 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.

4. The Contract may be terminated.

1-07.11(6) INCORPORATION OF PROVISIONS

The Design-Builder shall include the provisions of Section 1-07.11(2) Contractual Requirements (1) through (4) and the 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 minority and 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 equal employment opportunity obligations.

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 equal employment opportunity 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 being made in cooperation with unions to increase employment opportunities for minorities and women (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 being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
4. **Subcontracting** – The progress and efforts being made in securing the services of disadvantaged, minority, and women Subcontractors or Subcontractors with meaningful minority and female 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 three 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 Washington State Department of Transportation or the Federal Highway Administration.

Federal-Aid Highway Construction Contractors Annual EEO Report

FHWA #1391 – 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 25th in every year during which Work was performed in July. The payroll period to be reflected in the report is 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.

Monthly Employment Utilization Reports

WSDOT Form 820-010 – 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.

Comment [ST47]: Use in all Federal Aid projects. Otherwise Delete.

Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Design-Builder's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.
2. The goals and timetables for minority and female 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 time tables is enforced by the 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 female 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 good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female 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 working 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:

District Director
U.S. Department of Labor, OWCP
300 Fifth Avenue, Suite 1050F
Seattle, WA 98104-2429
(206) 470-3100 Phone
(206) 470-3101 Fax
Accommodation Line (Dedicated line for individuals with hearing impairments):
(206) 504-5195
Additional information may be found at the U.S. Department of Labor website:
http://www.dol.gov/ofccp/TAguides/ctaguide.htm

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 Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;

d. Minority includes:

(1) Black, a person having origins in any of the Black Racial Groups of Africa.

(2) Hispanic, a fluent Spanish speaking, Spanish surnamed person of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish origin.

(3) 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.

(4) 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 female 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. Contractors 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 good faith effort 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 good faith effort to achieve the Plan goals and timetables.

4. The Design-Builder shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of this Special Provision. 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 female 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 female 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 specifications, 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 equal employment opportunity. The evaluation of the Design-Builder's compliance with these specifications 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 female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female 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 female off-the-street applicant and minority or female 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 therefor, 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 woman 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 and/or participate in training programs 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 female 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 and female news media, and providing written notification to 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, both oral and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Design-Builder's recruitment area and employment needs. Not later than one 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 and female employees to recruit other minority persons and women and where reasonable, provide after school, summer and vacation employment to minority and female 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 and female 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 nonsegregated 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 and female construction contractors and suppliers, including circulation of solicitations to minority and female 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. Contractors 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 of this Special Provision 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, ensure that the concrete benefits of the program are reflected in the Design-Builder's minority and female work-force participation, makes a good faith effort 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 equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Design-Builder may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Design-Builder has achieved its goals for women generally, the Design-Builder may be in violation of the Executive Order if a specific minority group of women is underutilized).

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 of this Special Provision, so as to achieve maximum results from its efforts to ensure equal employment opportunity. 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 Contractors 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
http://www.wsdot.wa.gov/equalopportunity/default.htm

Comment [ST48]: Use in Federal Aid projects exceeding $10,000 in contract cost.

(Source GSP 1-07.11.OPT1.GR1 dated April 1, 2013)

Disadvantaged Business Enterprise Participation

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to this Contract. As such, the requirements of this Contract are to make affirmative efforts to solicit DBEs, provide information on who submitted a Bid or quote and to report DBE participation quarterly as described elsewhere in these Contract Provisions. No preference will be included in the evaluation of Bids/Proposals, no minimum level of DBE participation shall be required as a Condition of Award and Bids/Proposals may not be rejected or considered non-responsive on that basis.

DBE Goals

No DBE goals have been assigned as part of this Contract.

Affirmative Efforts to Solicit DBE Participation

DBE firms shall have an equal opportunity to compete for subcontracts in which the Design-Builder enters into pursuant to this Contract.

Design-Builders are encouraged to:

1. Advertise opportunities for Subcontractors or suppliers in a timely and reasonably designed manner to provide notice of the opportunity to DBEs capable of performing the Work. All advertisements should include a Contract Provision encouraging participation by DBE firms. This may be accomplished through general advertisements (e.g. newspapers, journals, etc.) or by soliciting Bids/Proposals directly from DBEs.

   Note: A Directory of Certified DBE Firms denoting the Description of Work the DBE Contractors are certified to perform is available at:

   www.omwbe.wa.gov/certification/index.shtml.

   The directory provides a plain language on the Description of Work that the listed DBE's have been certified by the Office of Minority and Women's Business Enterprises (OMWBE) to perform.

2. Establish delivery schedules that encourage participation by DBEs and other small businesses.

3. Participate with a DBE as a joint venture.

DBE Eligibility/Selection of DBEs for Reporting Purposes Only

Design-Builders may take credit for DBEs utilized on this Contract only if the firm is certified for the Work being performed.

Absent a mandatory goal, all DBE participation that is attained on this project will be considered as "race neutral" participation and shall be reported as such.

Crediting DBE Participation for Reporting Purposes

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 shall be credited.

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.

DBE Subcontractor

When a DBE firm participates as a Subcontractor, 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 shall be credited.

- Include the cost of supplies and materials obtained by the DBE for the Work in the Contract including supplies purchased or equipment leased by the DBE. However, you may not take credit supplies, materials, and equipment the DBE Subcontractor purchases or leases from the Design-Builder or its affiliate. In addition, Work performed by a DBE, utilizing resources of the Design-Builder or its affiliates shall not be credited.
- In very rare situations, a DBE firm may utilize equipment and/or personnel from a non-DBE firm other than the Design-Builder or its affiliates. Should this situation arise the arrangement must be short-term and have prior written approval from the Office of Equal Opportunity (OEO). The arrangement must not impact a DBE firm's ability to perform a Commercially Useful Function (CUF).
- Count the entire value of 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.
- When a DBE subcontracts to another firm, the value of the subcontracted Work may be counted as participation only if the DBE's lower tier Subcontractor is also a DBE.
- When 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 credited as DBE participation, so long as it is a distinct clearly defined portion of the Work that the DBE is performing with its own forces.
- If a firm is not certified as a DBE at the time of the execution of the contract, their participation cannot be counted toward any DBE goals.

Trucking

Use the following factors in determining DBE credit and whether a DBE trucking company is performing a Commercially Useful Function (CUF):

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which credit is being claimed.
2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the Contract.
3. The DBE receives credit only 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. For purposes of this requirement a lease must indicate that the DBE has exclusive use of and control over the truck. 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 first priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
4. The DBE may lease trucks from another DBE firm including an owner-operator provided they are certified as a DBE for trucking. The DBE who leases trucks from another DBE may claim participation for the total value of the transportation services the lessee DBE provides on the Contract.
5. The DBE may also lease trucks from a non-DBE firm and may enter into an agreement with an owner-operator who is a non-DBE. The DBE shall only receive credit for the number of additional non-DBE trucks equal or less than the number of DBE trucks the firms owns or has leased/subcontracted through another DBE trucking company. The DBE must control the work of the non-DBE trucks. If the non-DBE is performing the Work without supervision of that Work by the DBE, the DBE is not performing a Commercially Useful Function (CUF).
6. In any lease or owner-operator situation, as described in requirement #4 and #5 above, the following rules shall apply:
   a. A written lease/rental agreement is required for all trucks leased or rented; documenting the ownership and the terms of the agreement. The agreements must be submitted and approved by the Washington State Department of Transportation (WSDOT) prior to the beginning of the Work. The agreement must show the leaser's name, truck description and agreed upon amount and method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. (This requirement does not apply to owner-operator arrangements.)
   b. Only the vehicle, (not the operator) may be leased or rented. (This requirement does not apply to owner-operator arrangements.)
7. Credit may only be claimed for DBE trucking firms operating under a subcontract or a written agreement approved by WSDOT prior to performing Work.

Expenditures paid to other DBEs

Expenditures paid to other DBEs for materials or supplies may be counted toward DBE goals as provided in the following:

Manufacturer

You may claim DBE credit for 100 percent of value of the materials or supplies obtained from a DBE manufacturer.

A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material or that purchases and substantially alters goods and materials to make them suitable for

construction use before reselling them.

In order to receive credit as a DBE Manufacturer, the firm must be certified by OMWBE as a manufacturer in a NAICS code that falls within the 31XXXX to 33XXXX classification.

Regular Dealer

You may claim credit for 60 percent of the value of the materials or supplies purchased from a DBE regular dealer. Rules applicable to regular dealer status are contained in 49 CFR Part 26.55.e.2.

To be considered a regular dealer you must meet the following criteria:

1. WSDOT considers and recognizes a regular dealer, as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract and described by the specifications of the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.

2. Sixty percent (60%) of the cost of materials or supplies purchased from an approved regular dealer may be credited as DBE participation.

Regular dealer status is granted on a contract-by-contract basis. A firm wishing to be approved as a regular dealer for WSDOT contracted projects or Highways & Local Program administered projects must submit a request in writing to the OEO no later than seven days prior to Proposal turn in date.

Once the OEO has received the request, an onsite review will be set up with the firm and a review conducted to determine the firm's qualifications. If it is determined that the firm qualifies as a regular dealer the OEO will list the firm on an approved regular dealers List. The list may be accessed through the OEO Home website is at:

www.wsdot.wa.gov/equalopportunity

Note: Requests to be listed as a regular dealer will only be processed if the requesting firm is certified by the Office of Minority and Women's Business Enterprises in a NAICS code that fall within the 42XXXX NAICS Wholesale code section.

Materials or Supplies Purchased from a DBE

With regard to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer you may claim credit for the following:

1. Fees or commissions charged for assistance in the procurement of the materials and supplies.

2. Fees or transportation charges for the delivery of materials or supplies.

In either case, you may not take credit for any part of the cost of the materials and supplies.

Joint Checking Allowance

Design-Builders and DBEs must receive pre-approval by the OEO before using a joint check. Joint check requests shall be submitted, by the Design-Builder to WSDOT for approval.

When requesting approval for use of a joint checking allowance, the Design-Builder must distribute a written joint check agreement among the parties (including the suppliers involved) providing full and prompt disclosure of the expected use of the joint checks. The agreement shall contain all the information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs. The joint check request shall be submitted to WSDOT for approval prior to signing the Contract agreement.

The following are some general conditions that must be met by all parties regarding joint check use:

a. It is understood the Design-Builder acts as the guarantor of a joint check.

b. The DBE's own funds are used to pay supplier of materials. The Design-Builder does not make direct payment to supplier. In order to be performing a Commercially Useful Function (CUF), the DBE must release the check to the supplier (paying for the materials it-self and not be an extra participant in a transaction).

c. If the Design-Builder makes joint checks available to one DBE Subcontractor, the service must be made available to all Subcontractors (DBE and non-DBE).

d. The relationship between the DBE and its suppliers should be established independently of and without interference by the Design-Builder. The DBE has final decision-making responsibility concerning the procurement of materials and supplies, including which supplier to use.

e. The Design-Builder and DBE shall be able to provide receipts, invoices, cancelled checks and/or certification statements of payment if requested by WSDOT.

f. The DBE remains responsible for all other elements of 49 CFR 26.55(c) (1).

Failure by the Design-Builder to request and to receive prior approval of a joint check arrangement will result in the joint check amount not counting towards the Design-Builder's DBE goal.

Commercially Useful Function (CUF)

In any case, you may only take credit when the associated DBE that is determined to be performing a Commercially Useful Function (CUF).

- A DBE performs a CUF when it is responsible for execution of a distinct element of Work and is carrying out its responsibilities by performing, managing and supervising the Work involved. The DBE must also be responsible with respect to materials and supplies used on the Contract. For example; negotiating price, determining quality, determining quantities, ordering, installing (if applicable) and paying for the material itself.
- 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.

Procedures after Execution

Reporting

Quarterly Report of Amounts Credited as DBE Participation

Form #422-102

The Design-Builder shall submit a Quarterly Report of Amounts Credited as DBE Participation form (422-102 EF) on a quarterly basis for any calendar quarter in which DBE Work is accomplished or upon completion of the project, as appropriate. This is a record of payments to the DBE that the Design-Builder is taking credit for as DBE participation. The dollars reported as specified in Crediting DBE Participation for Reporting Purposes section of this contract provision.

In the event that the payments to a DBE have been made by an entity other than the Design-Builder (as in the case of a lower-tier Subcontractor or supplier), then the Design-Builder shall obtain the quarterly report, including the signed affidavit, from the paying entity and submit the report to WSDOT.

Payment

Compensation for all costs associated with complying with the conditions of this specification shall be included in payment for the associated Contract items of Work.

Prompt Payment

Prompt payment to all Subcontractors shall be in accordance with Section 1-08.1(1) of the Contract Provisions.

Damages for Noncompliance

The Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Contracts, which contain funding assistance from the United States Department of Transportation. Failure by the Design-Builder 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.

Comment [ST49]: Use on all Federal Aid projects unless 1-07.11.OPT3.FR1 is used. The "No DBE Goals" is to be furnished or verified by the Office of Equal Opportunity.

(Source GSP 1-07.11.OPT2.GR1 dated May 7, 2012)

Disadvantaged Business Enterprise Condition of Award Participation

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to this Contract. .

DBE Participating Goal

The WSDOT has established a COA Contract goal in the amount of: *** $$1$$ ***.

DBE Eligibility/Selection of DBEs

A Directory of Certified DBE Firms denoting the Description of Work the DBE Contractors are certified to perform is available at:

www.omwbe.wa.gov/certification/index.shtml.

Field Code Changed

The directory provides plain language on the Description of Work that the listed DBE's have been certified by the Office of Minority and Women's Business Enterprises (OMWBE) to perform. The Design Builder shall use the Directory of Certified DBE Firms to confirm if a DBE is certified for the "Description of Work" the Bidder lists on the DBE Utilization Certification form # 272-056 EF (see form instructions) and therefore qualifies for credit towards the COA goal.

Crediting DBE 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 shall be credited.

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 Prime performs with its own forces.

DBE Subcontractor

When a DBE firm participates as a Subcontractor 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 shall be credited.

Include the cost of supplies and materials obtained by the DBE for the Work in the Contract

including supplies purchased or equipment leased by the DBE.

However, you may not take credit for supplies, materials, and equipment the DBE Subcontractor purchases or leases from the Design Builder or its affiliate. In addition, Work performed by a DBE, utilizing resources of the Design Burilder or its affiliates shall not be credited.

In very rare situations, a DBE firm may utilize equipment and/or personnel from a non-DBE firm other than the Design Builder or its affiliates. Should this situation arise the arrangement must be short-term and have prior written approval from the Office of Equal Opportunity (OEO).

Count the entire value of 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.

When a DBE subcontracts to another firm, the value of the subcontracted Work may be counted as participation only if the DBE's lower tier Subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm shall not be credited.

When 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 credited as DBE participation, provided it is a distinct clearly defined portion of the Work that the DBE is certified to perform and the DBE Subcontractor performs the Work with its own forces.

If a firm is not certified as a DBE at the time of the execution of the contract, their participation cannot be counted toward any DBE goals.

Trucking

Use the following factors in determining DBE credit and whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which credit is being claimed.
2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the Contract.
3. The DBE receives credit only 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. For purposes of this requirement a lease must indicate that the DBE has exclusive use of and control over the truck. 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 first priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
4. The DBE may lease trucks from another DBE firm including an owner-operator provided they are certified as a DBE for trucking. The DBE who leases trucks from another DBE may claim participation for the total value of the transportation services the lessee DBE provides on the Contract.
5. The DBE may also lease trucks from a non-DBE firm and may enter into an agreement with an owner-operator who is a non-DBE. The DBE shall only receive credit for the number of additional non-DBE trucks equal or less than the number of DBE trucks the firms owns or has leased/subcontracted through another DBE trucking company. The DBE must control the work of the non-DBE trucks. If the non-DBE is performing the work without supervision of that work by the DBE, the DBE is not performing a Commercially Useful Function (CUF).

6. In any lease or owner-operator situation, as described in requirement #4 and #5 above, the following rules shall apply:

   a. A written lease/rental agreement is required for all trucks leased or rented; documenting the ownership and the terms of the agreement. The agreements must be submitted and approved by the WSDOT prior to the beginning of the Work. The agreement must show the leaser's name, truck description and agreed upon amount and method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. (This requirement does not apply to owner-operator arrangements.)

   b. Only the vehicle, (not the operator) may be leased or rented. (This requirement does not apply to owner-operator arrangements).

7. Credit may only be claimed for DBE trucking firms operating under a subcontract or a written agreement approved by the WSDOT prior to performing Work.

Expenditures paid to other DBEs

Expenditures paid to other DBEs for materials or supplies may be counted toward DBE goals as provided in the following:

Manufacturer

You may claim DBE credit for 100 percent of value of the materials or supplies obtained from a **DBE manufacturer.**

A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material or that purchases and substantially alters goods and materials to make them suitable for construction use before reselling them.

In order to receive credit as a DBE Manufacturer, the firm must be certified by OMWBE as a manufacturer in a NAICS code that falls within the 31XXXX to 33XXXX classification.

Regular Dealer

You may claim credit for 60 percent of the value of the materials or supplies purchased from a DBE regular dealer. Rules applicable to regular dealer status are contained in 49 CFR Part 26.55.e.2.

To be considered a regular dealer you must meet the following criteria:

- WSDOT considers and recognizes a regular dealer, as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract and described by the specifications of the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- Sixty percent (60%) of the cost of materials or supplies purchased from an approved regular dealer may be credited as DBE participation.

Regular dealer status is granted on a contract-by-contract basis. A firm wishing to be approved as a regular dealer for WSDOT contracted projects or Highways & Local Program administered projects must submit a request in writing to OEO for approval, no later than seven days prior to bid opening.

Once the OEO has received the request, an onsite review will be set up with the firm and a review

conducted to determine the firm's qualifications. If it is determined that the firm qualifies as a regular dealer the OEO will list the firm on an Approved Regular Dealers List. The list may be accessed through the OEO Home website is at:

www.wsdot.wa.gov/equalopportunity.

Field Code Changed

Note: Requests to be listed as a regular dealer will only be processed if the requesting firm is certified by the Office of Minority and Women's Business Enterprises in a NAICS code that fall within the 42XXXX NAICS Wholesale code section.

Materials or Supplies Purchased from a DBE

With regard to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer you may claim credit for the following:

1. Fees or commissions charged for assistance in the procurement of the materials and supplies.
2. Fees or transportation charges for the delivery of materials or supplies.

In either case you may not take credit for any part of the cost of the materials and supplies.

Commercially Useful Function (CUF)

The Design Builder has a responsibility and must treat the working relationship with the DBE such that the DBE is performing a commercially useful function. The Design Builder may only take credit for Work performed by a DBE that is determined to be performing a commercially useful function.

- A DBE performs a commercially useful function when it is responsible for execution of a distinct element of Work and is carrying out its responsibilities by performing, managing and supervising the Work involved. The DBE must also be responsible with respect to materials and supplies used on the Contract. For example; negotiating price, determining quality, determining quantities, ordering, installing (if applicable) and paying for the material itself.
- A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed.

Joint Checking Allowance

Design Builder and DBEs must receive pre-approval by the OEO before using a joint check. Joint check requests shall be submitted by the Design Builder to the WSDOT for approval.

When requesting approval for use of a joint checking allowance, the Design Builder must distribute a written joint check agreement among the parties (including the suppliers involved) providing full and prompt disclosure of the expected use of the joint checks. The agreement shall contain all the information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs. The joint check request shall be submitted to the WSDOT for approval prior to signing the contract agreement.

The following are some general conditions that must be met by all parties regarding joint check use:

a. It is understood that the Design Builder acts solely as the guarantor of a joint check.

b. The DBE's own funds are used to pay supplier of materials. The Design Builder does not make direct payment to supplier. In order to be performing a Commercially Useful Function (CUF), the DBE must release the check to the supplier (paying for the materials it-self and not be an extra participant in a transaction).

c. If the Design Builder makes joint checks available to one DBE Subcontractor, the service must be made available to all Subcontractors (DBE and non-DBE).

d. The relationship between the DBE and its suppliers should be established independently of and without interference by theDesign Builder . The DBE has final decision-making responsibility concerning the procurement of materials and supplies, including which supplier to use.

e. The Design Builder and DBE shall be able to provide receipts, invoices, cancelled checks and/or certification statements of payment if requested by the Contracting Agency.

f. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1).

Failure by the Design Builder to request and receive prior approval of a joint check arrangement will result in the joint check amount not counting towards the Design Builders DBE goal.

Procedures after Execution

After execution of the Contract, the Design-Builder shall provide the additional information described below.

As described in the ITP, each Proposer for this Contract was required to submit a DBE Performance Plan as part of a responsive Proposal. Following execution of the Contract and during both the design and construction portions of the project, the Design-Builder shall submit documentation, in the form of progress reports described in the Section below entitled "REPORTING", to show that the Design Builder is meeting the contract goal for the project, or if the goal is not being met, the Design Builder must submit satisfactory evidence that it has made good faith efforts, in accordance with that Section, to meet the goal. Evidence of good faith efforts, as described in 49 CFR Part 26 Section 26.53, will be monitored by WSDOT throughout the duration of the Contract.

Before execution of a Subcontract, the Design-Builder, Subcontractor, or lower-tier Subcontractor shall submit the following items:

1. Information for all utilized DBE's (Using the DBE Utilization Certification form, DOT Form 272-056 EF):
   - Correct business name, federal employee identification number (if available), and mailing address.
   - List of all items and types of work assigned to each utilized DBE firm, including prices and/or amounts paid.
   - Description of partial items and types of work (if any) to be sublet to each successful DBE firm specifying the distinct elements of work under each item to be performed by the DBE and including the dollar value of the DBE portion.
2. As it occurs, names of firms who submit a bid or quote in an attempt to participate in this project whether they were successful or not. Include the correct business name, federal employer identification number (optional) and a mailing address.

The firms identified by the Design-Builder may be contacted by WSDOT to solicit general information as follows:

- Age of the firm.
- Average of its gross annual receipts over the past three years

Crediting DBE Participation toward Meeting the Goal

Reporting

The Design-Builder shall provide monthly DBE Progress Reports to WSDOT and shall also provide an annual report on or before July 1 of each year. Each report shall also include a narrative and payment summary stating whether the Design-Builder is on target with respect to the established schedule for DBE participation, whether the goal is being exceeded (stating the amount of excess), or whether the goal is behind the target (stating the amount of the deficit), and what adjustments are being made to accomplish the plan.

The Design-Builder shall submit a "Quarterly Report of Amounts Credited as DBE Participation" DOT Form 422-102 EF (actual payments) on a quarterly basis for any calendar quarter in which DBE work is accomplished or upon completion of the project, as appropriate. The quarterly reports are due on January 20th, April 20th, July 20th, and October 20th of each year. The dollars reported will be in accordance with the "Counting DBE Participation Toward Meeting the Overall Design-Build contract Goal" section of this specification.

In the event that the payments to a DBE have been made by an entity other than the Design-Builder (as in the case of a lower-tier Subcontractor or supplier), then the Design-Builder shall obtain the quarterly report, including the signed affidavit, from the paying entity and submit the report to WSDOT.

DBE Termination

A COA DBE Subcontractor may only be terminated in whole or part with the approval of the WSDOT (in coordination with OEO). Approval will be granted provided the Design Builder demonstrates that the termination is based on good cause.

Good cause typically includes situations where the DBE Subcontractor is unable or has failed to perform the work of its subcontract in accordance with normal industry standards. While not all inclusive, some examples of good cause include the following circumstances:

Good cause may exist if:

- The listed DBE Subcontractor fails or refuses to execute a written contract.
- The listed DBE Subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
- The listed DBE Subcontractor fails or refuses to meet the Design Builder's reasonable, nondiscriminatory bond requirements.
- The listed DBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE Subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
- The listed DBE Subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
- The listed DBE is ineligible to receive DBE credit for the type of work required.
- A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its work on the contract.

Good cause does not exist if:

- The Design Builder seeks to terminate a COA DBE so that the Prime can self-perform the Work.

- The Design Builder seeks to terminate a COA DBE so the Design Builder can substitute another DBE or non-DBE after contract award.
- The failure or refusal of the DBE Subcontractor 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).

Prior to requesting termination, the Design Builder must give notice in writing to the DBE Subcontractor with a copy to the WSDOT of its intent to request to terminate DBE work and the reasons for doing so. The DBE Subcontractor shall have five (5) days to respond to the Design Builders notice. The DBE's response shall either support the termination or advise the WSDOT and the Design Builder of the reasons it objects to the termination of its subcontract.

When a COA DBE firm is "terminated" from a Contract (or fails to complete its Subcontract for any reason), the Design-Builder shall make every good faith effort to substitute another DBE firm (ref. to 49 CFR 26.53(g)).

Graduation

When a DBE firm "graduates" from the DBE program (during the course of an executed subcontract), the DBE participation of that firm "may" continue to count towards the contract DBE goal.

Decertification

When a COA DBE firm who has a signed subcontract in place with a Design-Builder, later becomes "decertified" (during the course of that subcontract) the DBE participation of that firm "may" continue to count towards the Contract DBE Goal.

Counting payments

Payments to a DBE firm will count toward DBE goals only if the participation is in accordance with these specifications.

Prompt Payment

Prompt payment to all Subcontractors shall be in accordance with Section 1-08.1(1) of these Contract special provisions.

Damages for Noncompliance

The Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts, which contain funding assistance from the United States Department of Transportation. Failure by the Design-Builder 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.

If the Design-Builder does not comply with any part of its contract as required under 49 CFR part 26, and/or any other Applicable Law or regulation regarding DBE, WSDOT may withhold payment, suspend, or terminate the Contract, and subject the Design-Builder to civil penalties of up to ten percent of the amount of the Contract for each violation. In the case of WSDOT contracts, repeated violations, exceeding a single violation, may disqualify the Design-Builder from further participation in WSDOT contracts for a period of up to three years. A selected proposer must be in compliance with these General Provisions as a condition precedent to the granting of a notice of award by WSDOT. The Design-Builder is entitled to request an adjudicative proceeding with respect to WSDOT's determination of contract violation and assessed penalties by filing a written

application within 30 Calendar Days of receipt of notification. The adjudicative proceeding, if requested, will be conducted by an administrative law judge pursuant to the procedures set forth in RCW 34.05 and Chapter 10.08 of the Washington Administrative Code

Payment

Compensation for all costs involved with complying with the conditions of this specification and any other associated DBE requirements is included in payment for the associated Contract items of Work.

Special Training Provisions

General Requirements

The Design-Builder's equal employment opportunity, affirmative action program shall include the requirements set forth below. The Design-Builder shall provide on-the-job training aimed at developing trainees to journeyman status in the trades involved. The number of training hours shall be ***** fill in training hours *****. 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. The Design-Builder shall also ensure that this training provision is made applicable to any Subcontract that includes training.

Trainee Approval

The federal government requires WSDOT to include these training provisions as a condition attached to the receipt of federal highway funding. The federal government has determined that the training and promotion of members of certain minority groups and women is a primary objective of this training provision. The Design-Builder shall make every effort to enroll minority groups and women 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, woman or otherwise. 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 Equal Employment Opportunity and On-the-Job Training requirements and provides documentation of the efforts taken to fill the specific training position with either minorities or females; or

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 and/or employment of minorities and females in the craft which the proposed trainee is to be trained; and

3. The Design-Builder has made a good faith effort towards recruiting of minorities and women. Good faith effort shall include but is not limited to the following:

Distribution of written notices of available employment opportunities with the Design-Builder and enrollment opportunities with its unions. Distribution should include but not be limited to minority and female recruitment sources and minority and female community organizations;

Records documenting the Design-Builder's efforts and the outcome of those efforts, to employ minority and female applicants and/or refer them to unions;

Records reflecting the Design-Builder's efforts in participating in developing minority and female on-the-job training opportunities, including upgrading programs and apprenticeship opportunities;

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

Efforts shall reflect two-way communications.

Comment [ST50]: Requires a CONDITION OF AWARD GOAL. Use in selected Federal Aid projects with DBE Condition of Award (COA) goals. The final COA DBE Goal is to be furnished or verified by the Office of Equal Opportunity. Use of Disadvantaged Business Enterprise Utilization Certification (DOT Form 272 056 EF) and use of Disadvantaged Business Enterprise Written Confirmation Document (DOT Form 422-031 EF) is required in the proposal.
Must use with 1-02.6.OPT10.GR1 and 1-02.9.OPT1.GR1
(1 fill-in) The fill-in shall be one of the following formats:
___ percent (___%) of the contract total for COA DBE goals; or
___ dollars for COA DBE goals

(Source GSP 1-07.11.OPT3.FR1 dated April 1, 2013)

No employee shall be employed as a trainee in any classification in which the employee has successfully completed training leading to journeyman status or in which the employee has been employed as a journeyman. 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. Washington State Department of Labor & Industries — 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; and

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.

2. Apprentices must be registered with U.S. Department of Labor — Bureau of Apprenticeship Training (BAT) approved program.

3. Trainees participating in a non-BAT/SATC program, which has been approved by the FHWA based on the contracting agency's recommendation for the specific project.

4. For assistance in locating trainee candidates, the Design-Builder may call WSDOT's OJT Support Services Technical Advisor at (360) 705-7088, (206) 587-4954 or toll free at 1-866-252-2680.

Comment [DEC51]: Verify

Comment [ST52]: Verify

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 or shall provide WSDOT with a certification showing the type and length of training satisfactorily completed by each trainee.

Training Program Approval

The Training Program shall meet the following requirements:

1. The Training Program (DOT Form 272-049) must be submitted to the WSDOT Engineer for approval prior to commencing contract Work and shall be resubmitted 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 good faith effort documentation shall be submitted on (DOT Form 272-050).

6. In King County, laborer trainees or apprentices will not be approved on contracts containing less than 1000 training hours as specified in this section. In King County, no more than twenty percent (20%) of hours proposed for trainees or apprentices shall be in the laborer classification when the contract contains 1000 or more hours of training as specified in this section.

7. 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.

8. 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.

9. 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 upon completion of the training program. 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.

10. Wage Progressions: Trainees will be paid at least the applicable ratios or wage progressions shown in the apprenticeship standards published by the Washington State Department of Labor and Industries. In the event that no training program has been established by the Department of Labor and Industries, the trainee shall be paid in accordance with the provisions of RCW 39.12.021 which reads as follows:

Apprentice workmen 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 workman for whom an apprenticeship agreement has not been registered and approved by the State Apprenticeship Council shall be considered to be a fully qualified journeyman, and, therefore, shall be paid at the prevailing hourly rate for journeymen.

Compliance

In the event that the Design-Builder is unable to accomplish the required training hours but can demonstrate a good faith effort to meet the requirements as specified, then WSDOT will adjust the training goals accordingly.

Requirements for Non BAT/SATC Approved Training Programs

Design-Builders who are not affiliated with a program approved by BAT or SATC may have their training program approved provided that the program is submitted for approval on DOT Form 272-049, 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 journeymen 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 journeyman 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.

Comment [ST53]: Use in all projects with more than 50 working days that contain Training (Obtain Training Decision & Fill-in from OEO office).

(Source GSP 1-07.11.OPT4.FR1 dated August 2, 2010)

Minority and Women's Business Enterprise (M/WBE) Participation

General Statement

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW the State of Washington encourages participation in all of its contracts by M/WBE firms certified by the office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to a solicitation/invitation or as a subcontractor to a Bidder/Proposer. No preference will be included in the evaluation of bids/proposals, no minimum level of M/WBE participation shall be required as a condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis.

Voluntary M/WBE Goals

Voluntary numerical M/WBE participation goals shall be established for all solicitation/invitations where applicable. These goals are voluntary, but achievement of the goals is encouraged. No preference will be included in the evaluation of bids/proposals, no minimum level of M/WBE participation shall be required as a condition of award or completion of the contract work, and bids/proposals will not be rejected or considered non-responsive on that basis. Bidders may contact OMWBE at 360-753-9693 to obtain information on certified firms.

Required M/WBE Participation Plan

Prime Contractors shall submit an M/WBE Participation Plan as part of responsibility, before work begins. Although the goals contained within each Contract are voluntary, that is, award of the contract is not conditioned upon attainment of the voluntary M/WBE goals, the outreach efforts to provide M/WBEs maximum practicable opportunities are not. For M/WBE Participation Plan Drafting Guidelines, please visit: http://www.wsdot.wa.gov/equalopportunity.

Non-discrimination

Contractors, Bidders, and Proposers shall not create barriers to open and fair opportunities for all businesses including M/WBEs to participate in all State contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In

considering offers from and doing business with subcontractors and suppliers, the Design-Builder shall not discriminate on the basis of race, color, creed, religion, national origin, sex, age, nationality, marital status, or the presence of any mental or physical disability in an otherwise qualified disabled person.

The Design-Builder shall make the M/WBE Participation General Statement cited previously in this Special Provision a part of all subcontracts and agreements entered into as a result of this contract.

Definitions

When referred to in this contract, the terms Minority, Minority Business Enterprise (MBE), and Women's Business Enterprise (WBE) will be construed to have the following meanings:

Minority means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: having origins in any of the black racial groups of Africa;

(b) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan Native: having origins in any of the original peoples of North America.

Minority Business Enterprise, Minority-owned Business Enterprise, or MBE means a business organized for profit, performing a commercially useful function, which is owned and controlled by one or more minority individuals or minority business enterprises. Owned and controlled means a business in which one or more minorities or MBE's own at least fifty-one percent (51%), or in the case of a corporation at least fifty-one percent (51%) of the voting stock, and control at least fifty-one percent (51%) of the management and daily business operations of the business.

M/WBE means a minority owned business enterprise, a women-owned business enterprise, and/or a combination minority and women's business enterprise certified by the Office of Minority and Women's Business Enterprises (OMWBE) of the State of Washington.

Women's Business Enterprise, Women-owned Business Enterprise, or WBE means a business organized for profit, performing a commercially useful function, which is owned and controlled by one or more women or women's business enterprises. Owned and controlled means a business in which one or more women or WBE's own at least fifty-one percent (51%) or in the case of a corporation at least fifty-one percent (51%) of the voting stock, and control at least fifty-one percent (51%) of the management and daily business operations of the business. The women owners must be United States citizens or lawful permanent residents.

Minority/Women's Business Enterprise means a minority owned business enterprise, a women-owned business enterprise; and/or a combination minority and women's business enterprise certified by the OMWBE of the State of Washington.

MBE/WBE Status

A consolidated list of firms accepted as certified by OMWBE is available via the WSDOT Home Page, (WWW.WSDOT.WA.GOV) and a hard copy is available at nominal cost from the OMWBE.

MBE/WBE Goals

WSDOT has established a voluntary goal in the amount of:

*** $$1$$ ***

Comment [ST54]: Fill-In

Further Information

If further information is desired concerning Minority Business Enterprise/Women's Business Enterprise participation, inquiry may be directed to:

External Civil Rights Branch

Office of Equal Opportunity

Washington State Department of Transportation

Transportation Bldg., PO Box 47314

Olympia, WA 98504-7314

or telephone - (360) 705-7085

Fax (360) 705-6801

Comment [ST55]: Use in State funded projects that contain M/WBE Goals. Do not use if the M/WBE Goal is zero. The final M/WBE goal is to be either furnished or verified by the External Civil Rights Unit.

(Source GSP 1-07.11.OPT5.FR1 dated August 4, 2008)

Apprentice Utilization

This Contract includes an Apprentice Utilization Requirement as defined in this specification. No less than 15.0 percent of project Labor Hours shall be performed by Apprentices.

Definitions

For the purposes of this specification the following definitions apply:

1. Apprentice Utilization Requirement is expressed as a percentage of the project Labor Hours performed by Apprentices.
2. Labor Hours are the total hours performed by all workers receiving an hourly wage who are directly employed on the project site including hours performed by workers employed by the prime Contractor and all Subcontractors. Labor Hours do not include hours performed by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements. Truck driving hours have to be four hours or more of a shift for inclusion.
3. Apprentice is a person enrolled in a State-approved Apprenticeship Training Program.
4. State-approved Apprenticeship Training Program is an apprenticeship training program approved by the Washington State Apprenticeship Council.
5. Good Faith Effort is a demonstration that the Contractor has strived to meet the Apprentice Utilization Requirement including but not necessarily limited to the specific steps as described elsewhere in this specification.

Plan

The Contractor shall submit an “Apprentice Utilization Plan” (DOT form 422-115 EF) within 30 days of execution, demonstrating how and when they intend to achieve the Apprentice Utilization Requirement. The plan shall be updated and resubmitted as appropriate as the Work progresses. The intent is to provide the Project Engineer with enough information to track progress in meeting the utilization requirements. If the Contractor is unable to demonstrate how they intend to meet the Apprentice Utilization Requirement on the Apprentice Utilization Plan they must submit Good Faith Effort documentation to the Project Engineer with their Apprentice Utilization Plan.

Reporting

The Contractor shall submit a “Statement of Apprentice /Journeyman Participation” (DOT form 422-110 EF) on a monthly basis. The report shall be submitted to the Project Engineer by the last

working day of the subsequent month, until the Physical Completion Date. The monthly Statement of Apprentice/Journeyman Participation should be submitted electronically using the Apprentice Journeyman Participation Database at http://fmapps.wsdot.wa.gov/fmi/iwp/res/iwp_home.html. The Contractor will receive information about using the Apprentice Journeyman Participation Database from the project office including an account name and password after Execution of the Contract. The Contractor may also request this information by e-mailing apprenticeship@wsdot.wa.gov. The data reported shall include the Contractor and all Subcontractors. At the Contractor's request, the Project Engineer may suspend this reporting requirement during periods of minimal or no applicable work activities on the projectGood Faith Effort documentation shall be submitted to the Project Engineer prior to the Physical Completion Date if the Contractor completes the project without meeting the Apprenticeship Utilization Plan.

Contacts

The Contractor may obtain information on State-approved Apprenticeship Training Programs by contacting the Department of Labor and Industries at:

Specialty Compliance Services Division, Apprenticeship Section, P.O. Box 44530, Olympia, WA 98504-4530 or by phone at (360) 902-5320.

Compliance

In the event that the Contractor is unable to accomplish the Apprentice Utilization Requirement, the Contractor shall demonstrate that a Good Faith Effort has been made as described elsewhere in this specification. Failure to comply with the requirements as specified may result in reduction or revocation of prequalification as allowed by WAC 468-16-190.

Good Faith Efforts

In fulfilling the Good Faith Effort, the Contractor shall perform and, when appropriate, require its Subcontractors to perform the following steps:

1. Solicit Apprentice(s) from State-approved Apprenticeship Training Program(s)
2. Document the solicitation and, in the event Apprentice(s) are not available, obtain supporting documentation from the solicited program(s).
3. Demonstrate that the plan was updated as required elsewhere in this specification.
4. Provide documentation demonstrating what efforts the Contractor has taken to require Subcontractors to solicit and employ Apprentice(s).

In the event that the preceding steps have been followed, the Contractor may also supplement the Good Faith Efforts documentation with the following documentation:

5. Submit documentation demonstrating successful Apprentice utilization on previous contracts.
6. Submit documentation indicating company wide Apprentice utilization efforts and percentages of attainment.

Payment

Compensation for all costs involved with complying with the conditions of this specification is included in payment for the associated Contract items of work.

Comment [ST56]:
Use in projects with an engineer's estimate of $2 million and greater

(Source GSP 1-07.OPT1.GR1 dated January 7, 2013)

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

The Required Contract Provisions Federal Aid Construction Contracts (FHWA 1273) Revised May 1, 2012 supersede any conflicting provisions of the Standard Specifications and are made a part of this Contract; provided, however, that if any of the provisions of FHWA 1273 are less restrictive than Washington State Law, then the Washington State Law shall prevail.

The provisions of FHWA 1273 included in this Contract require that the Design-Builder insert the FHWA 1273 in each Subcontract, together with the wage rates which are part of the FHWA 1273. Also, a clause shall be included in each Subcontract requiring the Subcontractors to insert the FHWA 1273 thereto in any lower tier Subcontracts, together with the wage rates. The Design-Builder shall also ensure that this section, REQUIRED FEDERAL AID PROVISIONS, is inserted in each Subcontract for Subcontractors and lower tier Subcontractors. For this purpose, upon request to the Project Engineer, the Design-Builder will be provided with extra copies of the FHWA 1273, the applicable wage rates, and this Special Provision.

Comment [ST57]: Use in all Federal Aid projects. Otherwise Delete.

(Source GSP 1-07.12.OPT1.GR1 dated July 30, 2012.)

1-07.13 THE DESIGN-BUILDER'S RESPONSIBILITY FOR WORK

1-07.13(1) GENERAL

All Work and material for the Contract, including any 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 any 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 Quality Management Plan approved by WSDOT

If WSDOT does not issue comments or propose changes within the time periods set forth in the RFP, the Design-Builder may proceed with the use and application of such Released for Construction 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 until project acceptance.

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 any other cause, 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 the WSDOT, of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection Work, lighting, and any required 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; and/or
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; and
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 1-04.4.

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, any claim 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 but not limited to 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 or 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 this 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); and/or

(b) The failure or alleged failure by the Design-Builder or its employees, agents, officers or 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; and/or

(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; and/or

(d) The alleged negligent act or omission or willful misconduct of the Design-Builder, its employees, agents, officers or Subcontractors or any other Persons performing any of the Work for whom the Design-Builder may be contractually or legally responsible; and/or

(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; and/or

(f) Any and all stop notices and/or Liens 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; and/or

(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 or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible; or

ii. Which was brought onto the Site by the Design-Builder or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible; and/or

(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 or 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 or 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.

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 save 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 and/or approval by WSDOT and/or 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 Design-Builder responsible Hazardous Materials pursuant to Section 1-07.14(1)(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 but not limited to 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)(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.

1-07.15 TEMPORARY WATER POLLUTION/EROSION CONTROL

In an effort to prevent, control, and stop water pollution and erosion within the Project, thereby protecting the Work, nearby land, streams, and other bodies of water, the Design-Builder shall perform all Work in strict accordance with all federal, State, and local laws and regulations governing waters of the State, as well as permits acquired for the Project.

The Design-Builder shall perform all temporary water pollution/erosion control measures shown in the Contract Documents, Released for Construction Documents, or as ordered by WSDOT as Work proceeds.

Stormwater, dewatering water, or other authorized non-stormwater discharges that has come into contact with pH modifying substances such as concrete rubble, concrete pours or amended soils,

need to be maintained between 6.5 – 8.5 standard units (su). If pH exceeds 8.5 su, the Contractor shall immediately discontinue work and initiate treatment to prevent discharges outside the acceptable range from occurring. All neutralization methods used shall be in accordance with the permit. Work may resume once treatment has been implemented and pH of the stormwater or authorized non-stormwater discharge is between 6.5 - 8.5 su or it can be demonstrated that high pH waters will not discharge to surface waters.

Stormwater, dewatering water, and other authorized non-stormwater discharges are monitored weekly for compliance with the turbidity benchmark (25 nephelometric turbidity units (ntu)) and the phone reporting trigger value (250 ntu) by the Contracting Agency. When the turbidity benchmark is breached, the best management practices (BMPs) installed on-site are not working adequately and need to be adapted, maintained or more BMPs shall be installed. When the turbidity phone reporting trigger value breached, immediate action becomes required in order to lower the turbidity to <25 ntu or to eliminate the discharge. Daily follow-up discharge samples will be collected at all locations where a discharge of 250 ntu or higher was collected unless the discharge was stopped or eliminated.

Comment [s58]: Use with WSDOT owned NPDES Construction Stormwater General Permits (CSWGP). Delete this text where CSWGP administration will be transferred to the Design-Builder prior to the start of construction.

Source GSP 1-07.5.OPT1(H).GR1 dated January 7, 2013

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 any 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 any 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 insure 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/or 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 Released for Construction Documents, existing vegetation 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 and/or individual flagging.

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 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 any 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 WSDOT Standard Specifications Section 8-18 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 as provided in WSDOT Standard Specifications Section 8-18 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 and/or the Contract Time required for the performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

1-07.17 UTILITIES AND SIMILAR FACILITIES

The Design-Builder shall Protect in Place all Utilities from damage resulting from the Work. All costs required to protect Utilities in place shall be at the Design-Builder's expense. The Design-Builder shall design and construct the Project so that no Utilities shall be required to be relocated. The Design-Builder shall coordinate all Protection in Place with the respective Utility Owners. All costs related to coordination shall be included in the Contract Price.

Chapter 19.122 of the Revised Code of Washington (RCW) relates to underground Utilities. In accordance with this RCW, the Design-Builder shall call the One-Number Locator Service 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 protect all private and public utilities from damage resulting from the Work. Among others, these utilities include: telephone, telegraph, and power lines; pipelines, sewer and water lines; railroad tracks and equipment; and highway lighting and signing systems, and intelligent transportation systems (ITS). All costs required to protect public and private utilities shall be at the Design-Builder's expense, except as provided otherwise in this Section.

RCW 19.122 relates to underground utilities. In accordance with this RCW, the Design-Builder shall call the One-Number Locator Service for field location of utilities. If no locator service is available for the area, notice shall be provided individually to those owners of utilities known to, or suspected of, having underground facilities within the area of the proposed excavation.

Comment [ST59]:
'No Utilities' Option 1 ******

This option is available for projects where no utility relocations are anticipated. E.g. a paving project.

If used, delete Option 2 & Option 3.

1-07.17(1) UTILITY CONSTRUCTION, REMOVAL, OR RELOCATION BY THE DESIGN-BUILDER

If the Work requires removing or relocating a utility, the Contract will assign the task to the Design-Builder or the utility owner. When the task is assigned to the Design-Builder it shall be performed in accordance with the Plans and Special Provisions. New utility construction shall be performed according to the appropriate Contract requirements.

To ease or streamline the Work for its own convenience, the Design-Builder may desire to ask utility owners to move, remove, or alter their equipment in ways other than those listed in the Plans or Special Provisions. The Design-Builder shall make the arrangements and pay all costs that arise from work performed by the utility owner at the Design-Builder's request. Two weeks prior to implementing any such utility work, the Design-Builder shall submit plans and details to the Project Engineer for approval describing the scope and schedule of all work performed at the Design-Builder's request by the utility owner.

In some cases, the Plans or Special Provisions may not show all underground facilities. If the Work requires these to be moved or protected, the Engineer will assign the task to others or issue a written change order requiring the Design-Builder to do so as provided in Section 1-04.4.

1-07.17(2) UTILITY CONSTRUCTION, REMOVAL, OR RELOCATION BY OTHERS

Any authorized agent of WSDOT or utility owners may enter the Highway right of way to repair, rearrange, alter, or connect their equipment. The Design-Builder shall cooperate with such effort and shall avoid creating delays or hindrances to those doing the work. As needed, the Design-Builder shall arrange to coordinate work schedules.

If the Contract provides notice that utility work (including furnishing, adjusting, relocating, replacing, or constructing utilities) will be performed by others during the prosecution of the Work, the Special Provisions will establish the utility owner's anticipated completion. The Design-Builder shall carry out the Work in a way that will minimize interference and delay for all forces involved. Any costs incurred prior to the utility owners anticipated completion (or if no completion is specified, within a reasonable period of time) that results from the coordination and prosecution of the Work regarding utility adjustment, relocation, replacement, or construction shall be at the Design-Builder's expense as provided in Section 1-05.14.

When others delay the Work through late performance of utility work, the Design-Builder shall adhere to the requirements of Section 1-04.5.WSDOT will either suspend Work according to Section 1-08.6, or order the Design-Builder to coordinate the Work with the work of the utility owner in accordance with Section 1-04.4. When ordered to coordinate the Work with the work of the utility owner, the Design-Builder shall prosecute the Work in a way that will minimize interference and delay for all forces involved.

Comment [ST60]:
'Simple Utilities' Option 2 (Standard Spec Language) ****

This option is available for small projects where WSDOT will handle all utility relocations or pay the Contractor if they are encountered during the work. It is a copy of the same section in the Standard Specification.

If used, delete Option 1 & Option 3.

1-07.17(3) UTILITY RELOCATIONS

This Section 1-07.17 describes the scope of the Design-Builder's responsibilities with respect to Utility Relocations, and how the risks associated with Relocations will be allocated between WSDOT and the Design-Builder. TR Section 2.10 further describes the scope of the Work with respect to Utility Relocations. Utilities impacted by the Project include both Public Utilities and Private Utilities.

The Public Utilities on this Project are owned by ****** fill in public utility owner name(s) ******. These Cities are parties to Intergovernmental Agreements with WSDOT that govern the Relocation of their respective Utilities. The Intergovernmental Agreements are Contract Documents, and the Design-Builder shall comply with the Intergovernmental Agreements in performing its Work with respect to applicable Utility Relocations.

Comment [DEC61]: Fill in

Except as provided otherwise in this Section 1-07.17, the Design-Builder is responsible for performing all work related to Public Utilities that is necessary to accommodate the Project, and the Contract Price includes all Relocation Costs incurred by the Design-Builder for such Work. In addition, except as otherwise provided in this Section 1-07.17, any reimbursement owed by or to a Public Utility Owner for Utility Relocations will be addressed directly between WSDOT and the respective Public Utility Owner pursuant to the Intergovernmental Agreement.

Private Utilities fall into two categories, as determined pursuant to Section 1-07.17(3).2 – Category #1 and Category #2. Except as otherwise provided in this Section 1-07.17, the Design-Builder shall negotiate and enter into a Relocation Agreement with the Private Utility Owners covering each Private Utility Relocation, whether Category #1 or Category #2.

For each Category #1 Utility that requires Relocation and occupies its existing location pursuant to a franchise or permit, WSDOT shall assign certain rights (including the right to require Relocation at the Utility Owner's expense) and delegate certain obligations under the applicable franchise or

permit to the Design-Builder (see Assignment/Delegation of Utility Permit/Franchise Rights and Obligations, RFP Appendix U6).

For any Category #1 Utility that does not occupy its existing location pursuant to a franchise or permit, WSDOT will direct the Utility Owner to Relocate the Utility as necessary to accommodate the Project. The Design-Builder shall seek reimbursement of any Relocation Costs it incurs for Category #1 Utilities directly from the Utility Owners pursuant to the applicable Relocation Agreement. 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 Category #1 Utility. See Utility Certification, Form L, which is included in the Proposal.

Except as otherwise specified in this Section 1-07.17, all Relocation Costs for Category #2 Utilities shall be the Design-Builder's responsibility, without regard to whether the cost is incurred by the Design-Builder, the Utility Owner, or an agent of the Utility Owner. As such, 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 Category #2 Utilities.

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 Section 1-04.4 and 1-08.8. In all other respects, the Design-Builder assumes all risk and responsibility for any additional or unanticipated costs and/or time resulting from Utilities affecting, or affected by, the Project.

Comment [DEC62]: Verify

Comment [GMG63]: Verify

Comment [ST64]:
'Complex – Mega Project' Utilities Option 3 ***

This is the standard design build utilities section. It presumes that WSDOT will enter into relocation agreements (IGAs) with local municipalities whose utilities are to be relocated.

If used, delete Option 1 & Option 2.

1-07.17(4) DESIGN-BUILDER'S RESPONSIBILITY FOR UTILITY WORK

1-07.17(4).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 this Section 1-07.17 or in TR Section 2.10, and (b) those efforts and costs which are allocated to the Utility Owners in the Intergovernmental 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 Category #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); and

(f) Any other efforts and costs by the Design-Builder that are necessary in order to accomplish the Work described in this Section 1-07.17 and/or in TR Section 2.10.

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 Category #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/or (b) an incompatibility between the Project as designed and the Utility based on the applicable Utility Standards and/or 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 Right of Way. 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 among 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(4).2 Prior Relocations

The Utility Work includes such coordination between the Design-Builder and others performing work on Prior Relocations as may be necessary for orderly and timely progress on the Prior Relocation and the Project, including assisting in the determination of an appropriate location for installation of the Relocated Utility (if not yet determined) in conjunction with the development of the design for the Project.

1-07.17(4).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 this 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 any 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(4).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 any proposed disposition (e.g., Relocation, Protection in Place) stated for the Utility 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(5) UTILITY AGREEMENTS

The Utility Agreements for the Project are: (a) the Utility MOU's (if any), (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 (if any).

1-07.17(5).1 Memoranda of Understanding

The Design-Builder acknowledges that the purpose of the Utility MOUs (if any) is to promote cooperation by the Utility Owners with the Project, but that the Utility MOUs are not binding on the Utility Owners. Nevertheless, the Design-Builder is required to comply with any Utility MOUs included in RFP Appendix U9, 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 shall have no obligation to enter into a Utility MOU with any Utility Owner.

Comment [GMG65]: Verify

1-07.17(5).2 Relocation Agreements

Each Relocation of a Private Utility (other than Prior Relocations and temporary Protections in Place) 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 in accordance with TR Section 2.10. 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(5).3 Intergovernmental Agreements and Prior Relocation Agreements

The Design-Builder shall comply with the Intergovernmental Agreements and the Prior Relocation Agreements (if any), all of which are Contract Documents.

1-07.17(6) WORK RESPONSIBILITY AND COST RESPONSIBILITY

1-07.17(6).1 Work Responsibility

The responsibility (as between Design-Builder and the Utility Owners) for performing particular Relocation Work shall be initially determined in accordance with the following:

(a) For any Prior Relocations (whether for Public or Private Utilities), Design-Builder is responsible for coordinating its Work on the Project (and the Relocation Work by any Utility Owners in the

vicinity) with any such Relocation. See Section 1-07.17(4).2. Design-Builder shall have no other responsibility for performing Relocation Work on Prior Relocations.

(b) For Public Utilities other than any identified as a Prior Relocation, Design-Builder is responsible for performing all Relocation Work, except as provided otherwise in the applicable Intergovernmental Agreement or Utility Standards. In case of conflict between the applicable Intergovernmental Agreement and Utility Standards as to this issue, the Intergovernmental Agreement shall prevail.

(c) For Private Utilities other than any identified as a Prior Relocation, Design-Builder and the affected Utility Owner shall determine the allocation of responsibility for performing particular Relocation Work in the course of negotiating the applicable Relocation Agreement, as more particularly described in TR Section 2.10.

Any subsequent modification of work responsibility for a Prior Relocation or for Relocation of any other Public Utility shall be decided by WSDOT (together with the Utility Owner), and implemented in accordance with Sections 1.04.4 and 1.08.8 as applicable. For any other Private Utility, Design-Builder and the affected Utility Owner may modify the initial allocation of responsibility for performing Relocation Work by amending the Relocation Agreement in accordance with TR Section 2.10. Any such changes in work allocation shall be addressed in accordance with Section 1-07.17(9).1.

Regardless of the arrangements made with the Utility Owners, and 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(6).2 Cost Responsibility

For each Private Utility identified in the Utility Information, the initial determination of whether the Utility is a Category #1 Utility or a Category # 2 Utility shall be in accordance with TR Section 2.10 or if not specified therein, then in accordance with the applicable Utility MOU included in the RFP, if any. Except for Incidental Utility Work, if the Cost Responsibility for a particular Private Utility is not indicated in either location, then the Utility shall initially be considered a Category #1 Utility. Any changes from the initial determination of Cost Responsibility for a Private Utility shall be addressed in accordance with Section 1-07.17(7).1.

The determination of Cost Responsibility with respect to Public Utilities will be addressed directly between WSDOT and the respective Utility Owner. Consequently, any changes in Cost Responsibility which may occur in regards to Public Utilities will not affect either the scope of the Utility Work or Design-Builder's compensation hereunder.

1-07.17(7) PAYMENT TO AND COLLECTION FROM UTILITY OWNERS

1-07.17(7).1 Collection from Private Utility Owners

Design-Builder shall collect the appropriate reimbursement directly from the Utility Owner for any Utility Work Design-Builder performs for a Category #1 Utility, as addressed in the applicable Relocation Agreement.

The Design-Builder also shall collect the appropriate reimbursement directly from the Utility Owner for any increased costs the Design-Builder may incur as a result of actions or inactions on the part of any Private Utility Owner. If the Design-Builder asserts that any Private 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(10) and 1-07.17(12), the Design-Builder's sole remedy shall be to seek recourse against the Utility Owner.

1-07.17(7).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(7).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(10).

1-07.17(7).3 Reimbursements to Utility Owners

The Design-Builder shall reimburse Utility Owners for all Relocation Costs for Category #2 Utilities, excluding Prior Relocations.

Except for Relocation Costs incurred by Utility Owners for Public Utilities (for which any reimbursement owed will be addressed between WSDOT and the Public Utility Owner), the Design-Builder also shall make any other reimbursements to Utility Owners required under any Utility Agreement in connection with the Relocation Work or shall reimburse WSDOT for making such payments as applicable (for example, for damage to a Public Utility Owner's facilities caused by the Design-Builder's work). The Design-Builder shall make all payments required by this Section in accordance with the time and other requirements of the applicable Utility Agreement(s). The provisions of this Section 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(8) RELIANCE ON UTILITY INFORMATION

WSDOT has performed preliminary investigations of existing Utilities located within the Project Right of Way, as described in TR Section 2.10. The Design-Builder acknowledges that (a) the Utility Information generally does not identify Service Lines impacted by the Project, and (b) information contained in the Utility Information, including the descriptions of the affected Utilities their locations, and any concepts regarding the nature and extent of Relocation (if any) required for a Utility, is preliminary and may not be accurate. The Design-Builder shall verify all Utility Information included in the RFP, 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(12).3) the Design-Builder shall notify WSDOT immediately upon such discovery. 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 RCW 19.122 *et seq*. regarding underground Utilities. 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(9) BETTERMENTS AND UTILITY OWNER PROJECTS

1-07.17(9).1 Betterments

1-07.17(9).1.1 Betterments for Private Utilities

With respect to a Private Utility, Work that is 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. The Design-Builder may agree in a Relocation Agreement to design and/or construct a Betterment for a Private Utility at the Utility Owner's expense, subject to compliance with Section 1-07.17(9).3. Such Betterment shall be treated as an addition to the scope of the Utility Work upon WSDOT's approval and the parties' execution of such 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.

The Design-Builder shall promptly notify WSDOT of any request or requirement by a Private 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 Private Utility Owners concerning such requests. If the Design-Builder and a Private 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(10).

1-07.17(9).1.2 Betterments for Public Utilities

Any work with respect to a Public Utility that is required by an IGA (in its original form, absent any amendments entered into after the Proposal Due Date) shall not be considered a Betterment, whether or not treated as a Betterment as between WSDOT and the Utility Owner pursuant to said IGA. Any upgrades to existing facilities described in Exhibit A to such IGA with the City of ******** Fill In Name ******** are required, and shall be treated as part of the original scope of the Work.

Comment [DEC66]: Fill in

Any Utility Owner requests or requirements for a Public Utility Betterment shall be addressed pursuant to Section 1-04.4 and Section 1-08.8, as applicable.

1-07.17(9).2 Utility Owner Projects

The Design-Builder may enter into an agreement with a Utility Owner to design and/or construct a Utility Owner Project at the Utility Owner's expense, subject to compliance with Section 1-07.17(9).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(9).3 Restrictions on Betterments and Utility Owner Projects

Except as may be otherwise set forth in this Section 1-07.17(9) or in TR 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.

The Design-Builder shall not proceed with any Private Utility Betterment or with any 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 Private Utility Betterment or any Utility Owner Project.

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(9).

1-07.17(10) FAILURE OF UTILITY OWNERS TO COOPERATE

1-07.17(10).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 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 Private 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(7), 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.

Except as noted below, the Design-Builder shall take the lead in resolving any disputes involving Private Utilities. Subject to Section 1-07.17(10).2, WSDOT shall 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 shall have no obligation to pursue any legal proceedings against the Utility Owner.

WSDOT shall take the lead in resolving any disputes relating to Relocations subject to a Prior Relocation Agreement or an Intergovernmental Agreement or where the Design-Builder has after diligent effort been unable to enter into a Relocation Agreement for a Category #1 Utility not covered by a permit or franchise. 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 Category #2 Utility. Once a Relocation Agreement has been executed between the Design-Builder and the owner of a Private Utility, any further disputes regarding that Utility shall be addressed pursuant to the preceding paragraph.

Any notice provided to WSDOT or assistance requested from and/or provided by WSDOT shall not relieve the Design-Builder of its responsibility hereunder for the satisfaction of its obligations and timely completion of all Relocations.

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 shall 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(10).2 Conditions to WSDOT's Assistance

WSDOT shall not be obligated to take action pursuant to Section 1-07.17(10).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; and
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 to the Utility Owner that has been approved by WSDOT;
   - (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 time for completion of the Relocation established in the Contract Schedule is reasonable; and
   - (f) The Design-Builder's position in the dispute is otherwise reasonable.

1-07.17(11) 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, to minimize costs for which WSDOT is required to reimburse a Utility Owner or for which the Design-Builder is entitled to additional compensation pursuant to this 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 (including Prior Adjustments), 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. Design-Builder shall reimburse such costs incurred by Utility Owners either directly (for Private Utilities) or by reimbursing WSDOT for amounts paid by WSDOT to the Utility Owner (for Public Utilities). 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(11) relating to multiple

Relocations shall not apply to Temporary Relocations that are necessary for construction of the Project.

1-07.17(12) PRICE ADJUSTMENTS AND TIME EXTENSIONS FOR INACCURATE UTILITY INFORMATION

1-07.17(12).1 Eligibility for Change Orders – Public Utilities and Prior Relocations

Subject to Sections 1-07.17(4).4, 1-07.17(8), and 1-07.17(9) and to any other Contract requirements relating to entitlement to Change Orders, if (1) any Major Underground Utility that is a Public Utility and/or (2) any Major Underground Utility that is a Prior Relocation 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, and

(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 correction of the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(12).2 Eligibility for Change Orders – Other Utilities

Subject to Sections 1-07.17(4).4, 1-07.17(8) and 1-07.17(9) and to any other Contract requirements relating to entitlement to Change Orders, if any Major Underground Utility not addressed in Section 1-07.17(4).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) For Category #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 Category #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 Category #2 Major Underground Utility is not described in the Utility Information with Reasonable Accuracy and correction of the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(12).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), unless noted otherwise in TR Section 2.10, and

2. one of the following applies, with regard to any difference (whether larger or smaller) between the Utility's actual inside diameter (as applicable to pipe style Utilities) or actual cross sectional area (as applicable to duct back style Utilities), excluding casings and any other appurtenances (the "actual size") and the inside diameter or cross sectional area, as applicable, indicated for such Utility in the Utility Information (the "stated size"):

Stated size (pipe style)	**Actual size**
12" 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", but the pipeline's actual size is 48" and its centerline is actually located eight 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 Category #2 underground pipeline listed in the Utility Information is 36", but the pipeline's actual size is 60" and its centerline is actually located eight 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: nominal duct bank cross section is calculated based on number, size, and orientation of conduit with 2" edge to edge spacing between conduit, 3" outside cover; and 6" over pour to sides and top. Example calculation:

For a 2X3 duct bank with 5-inch conduit nominal cross section is calculated as follows:

width = 3"+5"+2"+5"+3"+6" = 24"
depth = 3"+5"+2"+5"+2"+5"+3" +6"= 31"
Nominal cross section area = 24"X31" = 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(12).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, or
   - (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 "Released for Construction" Design Documents for the Work in question.
3. Any inaccuracies in the Utility Information regarding Utilities other than Major Underground Utilities.

1-07.17(13) CERTAIN OTHER PRICE ADJUSTMENTS

1-07.17(13).1 Change in Category Assignment of Private Utility

WSDOT may, at any time, notify the Design-Builder of a change in the Cost Responsibility category assignment for a particular Private Utility. Such a change between Categories #1 and #2 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 (but not Contract Time), as applicable.

1-07.17(14) 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 completion deadline specified in the applicable Prior Relocation Agreement, or if there is no applicable Prior Relocation Agreement, then on or before the time reasonably scheduled by the Design-Builder for completion of such work (as stated in the Contract Schedule approved by WSDOT), 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, and
- (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(15) UTILITY DELAYS

Except as specified in this section, any time frames for completion of the Relocation Work or components thereof included in the RFP are estimates only and shall not be relied upon by the Design-Builder.

The provisions of this Section 1-07.17(15) shall not apply to any Prior Relocations and are subject in all cases to the conditions and applicable limitations stated in this Section 1-07.17(15), Sections 1-07.17(16), 1-04.4, Section 1-08.8, and to any other Contract requirements relating to entitlement to Change Orders.

1-07.17(15).1 Utility Delays -- Private Utilities

1-07.17(15).1.1 Category #1 Private Utilities Subject to an Assigned Permit/Franchise and/or a Relocation Agreement

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 Category # 1 Utility that is subject to an assigned permit/franchise and/or a Relocation Agreement.

1-07.17(15).1.2 Category #1 Private Utilities Not Subject to an Assigned Permit/Franchise and not Addressed in a Relocation Agreement.

For purposes of this Section 1-07.17(15).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 Category #1 Utility (excluding Prior Relocations) not subject to an assigned permit/franchise before the deadline for performance of such task under the applicable Utility MOU (or, if there is no applicable Utility MOU 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 or is not required to do so.

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 this Section 1-07.17(15).1.2, and

(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.

This Section 1-07.17(15).1.2 does not apply to any Category #1 Utilities that are addressed in a Relocation Agreement between the Design-Builder and the respective Private Utility Owner regardless of the existence of a permit/franchise addressing said Utility.

1-07.17(15).1.3 Category #2 Private Utilities

For purposes of this Section 1-07.17(15).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 Adjustment of a Category #2 Utility before the later to occur of: (a) the deadline for performance of such task under the applicable Utility MOU (or if there is no applicable Utility MOU 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(15).2 Utility Delays -- Public Utilities

For purposes of this Section 1-07.17(15).2, the term "Utility Delay" shall mean 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 a Public Utility (excluding Prior Relocations) before the later to occur of: (a) the deadline for performance of such task under the applicable Intergovernmental Agreement, and (b) the time reasonably scheduled by the Design-Builder for such task.

The Design-Builder shall be entitled to:

(a) An increase in the Contract Price on account of any increased costs of the Work which are directly attributable to a Utility Delay as defined in this Section 1-07.17(15).2, and

(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.

1-07.17(15).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, and

   (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 obtain in a timely manner, 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; and

5. The time extension is otherwise allowable under Section 1-08.8 .

1-07.17(16) 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, in addition to the other specified requirements and limitations.

1-07.17(16).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 Category #2 Utilities (except as may be otherwise provided in this 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 either Public Utilities or Private Utilities,

(b) For Public 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, and

(c) For Private Utilities, there shall be no resulting change in the Contract Price (either up or down).

The provisions of this Section 1-07.17(16).1 shall not apply to any delayed Prior Relocations or to any Relocation Work that is the subject of Section 1-07.17(10).2.

1-07.17(16).2 Changes in Utility Standards

There shall be no increase or decrease in the Contract Price pursuant to this 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(16).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 (RCW19.122), 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(11). 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(16).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(16).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 the classification of an associated Utility as a Category #1, Category #2, or Public Utility, and regardless of whether or not (a) the Utility Information reveals the circumstances requiring such Incidental Utility Work and/or coordination, 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(16).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(17) FHWA UTILITY REQUIREMENTS

The provisions of this Section apply to the Project unless WSDOT advises 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. Design-Builder shall be responsible for preparing and processing any submittals to FHWA that may be required with respect to the Utility Relocations. 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

Design-Builder shall procure and maintain insurance as specified in this Section 1-07.18. The insurance provided hereunder shall be available for the benefit of the Indemnified Parties and Design-Builder with respect to covered claims, but shall not be interpreted to relieve 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.

1-07.18(1) MINIMUM INSURANCE REQUIREMENTS

1-07.18(1).1 Workers' Compensation

Design-Builder and each Related Entity shall provide industrial insurance and medical aid as required under Title 51 RCW. Design-Builder shall also provide coverage for claims asserted under the Longshore and Harbor Workers Compensation Act (LHWCA) and the Jones Act, as required. Design-Builder shall maintain such insurance through the expiration of the Warranty periods described in Section 1-05.16. 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, 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.

1-07.18(1).2 Commercial General Liability

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 (ISO) form CG 00 01 12 04. Design-Builder shall maintain such insurance through the Physical Completion Date, and during any warranty work.

The commercial general liability insurance shall include, but not be limited to, 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 limits of $2,000,000 per occurrence, $4,000,000 general annual aggregate and $4,000,000 products/completed operations aggregate. If commercial general liability insurance with a general aggregate limit and products and completed operations aggregate limit is used, then both the general liability and products/completed operations aggregate limits shall apply separately and exclusively to the Project, or 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 Design-Builder.

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 1-07.18(1).11.

Comment [ST67]: This coverage protects third parties for damage as a result of the performance of work

1-07.18(1).3 Automobile Liability

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 $1,000,000 per accident, combined single limit for bodily injury and property damage liability. 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 CA9948 (in transit pollution risks coverage). 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 Environmental Liability

The Design-Builder shall provide environmental liability coverage, on an occurrence or claims made basis, with annual limits of not less than $100,000,000 per claim and in the aggregate,

including liability arising out of transportation and non-owned disposal sites. The policy shall include as named insureds the State, the Design-Builder and any Related Entity of any tier performing Work for which such coverage is appropriate. 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 of the Site:

The policy shall have a five 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.

Comment [ST68]: There are a series of Liability cover ages (Environmental, Builders Risk, Railroad, Aircraft, Marine) that are included in this template. Designer will need to determine which of these are necessary for their specific project.

1-07.18(1).5 Excess Liability

Design-Builder shall provide excess liability insurance with limits not less than $50,000,000 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).8, and 1-07.18(1).9, respectively. 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.

Comment [ST69]: Delete from contracts less than $100M.

1-07.18(1).6 Intentionally Omitted

1-07.18(1).7 Builders Risk

Comment [c70]: Omit on all but the largest, most complex projects. To be used only with HQ Construction approval.

Comment [DEC71]: This insurance policy protects 'the work' during the construction phase.. It would reimburse the Design-Builder if, say, a bridge was damaged while under construction.

Comment [DEC72]: There are a series of Liability coverages (Environmental, Builders Risk, Railroad, Aircraft, Marine) that are included in this template. Designer will need to determine which of these are necessary for their specific project.

The Design-Builder shall procure and maintain builder's risk insurance for the Project as specified below. The policy shall be written by insurers authorized to conduct business in the State of Washington with a minimum A.M. Best's Rating of A-, Class X. The insureds shall be the Design-Builder, any Related Entity (excluding those solely responsible for design Work), WSDOT and the Indemnified Parties, as their interests may appear. The insurance shall be maintained until the date of Final Acceptance; provided that Design-Builder shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to WSDOT.

a. Minimum Scope

The policy shall be a blanket builder's risk insurance policy on an "all risk" basis for the entire Project including: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against damage or loss caused by earth movement, flood, fire, accidental breakdown of machinery, theft, vandalism and malicious mischief; (3) coverage for removal of debris, (3) coverage for buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to WSDOT.

In satisfaction of the requirements of subsection (4) above concerning "ocean marine coverage", the Contractor may obtain separate ocean marine insurance on an "All Risk" basis known as "Institute Cargo Clauses (A)" including war, riots and strikes, covering all materials and equipment associated with the Work at full replacement value while in transit, shipment and/or moorage until the date of Completion.

b. Minimum Coverage Limits

Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, including earth movement and flood coverage, with a minimum limit of liability equal to the greater of (a) $500,000,000 or (b) the probable maximum loss of the Project and the components thereof. Coverage shall include earthquake insurance with sub limits of $100,000,000 minimum annual aggregate limit and flood insurance with sub limits of $100,000,000 minimum annual aggregate limit. The coverage shall be written without risk of liability of WSDOT for payment and without deduction for depreciation. There shall be no coinsurance penalty provision in any such policy. Deductibles or self-insured retentions shall be no greater than 2% of the total value of each insured unit at the time of loss.

1-07.18(1).8 Railroad Protective Liability

The Design-Builder shall provide any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Said policy shall be effective during the period any Work is being performed across, under or adjacent to any railroad tracks or any railroad right of way.

Comment [DEC73]: There are a series of Liability coverages (Environmental, Builders Risk, Railroad, Aircraft, Marine) that are included in this template. Designer will need to determine which of these are necessary for their specific project.

Comment [DEC74]: Will this project do work on or adjacent to RR property? You may need this section.

1-07.18(1).9 Aircraft Liability

The Design-Builder shall provide insurance, with annual limits of not less than $25,000,000 per occurrence, in all cases where any aircraft is used on the Project that is owned, leased or chartered by any Related Entity, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Site or on any property owned by State shall be subject to review and written acceptance by WSDOT prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft. 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

Comment [DEC75]: There are a series of Liability coverages (Environmental, Builders Risk, Railroad, Aircraft, Marine) that are included in this template. Designer will need to determine which of these are necessary for their specific project.

Comment [DEC76]: Will this project employ any aircraft?

1-07.18(1).10 Marine Liability

The Design-Builder shall provide marine protection and indemnity (P&I) insurance for all liabilities arising out of the operation of a watercraft or vessel used on the Project that is owned, leased or chartered by the Design Builder or any Related Entity. The policy shall include, among other things, coverage for bodily injury, illness and/or loss of life to any person or crew member (including any and all claims arising pursuant to the Jones Act and LHWCA and claims for maintenance and cure), damage to cargo while loading, carrying or unloading cargo, damage to piers and docks, pollution liability, charterer's liability, and removal of wreckage as required by law. Such coverage shall have primary limits of not less than $5,000,000 per occurrence, and excess limits of not less than $20,000,000 shall be required in all cases where any watercraft or vessel is used on the Project that is owned, leased or chartered by any Related Entity. If any watercraft or vessels are leased or chartered with crew, evidence of non-owned watercraft liability insurance complying with the requirements of this Section will be acceptable but must be provided to WSDOT prior to use of the watercraft or vessel. 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.

Comment [DEC77]: There are a series of Liability coverages (Environmental, Builders Risk, Railroad, Aircraft, Marine) that are included in this template. Designer will need to determine which of these are necessary for their specific project.

Comment [DEC78]: Will this project require the use of watercraft? Barges, floating cranes?

1-07.18(1).11 Owners and Contractors Protective (OCP) Liability Insurance

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 $2,000,000 per occurrence, $4,000,000 general annual aggregate, providing bodily injury and property damage liability coverage until the Final Acceptance date, as determined pursuant to Section 1-05.12, under Insurance Services Office form CG 0009, together with WSDOT Amendatory Endorsement No. CG 29 08, specifying the State as named insured.

1-07.18(2) GENERAL INSURANCE REQUIREMENTS

1-07.18(2).1 Premiums, Deductibles and Self-Insured Retentions

Design-Builder shall be responsible for payment of premiums for all insurance required under this Section 1-07.18. Design-Builder further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Design-Builder is responsible hereunder, Design-Builder shall be solely responsible for all deductibles, self-insured retentions (SIR) and amounts in excess of the coverage provided. Any deductibles or SIR's shall not exceed $500,000, unless otherwise provided in this Section 1-07.18. Any deductibles or SIR's shall not apply to WSDOT or the Indemnified Parties. With respect to any deductibles or SIR's in excess of $100,000, Design-Builder shall provide, at the time the policies are delivered, a bond or an irrevocable letter of credit acceptable to WSDOT guaranteeing payment of losses and related investigations, claims administration and defense expenses which may fall within the SIR.

1-07.18(2).2 Verification of Coverage

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 days prior to contract execution. WSDOT shall have no duty to pay or perform under the Contract Documents until such policies, in compliance with all requirements of this 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 this Section 1-07.18 at any time in the future. 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 45 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium therefore. If requested by WSDOT from time to time, certified duplicate copies of any renewal policy shall also be provided.

1-07.18(2).3 Subcontractor Insurance Requirements

Design-Builder shall cause each Subcontractor to provide and maintain insurance that complies with the requirements for Design-Builder-provided insurance set forth in this Section 1-07.18 in circumstances where the Subcontractor is not covered by Design-Builder-provided insurance; provided that Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors (if any), which determination shall be made in accordance with reasonable and prudent business practices. 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).8, 1-07.18(1).9, and 1-07.18(1).10 above. 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, Design-Builder shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. WSDOT shall 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 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 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 (including but not limited to 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 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 days (10 days for non-payment of premium) prior written notice by certified mail, return receipt requested, 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 endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form and shall contain no limitations or exclusions with respect to" products/completed operations" coverage. The coverage 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, and earth movement policies).

(h) The commercial general liability insurance policy shall be endorsed to state that coverage for bodily injury to Related Entity employees shall not be excluded.

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. 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 Design-Builder or those claims asserted by Design-Builder against any Subcontractors and/or suppliers. Each policy, including, but not limited to, 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 shall notify Design-Builder in writing of any changes in the requirements applicable to insurance required to be provided by Design-Builder. Except as set forth in this 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 this Section 1-07.18(2).

1-07.18(2).8 Support of Indemnifications

The insurance coverage provided hereunder by Design-Builder shall support but is not intended to limit Design-Builder's indemnification obligations under the Contract Documents.

1-07.18(2).9 Commercial Unavailability of Required Coverages

If, through no fault of Design-Builder, any of the coverages required in this 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 Design-Builder, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. 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. 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 Escrowed Proposal Documents escrowed pursuant to Section 1-03.15 (or based on other evidence of insurance

premiums as of the Proposal Date if the Escrowed Proposal Documents 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, by facsimile transmission and U.S. Mail, within two business days of receipt. Failure on the part of Design-Builder to maintain the insurance as required hereunder shall constitute a material breach of the Contract, upon which WSDOT may, after giving five business days notice to 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 Design-Builder from WSDOT.

1-07.18(4) INSURANCE PROCEEDS AND PROSECUTION OF CLAIMS

Unless otherwise directed by WSDOT in writing, Design-Builder shall be responsible for reporting and processing all potential claims by WSDOT or Design-Builder against the insurance required to be provided under this Section 1-07.18. Except as noted otherwise, Design-Builder shall not be entitled to receive a Change Order for any costs, which it could have recovered from the insurer. 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 Design-Builder of WSDOT's incidents, potential claims, and matters which may give rise to an insurance claim by WSDOT, to tender its defense or the claim to Design-Builder, and to cooperate with Design-Builder as necessary for Design-Builder to fulfill its duties hereunder.

1-07.18(5) CLAIMS RELATING TO DIFFERING SITE CONDITIONS

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. 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. 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 Design-Builder as necessary for Design-Builder to fulfill its duties hereunder.

1-07.18(6) COMMENCEMENT OF WORK

Design-Builder shall not commence Work under this Contract until it has obtained the insurance required under this 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

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 Design-Builder may be held responsible for any claims resulting from its performance of the work hereunder. Design-Builder's obligations to procure insurance are separate and independent of its contractual defense and indemnity obligations. The coverage limits set forth in the 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 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: Nor will the Design-Builder 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 the State Department of Labor and Industries.

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 public 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 use of explosives is necessary for the prosecution of the work, the Design-Builder's insurance shall contain a special clause permitting the blasting.

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 other sections of these Specifications. 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 TR Section 2.22.

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 TR Section 2.24.)

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; or

(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.

1-07.28 APPRENTICE UTILIZATION

The Design-Builder shall comply with an Apprentice Utilization Requirement. No less than 15.0% of project Labor Hours shall be performed by Apprentices.

Comment [GMG79]: Verify

1-07.28(1) DEFINITIONS

The following definitions apply to Apprentice Utilization:

1. Apprentice Utilization Requirement is expressed as a percentage of the project Labor Hours performed by Apprentices.
2. Labor Hours are the total hours performed by all workers receiving an hourly wage who are directly employed on the project Site 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.
3. Apprentice is a person enrolled in a State-approved Apprenticeship Training Program.
4. State-approved Apprenticeship Training Program is an apprenticeship training program approved by the Washington State Apprenticeship Council.
5. Good Faith Effort is a demonstration that the Design-Builder has strived to meet the Apprentice Utilization Requirement including but not necessarily limited to the specific steps as described elsewhere in this section.

1-07.28(2) PLAN

The Design-Builder shall submit an "Apprentice Utilization Plan" (DOT form 422-115 EF) within 30 Calendar Days of execution, demonstrating how and when they intend to achieve the Apprentice Utilization Requirement. The plan shall be updated and resubmitted as appropriate as the Work progresses. The intent is to provide WSDOT with enough information to track progress in meeting the utilization requirements.

1-07.28(3) REPORTING

The Design-Builder shall submit a "Statement of Apprentice /Journeyman Participation" (DOT form 422-110 EF) on a monthly basis. The report shall be submitted to WSDOT by the last working day of the subsequent month, until the Physical Completion Date. The data reported shall be cumulative to date and consolidated to include the Design-Builder and all Subcontractors. At the Design-Builder's request, WSDOT may suspend this reporting requirement during periods of minimal or no applicable work activities on the project. The Design-Builder shall submit documentation of their Good Faith Effort if; (1) they are unable to provide a plan demonstrating how they intend to meet the Apprentice Utilization Requirement; or, (2) the project has been completed without meeting the Apprentice Utilization Requirement.

1-07.28(4) CONTACTS

The Design-Builder may obtain information on State-approved Apprenticeship Training Programs by contacting the Department of Labor and Industries at:
Specialty Compliance Services Division, Apprenticeship Section, P.O. Box 44530, Olympia, WA 98504-4530 or by phone at (360) 902-5320.

Comment [GMG80]: Verify

1-07.28(5) COMPLIANCE

In the event that the Design-Builder is unable to accomplish the Apprentice Utilization Requirement, the Design-Builder shall demonstrate that a Good Faith Effort has been made as described elsewhere in this section. Failure to comply with the requirements as specified may result in reduction or revocation of prequalification as allowed by WAC 468-16-190.

1-07.28(6) GOOD FAITH EFFORTS

In fulfilling the Good Faith Effort, the Design-Builder shall perform and, when appropriate, require its Subcontractors to perform the following steps:

1. Solicit Apprentice(s) from State-approved Apprenticeship Training Program(s).
2. Document the solicitation and, in the event Apprentice(s) are not available, obtain supporting documentation from the solicited program(s).
3. Demonstrate that the plan was updated as required elsewhere in this specification.
4. Provide documentation demonstrating what efforts the Design-Builder has taken to require Subcontractors to solicit and employ Apprentice(s).

In the event that the preceding steps have been followed, the Design-Builder may also supplement the Good Faith Efforts documentation with the following documentation:

1. Submit documentation demonstrating successful Apprentice utilization on previous contracts.
2. Submit documentation indicating company wide Apprentice utilization efforts and percentages of attainment.

1-07.28(7) APPRENTICE WAGES

See 1-07.9(3).

1-08 PROSECUTION AND PROGRESS

1-08.1 SUBCONTRACTING

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 Awarded Contract price) the costs of any subcontracted Work on items the Contract designates as specialty items. 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 /or 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 bidder'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; and,
7. Include these responsibility criteria in every lower tier Subcontract.

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; or

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, the Washington State Department of Labor and Industries 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 submit a "Quarterly Report of Amounts Credited as DBE Participation" on a quarterly basis for every quarter in which the Contract is active (work is accomplished) or upon completion of the Project, as appropriate. The quarterly reports are due on the 20th of April, July, October, and January for the four respective quarters. When required, this "Quarterly Report of Amounts Credited as DBE Participation" is in lieu of WSDOT form 421-023, "Annual Report of Amounts Paid as MBE/WBE Participants."

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 a certification (WSDOT Form 420-004) that a written agreement between the Design-Builder and the Subcontractor or between the Subcontractor and any lower tier Subcontractor has been executed. This certification shall also guarantee that these Subcontract agreements include all the documents required by the General Provision "Federal Agency Inspection".

Comment [oj81]: Include with federal funds?

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. Request to Sublet Work (Form 421-012), and
2. Contractor and Subcontractor or Lower Tier Subcontractor Certification for Federal Aid Projects (Form 420-004).

Comment [oj82]: Include with federal funds?

The Design-Builder's records pertaining to the requirements of this General 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 three years after the date of 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 a Certification for Federal-Aid Contracts (Form DOT 272-040) 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.

Comment [oj83]: Include with federal funds?

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 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. The Subcontractor shall make a written request to the Design-Builder for the release of the Subcontractor's retainage or retainage bond.

2. Within 10 working days of the request, the Design-Builder shall determine if the subcontract has been satisfactorily completed and shall inform the Subcontractor, in writing, of the Design-Builder's determination.

3. 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 working days from the date of the written notice.

4. If the Design-Builder determines that the Subcontractor has not achieved satisfactory completion of the subcontract, the Design-Builder must 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 8 working days after the Subcontractor has satisfactorily completed the Work identified in the notice.

5. 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 Contracting Agency or by law such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the Subcontractor's Work.

6. If the Design-Builder fails to comply with the requirements of the Specification and the Subcontractor's retainage or retainage bond is wrongfully withheld, the Subcontractor may 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 will be solely responsible for any additional costs involved in paying retainage to the Subcontractors prior to total project completion. Those costs shall be incidental to the respective Bid items.

The following procedures shall apply to all subcontracts entered into as a part of this Contract:

Comment [ST84]:
Use in all Federal Aid projects. Otherwise Delete.

(Source Standard Specification from 2012 Book)

Requirements

1. The Design-Builder or Subcontractor shall make payment to the Subcontractor not later than ten (10) days after receipt of payment from WSDOT for work satisfactorily completed by the Subcontractor, to the extent of each Subcontractor's interest therein.

2. Prompt and full payment of retainage from the Design-Builder to the Subcontractor shall be made within 30 days after Subcontractor's Work is satisfactorily completed.

3. For purposes of this Section, a Subcontractor's work is satisfactorily completed when all task and requirements of the Subcontract have been accomplished and including any required documentation and material testing .

4. Failure by a Design-Builder or Subcontractor to comply with these requirements may result in one or more of the following:

   a. Withholding of payments until the Design-Builder or Subcontractor complies

   b. Failure to comply shall be reflected in the Design-Builder's Performance Evaluation

   c. Cancellation, Termination, or Suspension of the Contract, in whole or in part

   d. Other sanctions as provided by the subcontractor or by law under applicable prompt pay statutes.

Conditions

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.

Payment

The Design-Builder will be solely responsible for any additional costs involved in paying retainage to the Subcontractors. Those costs shall be incidental to the respective Bid Items.

Comment [ST85]:
Use in all Federal Aid projects. Otherwise Delete.

Make sure you delete the Spec language above when using this GSP.

(Source GSP 1-08.1(1).OPT1.GR1 dated June 27, 2011)

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 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 Project 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 work forces, equipment, and work schedules to ensure completion of the Project within the time(s) specified in the Contract. Similarly, WSDOT 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;

Comment [DEC86]: Consider reducing this duration for small DB projects.

2. Identify self-imposed and/or regulatory non-work periods arising out of climatological and/or 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 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, and
   (h) Dates for obtaining Governmental Approvals for which the Design-Builder is responsible;
4. Show the sequence in which the Design-Builder intends to perform the Work from Notice to Proceed through Completion;
5. Be prepared using precedence diagram methodology, which clearly delineates the relationship between Contract activities; and
6. Activities shall 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 must include the following calculated or assigned attributes:
   (a) The activity calendar that identifies work days and non-work days.
   (b) All activities will 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), and

(d) Resources, Cost Accounts, Role(s) and other codes as required for grouping, sorting and reporting as required in Section 1-08.3 and 1-09.9.

No schedule shall conflict with any time and sequencing requirement in the Contract. All schedules shall be submitted both electronically and on suitable, industry standard hard copy media. Schedule submittals shall be in accordance with 1-08.3(4) below.

1-08.3(3) SOFTWARE REQUIREMENTS

The scheduling software that will be utilized by WSDOT on this Project is Primavera P6 version 7 by Oracle. In order to insure 100% 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% compatibility to WSDOT's satisfaction and obtain written acceptance by WSDOT pre-bid.

Comment [GMG87]: Verify

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 Claim Digger schedule comparison module provided in the Primavera Project Management software bundle.

As a minimum this report will show changes for:

- General Project Data
- General WBS Data
- Project Budget Data
- Scheduling Options
- Added/Deleted Activities
- General Activity Data
- Constraints
- Added/Deleted Assignments
- General Resource Assignment Data
- Added/Deleted Expenses
- Constraints
- General Expense Data
- Relationships
- Activity Code Assignments, and
- Notebook Topics and Steps

The Design-Builder will 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 will 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 % complete" and "activity % 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 will be shown in days; time will not be shown in the duration display. Date format will be dd-mm-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 will be set to "Task Dependent;" and

(f) Prices allocated to schedule activities shall be assigned to the Nonlabor 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; and

7. Resource curves (if used) will be linear unless otherwise agreed to by WSDOT.

1-08.3(4) SUBMITTAL REQUIREMENTS

Except for the Preliminary 90-Day Look-Ahead Schedule, but including Baseline and Candidate Baseline Schedule(s), all schedules, reports and supporting data shall be submitted to WSDOT in hard copy and in electronic PDF file format as further described below:

1. All required or voluntary schedule submittals will include a Primavera P6.2, v.7 Export *.xer format file;

Comment [GMG88]: Verify

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, and

- Minimum font size 8-pt at 85% normal; and
- Distinctive pattern and/or colored bars 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, and
- Early Start, Early Finish or Actual Dates;

3. For each update schedule submit one (1) Gantt Chart of the entire schedule in the above format and printed on 11”X17” or 8½”X11” hard copy media and electronic text searchable PDF file(s);
4. For each Claim Digger report described at 1-08.3(3) submit one electronic HTML file;
5. For each required narrative report submit one hard copy on 11”X17” or 8½”X11” media and electronic text searchable PDF file(s);
6. For each tabular report submit one hard copy on 11”X17” or 8½”X11” media and electronic text searchable PDF file(s); and
7. For monthly Invoice Data Sheets one Primavera-generated tabular report as required at Section 1-09.9(1): one(1). letter-size hard copy, text searchable PDF file(s) format.
8. At the request of WSDOT, but not more often than once a month, 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 Notice to Proceed. This may be a 90-Day Look-Ahead Schedule meeting the following requirements or a full-featured critical path schedule meeting the requirements of 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 must 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).

Comment [GMG89]: Verify

The proposed Preliminary 90-day Look-Ahead Schedule shall be submitted for WSDOT’s acceptance in a suitably sized hard copy of the Gantt Chart and a tabular report of the proposed price-loading in hard copy, a PDF file and a Microsoft Excel-compatible electronic spreadsheet.

Upon acceptance of the Preliminary 90 Day Look-Ahead Schedule, said schedule will 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 will 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 one hard copy of 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 will be furnished in one hard copy, an electronic, text searchable PDF-file and a Microsoft Excel compatible spreadsheet.

1-08.3(6) BASELINE CONTRACT SCHEDULE

Within 30 Calendar Days after the effective date of the Notice to Proceed, 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 as required by the ITP in Section 3.3.6 Preliminary Baseline Contract Schedule (Section D). 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, and other activities required to be performed by the Design-Builder or others in order to achieve Substantial Completion.

Comment [DEC90]: Verify

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 and/or any Contract milestone dates. 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/reject the submittal. If rejected, the Design-Builder will have 14 Calendar Days to re-submit the Baseline Contract Schedule. WSDOT will then have 14 Calendar Days to review and accept/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 Notice to Proceed 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 Candidate 1, 2, 3, 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/or 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 three months from that shown in the Preliminary schedule;

(c) The price loading scheme proposed by the Design-Builder under the provisions of 1-08.3(9);

(d) The data backup, schedule archiving and baseline establishment and maintenance plan the Design-Builder proposes to implement;

(e) Description of any variance(s) and/or deviations from the requirements of Section 1-08.3(2), (3) and (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 at 1-09.9(1); and

(g) A letter or ledger size Gantt Chart of the proposed schedule in the format described at 1.08.3(4)

2. For subsequent Baseline Candidate submittals:

(h) A summary narrative report describing changes from the previous submittal;

(i) Tabular detail of additions or deletions to the list of requested variations/deviations;

(j) An updated tabular, Primavera-generated report that details all price loaded activities as described at 1-09.9(1); and

(k) A letter or ledger size Gantt Chart of the proposed schedule as described at 1-08.3(4)

Once accepted, the Baseline Contract Schedule shall not be modified in any way. It will be archived and a copy known as the "Working Schedule" will be used on the Project. Updated Working Schedules will be used to report progress, logic and/or activity changes, 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 will be required for each past pay period. Beginning with the first payment, work and payment information will 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/or 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 will 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 will 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 will be uniquely identified with the schedule period that it represents. A copy of the XER file will 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 will 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/or duration. In addition, the Design-Builder shall explain reasons for not updating/changing 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 1-08.3(4) Submittal Requirements;
2. Description of any changes from last month's variance(s) and/or deviations from the requirements of Section 1-08.3(2), (3) and (4) with justification therefore together with a detailed list of activities affected; and
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, and
   (e) Discussion of schedule recovery techniques (if any) incorporated into current schedule.

The Monthly Contract Schedule Update Submittal package shall be submitted with the Progress Report described at Section 1-09.9(1).4.

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 per 1-08.3(4) (Media CD +/-R).

2. One (1) letter or ledger size hard copy and electronic text searchable PDF file of a Gantt Chart showing the as-built schedule for the entire project, in the format set at 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 will 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 Rule 170 and 171. The Design-Builder shall allocate the total Contract Price among these activities as further described below. Each line item in the Design-Builder's Proposal Form B will 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 are not to be front-end loaded. No single schedule activity may be assigned a value greater than $500,000 unless approved by WSDOT. 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.

Comment [DEC91]: Consider reducing this value for smaller projects.

The Contract includes provisions for payment of mobilization. The Design-Builder shall price load one or more mobilization activities such 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 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 1-09.3],
- Equitable Adjustments [see 1-09.4],
- Deleted Work [see 1-09.5],

- Force Account [see 1-09.6],
- Other adjustments such as material price adjustments and incentive/disincentive awards and other items shown in Form B 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 Notice to Proceed, 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 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 Quality Management Plan has been approved 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 review(s) in accordance with Section 1-05.3, and
7. All applicable traffic control plans have been released for construction.

1-08.5 TIME FOR COMPLETION

The Design-Builder shall complete all Work necessary to achieve 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, Design-Builder shall provide notice to WSDOT when all of the following have occurred:

(a) 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) 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) 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) Design-Builder has obtained all design and construction approvals by Utility Owners; and

(e) Design-Builder has ensured that the facilities are ready to be opened for public traffic and that remaining Work can be completed within single lane or shoulder closures between 11:00PM and 5:00 AM, in accordance with the Technical Requirements and Technical Specifications.

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 shall advise the Design-Builder in writing of any of the following of which WSDOT has knowledge:

(a) Defects in the Work, and/or

(b) Deficiencies in the Project relating to the items described in clauses (a) through (e) of Section 1-08.5(1).1, and/or

(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 and the items described in Section 1-08.5(2) shall not be required to be performed as a condition to Substantial Completion;

(b) The Design-Builder has received all applicable Governmental Approvals required to be obtained by the Design-Builder pursuant to the Contract;

(c) Design-Builder has obtained all design and construction approvals by Utility Owners;

(d) A Punch List for the Project to be performed after Substantial Completion, has been mutually agreed to by WSDOT and the Design-Builder; and

(e) The Project is ready to be opened for public traffic and that remaining Work can be completed within single lane or shoulder closures in accordance with the TR Section 2.22.

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, including initial planting, 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 to acceptance by Utility Owners;

(c) Design-Builder has satisfied all requirements regarding Final Cleanup pursuant to Section 1-04.11; and

(d) Design-Builder has furnished the Design Documentation Package and Project File in compliance with Section 2. 2.

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; and

(b) The Design-Builder must furnish all documentation required by the Contract and required by law.

1-08.5(4) COMPLETION OF INTERIM MILESTONES

The Design-Builder shall achieve early completion of certain Work ******** fill in milestones as needed ********. Refer to Sections 1-08.9(7) and 1-08.9(8) for completion timelines.

Comment [DEC92]: Fill in

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 immediately submit a written notice of protest to WSDOT as provided in Section 1-04.5. No adjustment shall be allowed for any costs incurred more than 10 Calendar Days before the date WSDOT receives the Design-Builder's written notice of protest. If the Design-Builder contends damages have been suffered as a result of such suspension, delay, or interruption, the protest shall not be allowed unless the protest (stating the amount of damages) is asserted in writing as soon as practicable, but no later than the date of the Design-Builder's signature on the Final Contract Voucher Certification. 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 and/or time 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.

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

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, and
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 (and bear the costs of doing so) all other Work in areas not used by traffic.

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 WSDOT in writing no later than 14 Calendar Days after the delay occurs. The request shall be limited to demonstrable delays in the Critical Path attributable to the change or event giving rise to the request. To be considered by WSDOT, the request shall be in sufficient detail (as determined by WSDOT) to enable WSDOT to ascertain the basis and amount of the time requested. The Design-Builder shall be responsible for preparing a Contract Schedule update demonstrating to WSDOT's reasonable satisfaction that the event or circumstance: (1) had a specific impact on the Project 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 other reasonable alternatives. If a request for time extension, combined with previous extension requests, equals 20 percent or more of the original Contract Time, the Design-Builder shall provide with the request a written consent of the Surety or Sureties if WSDOT requests such consent. In evaluating any request, WSDOT will consider how well the Design-Builder used the time from Notice to Proceed up to the point of the delay and the effect the delay has on any completion times included in the Contract Documents.

Extensions of Contract Time will be allowed only for that period equal to the time WSDOT 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 Specifications 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; or

(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; and

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 subsection 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 Released for Construction 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; or
9. Delays in obtaining Governmental Approvals that are required to be obtained by the Design-Builder.

The Design-Builder's entitlement to, and duration of, any time extensions shall be determined by WSDOT, and such determination will be final as provided in Section 1.05.1.

1-08.9 LIQUIDATED DAMAGES

Time is of the essence of the Contract. Delays in completion of the Work and lane closures at times and in locations not consistent with the requirements of the Contract Documents result in

inconvenience to the traveling public, obstruct traffic, interfere with and delay commerce, impeded toll collections, and increase risk to highway users. Delays also cost tax payers undue sums of money, adding time needed for administration, engineering, inspection, and supervision. Accordingly, the parties agree to liquidate 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:

a) For failure to achieve Substantial Completion by the Substantial Completion Date: $25,000 per day until the date Substantial Completion is achieved;

b) For failure to achieve Physical Completion by the Physical Completion Date: $10,000 per day, until the date Physical Completion is achieved; and

c) For failure to achieve Completion by the Completion Date: $5,000 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.

Because WSDOT finds it impractical to calculate the actual cost of delays, it has adopted the following formula to calculate liquidated damages for failure to complete the physical Work of a Contract on time.

Accordingly, the Design-Builder agrees:

1. To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for Physical Completion, and

2. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Design-Builder.

Liquidated Damages Formula

$$LD = \frac{0.15C}{T}$$

Where:

LD= liquidated damages per working day (rounded to the nearest dollar)

C= original Contract amount

T= original time for Physical Completion

When the Contract Work has progressed to the extent that WSDOT has full use and benefit of the facilities, both from the operational and safety standpoint, all the initial plantings are completed and only minor incidental Work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains to physically complete the total Contract, the Engineer may determine the Contract Work is substantially complete. The Engineer will notify the Design-Builder in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established, the formula for liquidated damages shown above will not apply. For overruns in Contract time occurring after the Substantial Completion Date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work. The Design-Builder shall complete the remaining Work as promptly as possible. Upon request by the Project Engineer, the Design-Builder shall furnish a written schedule for completing the physical Work on the Contract.

Comment [DEC93]: Fill in project value

Comment [DEC94]: Fill in project value

Comment [DEC95]: Fill in project value

Comment [ST96]: Delete for smaller jobs (use the below option instead).

Comment [ST97]: Delete for bigger jobs (use the above option instead).

Source Specification Book

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

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 TR Section 2.22. Payment in accordance with this section shall liquidate all damages for failure to open lanes as specified.

******** fill in locations and values as needed ********

Comment [DEC98]: Fill in project value

The Design-Builder authorizes WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder.

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; or
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; or
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 'Released For Construction' 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 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 in cash by WSDOT to the Design-Builder.

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; or
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

1-08.11(1) INCENTIVE/DISINCENTIVE FOR PAVEMENT SMOOTHNESS

The incentive as described here in Section 1-08.11(1) applies to the final lift of pavement, bridge decks, lids, and approach slabs as described in TR Section 2.7.3.3.

Criteria for Pavement Smoothness Evaluation

The project will utilize International Roughness Index (IRI) values to quantify pavement surface smoothness for determination of the incentive/disincentive award. The IRI of the final pavement surface will be measured by WSDOT in 0.01 mile increments after the Design-Builder provides written notification that the roadway pavement is complete and the WSDOT Engineer determines the roadway is safe to evaluate at highway speeds. Upon completion of the IRI measurements the data will be provided to the Design-Builder.

Price Adjustment for Pavement Smoothness

WSDOT will calculate the incentive/disincentive payment for the pavement smoothness based on the following procedure:

1. Pay Adjustment Schedule 1 as shown in Table 12 below shall be used.
2. Incentive/disincentive payments for pavement smoothness will be made on an IRI value per 0.1 lane-mile in accordance with Table 12. The 0.1 lane-mile values are calculated from the 0.01 lane mile IRI measurements. When any 0.1 lane-mile includes pavement to be evaluated by more than one Pay Adjustment Schedule the pavement in the section will be broke into smaller sections by Pay Adjustment Schedule. For sections greater than 50 feet and less than 0.1 lane-mile, the pay adjustment will be prorated.
3. Incentives and disincentives apply for beginning joints, end joints, intermediate joints of any nature including but not limited to expansion joints, cold joints, PCCP to HMA joints, joints between bridge approach slabs and bridge decks, and any construction joints within a project paving section.
4. In addition to the IRI evaluation of the pavement for smoothness; any deviation from a 10-foot straight edge in excess of 1/8 inch shall be corrected. The Design-Builder shall submit for approval the proposed corrective actions. Corrective actions shall not reduce corrected pavement thickness by more than 1/4 inch. Existing bridge structures and existing approach slabs are not required to meet the 10-foot straight edge requirement.
5. No specific unit of measure will apply to the calculated item of pavement smoothness price adjustment. Incentive/disincentive, if any, will be made for the measurements taken prior to Substantial Completion.

1-08.11(1).1 Table 12 Pavement Smoothness Pay Adjustment Schedule

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
30	600
31	580
32	560
33	540
34	520
35	500
36	480
37	460
38	440

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
39	420
40	400
41	380
42	360
43	340
44	320
45	300
46	280
47	260
48	240
49	220
50	200
51	180
52	160
53	140
54	120
55	100
56	80
57	60
58	40
59	20
60	0
61	0
62	0
63	0
64	0
65	0
66	-100
67	-200
68	-300
69	-400
70	-500
71	-600
72	-700
73	-800
74	-900
75	-1000
76	-1100
77	-1200
78	-1300
79	-1400
80	-1500
81	-1600

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
82	-1700
83	-1800
84	-1900
85	-2000
86	-2100
87	-2200
88	-2300
89	-2400
90	-2500
91	-2600
92	-2700
93	-2800
94	-2900
95	-3000
96	-3162
97	-3324
98	-3486
99	-3649
100	-3811
101	-3973
102	-4135
103	-4297
104	-4459
105	-4622
106	-4784
107	-4946
108	-5108
109	-5270
110	-5432
111	-5595
112	-5757
113	-5919
114	-6081
115	-6243
116	-6405
117	-6568
118	-6730
119	-6892
120	-7054
121	-7216
122	-7378
123	-7541
124	-7703

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
125	-7865
126	-8027
127	-8189
128	-8351
129	-8514
130	-8676
131	-8838
132	-9000
133	-9162
134	-9324
135	-9486
136	-9649
137	-9811
138	-9973
139	-10135
140	-10297
141	-10459
142	-10622
143	-10784
144	-10946
145	-11108
146	-11270
147	-11432
148	-11595
149	-11757
150	-11919
151	-12081
152	-12243
153	-12405
154	-12568
155	-12730
156	-12892
157	-13054
158	-13216
159	-13378
160	-13541
161	-13703
162	-13865
163	-14027
164	-14189
165	-14351
166	-14514
167	-14676

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
168	-14838
169	-15000
170	-15162
>170	-15162

1-08.11(2) INCENTIVE/DISINCENTIVE FOR STATISTICAL EVALUATION OF MATERIALS

Acceptance of certain materials will be based on statistical analysis in accordance with TR Section 2.25. These materials will be subject to the financial incentive/disincentive (i.e., having a maximum pay factor of 1.05), or disincentive (i.e., having a maximum pay factor of 1.00) as described therein. Payment to the Design-Builder will be adjusted in accordance with TR Section 2.25.

1-09 MEASUREMENT OF 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, and
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 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 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 60 F (or will be corrected to the volume at 60 F 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 or;
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 and;
5. be carefully maintained, with bunkers and platforms kept clear of accumulated materials that could cause errors.

Scale Operations

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, write 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; and

4. test results and scale weight records for each day's hauling operations are provided to WSDOT daily. Unless otherwise approved, reporting shall utilize form 422-027, Scaleman's Daily Report.

Trucks and 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. Each vehicle operator shall obtain a weigh or load ticket from the scale operator. The Design-Builder shall provide item quantity tickets for all scales. All 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; and

6. weight delivered

    a. net weight in the case of batch and hopper scales

    b. gross weight, tare and net weight in the case of platform scales (tare may be omitted if a tare beam is used)

    c. approximate load out weight in the case of belt conveyor scales

The vehicle operator shall deliver the ticket in legible condition to 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.

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 one-tenth of 1% 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 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 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

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 use 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, TR 2.25, 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:

1. Weigh a loaded truck on a separate certified platform scale designated by the Design-Builder, for the purpose of scale verification.

2. Weigh a vehicle that weighs at least 10,000 pounds on a separate certified scale and then check the project scale with it.

3. 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:

- furnishing, installing, certifying, and maintaining scales;
- providing a weigher to operate a Design-Builder provided scale;
- providing a weigher to operate a commercial scale, if necessary;
- providing self-printing tickets, if necessary;
- rerouting a truck for verification weighing;
- assisting WSDOT with scale verification checks;
- any other related costs associated with meeting the requirements of this section.

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; and
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; or
   (b) Other agreed-upon prices.
2. If the parties cannot agree, the price will be determined by WSDOT using:

(a) Unit Prices; or

(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 that 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; and

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; and

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% of the sum of the costs calculated for labor 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. 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 1-09.6.4 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 even that prior quotations are not obtained and the vendor is a firm independent from the Design-Builder or Subcontractor, then after-the-fact quotations may be obtained by the Engineer 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% to equipment costs 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. 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 the Contracting Agency'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" shall be one which is typically billed through invoice in standard industry practice. 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% 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 Section 6 of this provision, then markup for that invoice shall be according to Section 6. "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% 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 Sections 1, 2, 3, 4 and 5, to compensate for all administrative costs, including 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.

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; and/or

(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 Sections 1 - 5 up to $25,000		12%
2.	On amounts greater than	$25,000 up to $100,000	10%
3.	On amounts greater than	$100,000	7%

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/or 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; and
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% when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory; and/or
2. 100% 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.

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.

Due to the rate at which funding will become available for this Project; payments to the Design-Builder shall not exceed $57,000,000 total prior to July 1, 2011, and $325,000,000 prior to July 1, 2013. At no time shall the Design-Builder invoice WSDOT for amounts exceeding the aforementioned funding restrictions. The Department's inability to pay more than these amounts shall not absolve the Design-Builder of responsibility to make timely payment to Subcontractors.

Comment [oj99]: Include this statement only when there are payment curve restrictions for the project.

Comment [DEC100]: Fill in project value and timing as needed.

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 this Payments section.

Submit the following documents with each invoice:

1. Invoice cover sheet,
2. Progress report,
3. Certification by Design and Construction Quality Assurance Managers,
4. Invoice data sheet(s) and supporting documents based on the price loaded Contract Schedule, and
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 Quality Assurance Manager and the Construction Quality Assurance 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. Total amount earned to date for the Project as a whole,
5. Authorized signature, title of signer, and date of signature, and
6. Signature of the Design and Construction Quality Assurance 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 at 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, and 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, RFIs, 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; and
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 QA 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/or 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; and

3. The design and construction QMPs and all of the measures and procedures provided therein are functioning properly and are being followed.

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. The Design-Builder shall design a Primavera report to WSDOT's satisfaction that can be submitted in letter size hard copy, 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 signed by the Design-Builder. Such voucher shall be deemed a release of all claims of the Design-Builder unless a 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 certified letter 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 certified letter 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(3) RETAINAGE

Pursuant to RCW 60.28, a sum of 5% of the monies earned by the Design-Builder will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Title 82, RCW, and (2) the claims of any Person arising under the Contract.

Monies retained under the provisions of RCW 60.28 shall, at the option of the Design-Builder, be:

1. Retained in a fund by WSDOT; or
2. Deposited by WSDOT in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Design-Builder). Deposits are to be in the name of WSDOT and are not to be allowed to be withdrawn without WSDOT's written authorization. WSDOT will issue a check representing the sum of the monies reserved, payable to the bank or trust company. Such check shall be converted into bonds and securities chosen by the Design-Builder as the interest accrues.

At the time the Contract is executed the Design-Builder shall designate the option desired. The Design-Builder in choosing option (2) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities. WSDOT may also, at its option, accept a bond in lieu of retainage.

Release of the retainage will be made 60 Calendar Days following the Completion Date (pursuant to RCW 39.12, and RCW 60.28) provided the following conditions are met:

1. On contracts totaling more than $35,000, a release has been obtained from the Washington State Department of Revenue;
2. Affidavits of Wages Paid for the Design-Builder and all Subcontractors are on file with WSDOT (RCW 39.12.040);
3. A certificate of *Payment of Contributions Penalties and Interest on Public Work Contract* is received from the Washington State Employment Security Department;

4. Washington State Department of Labor & Industries (per Section 1-07.10) shows the Design-Builder is current with payments of industrial insurance and medical aid premiums; and

5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3 and 4 are met, the Design-Builder will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by WSDOT sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

Comment [ST101]: Must delete for Federal Aid projects.

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 Notice to Proceed, WSDOT and the Design-Builder will mutually select a third-party facilitator to conduct a team building workshop for the attendees. The initial workshop should be held within 60 Calendar Days of the Notice to Proceed. The workshop is expected to last approximately one 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.

Comment [ST102]: This should be optional depending on the size of the project. A small DB paving project doesn't need to hire a 3rd party partnering facilitator.

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 or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

1-09.11 DISPUTES AND CLAIMS

When disputes occur during a Contract, the Design-Builder shall pursue resolution through the WSDOT Engineer. The Design-Builder shall follow the procedures outlined in Section 1-04.5. If the negotiation using the procedures outlined in Section 1-04.5 fails to provide satisfactory resolution, the Design-Builder shall pursue the more formalized method outlined in Section 1-09.11(2) for submitting a claim.

1-09.11(1) DISPUTES REVIEW BOARD

In order to assist in the resolution of disputes arising out of the work of this project, the Contract provides for the establishment of a Disputes Review Board, hereinafter called the "Board." The Board is created as part of the disputes resolution process to be utilized when normal WSDOT-

Design-Builder dispute resolution is unsuccessful and prior to the filing of a Section 1-09.11(2) claim.

The Board will consider disputes referred to it and furnish recommendations to WSDOT and the Design-Builder to assist in the resolution of the differences between them. 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.

The Board members will be especially knowledgeable in the type of construction involved in the Project. At least one member of the Board shall have expertise in the interpretation of contracts and Applicable Law. The Board members shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract.

Comment [ST103]: Consider deleting from projects with a project estimate of 10 million or less.

If deleted then revise the heading to read "Intentionally Omitted" and just delete the text so the numbers of the Sections do not change.

1-09.11(1).1 Selection of Disputes Review Board Members

The Board shall consist of one member selected by WSDOT and one member selected by the Design-Builder, with these two members to select the third member. The first two members shall be mutually acceptable to both WSDOT and the Design-Builder. If one or both of the two members selected are not acceptable to WSDOT or the Design-Builder, another selection shall be made.

WSDOT and the Design-Builder shall each select their member and negotiate an agreement, separate and apart from this Contract, with their respective Board member within the first 60 Calendar Days after Notice to Proceed. The agreements with these two Board members shall contain language imposing the "Scope of Work" and "Suggested Administrative Procedures" attached as an Appendix to the Contract. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first two by furnishing a needed expertise, which will facilitate the Board's operations. WSDOT has entered into "standby" agreements with a number of potential third members. The qualifications of these potential members have been reviewed and deemed acceptable by both WSDOT and the Associated General Contractors of Washington. The names of these potential members will be provided to the first two members for consideration. If a selection can be made from the standby list, then the Board may be immediately seated with the execution of a task order under the corresponding standby agreement. Should the first two members decide to select a third member not on the list of standby candidates, then the selected Person will be accepted to the Board after he or she executes a standby agreement (Third Party Member Disputes Review Board Consultant Agreement). Information about the acceptable format for this agreement and all accompanying exhibits as well as the processing and approval procedure is available from WSDOT. The fee for the third member shall be negotiated with the first two members and shall be included in a task order, issued by WSDOT after the third member standby agreement is fully executed.

In the event of an impasse in selection of the third member, either WSDOT or the Design-Builder or both may appeal to the Thurston County Superior Court for selection of a third member by the court from a list or lists submitted to the court by WSDOT and/or the Design-Builder. An impasse shall be considered to have been reached if the two members appointed by WSDOT and the Design-Builder to the Board have been unable to appoint the third member in a period of 60 Calendar Days after the approval of the last of such two members.

1-09.11(1).2 Termination of Disputes Review Board Members

In case a member of the Board needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement Board

member will begin promptly upon determination of the need for replacement and shall be completed within 30 Calendar Days.

Service of a Board member may be terminated at any time with not less than 30 Calendar Days notice as follows:

1. WSDOT may terminate service of WSDOT's appointed member; and/or
2. The Design-Builder may terminate service of the Design-Builder's appointed member; and/or
3. The third member's services may be terminated by agreement of the other two members; and or
4. By resignation of the member.

Termination of a member will be followed by appointment of a substitute as specified above.

No member shall have a financial interest in the Contract, except for payments for services on the Board. No member shall have been employed by either party or an affiliate of either party within a period of two years prior to award of this Contract or during the term of this Contract; except that, service as a member of other Disputes Review Boards on other contracts will not preclude a member from serving on the Board for this Contract.

1-09.11(1).3 Compensation of Disputes Review Board Members

Compensation for the Board members, and the expenses of operation of the Board, shall be shared by WSDOT and the Design-Builder in accordance with the following:

1. WSDOT will compensate directly the wages and travel expense for its selected member;
2. The Design-Builder shall compensate directly the wages and travel expense for its selected member;
3. WSDOT and the Design-Builder shall share equally in the third member's wages and travel expense, and all of the operating expenses of the Board. These equally shared expenses shall be billed to and paid by WSDOT. The Design-Builder's share will be deducted from monies due or coming due the Design-Builder; and
4. WSDOT will provide administrative services, such as conference facilities and secretarial services, to the Board and WSDOT will bear the costs for this service.

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.

1-09.11(1).4 Disputes Review Board Procedures

The Board, WSDOT, and the Design-Builder shall develop by agreement the Board's rules of operation and procedures to be followed for the Project. The agreement shall include the frequency of the Board's visits to the Project and its interactions with WSDOT and the Design-Builder to keep abreast of the construction development and potential disputes.

In developing the Agreement, the parties shall take into consideration their respective duties and responsibilities set forth in the "Scope of Work" section of their agreements, the form of which is included in the Appendix of the Contract.

The parties may also consider the "Suggested Administrative Procedures" for the Board's operation included in their agreements, the form of which is included in RFP Appendix F7. These Procedures express, in general terms, the policy for the creation and operation of the Board.

Comment [GMG104]: Verify

Disputes, as used in this Section, will refer only to protests properly submitted in accordance with Section 1-04.5. If WSDOT has determined the protest to be invalid and either the Design-Builder or WSDOT has elected to refer the matter to the Board, then the Board shall consider the issue and provide recommendations concerning:

1. The interpretation of the Contract;
2. Entitlement to additional compensation or time for performance;
3. The amount of additional compensation or time for performance following a recommendation of entitlement by the Board provided that: (1) the parties were not able to reach a resolution as to the amount of the equitable adjustment or time; (2) the WSDOT Engineer has made a unilateral determination of the amount of compensation for time; and (3) the Design-Builder has protested WSDOT's unilateral determination; and
4. Other subjects mutually agreed by WSDOT and the Design-Builder to be a Board issue.

1-09.11(1).5 Procedure for Consideration of Disputes

The procedure for consideration of disputes shall be as follows:

1. Once a protest has been denied as described in Section 1-04.5, the Board members will be contacted and advised of the existence of the dispute. A hearing will be scheduled to be conducted at the next regular project visit or at such other time, as agreed to by the parties;
2. The Design-Builder and WSDOT shall each be afforded an opportunity to be heard by the Board and to offer evidence. Either party furnishing any written evidence or documentation to the Board must furnish copies of such information to the other party a minimum of 15 Calendar Days prior to the date the Board sets to convene the hearing for the dispute. Either party shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute and furnish copies to the other party;
3. 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 and facts and circumstances involved in the dispute. The Contract shall be interpreted and construed in accordance with the laws of the State of Washington. The Board shall make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report; and
4. Within 30 Calendar Days of receiving the Board recommendations, 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.

In the event the Board's recommendations do not lead to resolution of the dispute, all Board records and written recommendations, including any minority reports, will be admissible as evidence in any subsequent arbitration or litigation.

1-09.11(1).6 Intentionally Omitted

1-09.11(1).7 DRB Process as a Condition Precedent to Arbitration or Litigation

Submittal of a dispute to the Board will be a condition precedent to the filing for arbitration or litigation in a court of law unless WSDOT and the Design-Builder have agreed to default the dispute to Section 1-09.11(2) Claims. If the Board's assistance does not lead to resolution of the dispute, causing the Design-Builder to file a Section 1-09.11(2) Claim, or if the parties default the

dispute to that section, full compliance by the Design-Builder with the provisions of that section is a contractual condition precedent to the Design-Builder's right to commence arbitration or litigation.

Unless otherwise noted, disputes, claims, counterclaims and other matters in question between WSDOT and the Design-Builder that are not resolved will be decided in the Superior Court of Thurston County, Washington, which shall have exclusive jurisdiction and venue over all matters in question between WSDOT and the Design-Builder.

The Contract shall be interpreted and construed in accordance with the laws of the State of Washington.

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 to resolve a dispute, the Design-Builder may file a claim as provided in this section. 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 claim. If the claim, after consideration by WSDOT, is found to have merit, WSDOT will make an equitable adjustment either in the amount of costs to be paid or in the time required for the Work, or both. If WSDOT finds the claim to be without merit, no adjustment will be made.

All claims filed by the Design-Builder shall be in writing and in sufficient detail to enable WSDOT to ascertain the basis and amount of the claim. 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, and

(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:

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

(2) The hours of use or standby; and

(3) The specific day and dates of use or standby;

(d) Job overhead;

(e) Overhead (general and administrative);

(f) Subcontractor's claims; and

(g) Other categories as specified by the Design-Builder or WSDOT;

10. A notarized 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/_____

    Subscribed and sworn before me this _____ day of _____

    _____

    Notary Public

    My Commission Expires: _____

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 three years after Final Acceptance.

The Design-Builder shall pursue administrative resolution of any claim with WSDOT or the designee of WSDOT.

Failure to submit with the Final Contract Voucher Certification such information and details as described in this section for any claim shall operate as a waiver of the claims by the Design-Builder 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 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 $100,000;
2. Within 90 Calendar Days from the date the claim is received by WSDOT if the claim amount is equal to or greater than $100,000; or
3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Design-Builder will be notified within 15 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 commence arbitration or litigation proceedings.

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 the State of Washington arising from the Contract shall be brought within 180 Calendar Days from the date of Final Acceptance (Section 1-05.12) 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. 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 the State of Washington arising from the Contract are filed with the State, initiated in arbitration, or initiated in court, the Design-Builder shall permit the State to have timely access to any records deemed necessary by the State 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 three 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 a good faith effort 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) CLAIMS

All 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 documents in both electronic and paper format:

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 three 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, and
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

Prior to seeking claim resolution through nonbinding alternative dispute resolution processes, binding arbitration, or litigation, pursuant to this section, the Design-Builder shall proceed under the administrative procedures in Sections 1-04.5, 1-09.11 and any special provision provided in the Contract for resolution of disputes. The provisions of these Sections must be complied with in full,

as a **CONDITION PRECEDENT**, to the Design-Builder's right to seek claim resolution through any nonbinding alternative dispute resolution process, binding arbitration or litigation, as provided in this section.

1-09.13(2) NONBINDING ALTERNATIVE DISPUTES RESOLUTION (ADR)

Nonbinding ADR processes are encouraged and available upon mutual agreement of the Design-Builder and WSDOT for all claims submitted in accordance with Section 1-09.11, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. WSDOT has been given the time and opportunity to respond to the Design-Builder as provided in Section 1-09.11(2); and
3. WSDOT has determined that it has sufficient information concerning the Design-Builder's claims to participate in a nonbinding ADR process.

WSDOT and the Design-Builder mutually agree that the cost of the nonbinding ADR process shall be shared equally by both parties with each party bearing its own preparation costs.

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

The Design-Builder agrees that the participation in a nonbinding ADR process does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180 Calendar Days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

1-09.13(3) CLAIMS $250,000 OR LESS

The Design-Builder and WSDOT mutually agree that those claims which total $250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through mandatory and binding arbitration as described herein.

1-09.13(3).1 Administration of Arbitration

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

1. The current version of the Northwest Region Expedited Commercial Arbitration Rules shall be used for claims with an amount less than $25,000;
2. The current version of the Expedited Procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $25,000 and less than $50,000; or
3. The current version of the standard procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $50,000 and not greater than $250,000.

WSDOT and the Design-Builder mutually agree the venue of any arbitration hearing shall be within the State of Washington and any such hearing shall be conducted within the State of Washington.

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. 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 Pursue Arbitration

If the dispute cannot be resolved through administrative procedures provided in Sections 1-04.5, 1-09.11, and any special provision provided in the Contract for resolution of disputes or through a mutually agreed upon nonbinding ADR process, the Design-Builder shall advise WSDOT, in writing, that mandatory and binding arbitration is desired. The parties may agree on an arbitration process, or, if the parties cannot agree a demand for arbitration shall be filed by the Design-Builder, in accordance with the AAA rules, with WSDOT, and with the AAA. Selection of the arbitrator and the administration of the arbitration shall proceed in accordance with AAA rules using arbitrators from the list developed by the AAA, except that: for claims under $25,000 using the Northwest Region Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited Procedure of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim as provided in Section 1-09.13(3).1.

Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to binding arbitration prior to Physical Completion of the Project, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. The dispute has been pursued to the claim status as provided in Section 1-09.11(2); and
3. 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 $250,000 to be eligible for arbitration.

In addition, the Design-Builder agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, 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).

The scope and extent of discovery shall be determined by the arbitrator in accordance with AAA rules. In addition, each party for claims greater than $25,000 shall serve upon the other party a "statement of proof." The statement of proof shall be served, with a copy to the AAA, no less than 20 Calendar Days prior to the arbitration hearing and shall include:

1. The identity, current business address, and residential address of each witness who will testify at the hearing;
2. The identity of any expert witness to be called, a statement as to the subject matter and the substance of the facts and opinions on which the expert is expected to testify, a summary of the grounds for each opinion, and a resume of the expert's qualifications; and
3. A list of each document that the party intends to offer in evidence at the arbitration hearing. Either party may request from the other party a copy of any document listed. If such a request is made, a copy of the document shall be provided within 5 Calendar Days from the date the request is received.

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

1-09.13(4) CLAIMS IN EXCESS OF $250,000

The Design-Builder and WSDOT mutually agree that those claims in excess of $250,000, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.