

**DESIGN-BUILD CONTRACT**

**Contract Form**

**SR 520 Evergreen Point Floating Bridge and Landings Project (“Project”)**

Washington State Department of Transportation

**THIS DESIGN-BUILD CONTRACT**, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the STATE OF WASHINGTON, acting through the Washington State Department of Transportation, and the Secretary of Transportation under Title 47 RCW, as amended (“WSDOT”), and \_\_\_\_\_ (the “Design-Builder”) collectively (the “Parties”),

- a corporation organized and existing under the laws of the State of \_\_\_\_\_, or
- a partnership, consisting of \_\_\_\_\_, or
- a limited liability company (LLC), consisting of \_\_\_\_\_, or
- a joint venture, consisting of \_\_\_\_\_, or
- an individual conducting business as \_\_\_\_\_,

the location of whose principal office is \_\_\_\_\_,

**WITNESSETH:** That WSDOT and the Design-Builder, for the consideration hereinafter named, agree as follows:

**1. DEFINED TERMS**

Terms used in this Contract and not otherwise defined herein shall have the meanings set forth in General Provisions Section 1-01.

**2. SCOPE OF WORK**

The Design-Builder shall furnish the design of and construct the Project in accordance with the Contract Documents. Refer to Exhibit A for a general description of the Project and to General Provisions Section 1-04 for information regarding the scope of the Work. The Design-Builder acknowledges that the scope of the Work includes:

- (a) Responsibility for and control of the Work, subject to review and approval of Design-Builder’s design by WSDOT as described in the Contract Documents;
- (b) Responsibility for construction quality control inspection and testing and for quality assurance of both the design and construction; and
- (c) Obtaining Governmental Approvals as specified in the Contract Documents, and compliance with all requirements of applicable Governmental Approvals, including those obtained by WSDOT.

The Design-Builder covenants and agrees that all of the Work shall be performed in a workmanlike manner and in accordance with the standard of care applicable to contractors and designers performing similar work in the State of Washington.

### **3. COMPENSATION**

WSDOT shall pay the Design-Builder the lump sum Contract Price of \$\_\_\_\_\_, in the manner provided for in the Contract Documents, as full compensation for performance of the Work. This amount includes compensation for both NTP 1 and NTP 2 Work.

The Design-Builder will be paid an amount up to, but not to exceed, 16% of the Contract Price in the manner provided for in the Contract Documents as full compensation for all NTP 1 Work. Under no circumstances, including but not limited to Termination for Convenience, shall the Design-Builder have a right to payment for NTP 1 Work in excess of this specified amount.

### **4. CONTRACT TIME**

#### **4.1 Time for Completion**

Design-Builder shall achieve Substantial Completion within \_\_\_\_\_ days starting on the first calendar day after the effective date of NTP 2 [number of days (not more than 1186) to be inserted from Proposal Form D]. The deadline for Physical Completion is 90 Calendar Days from the date Substantial Completion is achieved, and the deadline for Completion is 90 Calendar Days from the date Physical Completion is achieved. No extension of said deadlines shall be effective unless in writing signed by WSDOT.

See General Provisions Section 1-08.5 for information regarding requirements to be met in order to achieve Substantial Completion, Physical Completion and Completion.

See General Provisions Section 1-08.8 for information regarding time extensions. Any extension shall be for such time and upon terms and conditions as shall be fixed by WSDOT in accordance with the terms of the Contract, which may include the assessment of liquidated damages. See General Provisions Section 1-08.9 for information regarding liquidated damages.

#### **4.2 Notice To Proceed.**

The NEPA documentation and environmental permits for the Project will not be completed prior to Contract execution. Consequently, WSDOT will issue two Notices to Proceed for the Project (NTP 1 and NTP 2). NTP 1 will authorize Design-Builder to proceed with the NTP 1 Work consistent with FHWA's design-build rule and NEPA. Work that is authorized in NTP 1 will focus on preliminary design, including investigations, and analysis necessary to support the Final EIS, the Section 106 process, Endangered Species Act consultation, and environmental permitting.

The NTP 1 Work does not include preparation of the NEPA document or any decision-making responsibility with respect to the NEPA process, though NTP 1 Work will support the NEPA documents prepared by WSDOT. WSDOT will be responsible for completing the NEPA documentation and obtaining FHWA's approval thereof. Under no circumstances shall Design-Builder commence Final Design or construction until such time FHWA has issued the Record of Decision and WSDOT issues NTP 2, nor shall Design-Builder take any other action during the NTP 1 period that would materially affect WSDOT's or FHWA's objective consideration of alternatives under NEPA.

NTP 2 will be issued only if the final NEPA documents, including the Record of Decision, choose the 6-Lane Alternative as the selected alternative. NTP 2 Work generally consists of Final Design and construction.

The Design-Builder shall begin the Work promptly upon receipt of either NTP 1 or NTP 2, unless WSDOT gives its consent, in writing, for Work to begin at a later date, and the Design-Builder shall thereafter diligently prosecute the Work so as to achieve Project Substantial Completion, Physical Completion and Completion within the specified times.

In the event that the final NEPA documents select the “no-build” alternative or select an alternative other than the 6-Lane Alternative, WSDOT will terminate the Contract for convenience and Design-Builder will be paid for the NTP 1 Work as provided herein.

#### **4.2.1 Conditions to Issuance of NTP 2 and Start of NTP 2 Work**

NTP 2 will be issued only after final NEPA documents have been approved, and only if the 6-Lane Alternative is chosen as the selected alternative in the final approved documents. In addition, if the final approved documents, including the Record of Decision, include any modifications to the Project requirements requiring a modification to the Contract Documents, NTP 2 will be issued only after the parties have reached agreement regarding such modifications. Following issuance of NTP 2, Design-Builder may continue performance of Work authorized by NTP 1 and may also proceed with Final Design and construction.

23 CFR 636.302 (a) (1) (iv) and (vi) requires that subsequent approval of final design and construction activities will be contingent upon a finding of price reasonableness by WSDOT, and concurred in by FHWA. Any major changes or scope changes to the Contract that result between the issuing of NTP 1 and NTP 2 will be subject to price reasonableness analysis and, in conformance with 23 CFR 636.302 (a) (1) (vi), WSDOT’s finding of price reasonableness is subject to FHWA concurrence.

#### **4.2.3 Schedule for Issuance of NTPs**

1. WSDOT anticipates that NTP 1 will be issued shortly after Contract execution, but WSDOT may defer issuance of NTP 1 for up to 30 days after Contract execution.
2. NTP 2 is expected to be issued on either of the following dates whichever occurs later:
  - September 1, 2011; or
  - The day after the ROD is executed by FHWA, in the event the NEPA process is prolonged because of differences between the Proposal and the Environmental Project Description Narrative (Appendix E6), and/or differences between the Proposal and the Conceptual Design.

### **5. CONTRACT DOCUMENTS**

The term "Contract Documents" shall mean the documents listed below, including all addenda:

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

Said Contract Documents are hereby incorporated by reference herein as if fully set forth.

#### **5.1 Order of Precedence**

In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth in General Provisions Section 1-03.2.

#### **5.2 Interpretation of Contract**

Refer to General Provisions Section 1-03 for provisions regarding interpretation of the Contract. In case of any ambiguity or dispute over interpreting the Contract, WSDOT's decision will be final as provided in General Provisions Section 1-05.1.

**6. PROJECT ORGANIZATION.**

Refer to Exhibit C for a list of the authorized representatives of WSDOT and the Design-Builder and their contact information.

IN WITNESS WHEREOF, the Design-Builder and WSDOT have caused this instrument to be executed on the day and year first above written.

**WASHINGTON STATE DEPARTMENT OF  
TRANSPORTATION**

\_\_\_\_\_  
Director of Transportation

**DESIGN-BUILDER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A  
PROJECT DESCRIPTION**

The limits of the Project are the R/W limits as shown on the Conceptual Plans.

**EXHIBIT B**  
**WSDOT IDENTIFIED BETTERMENTS**

The following elements of the Proposal are identified as Betterments in accordance with Chapter 1 of the RFP:

**EXHIBIT C**  
**PROJECT ORGANIZATION**

WSDOT Contact:

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Email: \_\_\_\_\_

Design Builder Contact:

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Email: \_\_\_\_\_