



Washington State Ferries

1 **Seattle Multimodal Terminal**
2 **at Colman Dock**
3 **Project**

4
5 **REQUEST FOR FINAL PROPOSALS**
6 **for**
7 **GENERAL CONTRACTOR/**
8 **CONSTRUCTION MANAGER SERVICES**
9

10 **Division 00 72 00**

11 **General Requirements for Heavy Civil**
12 **General Contractor/Construction**
13 **Manager Contracts**

14
15 **DATE ISSUED: INDUSTRY DRAFT #2**
16

17 **PROPOSALS DUE: TBD**

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1 **1-01 Definitions and Terms**

2 **1-01.1 General**

3 The following abbreviations and terms are defined here as used in any Contract Documents
4 and Specifications. When used in the Proposal Form to denote items of Work and units of
5 measurements, abbreviations are defined to mean the full expression.

6 **1-01.2 Abbreviations**

7 **1-01.2(1) Associations and Miscellaneous**

8 These abbreviations are used in Plans and Specifications as defined here:

9	AAA	American Arbitration Association
10	AAR	Association of American Railroads
11	AASHTO	American Association of State Highway and Transportation Officials
12	ACI	American Concrete Institute
13	AGA	American Gas Association
14	AGC	Associated General Contractors of America
15	AI	Asphalt Institute
16	AIA	American Institute of Architects
17	AISC	American Institute of Steel Construction
18	AISI	American Iron and Steel Institute
19	AITC	American Institute of Timber Construction
20	AMS	Aerospace Material Specification
21	ANLA	American Nursery and Landscape Association
22	ANSI	American National Standards Institute
23	APA	American Plywood Association
24	API	American Petroleum Institute
25	APWA	American Public Works Association
26	ARA	American Railway Association
27	AREMA	American Railway Engineering and Maintenance Association
28	ARTBA	American Road & Transportation Builders Association
29	ASA	American Standards Association
30	ASCE	American Society of Civil Engineers
31	ASLA	American Society of Landscape Architects
32	ASME	American Society of Mechanical Engineers
33	ASNT	American Society for Nondestructive Testing
34	ASTM	American Society for Testing and Materials International
35	AWPA	American Wood Preservers' Association
36	AWS	American Welding Society

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1	AWWA	American Water Works Association
2	CFR	Code of Federal Regulations
3	CLI	Chain Link Institute
4	CRAB	County Road Administration Board
5	CRSI	Concrete Reinforcing Steel Institute
6	DIPRA	Ductile Iron Pipe Research Association
7	EI	Edison Electric Institute
8	EPA	Environmental Protection Agency
9	ESAL	Equivalent Single Axle Loads
10	FAR	Federal Acquisition Regulation
11	FHWA	Federal Highway Administration
12	FOP	Field Operating Procedure
13	FSS	Federal Specifications and Standards, General Services Administration
14	FTA	Federal Transit Administration
15	GC/CM	General Contractor/Construction Manager
16	HUD	United States Department of Housing and Urban Development
17	ICEA	Insulated Cable Engineers Association
18	IEEE	Institute of Electrical and Electronics Engineers
19	ITE	Institute of Transportation Engineers
20	IES	Illumination Engineering Society
21	IMSA	International Municipal Signal Association
22	LID	Local Improvement District
23	LPI	Lighting Protection Institute
24	MACC	Maximum Allowable Construction Cost
25	MASC	Maximum Allowable Subcontract Cost
26	MSHA	Mine Safety and Health Act
27	MUTCD	Manual on Uniform Traffic Control Devices
28	NEC	National Electrical Code
29	NEMA	National Electrical Manufacturers' Association
30	NEPA	National Environmental Policy Act
31	NFPA	National Fire Protection Association
32	NIST	National Institute of Standards and Technology
33	NRMCA	National Ready Mix Concrete Association
34	NSS	Negotiated Support Services
35	OMWBE	Office of Minority and Women's Business Enterprises
36	OSHA	Occupational Safety and Health Administration
37	PCA	Portland Cement Association
38	PPI	Plastic Pipe Institute
39	P/PCI	Precast/Prestressed Concrete Institute
40	QPL	Qualified Products List
41	RAM	Request for Approval of Material
42	RCW	Revised Code of Washington (Laws of the State)

DRAFT 00 72 00 Division 1 – General Requirements for Heavy Civil General Contractor/Construction Manager Contracts

Washington Department of Transportation – Ferries Division

1	RID	Road Improvement District
2	SAE	Society of Automotive Engineers
3	SEPA	State Environmental Policy Act
4	SGC	Specified General Conditions
5	SOP	Standard Operating Procedure
6	SSPC	Steel Structures Painting Council
7	TCC	Total Contract Cost
8	TIB	Transportation Improvement Board
9	UL	Underwriters Laboratories
10	ULID	Utility Local Improvement District
11	UMTA	Urban Mass Transit Administration
12	WAC	Washington Administrative Code
13	WAQTC	Western Alliance for Quality Transportation Construction
14	WCLIB	West Coast Lumber Inspection Bureau
15	WISHA	Washington Industrial Safety and Health Administration
16	WRI	Wire Reinforcement Institute
17	WSDOE	Washington State Department of Ecology
18	WSDOT	Washington State Department of Transportation
19	WWPA	Western Wood Products Association

20 1-01.2(2) Items of Work and Units of Measurement

21 Plans and Specifications may include common engineering and construction abbreviations.
22 Many such abbreviations need no definition. But when the following abbreviations are used,
23 the definition will be:

24	Agg.	Aggregate
25	Al.	Aluminum
26	BST	Bituminous Surface Treatment
27	Cl.	Class
28	Cfm	Cubic Feet per Minute
29	Cfs	Cubic Feet per Second
30	Comb.	Combination
31	Conc.	Concrete
32	CPF	Composite Pay Factor
33	Crib.	Cribbing
34	Culv.	Culvert
35	cy or cu yd.	Cubic Yard
36	Diam.	Diameter
37	ESAL	Equivalent Single Axle Loads
38	Est.	Estimate or Estimated
39	Excl.	Excluding
40	F	Fahrenheit

DRAFT 00 72 00 Division 1 – General Requirements for Heavy Civil General Contractor/Construction Manager Contracts

Washington Department of Transportation – Ferries Division

1	gph	Gallon per Hour
2	gpm	Gallon per Minute
3	Hund.	Hundred
4	HMA	Hot Mix Asphalt
5	In.	Inch
6	Incl.	Including
7	JMCIF	Job Mix Compliance Incentive Factor
8	JMF	Job Mix Formula
9	lb	Pound(s)
10	LF or Lin. Ft.	Linear Foot (Feet)
11	LS	Lump Sum
12	M	Thousand
13	MBM	Thousand Feet Board Measure
14	MUTS	Minimum Ultimate Tensile Strength
15	PCPS	Precast Prestressed
16	Pres.	Pressure
17	psf	Pounds per Square Foot
18	psi	Pounds per Square Inch
19	PVC	Polyvinyl Chloride
20	RAP	Recycled Asphalt Pavement
21	Reg.	Regulator
22	Reinf.	Reinforced, Reinforcing
23	Sec.	Section
24	St.	Steel
25	Str.	Structural
26	sy or sq. yd.	Square Yard(s)
27	Th.	Thick or Thickness
28	Tr.	Treatment
29	Va	Air Voids
30	VC	Vitrified Clay
31	VFA	Voids Filled with Asphalt
32	VMA	Voids in Mineral Aggregate

33 **1-01.3 Definitions**

34 **Addendum** – A written or graphic document, issued to all Proposers and identified as an
35 Addendum prior to receipt of Proposals, which modifies or supplements the Request for Final
36 Proposals and becomes a part of the Contract.

37 **Auxiliary Lane** – The part of the Roadway next to Traveled Ways for parking, speed changes,
38 turning, weaving, truck climbing, or for anything that adds to through traffic movement.

1 **Award** – The formal decision of the Contracting Agency to accept the most qualified
2 Proposer for the Work.

3 **Bid, Proposal** – The offer of a Proposer on a properly completed Proposal Form.

4 **Bidder** – An individual, partnership, firm, corporation, or joint venture, submitting a
5 Proposal or Bid. When required by law or otherwise, the individual, partnership, firm,
6 corporation, or joint venture shall be prequalified.

7 **Bid Documents** – The component parts of the proposed Contract which may include, but
8 are not limited to, the Proposal Form, the proposed Contract Provisions, the proposed Contract
9 Plans, Addenda; and for projects with Contracting Agency subsurface investigations, the
10 Summary of Geotechnical Conditions and subsurface boring logs (if any).

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

15 **Call for Bids (Advertisement for Bids)** – The published public notice soliciting Proposals or
16 Bids for Work stating, among other things, the time, place, and date for receiving and opening
17 the Bids.

18 **Commission, Washington State Transportation Commission** – The appointive body having
19 authority over state transportation matters as provided by law.

20 **Completion Dates** – Substantial Completion Date is the day the Engineer determines the
21 Contracting Agency has full and unrestricted use and benefit of the facilities, both from the
22 operational and safety standpoint; all the initial plantings are completed; and only minor
23 incidental work, replacement of temporary substitute facilities, plant establishment periods, or
24 correction or repair remains for the Physical Completion of the total Contract.

25 Physical Completion Date is the day all of the Work is physically completed on the Project.
26 All documentation required by the Contract and required by law does not necessarily need to
27 be furnished by the Contractor by this date.

28 Completion Date is the day all the Work specified in the Contract is completed and all the
29 obligations of the Contractor under the Contract are fulfilled by the Contractor. All
30 documentation required by the Contract and required by law must be furnished by the
31 Contractor before establishment of this date.

1 **Contract** – The written Agreement between the Contracting Agency and the General
2 Contractor/Construction Manager. It describes, among other things:

- 3 1. What Work will be done, and by when;
- 4 2. Who provides labor and materials; and
- 5 3. How Contractors will be paid.

6 The Contract includes the Contract (Agreement) Form, Bidder’s completed Proposal Form,
7 Contract Provisions, Contract Plans, *Standard Specifications*, *Standard Plans*, Addenda, various
8 certifications and affidavits, supplemental agreements, change orders, and subsurface boring
9 logs (if any).

10 **Contract Bond** – The approved form of security furnished by the Contractor and the
11 Contractor’s Surety as required by the Contract, that guarantees performance of all the Work
12 required by the Contract and payment to anyone who provides supplies or labor for the
13 performance of the Work.

14 **Contract Form (Agreement Form)** – The form (the Agreement for General
15 Contractor/Construction Manager Services) provided by the Contracting Agency that requires
16 the authorized signatures of the Contractor and the Contracting Agency to result in formal
17 execution of the Contract.

18 **Contracting Agency** – Agency of Government that is responsible for the execution and
19 administration of the Contract.

20 **Contractor** – The individual, partnership, firm, corporation, or joint venture, contracting
21 with the Contracting Agency to perform General Contractor/Construction Manager services.

22 **Contract Plans** – A publication addressing the Work required for an individual project. At
23 the time of the Call for Bids, the Contract Plans may include, but are not limited to, the
24 following: a vicinity map, a summary of quantities, structure notes, signing information, traffic
25 control plans, and detailed drawings; all for a specific individual project. At the time of the
26 Contract execution date, the Contract Plans include any Addenda.

27 **Contract Provisions** – A publication addressing the Work required for an individual project.
28 At the time of the Call for Bids, the Contract Provisions may include, for a specific individual
29 project, the Amendments to the Standard Specifications, the Special Provisions, a listing of the
30 applicable Standard Plans, the prevailing minimum hourly wage rates, and an informational
31 Proposal Form with the listing of Bid items. The proposed Contract Provisions may also include,
32 for a specific individual project, the Required Contract Provisions Federal-aid Construction
33 Contracts, and various required certifications or declarations. At the time of the Contract
34 execution date, the Contract Provisions include the proposed Contract Provisions and include

1 any Addenda, a copy of the Contract Form, and a copy of the Proposal Form with the Contract
2 prices and extensions.

3 **Contract Time** – The time allotted in the Contract Documents for completion of the Work.
4 The Contract Time begins upon the effective date of the Notice to Proceed and ends on the
5 date of Substantial Completion. Contract Time incorporates the Contract milestones
6 established for the Contract.

7 **Department, Department of Transportation** – The State Agency authorized by law to
8 administer transportation-related work.

9 **Engineer** – The Contracting Agency’s representative who directly supervises the engineering
10 and administration of a construction Contract.

11 **Federal Highway Administration (FHWA)** – The Federal United States Department of
12 Transportation (USDOT) Agency authorized to approve plans and contracts for Federal-Aid
13 Highway projects. They also inspect such projects to ensure Contract compliance.

14 **Federal Transit Administration (FTA)** – The Federal USDOT Agency that provides a portion
15 of the funds to pay for the Contractor’s performance under this Contract.

16 **Frontage Road** – A local street or road usually next to an arterial Highway that serves
17 abutting property and adjacent areas and controls access.

18 **General Contractor/Construction Manager** – A firm with which a public body has selected
19 to provide services during the design phase and negotiated a maximum allowable construction
20 cost to act as Construction Manager and General Contractor during the construction phase. The
21 terms “GC/CM” and “Contractor” are used interchangeably in this Contract.

22 **Heavy Civil Construction Project** – A civil engineering project, the predominant features
23 which are infrastructure improvements.

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

25 **Inspector** – The Engineer’s representative who inspects Contract performance in detail.

26 **Laboratory** – The laboratories of the Contracting Agency, or other laboratories the
27 Contracting Agency authorizes to test Work, soils, and materials.

28 **Maximum Allowable Construction Cost** – The maximum cost of the Work to construct the
29 Project, including a percentage for risk contingency, negotiated support services, provisional
30 sums (if any), and approved change orders.

31 **Maximum Allowable Subcontract Cost** – The maximum cost to construct Work of an EC/CM
32 or MC/CM subcontract package, when the Contractor, with WSDOT-Ferries Division approval,

1 contracts with an EC/CM or MC/CM consistent with RCW 39.10.385. Subcomponents of the
2 MASC include: a) the cost of all Work to be performed by the Subcontractor’s own forces and
3 any sub-tier Subcontractors or suppliers; b) Negotiated Support Services; c) Provisional Sums (if
4 any); and d) MASC Risk Contingency Account. Final agreement on the MASC is subject to the
5 approval of the WSDOT-Ferries Division.

6 **MACC Risk Contingency** – A fixed amount specified in the Agreement for General
7 Contractor/Construction Manager Services for use by the Contractor as specified in 1-03.1(2) of
8 the General Requirements. It is calculated by multiplying the MACC Risk Contingency
9 Percentage specified in 1-03.1(2) by the Maximum Total Subcontract Package Cost at the time
10 of execution of the Agreement for General Contractor/Construction Manager Services.

11 **Maximum Total Subcontract Package Work** – The maximum total amount to be paid by the
12 WSDOT – Ferries Division for all subcontract package Work, including any subcontract package
13 Work successfully bid on by the Contractor, and including the MASC. It does not include
14 Negotiated Self-Perform Work.

15 **Maximum Allowable Subcontract Cost Risk Contingency** – The Risk Contingency
16 established when RCW 39.10.385 is used to select an electrical or mechanical subcontractor.

17 **Negotiated Support Services** – Items a General Contractor would normally manage or
18 perform on a construction project including, but not limited to, surveying, hoisting, safety
19 enforcement, provisions of toilet facilities, temporary heat, cleanup, and trash removal; and
20 that are negotiated as part of the maximum allowable construction cost.

21 **Plans** – The Contract Plans or Standard Plans which show location, character, and
22 dimensions of prescribed Work including layouts, profiles, cross-sections, and other details.

23 **Percent Fee** – The percentage amount to be earned by the Contractor as overhead and
24 profit and as further defined in Section 1-03.1 (3) of these Special Provisions. Same as GC/CM
25 Fee.

26 **Percent Fee on Negotiated Self-Perform Work** – The percentage amount to be earned by
27 the Heavy Civil Contractor on negotiated self-performed work and as further defined in
28 Section 1-03.1 (4) of these Special Provisions.

29 **Project Engineer** – Same as Engineer.

30 **Proposal Form** – The form provided to Bidders by the Contracting Agency for submittal of a
31 Proposal or Bid to the Contracting Agency for a specific project. The form includes the item
32 number, estimated plan quantity, and item description of the Bid items along with blank spaces
33 to be completed by the Bidder for the unit prices, extensions, the total Bid amount, signatures,
34 date, acknowledgment of Addenda, and the Bidder’s address. The required certifications and
35 declarations are part of the form.

- 1 **Provisional Sum or Allowance** – An amount established in the Contract Documents for
2 inclusion in the MACC to cover Work which may or may not be carried out by the Contractor
3 and which cannot be accurately quantified at the time of MACC Negotiations, with provisions
4 that variations between such amount and the finally determined cost of the prescribed items
5 will be reflected in Change Orders appropriately adjusting the Total Contract Cost.
- 6 **Right-of-Way** – Land, property, or property interest, usually in a strip, acquired for or
7 devoted to transportation purposes.
- 8 **Roadbed** – The graded part of the Roadway within top and side slopes, prepared as a
9 foundation for the pavement structure and Shoulders.
- 10 **Roadside** – The area outside the traveled way.
- 11 **Roadway** – The portion of the Right-of-Way within the outside limits of the side slopes.
- 12 **Secretary, Secretary of Transportation** – The chief executive officer of the Department of
13 Transportation and other authorized representatives.
- 14 **Shoulder** – The part of the Roadway next to the Traveled Way or Auxiliary Lanes. It provides
15 lateral support of base and surface courses and is an emergency stopping area for vehicles.
- 16 **Special Provisions** – Supplemental Specifications and modifications to the Standard
17 Specifications and the Amendments to the Standard Specifications that apply to an individual
18 project.
- 19 **Specifications** – Provisions and requirements for the prescribed Work.
- 20 **Specified General Conditions** – General conditions work specified in the Request for Final
21 Proposals for which the Contractor has provided a lump sum proposal, including, but not
22 limited to, the total cost for the Contractor’s project team assigned to the Project.
- 23 **Standard Plans** – A manual of specific plans or drawings adopted by the Contracting Agency
24 which show frequently recurring components of Work that have been standardized for use.
- 25 **State** – The state of Washington acting through its representatives.
- 26 **Structures** – Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes,
27 endwalls, buildings, service pipes, sewers, underdrains, foundation drains, and other features
28 found during Work that the Contract may or may not classify as a Structure.
- 29 **Subcontractor** – An individual, partnership, firm, corporation, or joint venture who is sublet
30 as part of the Contract by the Contractor.

1 **Subgrade** – The top surface of the Roadbed on which subbase, base, surfacing, pavement,
2 or layers of similar materials are placed.

3 **Substructure** – The part of the Structure below:

- 4 1. The bottom of the grout pad for the simple and continuous span bearing, or
- 5 2. The bottom of the girder or bottom slab soffit, or
- 6 3. Arch skewbacks and construction joints at the top of vertical abutment members or rigid
7 frame piers.

8 Substructures include endwalls, wingwalls, barrier and railing attached to the wingwalls,
9 and cantilever barriers and railings.

10 **Superstructure** – The part of the Structure above:

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

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

- 17 1. From the face of end diaphragm abutting the bridge approach embankment for end
18 piers without expansion joints, or
- 19 2. From the end pier expansion joint for bridges with end pier expansion joints.

20 Superstructures include, but are not limited to, the bottom slab and webs of box girders,
21 the bridge deck and diaphragms of all bridges, and the sidewalks when shown on the bridge
22 deck. The Superstructure also includes the girders, expansion joints, bearings, barrier, and
23 railing attached to the Superstructure when such Superstructure components are not otherwise
24 covered by separate unit measured or lump sum bid items.

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

27 **Surety** – A company that is bound with the Contractor to ensure performance of the
28 Contract, payment of all obligations pertaining to the Work, and fulfillment of such other
29 conditions as are specified in the Contract, Contract Bond, or otherwise required by law.

1 **Titles (or Headings)** – The titles or headings of the Sections and Subsections herein are
2 intended for convenience of reference and shall not be considered as having any bearing on the
3 interpretation.

4 **Total Contract Cost** – The fixed amount for the detailed specified general conditions work,
5 the negotiated maximum allowable construction cost, the percent fee on the negotiated
6 maximum allowable construction cost and the percent fee on the negotiated self-perform
7 work.

8 **Traveled Way** – That part of the Roadway made for vehicle travel excluding Shoulders and
9 Auxiliary Lanes.

10 **Work** – The provision of all labor, materials, tools, equipment, and everything needed
11 to successfully complete a project according to the Contract.

12 **Working Drawings** – Drawings, plans, diagrams, or any other supplementary data or
13 calculations, including a schedule of submittal dates for Working Drawings where specified,
14 which the Contractor must submit to the Engineer.

15 **1-02 Bid Procedures and Conditions**

16 **1-02.1 Vacant**

17 **1-02.2 Vacant**

18 **1-02.3 Estimated Quantities**

19 The estimated MACC and negotiated Self-Perform Work shown in the Proposal Form are
20 estimates and are stated for Bid comparison purposes. THE CONTRACTING AGENCY does not
21 warrant expressly or by implication that the actual MACC and cost of the Negotiated
22 Self-perform Work will correspond with those estimates. However, if the actual MACC varies
23 more than fifteen percent from the bid estimated MACC due to requested and approved
24 changes in the scope, the percent fee shall be negotiated.

25 **1-02.4 Examination of Plans, Specifications, and Site of Work**

26 **Colman Dock** – The Contractor is advised that construction activities at Piers 50 and 52,
27 known as “Colman Dock”, will encounter contaminated in-water and subsurface sediments.
28 This is the residual of creosote treated structural materials leaching light and heavy polynuclear
29 aromatic hydrocarbons (PAHs), soluble metals, and stormwater runoff contributing semivolatiles
30 organic compounds (SVOCs). Work activities to extend the south trestle and replace Pier 50 will
31 encounter an existing sediment cap placed in 1999. Restoration and extension of the sediment
32 cap are described elsewhere in this Contract. Contaminated sediments collected during pile
33 driving, and contaminated fill removed from an existing retaining wall at the northeast corner
34 of the site will be disposed at an approved upland disposal facility. The Contractor will

1 implement sediment management methods determined in accordance with Washington State
2 Sediment Management Standards (SMS) defined by a future regulatory approval.

3 The King County Department of Transportation (KDOT) holds a lease agreement with the
4 Contracting Agency for passenger-only ferry operations at Pier 50, and the Seattle Department
5 of Transportation (SDOT) holds a lease agreement for a habitat beach south of Piers 50 and 52.
6 The Contracting Agency will have negotiated a Memorandum of Agreement that includes a
7 vessel operating protocol with the Muckleshoot and Suquamish Indian Tribes for treaty fishing
8 in Elliott Bay. The Contactor shall abide by the KDOT and SDOT lease agreement terms and the
9 tribal vessel operating protocol to coordinate construction activities and vessel traffic, as shown
10 in the Plans and as outlined in a future Contract appendix.

11 More information, and the Environmental Assessment, may be found at the online project
12 library located at the following:

13 <http://www.wsdot.wa.gov/Projects/Ferries/ColmanMultimodalTerminal/Library.htm>

14 **1-02.4(1) Subsurface Information**

15 If the Contracting Agency has made subsurface investigation of the site of the proposed
16 Work, the boring log data, soil sample test data, and geotechnical recommendations reports
17 obtained by the Contracting Agency will be made available for inspection by the Bidders at the
18 location specified in the Special Provisions. The Summary of Geotechnical Conditions, as an
19 appendix to the Special Provisions, and the boring logs shall be considered as part of the
20 Contract. However, the Contracting Agency makes no representation or warranty expressed or
21 implied that:

- 22 1. The Bidders' interpretations from the boring logs are correct,
23 2. Moisture conditions and indicated water tables will not vary from those found at the
24 time the borings were made, and
25 3. The ground at the location of the borings has not been physically disturbed or altered
26 after the boring was made.

27 The Contracting Agency specifically makes no representations, guarantees, or warranties as
28 to the condition, materials, or proportions of the materials between the specific borings
29 regardless of any subsurface information the Contracting Agency may make available to the
30 prospective Bidders.

31 The availability of subsurface information from the Contracting Agency shall not relieve the
32 Bidder or the Contractor from any risks or of any duty to make examinations and investigations
33 as required by Section 1-02.4(1) or any other responsibility under the Contract or as may be
34 required by law.

1 Subsurface data will be important for the Contractor to access due to contaminated
2 sediments, and the seismic improvement purpose of the Project.

3 The soils information used for study and design of this Project is available for review by the
4 bidder at the following location:

5 Washington State Ferries
6 Terminal Engineering
7 2901 3rd Avenue, Suite 500
8 Seattle, WA 98121-3014

9 The soils information includes the following:

10 Soil information for the north trestle fill area, and south trestle area.

11 **1-02.4(2) Acceptance of Existing Conditions**

12 If any part of the Contractor’s Work depends on proper execution of the work of other
13 forces or existing conditions, the Contractor shall report to the Engineer, before using the work,
14 all defects found in such work that render it unsuitable for the Contractor’s Work. Such report
15 shall be in writing and shall be submitted within thirty (30) days of being granted access to the
16 work. Failure of the Contractor to report such defects shall constitute an acceptance of the
17 other forces’ work or existing conditions as fit and proper for the execution of the Contractor’s
18 work and shall preclude any claim for additional compensation or schedule extension for
19 uncovering the Work or correcting defects, except for defects in the other force’s work which
20 are latent and not reasonably discernible. Any request for additional compensation based on
21 defective work of others or existing conditions shall be governed by the procedures of Article 4,
22 Changes and Change Order Process.

23 **1-02.5 Vacant**

24 **1-02.6 Vacant**

25 **1-02.7 Vacant**

26 **1-02.8 Vacant**

27 **1-02.9 Vacant**

28 **1-02.10 Vacant**

29 **1-02.11 Vacant**

30 **1-02.12 Vacant**

1 **1-02.13 Vacant**

2 **1-02.14 Vacant**

3 **1-03 Contractor Contract Award**

4 **1-03.1 General**

5 This Contract is entered into pursuant to the provisions of RCW 39.10.210 and
6 RCW 39.10.340 through RCW 39.10.410. Contractor agrees, as required by RCW 39.10.350, if
7 the Work cannot be completed for the agreed MACC, any additional costs, except as provided
8 below, shall be the responsibility of the Contractor and Contractor hereby assumes liability for
9 such costs without reimbursement by the Contracting Agency. The Contracting Agency agrees
10 that cost increases due to Contracting Agency-directed changes, regulatory changes, design
11 errors or omissions, and unforeseen site conditions are the Contracting Agency’s responsibility.

12 **1-03.1(1) Total Contract Cost**

13 The Total Contract Cost has been mutually negotiated and agreed to by the Contractor and
14 the Contracting Agency. The Contractor agrees that the Project is adequately defined, that the
15 Construction Documents are at least 90 percent complete, and has determined that the Project
16 is sufficiently clear and understandable for the Contractor to agree to the Total Contract Cost in
17 this Contract. The Total Contract Cost is defined in Article 1-01.3 Definitions herein and consists
18 of the fixed amount for the detailed Specified General Conditions, the negotiated Maximum
19 Allowable Construction Cost (MACC), the percent fee on the Negotiated Self-Perform Work, and
20 the percent fee on the negotiated MACC.

21 The Total Contract Cost was determined through negotiation of the MACC conducted prior
22 to the execution of this Contract. The MACC Negotiations are separate from and not part of the
23 Preconstruction Services Work. The Contractor will not be reimbursed for MACC negotiations.

24 **1-03.1(1)A Total Contract Cost Documentation**

25 The Contractor shall retain any and all work papers, spreadsheets, takeoffs, material lists,
26 Subcontractor quotes, vendor or material quotes, lists of wage rates and equipment rates(both
27 rental and owned) and any and all papers, documents, and electronic information or computer
28 files created or used by Contractor when preparing each component of the Total Contract Cost
29 (including the fixed amount for the detailed Specified General Conditions Work, Negotiated
30 Support Services, the Maximum Total Subcontract Package Cost, the Negotiated Self-Perform
31 Work, the Fee on the Negotiated Self-Perform Work, the negotiated Maximum Allowable
32 Construction Cost and the Fixed Contractor Fee), together with an itemized list of said
33 documents and files.

34 The Contractor shall make these records available to the Engineer upon request.

1 **1-03.1(2) Maximum Allowable Construction Cost (MACC)**

2 The MACC is the amount mutually agreed to between the Contracting Agency and the
3 Contractor that is required to complete all Work as described in the Contract Documents. The
4 negotiated MACC shall include funds for all costs through the life of the Project, except those
5 required for:

- 6 1. Preconstruction Work
- 7 2. GC/CM Fee
- 8 3. Negotiated Self-Perform Work Fee
- 9 4. Fixed Amount of Specified General Conditions Work
- 10 5. Changes in the Contract in accordance with Section 1-04.4
- 11 6. Washington State Sales Tax.

12 The Contractor shall be responsible for:

- 13 1. All costs related to Subcontractor claims or charges that result from mistakes or
14 omissions in the subcontract buy-out;
- 15 2. Coordination errors and coordination omissions related to the Coordinated Shop
16 Drawings review;
- 17 3. Interference between Subcontractor and the Contractor;
- 18 4. Interference between Subcontractors and other Subcontractors;
- 19 5. The Contractor’s failure to coordinate the work it self-performs with work of other
20 Subcontractors;
- 21 6. Costs to recover time on the schedule for which it is responsible;
- 22 7. Trade damage, to the extent that it cannot be determined who is at fault.

23 **1-03.1(2)A Provisional Sum Work**

24 The negotiated MACC may also contain funds for Provisional Sums or Allowances for Work
25 which may or may not be carried out by the Contractor and which cannot be accurately
26 quantified at the time of MACC negotiations.

- 27 1. No Provisional Sum Work will be performed or paid for without prior authorization by
28 the Engineer.

- 1 2. The Engineer may issue direction for Provisional Sum Work to be performed without
2 request from the Contractor.

- 3 3. If the Contractor believes that Provisional Sum Work is required, the Contractor shall
4 notify the Engineer. The Engineer will either:
 - 5 a. direct that the work be performed;
 - 6 b. request additional information; or,
 - 7 c. make a written determination that the event or condition does not require that
8 Provisional Sum Work be performed.

- 9 4. The Contractor shall maintain records and invoices for all costs associated with the
10 Provisional Sum Work in accordance with the requirements of 1-09.6 Force Account.
11 Because Provisional Sums were included in the MACC for the purpose of the Fixed
12 Contractor Fee calculations, no additional markup for project overhead, general
13 company overhead, profit, bonding, insurance, or B&O tax as provided in 1-09.6 will be
14 allowed for the Contractor. Markup, as provided in 1-09.6 will be allowed for Provisional
15 Sum Work performed by Subcontractors.

- 16 5. Any amount included as a Provisional Sum but not used in the course of the work and
17 the associated Contractor Fee shall be returned to the Contracting Agency by way of a
18 deductive Change Order.

- 19 6. Any potential time impacts arising from Provisional Sum Work shall be resolved in
20 accordance with Sections 1-04.4 Changes, 1-04.5 Procedures and Protest by the
21 Contractor, and 1-09.11 Disputes and Claims.

22 **1-03.1(2)B Negotiated Support Services**

23 The tasks and services identified as Negotiated Support Services in the Contract Documents
24 and summarized in the Matrix of Cost Allocation have been negotiated and included as a
25 separate component of the MACC. Negotiated Support Services costs will be paid by the
26 Contracting Agency based upon Attachment B to the Agreement for GC/CM Services
27 (Negotiated Support Services – Basis of Understanding). The costs for management required to
28 administer the Negotiated Support Services Work is included in the Fixed Amount for Specified
29 General Conditions and all profit and overhead is included in the Fixed GC/CM Fee. If
30 Contractor's total cost to perform the Negotiated Support Services exceeds the negotiated
31 amount for Negotiated Support Services, the Contractor shall be responsible for such costs.

32 **1-03.1(2)C MACC Risk Contingency Account**

33 A MACC Risk Contingency Account has been established in the amount of 2.5 percent of the
34 MACC. The Contractor may, with the Engineer's approval, utilize the MACC Risk Contingency

1 Account established herein to pay for the items listed below for which it is responsible, except
2 that:

3 The Contractor may not use the MACC Risk Contingency for items that are identified as
4 Percent Fee, Percent Fee on Negotiated Self-Perform Work, or as Specified General Conditions
5 in Sections 1-03.1.3 and 1-03.1.4 below.

6 The Contractor shall be responsible for:

- 7 1. All costs related to Subcontractor claims or charges that result from mistakes or
8 omissions in the subcontract buy-out;
- 9 2. Coordination errors and coordination omissions related to the Coordinated Shop
10 Drawings review;
- 11 3. Interference between Subcontractor and the Contractor;
- 12 4. Interference between Subcontractors and other Subcontractors;
- 13 5. The Contractor's failure to coordinate the Work it self-performs with Work of other
14 Subcontractors;
- 15 6. Costs to recover time on the schedule for which the Contractor is responsible;
- 16 7. Trade damage, to the extent that it cannot be determined who is at fault.

17 The MACC Risk Contingency will only increase when RCW 39.10.385 is used to select a
18 EC/CM or MC/CM and the Work of the EC/CM or MC/CM is completed for less than the
19 negotiated maximum allowable subcontract cost; in that case, any savings accrued will become
20 a part of the MACC Risk Contingency.

21 The Contractor's use of the MACC Risk Contingency Account must be approved in advance
22 by the Engineer. The Contractor shall provide the Engineer with monthly updates on the use of
23 the MACC Risk Contingency Account. Any funds remaining in the MACC Risk Contingency
24 Account shall be returned to the Contracting Agency with the corresponding Percent Fee.

25 The estimated costs for items identified as Negotiated Support Services in the Summary
26 Matrix of Cost Allocation, attached to the Agreement for General Contractor/Construction
27 Manager Services, shall be specifically identified and included in the MACC to be reimbursed by
28 the Contracting Agency on a direct cost basis. The costs for management required to administer
29 the Negotiated Support Services Work shall be included in the Fixed Amount for Specified
30 General Conditions.

1 **1-03.1(3) Fixed GC/CM Fee**

2 The Contractor submitted a dollar amount on the Form of Proposal which represented the
3 GC/CM Fee. The actual Fixed GC/CM Fee stated in the Agreement is a set dollar amount
4 calculated by multiplying the proposed fee percentage by the actual negotiated MACC. The
5 Fixed GC/CM Fee shall be adjusted based on deductive or additive change orders by multiplying
6 the fee percentage bid by the actual amount of the change order. The GC/CM Fee shall cover
7 the following:

- 8 1. All profit of the Contractor for this Project.
- 9 2. All regional and home office overhead expenses, including labor and materials, travel,
10 phone, facsimile, postage, and other incidental office expenses attributed to work on
11 this Project that is not specifically identified in Specified General Conditions Work.
- 12 3. All overhead expenses of the Contractor for participation in and the support of the
13 Subcontractor bidding process of the Project.
- 14 4. Other than retail sales tax, the fee shall cover all taxes owed by the Contractor including
15 City and State B&O tax.
- 16 5. Contractor’s Contract Bond described in Article 1-03.4 below.

17 **1-03.1(4) Negotiated Self-Perform Work Fee**

18 The Contractor submitted a dollar amount on the Form of Proposal which represented the
19 Negotiated Self-Perform Work Fee stated as a percentage of the estimated amount for
20 Negotiated Self-Perform Work. The actual Negotiated Self-Perform Work Fee in the Agreement
21 is a set dollar amount calculated by multiplying the Negotiated Subcontract Fee percentage bid
22 by the actual negotiated Self-Perform Work. The Negotiated Self-Perform Work Fee on
23 Negotiated Self-Perform Work shall be adjusted based on deductive or additive change orders
24 by multiplying the proposed fee percentage by the actual amount of the change order. The
25 Negotiated Self-Perform Work Fee shall cover the following:

- 26 1. All profit of the Contractor for the Negotiated Self Perform Work.
- 27 2. All regional and home office overhead expenses, including labor and materials, travel,
28 phone, facsimile, postage, and other incidental office expenses attributed to Negotiated
29 Self-Perform Work that is not specifically identified in Specified General Conditions
30 Work.
- 31 3. Other than retail sales tax, the fee shall cover all taxes owed by the Contractor including
32 City and State B&O tax.

1 1-03.1(5) Specified General Conditions Work

2 The Contract identifies the dollar amount for the “Fixed Amount for Specified General
3 Conditions Work. The Specified General Conditions Work shall consist of all requirements of the
4 Contract contained in this Division 1 General Requirements, in the General Conditions for
5 Washington State Facility Construction, the Supplemental Conditions for Washington State
6 Facility Construction, and the Special Conditions for Washington State Facility Construction
7 appended to these General Requirements that are not identified as Percent Fee, Negotiated
8 Support Services, or MACC cost. The Summary Matrix of Cost Allocation summarizes some of
9 the costs associated with Specified General Conditions Work. Any cost that is not specifically
10 identified in the Summary Matrix of Cost Allocation shall be covered in the amount bid for
11 Specified General Conditions, unless identified as a Negotiated Support Service, Percent Fee, or
12 MACC Cost. Specified General Conditions Work must be performed at the expense of the
13 Contractor and may not be made part of a subcontract bid except when so required by the
14 Specifications and approved by the Engineer.

15 1-03.2 Joint Venture Contractor

16 In the event the Contractor is a joint venture of two or more partners, the grants,
17 covenants, provisos and claims, rights, power, privileges, and liabilities of the Contract shall be
18 construed and held to be several as well as joint. Any notice, order, direction, request, or any
19 communication given by the Engineer to the Contractor under this Contract shall be well and
20 sufficiently given to all persons being the Contractor if given to any one or more of such joint
21 venture partners. Any notice, request, or other communication given by any one of such joint
22 venture partners to the Engineer under this Contract shall be deemed to have been given by
23 and shall bind all joint venture partners being the Contractor.

24 In the event of the dissolution of the joint venture Contractor, the Contracting Agency shall
25 have the unqualified right to select which joint venture partner(s) shall assume all liabilities,
26 obligations, rights, and benefits of the Contractor under this Contract. Dissolution of the joint
27 venture shall not be effected without prior consultation with the Engineer. In the event of
28 failure or inability of any joint venture partner(s) to continue performance under this Contract,
29 the remaining joint venture partner(s) shall perform all services and Work and assume all
30 liabilities, obligations, rights, and benefits to the Contractor under this Contract. Nothing in this
31 paragraph shall be construed or interpreted to limit the Contracting Agency’s rights under this
32 Contract or by law to determine whether the Contractor or any joint venture partner thereof
33 has performed within the terms of this Contract.

34 1-03.3 Execution of Contract

35 Within 20 calendar days after the Award date, the successful proposer shall return the
36 signed Contracting Agency-prepared Agreement, an insurance certification as requested by

1 Section 1-07.18 and Section 1-03.4, and shall be registered as a Contractor in the state of
2 Washington.

3 **1-03.4 Contract Bond**

4 The successful proposer shall provide an executed Contract Bond in the amount of the Total
5 Contract Cost. The Contract Bond shall:

- 6 1. Be on a Contracting Agency furnished form;
- 7 2. Be signed by an approved Surety (or Sureties) that:
 - 8 a. Is registered with the Washington State Insurance Commissioner; and
 - 9 b. Appears on the current Authorized Insurance List in the State of Washington
10 published by the Office of the Insurance Commissioner.
- 11 3. Be conditioned upon the faithful performance of the Contract by the Contractor within
12 the prescribed time; and
- 13 4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the
14 Project under titles 50, 51, and 82 RCW; and
- 15 5. Guarantee that the Surety shall indemnify, defend, and protect the Contracting Agency
16 against any claim of direct or indirect loss resulting from the failure:
 - 17 a. Of the Contractor (or any of the employees, Subcontractors, lower tier
18 Subcontractors of the Contractor) to faithfully perform the Contract; or
 - 19 b. Of the Contractor (or the Subcontractors or lower tier Subcontractors of the
20 Contractor) to pay all laborers, mechanics, Subcontractors, lower tier
21 Subcontractors, materialperson, or any other person who provides supplies or
22 provisions for carrying out the Work.

23 The Contracting Agency may require Sureties or Surety Companies on the Contract Bond to
24 appear and qualify themselves. Whenever the Contracting Agency deems the Surety or Sureties
25 inadequate, it may, upon written demand, require the Contractor to furnish additional Surety
26 to cover any remaining work.

27 **1-03.5 Failure to Execute Contract**

28 Failure to return the insurance certification and bond with the signed Agreement as
29 required in Section 1-03.3, or failure to provide Disadvantaged Business Enterprise information
30 if required by the Agreement, or failure or refusal to sign the Agreement, or failure to register

1 as a Contractor in the state of Washington shall result in forfeiture of the proposal bond or
2 deposit of this Proposer.

3 **1-03.6 Vacant**

4 **1-03.7 Judicial Review**

5 Any decision made by the Contracting Agency regarding the Award and execution of the
6 Contract or bid rejection shall be conclusive subject to the scope of judicial review permitted
7 under Washington Law. Such review, if any, shall be timely filed in the Superior Court of
8 Thurston County, Washington.

9 **1-04 Scope of the Work**

10 **1-04.1 Intent of the Contract**

11 The Contractor is an independent contractor with respect to the performance of all Work
12 hereunder, retaining control over the detail of its own operations, and the Contractor shall not
13 be considered the agent, partner, fiduciary, or trustee of the Contracting Agency.
14 Subcontractors to the Contractor will not be recognized as having a direct relationship with the
15 Contracting Agency, nor are Subcontractors intended or incidental third-party beneficiaries to
16 this Contract.

17 The Contractor will work collaboratively and proactively with the Contracting Agency and its
18 Design Team to proceed with the planning, design, and development of the Work in a manner
19 which supports the Contracting Agency's efforts to keep costs within the approved budget. The
20 Contractor shall provide Construction Management (CM) services throughout the Project, from
21 the preconstruction period through construction and shall closely coordinate such work with
22 the Design Team and the Contracting Agency. The Contractor shall provide CM services,
23 including but not limited to: (a) assistance in identifying safe work practices and requirements
24 for construction; (b) assessing and recommending site logistics requirements;
25 (c) recommending phasing, sequencing of work, and construction scheduling; (d) providing
26 cost-estimating including Negotiated Support Services budgeting; (e) determining and
27 reconciling constructability issues and performing constructability analysis of the design
28 documents prior to subcontract bidding; (f) assessing alternative construction options for cost
29 savings; (g) identifying products for Value Engineering (VE) and engineering systems for life
30 cycle cost considerations and recommending all work necessary to support product
31 implementation and; (h) participating in the Contracting Agency's Design and Construction
32 Documents Phases coordination reviews. In addition, the Contractor shall work with local labor
33 and subcontracting markets to generate viable pricing alternatives. The Contractor shall provide
34 full general contracting services for construction of the Project in accordance with the
35 requirements of the Contract Documents and RCW 39.10.210 and RCW 39.10.340 through

1 RCW 39.10.410, except to the extent work is specifically indicated in the Contract Documents to
2 be the responsibility of others.

3 Unless otherwise specifically stated in the Contract, the Contractor shall furnish, deliver,
4 provide, and pay for all materials, labor, professional services, tools, equipment, water, light,
5 power, heat, transportation, supervision, temporary construction of any nature, consumables,
6 and other services and facilities of any nature, whatsoever necessary, to execute, complete,
7 and deliver the Work within the Contract Time. The Work shall be executed in strict
8 conformance to the Contract requirements.

9 **1-04.1(2) LEED**

10 The LEED goal for this Project is (USGBC) LEED-NC (New Construction) Version 2009 with a
11 Silver certification. The Contractor shall work collaboratively and proactively throughout all
12 phases of the Project, including construction, to achieve this goal. Revise as necessary for the
13 latest version of LEED and the Contracting Agency's LEED Goal.

14 **1-04.1(3) CPARB Reporting**

15 Provide the Contracting Agency any Project information required to be submitted by the
16 Contractor in accordance with the provisions of chapter 39.10 RCW and the requirements of
17 the Capital Projects Advisory Review Board (CPARB).

18 **1-04.1(4) Construction Management and Contracting Plan**

19 The Contractor shall complete all Work in accordance with its Construction Management
20 and Contracting Plan as approved in MACC Negotiations. The Construction Management and
21 Contracting Plan shall have included at a minimum:

- 22 1. The Scope of Work and cost estimates for each bid package;
- 23 2. A proposed price and scope of work for the negotiated self-perform portion of the
24 project;
- 25 3. The bases used by the GC/CM to develop all cost estimates, including the negotiated
26 self-perform portion of the project; and
- 27 4. The GC/CM's updated outreach plan to include small business entities,
28 disadvantaged business entities, and disadvantaged or underutilized businesses as
29 subcontractors and suppliers for the project.

30 This Project is funded in part by US Department of Transportation funds. The DBE
31 requirements of 49 CFR apply to this contract. Demonstrating compliance with the DBE Goal
32 stated in 1-07.11(12) is a Condition of Award of this Contract.

1 1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications,
2 and Addenda

3 The complete Contract includes these parts: the Contract Form, Bidder’s completed
4 Proposal Form, Contract Plans, Contract Provisions, Standard Specifications, Standard Plans,
5 Addenda, various certifications and affidavits, supplemental agreements, change orders, and
6 subsurface boring logs (if any). These parts complement each other in describing a complete
7 Work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide
8 any Work or materials clearly implied in the Contract even if the Contract does not mention it
9 specifically.

10 Any inconsistency in the parts of the Contract shall be resolved by following this order of
11 precedence (e.g., 1 presiding over 2, 3, 4, 5, 6, and 7; 2 presiding over 3, 4, 5, 6, and 7; and so
12 forth):

- 13 1. Change Orders
- 14 2. Addenda
- 15 3. Agreement for General Contractor/Construction Manager Services
- 16 4. Special Provisions
- 17 5. Contract Plans
- 18 6. Amendments to the Standard Specifications
- 19 7. Standard Specifications
- 20 8. Standard Plans.
- 21 9. Division 1 – General Requirements for Heavy Civil General Contractor/Construction
22 Manager Contracts (Division 00 72 00)
- 23 10. Federal Transit Administration Articles for Construction Contracts (Division 00 73 73)

24 On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take
25 precedence over scaled dimensions.

26 This order of precedence shall not apply when Work is required by one part of the Contract
27 but omitted from another part or parts of the Contract. The Work required in one part must be
28 furnished even if not mentioned in other parts of the Contract.

29 If any part of the Contract requires Work that does not include a description for how the
30 Work is to be performed, the Work shall be performed in accordance with standard trade

1 practice(s). For purposes of the Contract, a standard trade practice is one having such regularity
2 of observance in the trade as to justify an expectation that it will be observed by the Contractor
3 in doing the Work.

4 In case of any ambiguity or dispute over interpreting the Contract, the Engineer’s decision
5 will be final as provided in Section 1-05.1.

6 **1-04.3 Work during Construction**

7 During construction, the Contractor shall provide all services required of a general
8 contractor and construction manager to execute the Work. Some details of Contractor’s Work
9 are provided below but this list shall in no way limit the Contractor’s overall duty to provide
10 Contractor services.

11 The Contractor has sole authority and responsibility to employ, discharge, and otherwise
12 control its employees and has complete and sole responsibility as a principal for its agents, for
13 all Subcontractors, and for all other persons that the Contractor or any Subcontractor hired to
14 perform or assist in performing the Work

15 The Contractor shall enforce strict discipline and good order among its employees at all
16 times and shall not employ on the Work any unfit person or anyone not skilled in the task
17 assigned to him or her. Any person employed on the Project by the Contractor or any of its
18 Subcontractors who, in the opinion of the Engineer, does not perform his or her work in a
19 proper and skillful manner or is intemperate, disorderly, reckless, or engages in any abuse or
20 harassment, shall, at the written request of the Engineer, be removed forthwith by his or her
21 employer, shall not be again be employed on the Project without the approval of the Engineer,
22 and shall at the Contractor’s own expense be replaced by a suitably qualified person.

23 **1-04.3(1) Meetings and Tours**

24 The Contractor shall conduct weekly Construction Progress Meetings and provide all
25 schedules, logs, and other information of construction activities to support the meeting. The
26 Contractor will record and distribute meetings minutes for same. The Contractor shall also
27 conduct separate weekly safety and Subcontractor meeting(s) and maintain minutes for same;
28 and attend Project Principals Oversight meetings and Disputes Review Board meetings with
29 representatives from the Contracting Agency and the Design Team on a monthly basis until
30 Final Completion is achieved, or as otherwise approved by the Contracting Agency. Upon
31 advanced notice, the Contractor shall conduct site tours for the Contracting Agency and other
32 officials as required.

33 **1-04.3(2) Superintendence/Coordination**

34 The Contractor shall be responsible for superintendence, providing ongoing coordination
35 between crafts; job site safety; housekeeping; quality control; settling disputes between

1 Subcontractors; negotiating any change orders with the Subcontractors (the Engineer expects
2 the Contractor to negotiate with Subcontractors but reserves the right to reject any
3 Subcontractor proposal); negotiating change orders with the Engineer; and reviewing,
4 coordinating, and forwarding submittals, substitution requests, and Requests for Information
5 (RFIs) to the Engineer for action and for responding to all correspondence related to the effort
6 required for any procurement activities that arise from a Subcontractor’s inability or
7 unwillingness to perform.

8 **1-04.3(3) Planning and Layout**

9 The Contractor shall be responsible for the planning and layout of the Work, and for the
10 coordination of layout work provided by separate trades for their own work, to ensure that no
11 conflict exists with the work of other trades.

12 **1.04.3(4) Project Management and Supervision (Key Personnel)**

13 As a part of the proposals submitted by the Contractor in response to the Request for
14 Proposals and Request for Final Proposals, the Contractor provided in writing to the Contracting
15 Agency the name, qualifications, and experience of the Contractor’s proposed Key Personnel.

- 16 1. The Project Manager identified in those proposals shall have complete authority to
17 represent and to act for the Contractor.
- 18 2. The Project Manager, or a designee shall be present at the site of the Work at all times
19 when the Work is actually in progress. The Project Manager shall notify the Engineer of
20 the names and means to contact the individual(s) who have authority to act for the
21 Project Manager at such times that the Project Manager is not present on any particular
22 part of the Work.
- 23 3. If for any reason and at any time any of the Key Personnel become unacceptable to the
24 Contracting Agency, the Contractor shall propose additional candidates within ten (10)
25 days of receiving written notice from the Engineer. If the Contractor wishes to replace
26 any of the Key Personnel at any time during the performance of this Contract, it first
27 shall submit the resume of its new candidate to the Engineer for the Engineer’s
28 approval, which approval shall not be unreasonably withheld. The Contractor shall not
29 make the substitution without the Engineer’s prior written approval. The Engineer, in his
30 or her sole discretion, may require the Contractor to remove the Project Manager, the
31 Superintendent, or any other employee from the site in the event such person fails to
32 uphold or meet the requirements of the Contract, including without limitation,
33 compliance with non-discrimination laws and regulations, or fails to perform in a
34 competent, qualified, or professional manner. Failure of the Engineer to require the
35 Contractor to remove such personnel shall not relieve the Contractor of its Contract
36 obligations.

- 1 4. The Contractor was awarded the Contract due in part to the Contractor’s submittal for
2 Key Personnel pursuant to the requirements of RCW 39.10.360. Contractor’s failure to
3 use such Key Personnel after award of the Contract shall constitute a breach of Contract
4 entitling the Contracting Agency at its option to any and all remedies, including, but not
5 limited to specific performance, revocation of the Contract Award, refusal to authorize
6 Notice to Proceed, suspension of Work for such time as is necessary for Contractor to
7 comply with the Contract by mobilizing the specified individuals or replacements
8 suitable to the Engineer, or termination of the Contract. If the Engineer elects to
9 continue the Work with Contractor’s replacement Key Personnel, in addition to all other
10 remedies available to the Contracting Agency, the Contractor agrees to pay a liquidated
11 amount, if specified in the Special Conditions, as damages for such substitution of one
12 or more Key Personnel. Contractor acknowledges that such amount is not a penalty and
13 constitutes a reasonable estimate of the damages to Contracting Agency associated
14 with the replacement of the Key Personnel upon which the Contracting Agency relied
15 for the award of this Contract.
- 16 5. The Engineer will not enforce the provisions of subparagraph 1-04.3(4) d. above in the
17 event compliance becomes impossible or commercially impracticable, provided
18 Contractor first submits substitute Key Personnel of equivalent skills, credentials, and
19 experience for approval. Such approval will not be unreasonably withheld.

20 **1-04.3(5) Inspections**

21 Special inspection required by the appropriate building officials and regulatory agencies will
22 be provided by the Contracting Agency. The Contractor shall be responsible to ensure that the
23 Engineer’s inspectors are given notice and are afforded timely and appropriate access to the
24 work to make their inspections.

25 **1-04.3(6) Building Permits and Changes**

26 The Contractor shall perform all work to obtain the necessary building permits from the
27 Authorities with Jurisdiction. Contractor shall pay for and obtain all permits, licenses, and
28 inspections necessary for proper execution and completion of the Work. Prior to Final
29 Acceptance, the approved, signed permits shall be delivered to Owner.

30 The Contractor shall perform all work required to make Building Permit changes and
31 updates. Building Permit changes and updates shall be, if approved by the Engineer,
32 incorporated into the appropriate subcontract package(s) and the Contract Documents by
33 change order.

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

1 The Contractor shall perform all work required to make Building Permit changes and
2 updates. Building Permit changes and updates shall be, if approved by the Engineer,
3 incorporated into the appropriate subcontract package(s) and the Contract Documents by
4 change order.

5 **1-04.3(7) Certificate of Occupancy**

6 The Contractor shall obtain a Certificate of Occupancy and the required operating permits
7 necessary for the Contracting Agency to take beneficial occupancy of the Project or any partially
8 completed portion of the Project when notified in writing by Contracting Agency.

9 **1-04.3(8) LEED Certification**

10 The Contractor shall manage environmental issues and implement and document the LEED
11 requirements of the Project, including but not limited to: (a) outline Subcontractor
12 requirements for LEED in the subcontract bid documents; (b) monitor the submittal process to
13 ensure LEED compliance; (c) train Subcontractors in LEED requirements; (d) review design
14 changes during construction for LEED impacts and inform the Engineer of impacts; (e) ensure
15 installed products are LEED compliant; and (f) assemble and maintain records to document
16 compliance of LEED goals.

17 **1-04.3(9) Work during Commissioning**

18 The Contracting Agency shall hire an independent Commissioning Authority. The Contractor
19 shall provide a Test Engineer and all support activities required by the Standard Specification,
20 Amendments to the Standard Specifications, Special Provisions, or per agreement with the City
21 of Seattle Building Department.

22 **1-04.4 Changes**

23 The Engineer reserves the right to make, at any time during the Work, such changes in
24 quantities and such alterations in the Work as are necessary to satisfactorily complete the
25 Project. Such changes in quantities and alterations shall not invalidate the Contract nor release
26 the Surety, and the Contractor agrees to perform the Work as altered. Among others, these
27 changes and alterations may include:

- 28 1. Deleting any part of the Work.
- 29 2. Increasing or decreasing quantities.
- 30 3. Altering Specifications, designs, or both.
- 31 4. Altering the way the Work is to be done.
- 32 5. Adding new Work.

1 6. Altering facilities, equipment, materials, services, or sites, provided by the Contracting
2 Agency.

3 7. Ordering the Contractor to speed up or delay the Work.

4 8. Design errors and omissions.

5 9. Regulatory changes.

6 10. Differing site conditions found to be materially different as determined in accordance
7 with the provisions of 1-04.7 below.

8 The Engineer will issue a written change order for any change unless the remainder of this
9 Section provides otherwise.

10 If the alterations or changes in quantities significantly change the character of the Work
11 under the Contract, whether or not changed by any such different quantities or alterations, an
12 adjustment, excluding loss of anticipated profits, will be made to the Contract. The basis for the
13 adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be
14 agreed upon, then an adjustment will be made either for or against the Contractor in such
15 amount as the Engineer may determine to be fair and equitable. If the alterations or changes in
16 quantities do not significantly change the character of the Work to be performed under the
17 Contract, the altered Work will be paid for as provided elsewhere in the Contract. The term
18 significant change shall be construed to apply only to the following circumstances:

19 A. When the character of the Work as altered differs materially in kind or nature from that
20 involved or included in the original proposed construction; or

21 B. When an item of Work, as defined elsewhere in the Contract, is increased in excess of
22 125 percent or decreased below 75 percent of the original Contract quantity. For the
23 purpose of this Section, an item of Work will be defined as any item that qualifies for
24 adjustment under the provisions of Section 1-04.6.

25 For item 1, an equitable adjustment for deleted Work will be made as provided in
26 Section 1-09.5.

27 For item 2, if the actual quantity of any item, exclusive of added or deleted amounts
28 included in agreed change orders, increases or decreases by more than 25 percent from the
29 original Plan quantity, the unit Contract prices for that item may be adjusted in accordance with
30 Section 1-04.6.

31 For any changes except item 1 (deleted Work) or item 2 (increasing or decreasing
32 quantities), the Engineer will determine if the change should be paid for at unit Contract
33 price(s). If the Engineer determines that the change increased or decreased the Contractor's

1 costs or time to do any of the Work including unchanged Work, the Engineer will make an
2 equitable adjustment to the Contract. The equitable adjustment will be by agreement with the
3 Contractor. However, if the parties are unable to agree, the Engineer will determine the
4 amount of the equitable adjustment in accordance with Section 1-09.4 and adjust the time as
5 the Engineer deems appropriate. Extensions of time will be evaluated in accordance with
6 Section 1-08.8. The Engineer’s decision concerning equitable adjustment and extension of time
7 shall be final as provided in Section 1-05.1.

8 The Contractor shall proceed with the Work upon receiving:

- 9 1. A written change order approved by the Engineer, or
- 10 2. An oral order from the Project Engineer before actually receiving the written change
11 order.

12 Changes normally noted on field stakes or variations from estimated quantities, except as
13 provided in subparagraph A or B above, will not require a written change order. These changes
14 shall be made at the unit prices that apply. The Contractor shall respond immediately to
15 changes shown on field stakes without waiting for further notice.

16 The Contractor shall obtain written consent of the Surety or Sureties if the Engineer
17 requests such consent.

18 **1-04.4(1) Minor Changes**

19 Payments of credits for changes amounting to \$15,000 or less may be made under the
20 Negotiated Support Services item “Minor Change”. At the discretion of the Contracting Agency,
21 this procedure for Minor Changes may be used in lieu of the more formal procedure as outlined
22 in Section 1-04.4, Changes.

23 The Contractor will be provided a copy of the completed order for Minor Change. The
24 agreement for the Minor Change will be documented by signature of the Contractor, or
25 notation of verbal agreement. If the Contractor is in disagreement with anything required by
26 the order for Minor Change, the Contractor may protest the order as provided in
27 Section 1-04.5.

28 Payments or credits will be determined in accordance with Section 1-09.4.

29 **1-04.4(3) Value Engineering Change Proposal (VECP)**

30 The following provision for Value Engineering Change Proposals will only apply to
31 Subcontractors that are selected pursuant to RCW 39.10.380 and who are not the Contractor or
32 one of its affiliates or subsidiaries. The provision for Value Engineering Change Proposal will not

1 apply to EC/CM and MC/CM Subcontractors selected pursuant to the provisions of
2 RCW39.10.385 Alternate Subcontractor Selection Process.

3 **1-04.4(3)A General**

4 A VECP is a Subcontractor proposed change to the Contract Provisions which will
5 accomplish the functional requirements of the Project in a manner that is equal to or better
6 than the requirements in the Contract. The VECP may be: (1) at a less cost or time, or (2) either
7 no cost savings or a minor increase in cost with a reduction in Contract time. The net savings or
8 added costs to the Contract Work are shared by the Contractor and Contracting Agency.

9 A Subcontractor may submit a VECP for changing the Plans, Specifications, or other
10 requirements of the Contract. The Engineer’s decision to accept or reject all or part of the
11 proposal is final and not subject to arbitration under the arbitration clause or otherwise subject
12 to litigation.

13 The VECP shall meet all of the following:

- 14 1. Not adversely affect the long-term life cycle costs.
- 15 2. Not adversely impact the ability to perform maintenance.
- 16 3. Provide the required safety and appearance.
- 17 4. Provide substitution for deleted or reduced Disadvantaged Business Enterprise
18 Condition of Award Work and Apprentice Utilization and Training.

19 VECPs that provide a time reduction shall meet the following requirements:

- 20 1. Time saving is a direct result of the VECP.
- 21 2. Liquidated damages penalties are not used to calculate savings.
- 22 3. Administrative/overhead cost savings experienced by either the Subcontractor or
23 Contracting Agency as a result of time reduction accrue to each party and are not
24 used to calculate savings.

25 **1-04.4(3)B VECP Savings**

26 **1-04.4(3)B1 Proposal Savings**

27 The incentive payment to the Subcontractor shall be one-half of the net savings of the
28 proposal calculated as follows:

- 29 1. (gross cost of deleted work) – (gross cost of added work) = (gross savings)

1 2. (gross savings) – (Subcontractor’s engineering costs) – (Contracting Agency’s costs) =
2 (net savings)

3 3. (net savings) / 2 = (incentive pay)

4 The Contracting Agency’s costs shall be the actual consultant costs billed to the Contracting
5 Agency and in-house costs. Costs for personnel assigned to the Engineer’s office shall not be
6 included.

7 **1-04.4(3)B2 Added Costs to Achieve Time Savings**

8 The cost to achieve the time savings shall be calculated as follows:

9 1. (cost of added work) + (Subcontractor’s engineering costs – Contracting Agency’s
10 engineering costs) = (cost to achieve time savings)

11 2. (cost to achieve time savings) / 2 = (Contracting Agency’s share of added cost)

12 If the timesaving proposal also involves deleting Work and, as a result, creates a savings for
13 the Contracting Agency, then the Contractor shall also receive one-half of the savings realized
14 through the deletion.

15 **1-04.4(3)C VECP Approval**

16 **1-04.4(3)C1 Concept Approval**

17 The Subcontractor shall submit a written proposal to the Engineer via the Contractor for
18 consideration. The proposal shall contain the following information:

19 1. An explanation outlining the benefit provided by the change(s).

20 2. A narrative description of the proposed change(s). If applicable, the discussion shall
21 include a demonstration of functional equivalency or a description of how the proposal
22 meets the original Contract scope of work.

23 3. A cost discussion estimating any net savings. Savings estimates will generally follow the
24 outline below under the section, “Proposal Savings”.

25 4. A statement providing the Contracting Agency with the right to use all or any part of the
26 proposal on future projects without future obligation or compensation.

27 5. A statement acknowledging and agreeing that the Engineer’s decision to accept or reject
28 all or part of the proposal is final and not subject to arbitration under the arbitration
29 clause or otherwise be subject to claims or disputes.

1 6. A statement giving the dates the Engineer must make a decision to accept or reject the
2 conceptual proposal, the date that approval to proceed must be received, and the date
3 the Work must begin in order to not delay the Contract. If the Contracting Agency does
4 not approve the VECP by the date specified by the Subcontractor in their proposal the
5 VECP will be deemed rejected.

6 7. The submittal will include an analysis on other Work that may have costs that changed
7 as a result of the VECP. Traffic control and erosion control shall both be included in
8 addition to any other impacted Work.

9 After review of the proposal, the Engineer will respond in writing with acceptance or
10 rejection of the concept. This acceptance shall not be construed as authority to proceed with
11 any change Contract Work. Concept approval allows the Subcontractor to proceed with the
12 Work needed to develop final plans and other information to receive formal approval and to
13 support preparation of a change order.

14 **1-04.4(3)C2 Formal Approval**

15 The Subcontractor’s submittal to the Engineer for formal approval shall include the
16 following:

17 1. Deleted Work – Include the calculated quantities of unit price Work to be deleted.
18 Include the proposed partial prices for portions of lump sum Work deleted. For deletion
19 of force account items, include the time and material estimates.

20 2. Added Work – Include the calculated quantities of unit price Work to be added, either
21 by original unit Contract prices or by new, negotiated unit prices. For new items of
22 Work, include the quantities and proposed prices.

23 3. Subcontractor’s Engineering Costs – Submit the labor costs for the engineering to
24 develop the proposal; costs for Subcontractor employees utilized in Contract operations
25 on a regular basis shall not be included.

26 4. Schedule Analysis – If the VECP is related to time savings, the Subcontractor shall submit
27 a partial progress schedule showing the changed Work. The submittal shall also include
28 a discussion comparing the partial progress schedule with the approved progress
29 schedule for the Project.

30 5. Working Drawings – Type 3 Working Drawings shall be submitted; those drawings which
31 require engineering shall be a Type 3E.

32 Formal approval of the proposal will be documented by issuance of a change order. The
33 VECP change order will contain the following statements which the Subcontractor agrees to by
34 signing the change order:

- 1 1. The Subcontractor accepts design risk of all features, both temporary and permanent, of
2 the changed Work.
- 3 2. The Subcontractor accepts risk of constructability of the changed Work.
- 4 3. The Subcontractor provides the Contracting Agency with the right to use all or any part
5 of the proposal on future projects without further obligation or compensation.

6 VECP change orders will contain separate pay items for the items that are applicable to the
7 Proposal. These are as follows:

- 8 1. Deleted Work.
- 9 2. Added Work.
- 10 3. The Subcontractor’s engineering costs, reimbursed at 100 percent of the
11 Subcontractor’s cost.
- 12 4. Incentive payment to the Subcontractor.

13 When added Work costs exceed deleted Work costs, but time savings make a viable
14 proposal, then items 3 and 4 above are replaced with the following:

- 15 3. The Contracting Agency’s share of added cost to achieve time savings.
- 16 4. The Subcontractor’s share of savings from deleted Work.

17 **1-04.4(3)C3 Authority to Proceed with Changed Work**

18 The authority for the Subcontractor to proceed with the VECP Work will be provided by one
19 of the following options:

- 20 1. Execution of the VECP change order, or
- 21 2. At the Subcontractor’s request, the Contracting Agency may provide approval by letter
22 from the Engineer for the Work to proceed prior to execution of a change order. All of
23 the risk for proceeding with the VECP shall be the responsibility of the Subcontractor.
24 Additionally, the following criteria are required to have been met:
 - 25 a. Concept approval has been granted by the Contracting Agency.
 - 26 b. All design reviews and approvals have been completed, including plans and
27 specifications.
 - 28 c. The Subcontractor has guaranteed, in writing, the minimum savings to the
29 Contracting Agency.

1 3. Contracting Agency.

2 **1-04.5 Procedure and Protest by the Contractor**

3 The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a
4 separate acceptance, or (3) not protesting in the way this Section provides. A change order that
5 is not protested as provided in this Section shall be full payment and final settlement of all
6 claims for Contract time and for all costs of any kind, including costs of delays, related to any
7 Work either covered or affected by the change. By not protesting as this Section provides, the
8 Contractor also waives any additional entitlement and accepts from the Engineer any written or
9 oral order (including directions, instructions, interpretations, and determinations).

10 If in disagreement with anything required in a change order, another written order, or an
11 oral order from the Engineer, including any direction, instruction, interpretation, or
12 determination by the Engineer, the Contractor shall:

- 13 1. Immediately give a signed written notice of protest to the Project Engineer or the
14 Project Engineer’s field Inspectors before doing the Work;
- 15 2. Supplement the written protest within 14 calendar days with a written statement and
16 supporting documents providing the following:
 - 17 a. The date and nature of the protested order, direction, instruction,
18 interpretation, or determination;
 - 19 b. A full discussion of the circumstances which caused the protest, including names
20 of persons involved, time, duration, and nature of the Work involved, and a
21 review of the Plans and Contract Provisions referenced to support the protest;
 - 22 c. The estimated dollar cost, if any, of the protested Work and a detailed
23 breakdown showing how that estimate was determined;
 - 24 d. An analysis of the progress schedule showing the schedule change or disruption
25 if the Contractor is asserting a schedule change or disruption; and
 - 26 e. If the protest is continuing, the information required above shall be
27 supplemented upon request by the Project Engineer until the protest is resolved.

28 Throughout any protested Work, the Contractor shall keep complete records of extra costs
29 and time incurred. The Contractor shall permit the Engineer access to these and any other
30 records related to the protested Work as determined by the Engineer.

31 The Engineer will evaluate all protests provided the procedures in this Section are followed.
32 If the Engineer determines that a protest is valid, the Engineer will adjust payment for Work or

1 time by an equitable adjustment in accordance with Section 1-09.4. Extensions of time will be
2 evaluated in accordance with Section 1-08.8. No adjustment will be made for an invalid protest.

3 If the Engineer determines that the protest is invalid, that determination and the reasons
4 for it will be provided in writing to the Contractor. The determination will be provided within
5 14 calendar days after receipt of the Contractor’s supplemental written statement (including
6 any additional information requested by the Project Engineer to support a continuing protest)
7 described in item 2 above.

8 If the Contractor does not accept the Engineer’s determination, then the Contractor shall
9 pursue the dispute and claims procedures set forth in Section 1-09.11. In spite of any protest or
10 dispute, the Contractor shall proceed promptly with the Work as the Engineer orders.

11 By failing to follow the procedures of Sections 1-04.5 and 1-09.11, the Contractor
12 completely waives any claims for protested Work.

13 **1-04.6 Variation in Estimated Quantities**

14 Payment to the Contractor will be made only for the actual quantities of Work performed
15 and accepted in conformance with the Contract. When the accepted quantity of Work
16 performed under a unit item varies from the original Proposal quantity, payment will be at the
17 unit Contract price for all Work unless the total accepted quantity of any Contract item,
18 adjusted to exclude added or deleted amounts included in change orders accepted by both
19 parties, increases or decreases by more than 25 percent from the original Proposal quantity. In
20 that case, payment for Contract Work may be adjusted as described herein.

21 The adjusted final quantity shall be determined by starting with the final accepted quantity
22 measured after all Work under an item has been completed. From this amount, subtract any
23 quantities included in additive change orders accepted by both parties. Then, to the resulting
24 amount, add any quantities included in deductive change orders accepted by both parties. The
25 final result of this calculation shall become the adjusted final quantity and the basis for
26 comparison to the original Proposal quantity.

27 1. Increased Quantities – Either party to the Contract will be entitled to renegotiate the
28 price for that portion of the adjusted final quantity in excess of 1.25 times the original
29 Proposal quantity. The price for excessive increased quantities will be determined by
30 agreement of the parties, or, where the parties cannot agree, the price will be
31 determined by the Engineer based upon the actual costs to perform the Work, including
32 reasonable markup for overhead and profit.

33 2. Decreased Quantities – Either party to the Contract will be entitled to an equitable
34 adjustment if the adjusted final quantity of Work performed is less than 75 percent of
35 the original Bid quantity. The equitable adjustment shall be based upon and limited to
36 three factors:

- 1 a. Any increase or decrease in unit costs of labor, materials, or equipment, utilized
2 for Work actually performed, resulting solely from the reduction in quantity;
- 3 b. Changes in production rates or methods of performing Work actually done to the
4 extent that the nature of the Work actually performed differs from the nature of
5 the Work included in the original plan; and
- 6 c. An adjustment for the anticipated contribution to unavoidable fixed cost and
7 overhead from the units representing the difference between the adjusted final
8 quantity and 75 percent of the original Plan quantity.

9 The following limitations shall apply to renegotiated prices for increases and/or equitable
10 adjustments for decreases:

- 11 1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the
12 AGC/WSDOT Equipment Rental Agreement (referred to in Section 1-09.6) that is in
13 effect at the time the Work is performed.
- 14 2. No payment will be made for extended or unabsorbed home office overhead and field
15 overhead expenses to the extent that there is an unbalanced allocation of such
16 expenses among the Contract Bid items.
- 17 3. No payment for consequential damages or loss of anticipated profits will be allowed
18 because of any variance in quantities from those originally shown in the Proposal form,
19 Contract Provisions, and Contract Plans.
- 20 4. The total payment (including the adjustment amount and unit prices for Work
21 performed) for any item that experiences an equitable adjustment for decreased
22 quantity shall not exceed 75 percent of the amount originally Bid for the item.

23 If the adjusted final quantity of any item does not vary from the quantity shown in the
24 Proposal by more than 25 percent, then the Contractor and the Contracting Agency agree that
25 all Work under that item will be performed at the original Contract unit price.

26 When ordered by the Engineer, the Contractor shall proceed with the Work pending
27 determination of the cost or time adjustment for the variation in quantities.

28 The Contractor and the Contracting Agency agree that there will be no cost adjustment for
29 decreases if the Contracting Agency has entered the amount for the item in the Proposal form
30 only to provide a common Proposal for Bidders.

1 **1-04.7 Differing Site Conditions (Changed Conditions)**

2 During the progress of the Work, if preexisting subsurface or latent physical conditions are
3 encountered at the site, differing materially from those indicated in the Contract, or if
4 preexisting unknown physical conditions of an unusual nature differing materially from those
5 ordinarily encountered and generally recognized as inherent in the Work provided for in the
6 Contract, the party discovering such conditions shall promptly notify the other party in writing
7 of the specific differing site conditions before the conditions are disturbed and before the
8 affected Work is performed.

9 Upon written notification, the Engineer will investigate the conditions and if he/she
10 determines that the conditions materially differ and cause an increase or decrease in the cost
11 or time required for the performance of any Work under the Contract, an adjustment,
12 excluding loss of anticipated profits, will be made and the Contract modified in writing
13 accordingly. The Engineer will notify the Contractor of his/her determination whether or not an
14 adjustment of the Contract is warranted.

15 No Contract adjustment which results in a benefit to the Contractor will be allowed unless
16 the Contractor has provided the required written notice.

17 The equitable adjustment will be by agreement with the Contractor. However, if the parties
18 are unable to agree, the Engineer will determine the amount of the equitable adjustment in
19 accordance with Section 1-09.4. Extensions of time will be evaluated in accordance with
20 Section 1-08.8.

21 If the Engineer determines that different site conditions do not exist and no adjustment in
22 costs or time is warranted, such determination shall be final as provided in Section 1-05.1.

23 If there is a decrease in the costs or time required to perform the Work, failure of the
24 Contractor to notify the Engineer of the differing site conditions shall not affect the Contracting
25 Agency’s right to make an adjustment in the costs or time.

26 No claim by the Contractor shall be allowed unless the Contractor has followed the
27 procedures provided in Sections 1-04.5 and 1-09.11.

28 **1-04.8 Progress Estimates and Payments**

29 Engineer-issued progress estimates or payments for any part of the Work shall not be used
30 as evidence of performance or quantities. Progress estimates serve only as basis for partial
31 payments. The Engineer may revise progress estimates any time before final acceptance. If the
32 Engineer deems it proper to do so, changes may be made in progress estimates and in the final
33 estimate.

1 **1-04.9 Use of Buildings or Structures**

2 The Engineer will decide whether any building or Structure on the Right-of-Way may remain
3 during the Work and whether the Contractor may use such a building or Structure.

4 **1-04.10 Use of Materials Found on the Project**

5 With the Engineer’s written approval, the Contractor may use on the Project: stone, gravel,
6 sand, other materials from on-site excavation, or timbers removed in the course of the Work.
7 Approval will not be granted if:

- 8 1. The excavated materials or timber fail to meet Contract requirements;
- 9 2. The excavated materials or timber are required for other use under the Contract;
- 10 3. The excavated materials are required for use as Selected Materials under
11 Section 2-03.3(10); or
- 12 4. Such use is not in the best interests of the Contracting Agency as determined by the
13 Engineer, whose decision shall be final as provided in Section 1-05.1.

14 Any material disturbed by, but not used in, the Work shall be disposed of as provided
15 elsewhere in the Contract or as ordered by the Engineer in accordance with Section 1-04.4.

16 **1-04.11 Final Cleanup**

17 The Contractor shall perform final cleanup as provided in this Section to the Engineer’s
18 satisfaction. The Engineer will not establish the Physical Completion Date until this is done. The
19 Highway Right-of-Way, material sites, and all ground the Contractor occupied to do the Work
20 shall be left neat and presentable. The Contractor shall:

- 21 1. Remove all rubbish, surplus materials, discarded materials, falsework, camp buildings,
22 temporary structures, equipment, and debris; and
- 23 2. Deposit in embankments, or remove from the Project, all unneeded, oversized rock left
24 from grading, surfacing, or paving.

25 The Contractor shall not remove warning, regulatory, or guide signs unless the Engineer
26 approves.

1 **1-05 Control of Work**

2 **1-05.1 Authority of the Engineer**

3 The Engineer shall be satisfied that all the Work is being done in accordance with the
4 requirements of the Contract. The Contract and Specifications give the Engineer authority over
5 the Work. Whenever it is so provided in this Contract, the decision of the Engineer shall be
6 final; provided, however, that if an action is brought within the time allowed in this Contract
7 challenging the Engineer’s decision, the decision shall be subject to the scope of judicial review
8 provided in such cases under Washington case law.

9 The Engineer’s decisions will be final on all questions including the following:

- 10 1. Quality and acceptability of materials and Work,
- 11 2. Measurement of unit price Work,
- 12 3. Acceptability of rates of progress on the Work,
- 13 4. Interpretation of Plans and Specifications,
- 14 5. Determination as to the existence of changed or differing site conditions,
- 15 6. Fulfillment of the Contract by the Contractor,
- 16 7. Payments under the Contract including equitable adjustment,
- 17 8. Suspension(s) of Work,
- 18 9. Termination of the Contract for default or public convenience,
- 19 10. Determination as to unworkable days, and
- 20 11. Approval of Working Drawings.

21 The Engineer represents the Contracting Agency with full authority to enforce Contract
22 requirements. If the Contractor fails to respond promptly to the requirements of the Contract
23 or orders from the Engineer:

- 24 1. The Engineer may use Contracting Agency resources, other contractors, or other means
25 to accomplish the Work; and
- 26 2. The Contracting Agency will not be obligated to pay the Contractor, and will deduct
27 from the Contractor’s payments any costs that result when any other means are used to
28 carry out the Contract requirements or Engineer’s orders.

1 At the Contractor’s risk, the Engineer may suspend all or part of the Work according to
2 Section 1-08.6.

3 Nothing in these Specifications or in the Contract requires the Engineer to provide the
4 Contractor with direction or advice on how to do the Work. If the Engineer approves or
5 recommends any method or manner for doing the Work or producing materials, the approval
6 or recommendation shall not:

- 7 1. Guarantee that following the method or manner will result in compliance with the
8 Contract,
- 9 2. Relieve the Contractor of any risks or obligations under the Contract, or
- 10 3. Create any Contracting Agency liability.

11 **1-05.2 Authority of Assistants and Inspectors**

12 The Engineer may appoint assistants and Inspectors to assist in determining that the Work
13 and materials meet the Contract requirements. Assistants and Inspectors have the authority to
14 reject defective material and suspend Work that is being done improperly, subject to the final
15 decisions of the Engineer.

16 Assistants and Inspectors are not authorized to accept Work, to accept materials, to issue
17 instructions, or to give advice that is contrary to the Contract. Work done or material furnished
18 which does not meet the Contract requirements shall be at the Contractor’s risk and shall not
19 be a basis for a claim even if the Inspectors or assistants purport to change the Contract.

20 Assistants and Inspectors may advise the Contractor of any faulty Work or materials or
21 infringements of the terms of the Contract; however, failure of the Engineer or the assistants or
22 Inspectors to advise the Contractor does not constitute acceptance or approval.

23 **1-05.3 Working Drawings**

24 The Contract may require the Contractor to submit Working Drawings for the performance
25 of the Work. Working Drawings shall be submitted by the Contractor electronically to the
26 Engineer in PDF format; drawing details shall be prepared in accordance with conventional
27 detailing practices. If the PDF format is found to be unacceptable, at the request of the
28 Engineer, the Contractor shall provide paper copies of the Working Drawings with drawings on
29 11- by 17-inch sheets and calculations/text on 8½-by 11-inch sheets.

1 Working Drawings will be classified under the following categories:

2 Type 1 – Submitted for Contracting Agency information. Submittal must be received
3 by the Contracting Agency a minimum of 7 calendar days before work represented by
4 the submittal begins.

5 Type 2 – Submitted for Contracting Agency review and comment. Unless otherwise
6 stated in the Contract, the Engineer will require up to 20 calendar days from the date
7 the Working Drawing is received until it is returned to the Contractor. The Contractor
8 shall not proceed with the Work represented by the Working Drawing until comments
9 from the Engineer have been addressed.

10 Type 2E – Same as a Type 2 Working Drawing with Engineering as described below.

11 Type 3 – Submitted for Contracting Agency review and approval. Unless otherwise
12 stated in the Contract, the Engineer will require up to 30 calendar days from the date
13 the Working Drawing is received until it is returned to the Contractor. The Contractor
14 shall obtain the Engineer’s written approval before proceeding with the Work
15 represented by the Working Drawing.

16 Type 3E – Same as a Type 3 Working Drawing with Engineering as described below.

17 All Working Drawings shall be considered Type 3 Working Drawings except as specifically
18 noted otherwise in the Contract. Unless designated otherwise by the Contractor, submittals of
19 Working Drawings will be reviewed in the order the Working Drawings are received by the
20 Engineer. In the event that several Working Drawings are received simultaneously, the
21 Contractor shall specify the sequence in which the Working Drawings are to be reviewed. If the
22 Contractor does not submit a review sequence for simultaneous Working Drawing submittals,
23 the review sequence will be at the Engineer’s discretion.

24 Working Drawings requiring Engineering, Type 2E and 3E, shall be prepared by (or under the
25 direction of) a Professional Engineer, licensed under Title 18 RCW, State of Washington, and in
26 accordance with WAC 196-23-020. Design calculations shall carry the Professional Engineer’s
27 signature and seal, date of signature, and registration number on the cover page. The cover
28 page shall also include the Contract number, Contract title and sequential index to calculation
29 page numbers.

30 If more than the specified number of calendar days is required for the Engineer’s review of
31 any individual Working Drawing or resubmittal, an extension of time will be considered in
32 accordance with Section 1-08.8.

33 Review or approval of Working Drawings shall neither confer upon the Contracting Agency
34 nor relieve the Contractor of any responsibility for the accuracy of the Working Drawings or

1 conformity of the Working Drawings with the Contract. The Contractor shall bear all risk and all
2 costs of any Work delays caused by rejection or nonapproval of Working Drawings.

3 The cost of Working Drawings is included in the MACC.

4 **1-05.3(1) Right and Left Designation**

5 Any right or left designations used to locate Structures throughout the Plans and these
6 Special Provisions are made by facing offshore.

7 **1-05.3(2) Sundry Site Plan**

8 The Sundry Site Plan is included in these Contract Documents for the benefit of the
9 Contractor. It is meant to give a graphical representation of the properties in the vicinity of the
10 Project site.

11 The Sundry Site Plan gives information necessary for locating Right-of-Way (R/W) lines,
12 construction permit boundaries, and permanent or construction easements.

13 Areas identified within R/W are made available to the Contractor for use as indicated in
14 these Plans and Special Provisions.

15 The Contractor is not to use adjoining property without first obtaining written permission
16 from adjacent property owner(s), and notifying the Engineer, in writing, when such permission
17 has been granted prior to occupying or using adjoining property.

18 **1-05.3(3) Work Plan**

19 The Contractor shall submit a Work Plan to the Engineer for review. The Work Plan shall
20 include the following minimum requirements:

- 21 1. The Work Plan shall describe the Contractor's proposed methods for accomplishing the
22 Work within the conditions and restrictions of the Contract. The Work Plan shall
23 describe the nature, approach, and sequence of the Work to be performed; the type
24 and location of cranes, barges, and other equipment to be used; plans for demolition,
25 debris control, and disposal of materials; temporary construction; compliance with
26 environmental provisions; and any unavoidable impacts, necessary safeguards, and
27 mitigating measures.
- 28 2. Where the Contractor's work would impact the operation and safety of ferry traffic and
29 ferry pedestrian areas, the Work Plan shall detail the methods used to either separate
30 the Work from the ferry traffic or to maintain the area in a safe condition while it is
31 being utilized by ferry passengers.

1 3. The Work Plan shall be a Type 2 Working Drawing with attached drawings, charts,
2 diagrams, and references to the Plans and Progress Schedule as necessary.

3 4. The Work Plan shall be updated whenever conditions change or as directed by the
4 Engineer.

5 All costs associated with the Work Plan shall be included as a Negotiated Support Service
6 (NSS).

7 **1-05.4 Licensed Surveyors**

8 The Contractor shall be responsible for reestablishing or locating legal survey markers such
9 as GLO monuments or property corner monuments; conduct boundary surveys to determine
10 Contracting Agency right-of-way locations; and obtain, review, and analyze deeds and records
11 as necessary to determine these boundaries. The Contracting Agency will provide “rights of
12 entry” as needed by the Contractor to perform the work.

13 The Contractor shall brush out or clear and stake or mark the right-of-way lines as
14 designated by the Engineer.

15 The Contractor shall inform the Engineer when monuments are discovered that were not
16 identified in the Plans and when construction activity may disturb or damage the monuments.
17 All monuments noted on the plans “DO NOT DISTURB” shall be protected throughout the
18 length of the Project or be replaced at the Contractor’s expense.

19 When required, the Contractor shall prepare and file a Record of Survey map in accordance
20 with RCW 58.09 and provide a recorded copy to the Contracting Agency. The Contracting
21 Agency will provide all existing base maps, existing horizontal and vertical control, and other
22 material available with Washington State Plane Coordinate information to the Contractor. The
23 Contracting Agency will also provide maps, plan sheets, and/or aerial photographs clearly
24 identifying the limits of the areas to be surveyed. The Contractor shall establish Washington
25 State Plane Coordinates on all points required in the Record of Survey and other points
26 designated in the Contract Documents.

27 Existing right-of-way documentation, existing base maps, existing horizontal and vertical
28 control descriptions, maps, plan sheets, aerial photographs, and all other available material
29 may be viewed by prospective bidders at the office of the Project Engineer.

30 The Contractor shall perform all of the necessary calculations for the contracted survey
31 work and shall provide copies of these calculations to the Contracting Agency. Electronic files of
32 all survey data shall be provided and in a format acceptable to the Contracting Agency.

33 All survey work performed by the Contractor shall conform to all applicable sections of the
34 Revised Code of Washington and the Washington Administrative Code.

1 The Contractor shall provide all, signing, and temporary traffic control devices in order to
2 provide a safe work zone.

3 **Payment** – Licensed Surveying is a Negotiated Support Service.

4 These General Requirements require that the Contractor be contractually responsible for all
5 of the Project surveying. The Contractor’s Licensed Surveyor shall layout and set construction
6 stakes and marks needed to establish the lines, grades, slopes, cross sections, and curve
7 superelevations. These stakes and marks will govern the Contractor’s Work. The Contractor
8 shall take full responsibility for detailed dimensions, elevations, and slopes measured from the
9 stakes and marks.

10 All Work performed shall be in conformity with the lines, grades, slopes, cross-sections,
11 superelevation data, and dimensions as shown in the Plans, or as staked. If the Plans, Special
12 Provisions, or these Specifications, state specific tolerances, then the Work shall be performed
13 within those limits. The Engineer’s decision on whether the Work is in conformity shall be final,
14 as provided in Section 1-05.1.

15 The Contractor shall not deviate from the approved Plans and Working Drawings unless the
16 Engineer approves in writing.

17 When the Contracting Agency is responsible for roadway surveying, and the Contractor
18 trims the subgrade with an automatic machine guided by reference lines, the Engineer will set
19 control stakes for line and grade only once after grading is complete. To gain better control
20 with unusual pavement widths or for other reasons, the Engineer may set more control stakes
21 without added cost to the Contractor. The Contractor shall set reference lines from these
22 control stakes for trimming subgrade, for surfacing, and for controlling the paving machines.

23 The Contractor shall work to preserve stakes, marks, and monuments set by the Engineer.
24 The Contracting Agency will deduct from payments due the Contractor all costs to replace such
25 stakes, marks, and monuments carelessly or willfully damaged or destroyed by the Contractor’s
26 operation.

27 The Contractor shall provide enough safe areas to permit the Engineer to set those points
28 and elevations that are the responsibility of the Contracting Agency and to perform random
29 checks of the surveying performed by the Contractor.

30 The Contractor shall keep the Engineer informed of staking requirements to provide the
31 Engineer with adequate time to set the stakes for which the Contracting Agency is responsible.
32 Contractor requests for stakes shall be made at least 3 working days before the Engineer needs
33 to begin the staking operation.

1 **1-05.4(1) Contractor Surveying – Marine**

2 The Contractor shall be responsible for setting and maintaining all alignment and elevations
3 necessary for the construction of the Structures, except for the survey control data to be
4 furnished by the Contracting Agency. All calculations, surveying materials, and measuring
5 required for setting and maintaining the necessary lines and grades shall be the Contractor’s
6 responsibility. Detailed survey records shall be maintained, including a description of the Work
7 performed on each shift, the methods utilized, and the control points used. The record shall be
8 adequate to allow the survey to be reproduced. The Contractor shall provide a copy of such
9 calculations and other data to the Contracting Agency when requested by the Engineer. A copy
10 of the Contracting Agency-provided survey control data is available for the bidder’s inspection
11 at the office of the Project Engineer.

12 The meaning of words and terms used in this provision shall be as listed in “*Definitions of*
13 *Surveying and Associated Terms*” current edition, published by the American Congress on
14 Surveying and Mapping and the American Society of Civil Engineers

15 Any surveying done for the Project that does not fit field conditions will be reviewed and, if
16 necessary, adjusted by the Engineer. Any necessary revision will be provided to the Contractor
17 for use in completing the work.

18 The Contracting Agency will provide the Contractor with survey control in the form of an
19 elevation bench mark and two points on the work line. This information shall be provided
20 within 21 calendar days of being requested by the Contractor.

21 The Contractor shall ensure a surveying accuracy within the following tolerances:

22	Stationing	+ 0.01 foot
23	Alignment	+ 0.01 foot
24	Elevations	+ 0.005 foot

25 **Payment** – Payment will be made from Negotiated Support Services (NSS).

26 **1-05.5 Inspection of Work and Materials**

27 The Engineer may inspect all Work and materials for conformity with Contract terms. To
28 ensure the Engineer’s safety and access during these inspections, the Contractor shall provide
29 any equipment needed, such as walkways, railings, ladders, and platforms.

30 When the Engineer requests, the Contractor shall (without charge) provide samples of
31 materials used or to be used in the Work. If the Contractor uses materials tested and approved
32 for one project in an unrelated project, the Contracting Agency may deduct its testing and
33 inspection costs from payments due the Contractor. The Engineer may order the Contractor to
34 remove and replace, and bear the cost of doing so, any materials used without inspection.

1 Any inspections, tests, measurements, or other actions by Contracting Agency employees
2 serve only one purpose: to assure the Engineer that Work, materials, progress rate, and
3 quantities comply with Contract terms. Such work by Contracting Agency employees shall not
4 relieve the Contractor from doing any Contract-assigned Work or from determining whether
5 Contract requirements are being met. The Contractor shall correct any substandard Work or
6 materials. The Engineer will reject unsuitable Work or materials even though inspected or paid
7 for in a progress estimate.

8 If the Engineer requests, then the Contractor shall remove or uncover any area of the
9 completed Work. After the Engineer inspects it, the Contractor shall restore the area to the
10 standard the Contract requires. The Contractor shall bear the cost of uncovering, removing, and
11 restoring the exposed Work: (a) if it proves unacceptable, or (b) if it was placed without
12 authority or without due notice to the Engineer. The Contracting Agency will pay these costs by
13 agreed price or by force account if the Work proves to be acceptable and the Contractor had
14 performed the original Work with the authority of and due notice to the Engineer.

15 The Contractor, if advised to do so by the Engineer, shall permit representatives from other
16 agencies to inspect the Work when it is to be done:

- 17 1. On any railroad, utility, or facility of a public agency; or
- 18 2. To the satisfaction of any federal, state, or municipal agency.

19 In any crushing or screening operation, the Contractor shall provide and install a mechanical
20 sampler that:

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

28 No material from the crushing or screen operation will be accepted until after the Engineer
29 has approved the design and operation of the sampling equipment. The Contractor shall bear
30 all costs of providing the sampling equipment, the power to operate it, and the space for its
31 use.

1 **1-05.6 Removal of Defective and Unauthorized Work**

2 The Contracting Agency will not pay for unauthorized or defective Work. Unauthorized or
3 defective Work includes: Work and materials that do not conform to Contract requirements;
4 Work done beyond the lines and grades set by the Plans or the Engineer; and extra Work and
5 materials furnished without the Engineer’s written approval. At the Engineer’s order, the
6 Contractor shall immediately remedy, remove, replace, or dispose of unauthorized or defective
7 Work or materials and bear all costs of doing so.

8 **1-05.7 Vacant**

9 **1-05.8 Equipment**

10 At the Engineer’s request, the Contractor shall provide an operating and maintenance
11 manual for each model or type of mixing, placing, or processing equipment before using it in
12 the Work. The Contractor shall also provide test instruments to confirm whether the equipment
13 meets operating requirements, such as vibration rate, revolutions-per-minute, or any other
14 requirements.

15 The Contract may require automatically controlled equipment for some operations. If the
16 automatic controls on such equipment fail, then the Contractor may operate the equipment
17 manually for the remainder of that normal working day, provided the method of operation
18 produces results otherwise meeting the Specifications. Continued operation of the equipment
19 manually beyond this working day will be permitted only by specific authorization of the
20 Engineer.

21 The Engineer will reject equipment that repeatedly breaks down or fails to produce results
22 within the required tolerances. The Contractor shall have no claim for additional payment or for
23 extension of time due to rejection and replacement of any equipment.

24 **1-05.9 Guarantees**

25 The Contractor shall furnish to the Contracting Agency any guarantee or warranty furnished
26 as a customary trade practice in connection with the purchase of any equipment, materials, or
27 items incorporated into the Project.

28 **1-05.10 Final Inspection**

29 The Engineer will not make the final inspection until the physical Work required by the
30 Contract, including final cleanup and all extra Work ordered by the Engineer, has been
31 completed. The Physical Completion Date for the Contract will be determined as provided in
32 Section 1-08.5.

1 1-05.11 Final Acceptance

2 The Contractor must perform all the obligations under the Contract before a Completion
3 Date and final acceptance can occur. Failure of the Contractor to perform all the obligations
4 under the Contract shall not bar the Contracting Agency from unilaterally accepting the
5 Contract as provided in Section 1-09.9. The Secretary accepts the completed Contract and the
6 items of Work shown in the final estimate by signature of the Final Contract Voucher
7 Certification. The date of that signature constitutes the acceptance date. Progress estimates or
8 payments shall not be construed as acceptance of any Work under the Contract.

9 The Contractor agrees that neither completion nor final acceptance shall relieve the
10 Contractor of the responsibility to indemnify, defend, and protect the Contracting Agency
11 against any claim or loss resulting from the failure of the Contractor (or the Subcontractors or
12 lower tier Subcontractors) to pay all laborers, mechanics, Subcontractors, materialpersons, or
13 any other person who provides labor, supplies, or provisions for carrying out the Work or for
14 any payments required for unemployment compensation under Title 50 RCW or for industrial
15 insurance and medical aid required under Title 51 RCW.

16 Final acceptance shall not constitute acceptance of any unauthorized or defective work or
17 material. The Contracting Agency shall not be barred from requiring the Contractor to remove,
18 replace, repair, or dispose of any unauthorized or defective work or material or from recovering
19 damages for any such work or material.

20 1-05.12 Superintendents, Labor, and Equipment of Contractor

21 At all times, the Contractor shall keep at the Work site a set of the Plans, Specifications,
22 Special Provisions, and Addenda. The Contractor shall devote the attention required to make
23 reasonable progress on the Work and shall cooperate fully with the Engineer and Inspectors.

24 Either the Contractor in person, or an authorized representative, shall remain on site
25 whenever the Work is underway. Before the Work begins, the Contractor shall name in writing
26 an experienced superintendent who understands the Contract and is able to supervise the
27 Work. This superintendent shall have full authority to represent and act for the Contractor. Any
28 superintendent who repeatedly fails to follow the Engineer’s written or oral orders, directions,
29 instructions, or determinations shall be subject to removal from the Project. Upon the written
30 request of the Engineer, the Contractor shall immediately remove such superintendent and
31 name a replacement in writing.

32 Competent supervisors experienced in the task being performed shall continuously oversee
33 the Contract Work. At the Engineer’s written request, the Contractor shall immediately remove
34 and replace any incompetent, careless, or negligent employee.

35 Noncompliance with the Engineer’s request to remove and replace personnel at any level
36 shall be grounds for terminating the Contract under the terms of Section 1-08.10.

1 The Contractor shall keep all machinery and equipment in good, workable condition. It shall
2 be adequate for its purpose and used by competent operators.

3 The Engineer will rate the Contractor’s performance and Contract compliance in these
4 categories:

- 5 1. Progress of Work,
- 6 2. Quality of Work,
- 7 3. Equipment,
- 8 4. Administration/Management/Supervision, and
- 9 5. Coordination and Control of Subcontractors.

10 Whenever the Contracting Agency evaluates the Contractor’s prequalification under
11 RCW 47.28.070, it will take these reports into account.

12 **1-05.12(1) Emergency Contact List**

13 The Contractor shall submit an Emergency Contact List to the Engineer no later than
14 5 calendar days after the date the Contract is executed. The list shall include, at a minimum, the
15 Prime Contractor’s Project Manager, or equivalent, the Prime Contractor’s Project
16 Superintendent, the Erosion and Sediment Control (ESC) Lead, and the Traffic Control
17 Supervisor. The list shall identify a representative with delegated authority to act as the
18 emergency contact on behalf of the Prime Contractor and include one or more alternates. The
19 emergency contact shall be available upon the Engineer’s request at other than normal working
20 hours. The Emergency Contact List shall include 24-hour telephone numbers for all individuals
21 identified as emergency contacts or alternates.

22 **1-05.13 Cooperation with Other Contractors**

23 The Contracting Agency may perform other work at or near the site, including any material
24 site, with other forces than those of the Contractor. This work may be done with or without a
25 contract. If such work takes place within or next to this Project, the Contractor shall cooperate
26 with all other contractors or forces. The Contractor shall carry out Work under this Project in a
27 way that will minimize interference and delay for all forces involved. The Engineer will resolve
28 any disagreements that may arise among the contractors or the Contractor and the Contracting
29 Agency over the method or order of doing the Work. The Engineer’s decision in these matters
30 shall be final, as provided in Section 1-05.1.

1 The coordination of the Work shall be taken into account by the Contractor as part of the
2 site investigation in accordance with Section 1-02.4 and any resulting costs shall be incidental
3 and included within the unit Bid prices in the Contract.

4 **1-05.13(1) Other Contracts or Other Work**

5 It is anticipated that the following work adjacent to or within the limits of this Project will be
6 performed by others during the course of this Project and will require coordination of the work:

- 7 • Ongoing WSF maintenance work.
- 8 • List of other ongoing work to be determined by WSF.

9 **1-05.14 Method of Serving Notices**

10 Any written notice to the Contractor required under these Specifications may be served on
11 the Contractor either personally or by mailing or by delivery to the last post office address
12 known to the Engineer.

13 All correspondence from the Contractor shall be directed to the Project Engineer.

14 **1-06 Control of Material**

15 **1-06.1 Approval of Materials Prior to Use**

16 Prior to use, the Contractor shall notify the Engineer of all proposed materials.
17 The Contractor shall use the Qualified Product List (QPL), the Aggregate Source Approval (ASA)
18 Database, or the Request for Approval of Material (RAM) form.

19 All equipment, materials, and articles incorporated into the permanent Work:

- 20 1. Shall be new, unless the *Special Provisions* or *Standard Specifications* permit
21 otherwise;
- 22 2. Shall meet the requirements of the Contract and be approved by the Engineer;
- 23 3. May be inspected or tested at any time during preparation and use; and
- 24 4. Shall not be used in the Work if the items become unfit after being previously
25 approved.

26 **1-06.1(1) Qualified Products List (QPL)**

27 The Qualified Product List (QPL) is a listing of manufactured products that have been
28 evaluated and determined suitable for use in Highway construction.

1 If the Contractor elects to use the QPL, the most current list available at the time the
2 product is proposed for use shall be used. The QPL submittal shall be prepared by the
3 Contractor in accordance with the instructions in the QPL and submitted to the Engineer prior
4 to use.

5 The QPL identifies the approved products, the applicable Specification Section, and the
6 basis for acceptance at the Project level. The listing is divided into two categories, “Approved”
7 and “Conditionally Approved”. “Approved” products are denoted with an “A”. Those products
8 may be accepted without additional sampling. “Conditionally Approved” products are denoted
9 with a “CA”. The acceptance and use of these products is based upon additional job sampling
10 and/or documentation. All additional acceptance actions need to be completed prior to the
11 material being incorporated into the Work.

12 The Contractor shall advise the Engineer of the intended items for use from the QPL by
13 reference to the Contract Bid item.

14 The use of listed products shall be restricted to the Standard Specification for which the
15 products are listed and fulfillment of the acceptance requirement defined in the QPL. Qualified
16 products not conforming to the Specifications, not fulfilling the acceptance requirements, or
17 improperly handled or installed, shall be replaced at the Contractor’s expense.

18 To qualify for continued listing on the QPL, products may be sampled and tested for
19 conformance to the *Standard Specifications*. The Contracting Agency reserves the right to make
20 revisions to the QPL at any time.

21 If there is a conflict between the QPL and the Contract, the provisions of the Contract shall
22 take precedence over the QPL.

23 The current QPL can be accessed online at www.wsdot.wa.gov/biz/mats/qpl/qpl.cfm.

24 **1-06.1(2) Request for Approval of Material (RAM)**

25 The RAM shall be used when the Contractor elects not to use the QPL or the material is not
26 listed in the QPL. The RAM shall be prepared by the Contractor in accordance with the
27 instructions on Form 350-071 and submitted to the Engineer for approval before the material is
28 incorporated into the Work.

29 Approval of the material does not constitute acceptance of the material for incorporation
30 into the Work.

31 Additional acceptance actions as noted on the RAM need to be completed prior to the
32 materials being incorporated into the Work.

1 When requesting approval of an item that requires fabrication, both the fabricator and the
2 manufacturer of the base material shall be identified on the RAM.

3 **1-06.1(3) Aggregate Source Approval (ASA) Database**

4 The Aggregate Source Approval (ASA) is a database containing the results of WSDOT’s
5 preliminary testing of aggregate sources. This database is used by the Contracting Agency to
6 indicate the approval status of these aggregate sources for applications that require preliminary
7 testing as defined in the Contract. The ASA “Aggregate Source Approval Report” identifies the
8 currently approved applications for each aggregate source listed. The acceptance and use of
9 these aggregates is contingent upon additional job sampling and/or documentation. The ASA
10 database can be accessed online at the agency website.

11 Aggregates approved for applications on the ASA ‘Aggregate Source Approval Report’ not
12 conforming to the Specifications, not fulfilling the acceptance requirements, or improperly
13 handled or installed, shall be replaced at the Contractor’s expense.

14 Aggregate materials that are not approved for use in the ASA database may be sampled and
15 tested by the Agency for a specified use on a project from the source or from a processed
16 stockpile of the material, and all cost for the sampling and testing will be deducted from the
17 Contract.

18 The Contractor agrees to authorize the Project Engineer to deduct the sampling and testing
19 costs from any money due or coming due to the Contractor.

20 **1-06.1(4) Fabrication Inspection Expense**

21 In the event the Contractor elects to have items fabricated beyond 300 miles from Seattle,
22 Washington, the Contracting Agency will deduct from payment due the Contractor costs to
23 perform fabrication inspection on the following items:

- 24 • Bridge Bearings (Cylindrical, Disc, Fabric Pad, Pin, Pendulum, Rocker, and Spherical)
- 25 • Cantilever Sign Structures and Sign Bridges
- 26 • Epoxy-Coated Reinforcing Steel
- 27 • Metal Bridge Railing and Handrail
- 28 • Modular Expansion Joints
- 29 • Painted Piling and Casing
- 30 • Painted and Powder-Coated Luminaire and Signal Poles
- 31 • Precast Concrete Catch Basins, Manholes, Inlets, Drywells, and Risers
- 32 • Precast Concrete Drain, Perforated Underdrain, Culvert, Storm Sewer, and Sanitary
33 Sewer Pipe

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- 1 • Precast Concrete Three Sided Structures
- 2 • Precast Concrete Junction Boxes, Pull Boxes, Cable Vaults, Utility Vaults, and Box
- 3 Culverts
- 4 • Precast Concrete Traffic Barrier
- 5 • Precast Concrete Marine Pier Deck Panels
- 6 • Precast Concrete Floor Panels
- 7 • Precast Concrete Structural Earth Walls, Noise Barrier Walls, and Wall Stem Panels
- 8 • Precast Concrete Retaining Walls, including Lagging Panels
- 9 • Prestressed Concrete Girders and Precast Bridge Components
- 10 • Prestressed Concrete Piles
- 11 • Seismic Retrofit Earthquake Restrainers
- 12 • Soldier Piles
- 13 • Steel Bridges and Steel Bridge Components
- 14 • Steel Column Jackets
- 15 • Structural Steel for Ferry Terminals, including items such as Dolphins, Wingwalls, and
- 16 Transfer Spans
- 17 • Treated Timber and Lumber, 6 inch by 6 inch or larger
- 18 • Timber Bridges
- 19 • Additional items as may be determined by the Engineer

20 The deductions for fabrication inspection costs will be as shown in the Payment Table
 21 below.

22

Zone	Place of Fabrication	Reduction in Payment
1	Within 300 airline miles from Seattle	None
2	Between 300 and 3,000 airline miles from Seattle	\$700.00 per inspection day*
3	Over 3,000 airline miles from Seattle	\$1,000 per inspection day,* but not less than \$2,500 per trip
*An inspection day includes any calendar day or portion of a calendar day spent by one inspector inspecting, on standby, or traveling to and from, a place of fabrication. An additional cost per inspection day will be assessed for each additional inspector. Reimbursement will be assessed at \$280.00 per day for weekends and holidays for each on-site inspector in travel status, but not engaged in inspection or travel activities when fabrication activities are not taking place.		

23 Where fabrication of an item takes place in more than one zone, the reduction in payment
 24 will be computed on the basis of the entire item being fabricated in the farthest of zones where
 25 any fabrication takes place on that item.

1 The rates for Zones 2 and 3 shall be applied for the full duration of time for all fabrication
2 inspection activities, to include, but not be limited to: plant approvals, prefabrication meetings,
3 fabrication, coatings, and final inspection.

4 **1-06.2 Acceptance of Materials**

5 **1-06.2(1) Samples and Tests for Acceptance**

6 The Contractor shall deliver representative samples (from the Contractor, Producer, or
7 Fabricator) to the Engineer without charge before incorporating material into the Work. In
8 providing samples, the Contractor shall provide the Engineer with sufficient time and quantities
9 for testing before use. The Engineer may require samples at any time. Samples not taken by or
10 in the presence of the Engineer will not be accepted for testing, unless the Engineer permits
11 otherwise.

12 The Contractor shall designate specific Contractor employees as points of contact for
13 concrete testing and acceptance. Alternates shall be designated to ensure that direct contact is
14 maintained during concrete placement. If designated by the Contractor to the Engineer, the
15 concrete supplier will receive all 28-day concrete strength test results.

16 The Project Engineer will designate specific Contracting Agency employees as points of
17 contact for concrete testing and acceptance.

18 The Contractor may observe any of the sampling and testing performed by the Engineer. If
19 the Contractor observes a deviation from the specified sampling and testing procedures, the
20 Contractor shall verbally described the deviations observed to the Engineer or designated
21 representative immediately, and shall confirm these observed deviations in writing to the
22 Engineer within 24 hours, referencing the specific procedures and steps. The Engineer will
23 respond in writing within 3 working days of the receipt of the Contractor’s written
24 communications.

25 All field and laboratory materials testing by the Engineer will follow methods described in
26 the Contract Documents, or in the WSDOT Materials Manual M 46-01, using qualified testing
27 personnel and calibrated or verified equipment. The standard or tentative standard in effect on
28 the Bid advertising date will apply in each case.

29 Revisions to the WSDOT Materials Manual M 46 01 or revisions to other Specifications or
30 test methods such as AASHTO, ASTM, or Federal Specifications will be considered as in effect
31 60 calendar days after publication.

1 1-06.2(2) Statistical Evaluation of Materials for Acceptance

2 1-06.2(2)A General

3 Where specified, acceptance sampling and testing will be performed by the Contracting
 4 Agency and statistically evaluated for acceptance by the provisions of this Subsection. All test
 5 results for a lot will be analyzed collectively and statistically by the quality level analysis
 6 procedures shown at the end of this Subsection to determine the total percent of the lot that is
 7 within Specification limits and to determine an appropriate pay factor. Lots and sublots are
 8 defined in the appropriate Subsection of these Specifications for the material being statistically
 9 evaluated.

10 Quality level analysis is a statistical procedure for determining the percent compliance of
 11 the material with these Specifications. Quality level is the computed percent of material
 12 meeting these Specifications and is determined from the arithmetic mean, (X_m), and the
 13 sample standard deviation (S), for each constituent of the lot.

14 Any necessary rounding off of test results or calculations will be accomplished according to
 15 the individual testing procedure, or, if not defined in the procedure then accomplished
 16 according to the following rules:

- 17 1. The final significant digit will not be changed when the succeeding digit is less than 5.
- 18 2. The final significant digit will be increased by one when the succeeding digit is 5 or
 19 greater.

20 **Table 1 – Estimated Percent of Work within Specification Limits**

Estimated Percent Within Specification Limits (P_U or P_L)	Upper Quality Index Q_U or Lower Quality Index Q_L														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to ∞
100	1.16	1.49	1.72	1.88	1.99	2.07	2.13	2.20	2.28	2.34	2.39	2.44	2.48	2.51	2.56
99		1.46	1.64	1.75	1.82	1.88	1.91	1.96	2.01	2.04	2.07	2.09	2.12	2.14	2.16
98		1.43	1.58	1.66	1.72	1.75	1.78	1.81	1.84	1.87	1.89	1.91	1.93	1.94	1.95
97	1.15	1.40	1.52	1.59	1.63	1.66	1.68	1.71	1.73	1.75	1.76	1.78	1.79	1.80	1.81
96		1.37	1.47	1.52	1.56	1.58	1.60	1.62	1.64	1.65	1.66	1.67	1.68	1.69	1.70
95	1.14	1.34	1.42	1.47	1.49	1.51	1.52	1.54	1.55	1.56	1.57	1.58	1.59	1.59	1.60
94		1.31	1.38	1.41	1.43	1.45	1.46	1.47	1.48	1.49	1.50	1.50	1.51	1.51	1.52
93	1.13	1.28	1.33	1.36	1.38	1.39	1.40	1.41	1.41	1.42	1.43	1.43	1.44	1.44	1.44
92		1.12	1.25	1.29	1.31	1.33	1.33	1.34	1.35	1.35	1.36	1.36	1.37	1.37	1.38
91		1.11	1.22	1.25	1.27	1.28	1.28	1.29	1.29	1.30	1.30	1.30	1.31	1.31	1.31
90	1.10	1.19	1.21	1.23	1.23	1.24	1.24	1.24	1.25	1.25	1.25	1.25	1.25	1.26	1.26
89	1.09	1.16	1.18	1.18	1.19	1.19	1.19	1.19	1.20	1.20	1.20	1.20	1.20	1.20	1.20
88	1.07	1.13	1.14	1.14	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15
87	1.06	1.10	1.10	1.10	1.10	1.10	1.10	1.10	1.11	1.11	1.11	1.11	1.11	1.11	1.11
86	1.04	1.07	1.07	1.07	1.07	1.07	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06
85	1.03	1.04	1.03	1.03	1.03	1.03	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02	1.02
84	1.01	1.01	1.00	0.99	0.99	0.99	0.99	0.98	0.98	0.98	0.98	0.98	0.98	0.98	0.98

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Estimated Percent Within Specification Limits (P _U or P _L)	Upper Quality Index Q _U or Lower Quality Index Q _L														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to ∞
83	0.99	0.98	0.97	0.96	0.95	0.95	0.95	0.95	0.94	0.94	0.94	0.94	0.94	0.94	0.94
82	0.97	0.95	0.93	0.92	0.92	0.92	0.91	0.91	0.91	0.91	0.90	0.90	0.90	0.90	0.90
81	0.95	0.92	0.90	0.89	0.88	0.88	0.88	0.87	0.87	0.87	0.87	0.87	0.87	0.87	0.87
80	0.93	0.89	0.87	0.86	0.85	0.85	0.84	0.84	0.84	0.83	0.83	0.83	0.83	0.83	0.83
79	0.91	0.86	0.84	0.82	0.82	0.81	0.81	0.81	0.80	0.80	0.80	0.80	0.80	0.80	0.79
78	0.88	0.83	0.81	0.79	0.79	0.78	0.78	0.77	0.77	0.77	0.76	0.76	0.76	0.76	0.76
77	0.86	0.80	0.77	0.76	0.75	0.75	0.74	0.74	0.74	0.73	0.73	0.73	0.73	0.73	0.73
76	0.83	0.77	0.74	0.73	0.72	0.72	0.71	0.71	0.70	0.70	0.70	0.70	0.70	0.70	0.70
75	0.81	0.74	0.71	0.70	0.69	0.69	0.68	0.68	0.67	0.67	0.67	0.67	0.67	0.67	0.66
74	0.78	0.71	0.68	0.67	0.67	0.65	0.65	0.65	0.64	0.64	0.64	0.64	0.64	0.64	0.63
73	0.75	0.68	0.65	0.64	0.63	0.62	0.62	0.62	0.61	0.61	0.61	0.61	0.61	0.61	0.60
72	0.73	0.65	0.62	0.61	0.60	0.59	0.59	0.59	0.58	0.58	0.58	0.58	0.58	0.58	0.57
71	0.70	0.62	0.59	0.58	0.57	0.57	0.56	0.56	0.55	0.55	0.55	0.55	0.55	0.55	0.54
70	0.67	0.59	0.56	0.55	0.54	0.54	0.53	0.53	0.52	0.52	0.52	0.52	0.52	0.52	0.52
69	0.64	0.56	0.53	0.52	0.51	0.51	0.50	0.50	0.50	0.49	0.49	0.49	0.49	0.49	0.49
68	0.61	0.53	0.50	0.49	0.48	0.48	0.48	0.47	0.47	0.47	0.46	0.46	0.46	0.46	0.46
67	0.58	0.50	0.47	0.46	0.45	0.45	0.45	0.44	0.44	0.44	0.44	0.43	0.43	0.43	0.43
66	0.55	0.47	0.45	0.43	0.43	0.42	0.42	0.42	0.41	0.41	0.41	0.41	0.41	0.41	0.40
65	0.51	0.44	0.42	0.40	0.40	0.39	0.39	0.39	0.38	0.38	0.38	0.38	0.38	0.38	0.38
64	0.48	0.41	0.39	0.38	0.37	0.37	0.36	0.36	0.36	0.36	0.35	0.35	0.35	0.35	0.35
63	0.45	0.38	0.36	0.35	0.34	0.34	0.34	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.32
62	0.41	0.35	0.33	0.32	0.32	0.31	0.31	0.31	0.30	0.30	0.30	0.30	0.30	0.30	0.30
61	0.38	0.30	0.30	0.30	0.29	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28
60	0.34	0.28	0.28	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
59	0.31	0.27	0.25	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.30	0.25	0.23	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
57	0.25	0.20	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.20	0.18	0.16	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15	0.15
55	0.18	0.15	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.15	0.13	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.10	0.10	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08
52	0.08	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
51	0.05	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

1

Table 2 – Pay Factors

Pay Factor	Required Quality Level for a Given Sample Size (n) and a Given Pay Factor														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to ∞
1.05						100	100	100	100	100	100	100	100	100	100
1.04					100	99	97	95	96	96	96	97	97	97	97
1.03				100	98	96	94	92	93	93	94	95	95	96	96
1.02					99	97	94	91	89	90	91	92	93	94	94
1.01	100	100	100	98	95	92	89	87	88	89	90	91	92	92	93
1.00	69	75	78	80	82	83	84	85	86	87	88	89	90	91	92
0.99	66	72	76	78	80	81	82	83	84	85	86	87	89	90	91
0.98	64	70	74	76	78	79	80	81	82	84	85	86	87	88	90
0.97	63	68	72	74	76	77	78	79	81	82	83	84	86	87	88
0.96	61	67	70	72	74	75	76	78	79	81	82	83	84	86	87

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Required Quality Level for a Given Sample Size (n) and a Given Pay Factor															
Pay Factor	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=17	n=18 to n=22	n=23 to n=29	n=30 to n=42	n=43 to n=66	n=67 to ∞
0.95	59	65	68	71	72	74	75	76	78	79	80	82	83	84	86
0.94	58	63	67	69	71	72	73	75	76	78	79	80	82	83	85
0.93	57	62	65	67	69	71	72	73	75	76	78	79	80	82	84
0.92	55	60	63	66	68	69	70	72	73	75	76	78	79	81	82
0.91	54	59	62	64	66	68	69	70	72	74	75	76	78	79	81
0.90	53	57	61	63	65	66	67	69	71	72	74	75	77	78	80
0.89	51	56	59	62	63	65	66	68	69	71	72	74	75	77	79
0.88	50	55	58	60	62	64	65	66	68	70	71	73	74	76	78
0.87	49	53	57	59	61	62	63	65	67	68	70	71	73	75	77
0.86	48	52	55	58	59	61	62	64	66	67	69	70	72	74	76
0.85	46	51	54	56	58	60	61	62	64	66	67	69	71	72	75
0.84	45	49	53	55	57	58	60	61	63	65	66	68	70	71	73
0.83	44	48	51	54	56	57	58	60	62	64	65	67	69	70	72
0.82	43	47	50	53	54	56	57	59	61	62	64	66	67	69	71
0.81	41	46	49	51	53	55	56	58	59	61	63	64	66	68	70
0.80	40	44	48	50	52	54	55	56	58	60	62	63	65	67	69
0.79	39	43	46	49	51	52	54	55	57	59	61	62	64	66	68
0.78	38	42	45	48	50	51	52	54	56	58	59	61	63	65	67
0.77	36	41	44	46	48	50	51	53	55	57	58	60	62	64	66
0.76	35	39	43	45	47	49	50	52	54	56	57	59	61	63	65
0.75	33	38	42	44	46	48	49	51	53	54	56	58	60	62	64
RE-JECT	Values Less Than Those Shown Above														
Reject Quality Levels Less Than Those Specified for a 0.75 Pay Factor															
Note: If the value of $(P_U + P_L) - 100$ does not correspond to a $(P_U + P_L) - 100$ value in this table, use the next smaller $(P_U + P_L) - 100$ value.															

1 1-06.2(2)B Financial Incentive

2 As an incentive to produce superior quality material, a pay factor greater than 1.00 may be
 3 obtained with the maximum pay factor being 1.05. A lot containing non-Specification material will
 4 be accepted provided the Composite Pay Factor reaches the minimum value specified elsewhere.
 5 A lot containing non-Specification material which fails to obtain at least the specified minimum
 6 Composite Pay Factor will be rejected by the Engineer. The Engineer will take one or more of the
 7 following actions when rejected material has been incorporated into the Work:

- 8 1. Require complete removal and replacement with Specification material at no additional
 9 cost to the Contracting Agency.
- 10 2. At the Contractor’s written request, allow corrective work at no additional cost to the
 11 Contracting Agency and then an appropriate price reduction that may range from no
 12 reduction to no payment.
- 13 3. At the Contractor’s written request, allow material to remain in place with an
 14 appropriate price reduction that may range from a designated percentage reduction to
 15 no payment.

1 Any lot for which at least three samples have been obtained, and all of the test results meet
2 one of the appropriate criteria listed below, will receive at least a 1.00 Composite Pay Factor:

- 3 1. All test results are within the allowable limits specified for the item, or
- 4 2. All test results that only have a lower Specification limit are greater than or equal to that
5 limit, or
- 6 3. All test results that only have an upper Specification limit are less than or equal to that limit.

7 Computation of the quality level in these instances will be for determining the amount of
8 any bonus that might be warranted.

9 Lots represented by less than three samples or unsampled lots will be exempt from
10 statistical based acceptance.

11 **1-06.2(2)C Removed and Rejected Materials**

12 The Contractor may, prior to sampling, elect to remove any defective material and replace it
13 with new material at no expense to the Contracting Agency. Any such new material will be
14 sampled, tested, and evaluated for acceptance as a part of the subplot in accordance with this
15 statistical sampling and testing procedure.

16 The Engineer may reject a subplot that tests show to be defective. Such rejected material
17 shall not be used in the Work, and the results of tests run on the rejected material will not be
18 included in the original lot acceptance tests.

19 **1-06.2(2)D Quality Level Analysis**

20 **1-06.2(2)D1 General**

21 The quality level calculations for HMA and other materials are completed using the
22 formulas in Section 1-06.2(2)D4. For HMA, the definition of the “x” value used in the
23 calculations and the definition of the upper and lower specification limit are in
24 Section 1-06.2(2)D2. For other materials, the definition of the “x” value used in the calculations
25 and the definition of the upper and lower specification limit are in Section 1-06.2(2)D3. All
26 other terms and variables are the same for all calculations.

1 **1-06.2(2)D2 Hot Mix Asphalt**

2 x = difference between an individual test value and the job mix formula (JMF)

3 USL = maximum allowable limit in Section 9-03.8(7)

4 LSL = minimum allowable limit in Section 9-03.8(7)

5 **1-06.2(2)D3 Other Materials**

6 x = individual test value

7 USL = upper specification limit

8 LSL = lower specification limit

9 **1-06.2(2)D4 Quality Level Calculation**

10 The procedures for determining the quality level and pay factors for a material are as
11 follows:

12 1. Determine the arithmetic mean, X_m , for each specified material constituent:

13
$$X_m = \frac{\sum x}{n}$$

14 Where: \sum = summation of x
15 n = total number test values

16 2. Compute the sample standard deviation, "S", for each constituent:

17
$$s = \left[\frac{n\sum x^2 - (\sum x)^2}{n(n-1)} \right]^{1/2}$$

18 Where: $\sum x^2$ = summation of the squares of individual test values
19 $(\sum x)^2$ = summation of the individual test values squared

20 3. Compute the upper quality index, (QU), for each constituent:

21
$$Q_U = \frac{USL - X_m}{S}$$

22 4. Compute the lower quality index, (QL), for each constituent:

23
$$Q_L = \frac{X_m - LSL}{S}$$

- 1 5. For each constituent determine PU (the percent within the upper Specification limit
2 which corresponds to a given QU) from Table 1. If USL is 100.00 percent or is not
3 specified, PU will be 100. For negative values of QU, PU (e.g., N = 15 and QU = -0.5 will
4 result in PU = 30) is equal to 100 minus the table PU. If the value of QU does not
5 correspond exactly to a figure in the table, use the next higher value.
- 6 6. For each constituent determine PL (the percent within the lower Specification limit
7 which corresponds to a given QL) from Table 1. If LSL is zero or not specified, PL will be
8 100. For negative values of QL, PL is equal to 100 minus the table PL. If the value of QL
9 does not correspond exactly to a figure in the table, use the next higher value.
- 10 7. For each constituent determine the quality level (the total percent within Specification
11 limits):
- 12 Quality Level = (PU + PL) – 100
- 13 8. Using the quality level from step 7, determine the pay factor (PF_i) from Table 2 for each
14 constituent tested.
- 15 9. Determine the Composite Pay Factor (CPF) for each lot.

$$CPF = \frac{f_1(PF_1) + f_2(PF_2) + \dots + f_j(PF_j)}{\sum_{i=1}^j f_i}$$

16

17

Where:

18

f_i = price adjustment factor listed in these Specifications
 for the applicable material

19

20

j = number of constituents being evaluated

21 **1-06.3 Manufacturer’s Certificate of Compliance**

22 When authorized by these Specifications or the Special Provisions and prior to use, the
23 Engineer may accept certain materials on the basis of a Manufacturer’s Certificate of
24 Compliance as an alternative to material inspection and testing.

25 The Contractor may request, in writing, authority from the Engineer to install such materials
26 prior to submitting the required certification; however, no payment will be made for the Work
27 in the absence of an acceptable Manufacturer’s Certificate of Compliance. The Contracting
28 Agency reserves the right to deny the request for good cause. If for any reason the Contractor
29 has not provided an acceptable Manufacturer’s Certificate of Compliance by the Physical
30 Completion Date established by Section 1-08.5, the Contracting Agency will assess the
31 usefulness of the installed material. At the Engineer’s discretion, the Contracting Agency will
32 either require replacement of the material by the Contractor at no expense to the Contracting

1 Agency or process the final payment as provided by Section 1-09.9 without paying for the
2 materials or any portion of the Work performed to install the materials provided on such a
3 basis. The unit Contract prices for the Work shall be used to determine the amount to be
4 withheld. Where unit Contract prices do not exist, as in a lump sum item, the amount to be
5 withheld shall be an equitable adjustment, covering labor, equipment, and materials,
6 determined in accordance with Section 1-09.4.

7 The Manufacturer’s Certificate of Compliance must identify the manufacturer, the type and
8 quantity of material being certified, the applicable Specifications being affirmed, and the
9 signature of a responsible corporate official of the manufacturer and include supporting mill
10 tests or documents. A Manufacturer’s Certificate of Compliance shall be furnished with each lot
11 of material delivered to the Work and the lot so certified shall be clearly identified in the
12 certificate.

13 All materials used on the basis of a Manufacturer’s Certificate of Compliance may be
14 sampled and tested at any time. Any material not conforming to the requirements will be
15 subject to rejection whether in place or not. The Contracting Agency reserves the right to refuse
16 to accept materials on the basis of a Manufacturer’s Certificate of Compliance.

17 **1-06.4 Handling and Storing Materials**

18 In storage and handling, the Contractor shall protect materials against damage from
19 careless handling, from exposure to weather, from mixture with foreign matter, and from all
20 other causes. The Engineer will reject and refuse to test materials improperly handled or
21 stored.

22 The Contractor shall repair, replace, or make good all Contracting Agency-provided
23 materials that are damaged or lost due to the Contractor’s operation or while in the
24 Contractor’s possession, at no expense to the Contracting Agency.

25 **1-06.5 Owners Manuals and Operating Instructions**

26 For equipment and materials that are permanently incorporated in the Work, the
27 Contractor shall provide to the Project Engineer all owners’ manuals and operating instructions
28 furnished by the equipment or material manufacturer.

29 **1-07 Legal Relations and Responsibilities to the Public**

30 **1-07.1 Laws to be Observed**

31 The Contractor shall always comply with all Federal, State, tribal, or local laws, ordinances,
32 and regulations that affect Work under the Contract. The Contractor shall indemnify, defend,
33 and save harmless the State (including the Governor, Commission, Secretary, and any agents,

1 officers, and employees) against any claims that may arise because the Contractor (or any
2 employee of the Contractor or Subcontractor or materialperson) violated a legal requirement.

3 The Contractor shall be responsible to immediately report to the Engineer any deviation
4 from the Contract Provisions pertaining to environmental compliance, including but not limited
5 to spills, unauthorized fill in waters of the State including wetlands, water quality standards,
6 noise, air quality, etc.

7 The Contractor shall be responsible for the safety of all workers and shall comply with all
8 appropriate state safety and health standards, codes, rules, and regulations, including, but not
9 limited to, those promulgated under the Washington Industry Safety and Health Act RCW 49.17
10 (WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). In particular
11 the Contractor’s attention is drawn to the requirements of WAC 296.800 which requires
12 employers to provide a safe workplace. More specifically, WAC 296.800.11025 prohibits alcohol
13 and narcotics from the workplace. The Contractor shall likewise be obligated to comply with all
14 federal safety and health standards, codes, rules, and regulations that may be applicable to the
15 Contract Work.

16 U.S. Mine Safety and Health Administration rules apply when the Project includes pit or
17 quarry operations. Among other actions, these regulations require the Contractor to notify the
18 nearest Mine Safety and Health sub district office (1) of the Project before it begins, (2) of the
19 starting date, and (3) of the Physical Completion Date.

20 Without usurping the authority of other agencies, the Contracting Agency will cooperate
21 with them in their efforts to enforce legal requirements. Upon awareness of a violation of a
22 legal requirement, the Engineer will notify the Contractor in an effort to achieve compliance.
23 The Engineer may also notify the agency responsible for enforcement if the Engineer deems
24 that action is necessary to achieve compliance with legal requirements. The Engineer will also
25 assist the enforcement agency to obtain Contractor compliance to the extent such assistance is
26 consistent with the provisions of the Contract.

27 The Contracting Agency will not adjust payment to compensate the Contractor for changes
28 in legal requirements unless those changes are specifically within the scope of RCW 39.04.120.
29 For changes under RCW 39.04.120, the Contracting Agency will compensate the Contractor by
30 negotiated change order as provided in Section 1-04.4.

31 Under certain conditions, the Contracting Agency will adjust payment to compensate for tax
32 changes. First, the changes shall involve federal or state taxes on materials or fuel used in or
33 consumed for the Project. Second, the changes shall increase or decrease Contractor-paid taxes
34 by more than \$500. For items in the original Contract, the tax change must occur after the Bid
35 opening date. For negotiated Contracts or items in a supplemental agreement, the tax change
36 must take place after the execution date of the Contract or agreement. Within these
37 conditions, the Contracting Agency will adjust compensation by the actual dollar amounts of

1 increase or decrease caused by the tax changes. If the Engineer requests it, the Contractor shall
2 certify in writing that the Contract price does not include any extra amount to cover a possible
3 change in taxes.

4 The Contracting Agency may audit the records of the Contractor as provided in
5 Section 1-09.12, to verify any claim for compensation because of changes in laws or taxes.

6 **1-07.1(1) Contract is Subject to FTA Provisions**

7 The Contract is partially funded by the US DOT Federal Transit Administration (FTA) and is
8 therefore subject to certain federal provisions. The Federal Transit Administration Articles for
9 Construction Contracts in Division 00 73 73 apply to this Contract. The Contractor shall follow
10 all requirements shown therein. Further, the FTA requires that certain terms and conditions of
11 the Contract Documents be included in all Subcontracts. The Contractor shall be responsible for
12 ensuring all applicable mandatory FTA provisions are included in all Subcontracts. These
13 mandatory provisions are set forth in Division 1 General Requirements Section 1-08 and in
14 Division 00 73 73.

15 **1-07.1(2) Required Federal Aid Provisions**

16 This Contract is partially funded by the US DOT Federal Highway Administration and is
17 therefore subject to certain federal provisions.

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

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

30 **1-07.1(3) Apprentice Utilization**

31 This Contract includes an Apprentice Utilization Requirement as defined in this
32 Specification. No less than 15 percent of Project Labor Hours shall be performed by
33 Apprentices.

1 **Definitions**

2 For the purposes of this Specification, the following definitions apply:

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

18 **Electronic Reporting**

19 The Contractor shall use the application available at:

20 <https://RemoteApps.wsdot.wa.gov/Construction/Training/Apprenticeship/>
21 to submit the “Apprentice Utilization Plan”, “Statement of Apprentice/Journeyman
22 Participation” and to submit “Good Faith Effort” documentation. After execution of the
23 Contract, the Contractor shall send an e-mail to apprenticeship@wsdot.wa.gov containing the
24 following information: the first and last name, e-mail address, and title and phone number of
25 the person that will be submitting the above documents for their company. The e-mail shall
26 include the WSDOT contract number they will be reporting on. After receipt of this information
27 by WSDOT, the Contractor will receive an e-mail containing their username and password for
28 the application and a link to the application. Reporting instructions are available in the
29 application.

30 **Plan**

31 The Contractor shall submit an “Apprentice Utilization Plan” using the application described
32 in “Electronic Reporting” within 30 days of execution, demonstrating how and when they
33 intend to achieve the Apprentice Utilization Requirement. The plan shall be updated and
34 resubmitted as appropriate as the Work progresses. The intent is to provide the Project
35 Engineer with enough information to track progress in meeting the utilization requirements. If
36 the Contractor is unable to demonstrate how they intend to meet the Apprentice Utilization

1 Requirement on the Apprentice Utilization Plan, they must submit Good Faith Effort
2 documentation to the Project Engineer with their Apprentice Utilization Plan.

3 **Reporting**

4 The Contractor shall submit a “Statement of Apprentice /Journeyman Participation” using
5 the application described in “Electronic Reporting” on a monthly basis. The report shall be
6 submitted to the Project Engineer by the last working day of the subsequent month, until the
7 Physical Completion Date. The data reported shall include the Contractor and all
8 Subcontractors. At the Contractor’s request, the Project Engineer may suspend this reporting
9 requirement during periods of minimal or no applicable work activities on the Project. Good
10 Faith Effort documentation shall be submitted to the Project Engineer prior to the Physical
11 Completion Date if the Contractor completes the Project without meeting the Apprentice
12 Utilization Plan.

13 **Contacts**

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

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

21 **Compliance**

22 In the event that the Contractor is unable to accomplish the Apprentice Utilization
23 Requirement, the Contractor shall demonstrate that a Good Faith Effort has been made as
24 described elsewhere in this Specification. Good Faith Effort documentation shall be uploaded
25 using the application described in “Electronic Reporting.” Failure to comply with the
26 requirements as specified may result in reduction or revocation of prequalification as allowed
27 by WAC 468-16-190.

28 **Good Faith Efforts**

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

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

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

3 5. Submit documentation demonstrating successful Apprentice utilization on previous
4 contracts.

5 6. Submit documentation indicating company-wide Apprentice utilization efforts and
6 percentages of attainment.

7 **Payment**

8 Compensation for all costs involved with complying with the conditions of this Specification
9 is included in payment for Specified General Conditions or if by a subcontractor, in the
10 associated Subcontract items of Work.

11 **1.07.1(4) Diving Safety Plan**

12 The Contractor shall abide by WAC 296-37 — “Standards for Commercial Diving Operations”
13 — as well as the guidelines contained herein. The Contractor shall give the Engineer 24 hours
14 advance notice of any planned diving activity.

15 **General Requirements — Communication and Safety**

16 The following rules shall be followed whenever diving activity is performed at the ferry
17 terminal:

- 18 • Prior to diving activity, the Contractor shall obtain approval from the Engineer.
19 Notification shall be made no less than one hour prior to the diver entering the
20 water.
- 21 • The Engineer will be responsible for notifying each vessel of the upcoming day’s
22 diving activity.
- 23 • The Engineer will request that the vessels depart under low power (slow bell) unless
24 otherwise necessary due to weather conditions.
- 25 • The diving team shall not disrupt the ferry service schedule.
- 26 • Communications between the diver and the Diver’s Tender shall be maintained at all
27 times.
- 28 • The Engineer and Masters shall be notified at the completion of diving activity each
29 day.

30 **Slip-Specific Diving Requirements**

31 The following safety rules shall be followed when diving activities are performed within the
32 diving envelope of a ferry slip. The diving envelope is defined as 150 feet, laterally, from the
33 wingwalls of the slip.

1 A three-member minimum diving team will be required when diving within the diving
2 envelope of a ferry slip. The duties of the team members will be as follows:

- 3 • One member shall be diving.
- 4 • One member shall be in a skiff, on the trestle, or on the transfer span acting as the
5 Diver’s Tender. The Diver’s Tender shall maintain communication with the diver, and
6 the Safety Technician, at all times. In addition, the Diver’s Tender shall assure that
7 the diver has safely surfaced and cleared the diving area five minutes prior to vessel
8 landing, unless outside the envelope.
- 9 • One member shall act as a Safety Technician. The Safety Technician shall be in a skiff
10 or on shore and shall maintain constant communication with the Diver’s Tender.

11 Upon completion of diving activity, the Safety Technician shall be responsible for notifying
12 the Engineer and Masters. Once the diver has cleared the diving area, the Safety Technician
13 shall directly radio the Master on each arriving vessel and relay the message “DIVER CLEAR”.
14 The Contracting Agency will provide the Safety Technician a hand-held radio for these
15 purposes.

16 **1-07.1(5) Ferry Tolls and Service**

17 No gratuity of tolls or special service will be granted to the Contractor during the life of this
18 Project. Contractor use of ferry service shall be in accordance with the published rates, tolls,
19 and schedules for the general public.

20 **1-07.1(6) Lead Health Protection Program**

21 Structural and non-structural materials located at the Project site are known to contain
22 lead-based products. The Contractor shall be fully responsible for the safety and health of all
23 on-site workers and be compliant with Washington Administrative Code (WAC 296-155-176).
24 The Contractor’s Lead Health Protection Program shall be sent to the Contracting Agency at
25 least 2 weeks prior to the Contractor beginning work involving exposure to lead contamination.
26 The Contractor shall communicate with the Project Engineer to ensure a coordinated effort for
27 providing and maintaining a safe worksite for both the Contracting Agency’s and Contractor’s
28 workers.

29 **Construction Requirements** – The Contractor shall be responsible for the containment
30 measures required to provide and maintain a safe and healthful jobsite for the duration of the
31 Project in accordance with all applicable laws and this Special Provision.

32 **Payment** – All costs to comply with this Section for the Lead Health Protection laws and
33 regulations are the responsibility of the Contractor and shall be included in the MACC.

1 **1-07.1(7) Confined Space**

2 Confined spaces are believed to exist.

3 The Contractor shall be fully responsible for the safety and health of all on-site workers and
4 be compliant with Washington Administrative Code (WAC 296-809).

5 The Contractor shall prepare and implement a confined space program for each of the
6 confined spaces identified above. The Contractor’s Confined Space program shall be sent to the
7 Contracting Agency at least 30 days prior to the Contractor beginning work in or adjacent to the
8 confined space. No work shall be performed in or adjacent to the confined space until the plan
9 is submitted to the Engineer as required. The Contractor shall communicate with the Project
10 Engineer to ensure a coordinated effort for providing and maintaining a safe worksite for both
11 the Contracting Agency’s and Contractor’s workers when working in or near a confined space.

12 All costs to prepare and implement the confined space program shall be included in the
13 MACC.

14 **1-07.2 State Taxes**

15 The Washington State Department of Revenue has issued special rules on the state sales
16 tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contracting
17 Agency will not adjust its payment if the Contractor bases a Bid on a misunderstood tax liability.

18 The Contracting Agency may deduct from its payments to the Contractor, retainage or lien
19 the bond, in the amount the Contractor owes the State Department of Revenue, whether the
20 amount owed relates to the Contract in question or not. Any amount so deducted will be paid
21 into the proper State fund on the Contractor’s behalf. For additional information on tax rates
22 and application refer to applicable RCWs, WACs, or the Department of Revenue website.

23 **1-07.2(2) State Sales Tax: WAC 458-20-170 – Retail Sales Tax**

24 For Work designated as Rule 170, Retail Sales Tax, the Contractor shall collect from the
25 Contracting Agency Retail Sales Tax on the full Contract price. The Contracting Agency will
26 automatically add this Retail Sales Tax to each payment to the Contractor and for this reason;
27 the Contractor shall not include the Retail Sales Tax in the unit Bid prices or in any other
28 Contract amount. However, the Contracting Agency will not provide additional compensation
29 to the Prime Contractor or Subcontractor for Retail Sales Taxes paid by the Contractor in
30 addition to the Retail Sales Tax on the total Contract amount. Typically, these taxes are
31 collected on items such as the purchase or rental of tools, machinery, equipment, or
32 consumable supplies not integrated into the Project. Such sales taxes shall be included in the
33 unit Bid prices or in any other Contract amounts.

1 The Summary of Quantities in the Contract Plans identifies those parts of the Project that
2 are subject to Retail Sales Tax under Section 1-07.2(2).

3 **1-07.2(3) Services**

4 Any Contract wholly for professional or other applicable services is generally not subject to
5 Retail Sales Tax and therefore, the Contractor shall not collect Retail Sales Tax from the
6 Contracting Agency on those Contracts. Any incidental taxes paid as part of providing the
7 services shall be included in the payments under the Contract.

8 **1-07.3 Vacant**

9 **1-07.4 Sanitation**

10 **1-07.4(1) General**

11 The Contractor shall provide employees with all accommodations required by the State
12 Department of Health and other agencies. These accommodations shall be kept clean, neat,
13 and sanitized, and shall not create any public nuisance. The Contractor shall keep all campsites
14 clean, properly dispose of all refuse, and leave each site in a neat and sanitary condition.

15 **1-07.4(2) Health Hazards**

16 Biological hazards and associated physical hazards may be present in the worksite. The
17 Contractor shall take precautions and perform any necessary Work to provide and maintain a
18 safe and healthful worksite in accordance with applicable laws. Payment for Work necessary to
19 provide and maintain a safe worksite will be incidental to associated items of Contract Work
20 unless the Contract includes provisions to the contrary.

21 **1-07.4(3) Transients**

22 This project site is known to be frequented by transients and therefore may contain
23 biological hazards and associated physical hazards. These may include, but not be limited to
24 violent and dangerous individuals, hypodermic needles, garbage, broken glass, human and
25 animal excrement, drug paraphernalia, and other hazards.

26 The Contractor shall take precautions and perform any necessary Work required to provide
27 and maintain a safe and healthful jobsite for all workers and the public for the duration of the
28 project in accordance with all applicable laws and contract requirements.

29 The Contractor shall ensure that the public, including persons who may be non-English
30 speaking or those who may not be able to recognize potential safety and health hazards within
31 the project area, are not harmed by the Contractors activities.

1 Nothing required by this Specification shall operate as a waiver of the Contractor’s
2 responsibility for taking all steps necessary to ensure the safety of the public under
3 Section 1-07.23 or responsibility for liability and damages under Section 1-07.14 or for any
4 other responsibility under the Contract or as may be required by law.

5 **Health and Safety Plan**

6 The Contractor shall prepare a written Health and Safety Plan. The plan shall be prepared
7 under the supervision of a certified industrial hygienist and shall incorporate all required
8 County, State, and Federal health and safety provisions. The plan shall include requirements of
9 the Federal Occupational Safety and Health Act of 1970 (OSHA), all amendments, and all other
10 applicable health regulations.

11 Preparation of the Health and Safety Plan shall include an initial site assessment by the
12 industrial hygienist. The plan shall break initial cleanup of the project into identifiable
13 construction areas. The plan shall be submitted to the Project Engineer prior to commencing
14 cleanup Work. At least one copy of the plan shall be posted at the work site while cleanup Work
15 is in progress. The industrial hygienist shall perform one or more follow-up site assessments as
16 needed to approve the site following completion of the initial site cleanup.

17 **Public Notification**

18 The Contractor shall furnish and install the “No Trespassing” signs shown in the Plans at
19 locations staked by the Project Engineer at least 72 hours prior to performing site cleanup or
20 any potentially hazardous Work (such as clearing or operating equipment).

21 Weather resistant “No Loitering” signs shall be posted on temporary elevated walkways
22 where the traveled path must be kept clear to ensure safe access for ferry passengers.

23 At the same time that “No Trespassing” signs are posted, provide written notification of the
24 following to the Project Engineer and to the chief law enforcement officer of the local
25 governmental entity where the Work will occur:

- 26 1. The precise location of each area that is posted “No Trespassing”;
- 27 2. The date and time that each site was posted “No Trespassing”;
- 28 3. The date, time, description and duration of the Work to be performed at each site.

29 At least 72 hours prior to performing site cleanup in Work areas containing encampments
30 (such as tents, makeshift dwellings, sleeping sites, or accumulations of personal property that

1 are not refuse), the Contractor shall post a notification at each encampment area. Each notice
2 shall:

- 3 1. Be weather resistant, and written in both English and Spanish.
- 4 2. Be affixed to each dwelling or post mounted within 10-feet of each encampment;
- 5 3. State the Prime Contractor’s company name as the entity that performed the cleanup as
6 required by the Washington State Department of Transportation;
- 7 4. Provide the date that the notice is posted;
- 8 5. Provide date(s) and time(s) that cleanup will occur;
- 9 6. Provide the telephone number, business hours and physical address of the location
10 where stored personal property may be claimed.
- 11 7. State that personal property will be stored for 70-days from the date of removal, and if
12 unclaimed within that time, will be disposed of.

13 At the same time that notifications are posted at encampment areas, provide written
14 notification of the schedule to perform site cleanup to the Project Engineer and to the following
15 advocacy groups:

16 **Union Gospel Mission; Others TBD**

17 Acceptance of signs and notifications will be based on visual inspection that the sign and
18 notifications meet these requirements.

19 **Site Cleanup of Biological and Physical Hazards**

20 An initial cleanup of the site, including all preparatory work required to make the worksite
21 sanitary and safe in accordance with applicable laws and with the Contract, shall be completed
22 to remove all individuals, encampments, and personal property from areas signed “No
23 Trespassing”, and to address all biological and associated physical hazards present on the
24 project. Necessary worker training, on and off site preparations, and personal protective
25 equipment shall be provided by the Contractor to complete this Work. If aggressive or violent
26 individuals are encountered, the Contractor shall notify the local law enforcement agency to
27 assist them in clearing the Work area.

28 Site cleanup of individual areas identified in the Health and Safety Plan shall be performed
29 no more than 30 days in advance of performing other Work in each area.

1 The refuse generated by the site cleanup shall become the property of the Contractor and
2 shall be removed from the project. Personal property shall be handled as required by this
3 Specification and applicable laws.

4 **Removal, Storage and Return of Personal Property**

5 Personal property may include radios, audio and video equipment, sleeping bags, tents,
6 stoves and cooking utensils, lanterns, flashlights, bed rolls, tarps, foam, canvas, mats, blankets,
7 pillows, medication, personal papers, photographs, books and other reading materials, luggage,
8 backpacks or other storage containers, clothing, towels, shoes, toiletries and cosmetics, clocks
9 and watches, and eye glasses. Personal property does not include building materials such as
10 wood products, metal, or rigid plastic.

11 Personal property items that are not refuse, contaminated, illegal or hazardous shall be
12 removed from the Work area and stored at a location near the project site for return to the
13 property owner. Items shall be placed in large transparent plastic bags and stored in a manner
14 that protects them from adverse weather and theft. Reasonable efforts shall be made to place
15 all items from each encampment into a separate bag. Each bag shall be labeled with an
16 inventory to include a brief description of the contents, a description of the location that it was
17 removed from, and the date that it was removed from the Work area. The Contractor shall not
18 open closed items of personal property unless, in its determination, it is necessary to do so to
19 protect public safety.

20 The Contractor shall retain the property for 70 days.

21 If the name and contact information of the owner of a personal property item is identified
22 on that item, then for a period of not less than 10 days after removing the property from the
23 Work area, the Contractor shall attempt to notify the apparent owner of the property and
24 make arrangements for the owner to claim the property.

25 The Contractor shall release the property to any individual who claims ownership provided
26 they are able to establish ownership by identifying the property and its approximate location.
27 The Contractor shall maintain a record of all property that is claimed. The record shall include a
28 description of the property, the date claimed, and the name of the claimant.

29 If personal property is not claimed within 70-days of removal from the encampment, then
30 the property shall become the property of the Contractor and shall be removed from the
31 project.

32 **Site Preservation**

33 The Contractor shall preserve the site after initial cleanup of biological and physical hazards.

1 On a daily basis and prior to performing any Work in areas where pedestrians or
2 encampments may be present, the Contractor shall verify that the Work area is cleared of all
3 persons not associated with the project. The same verification shall be made at the end of each
4 working day prior to securing the Work site. Individuals may seek shelter in dumpsters,
5 equipment, under blankets, or other places hidden from view. Individuals may be disabled, or
6 under the influence of alcohol or drugs and it should not be assumed that loud construction
7 noise will wake them.

8 If the worksite becomes unsanitary or unsafe due to new encampments or new biological
9 and associated physical hazards after initial cleanup is completed, then the Contractor shall
10 perform additional site assessment, additional notification and additional cleanup.

11 The Project Engineer may authorize additional site preservation measures. The nature and
12 frequency of these measures will be as agreed to by the Project Engineer. Additional site
13 preservation measures may include the use of fencing, lighting, or security, provided it is
14 approved in advance by the Project Engineer. Work performed without Project Engineer
15 authorization will not be eligible for payment.

16 **Measurement** – No trespassing signs will be measured per each.

17 **Payment** – Payment will be made for the following items from Negotiated Support Services:

18 “No Trespassing Sign”, per each.

19 The unit contract price per each “No Trespassing Sign” shall be full payment for all Work
20 required to furnish, install, maintain and remove the signs.

21 “Health and Safety Plan”, lump sum.

22 The lump sum price for “Health and Safety Plan” shall be full payment for all Work
23 associated with the preparation and implementation of the Health and Safety Plan including the
24 initial and follow up assessment(s) for initial site cleanup, worker training and personal
25 protective equipment, and providing required notifications.

26 **1-07.5 Environmental Regulations**

27 **1-07.5(1) General**

28 Throughout the Work, the Contractor shall comply with all current rules of the resource
29 agencies having jurisdiction over the affected areas. Some, though not all, of these rules are
30 summarized below. Any of these agencies may, without prejudice to the Contracting Agency,
31 add rules as needed to protect game, fish, or the environment.

1 **1-07.5(1)A Asbestos, Lead, and Other Potential Contaminants**

2 The Contractor is advised that asbestos, lead, and other hazardous or contaminated
3 material may be present on this Project. Studies, environmental reports, history, and/or test
4 results that identify the potential for encountering hazardous or contaminated materials are
5 available for review at the Engineer’s office.

6 The Contractor is responsible for all work, records, and reports required to perform the
7 Work described in this Section. The Contractor will furnish the necessary permits for the Work
8 described in this Section, unless otherwise indicated in this Contract. The Contracting Agency
9 will perform all testing of suspected hazardous or contaminated material.

10 The Contractor shall notify the Engineer 10 working days prior to beginning work in the area
11 identified in the Plans as contaminated. The Contractor shall notify the Engineer immediately if
12 contamination is discovered in areas other than those identified in the Plans, or is suspected
13 through observations such as an oily sheen or discolored soils that may or may not emit strong
14 chemical odors.

15 **Contaminated Soil and Hazardous Material**

16 The Engineer will determine the limits of excavation required. All material that is designated
17 by the Engineer to be removed shall be handled and stored in a manner that prevents the
18 spread of contamination to soil, water, or air. Separate stockpiles shall be maintained for
19 known hazardous or contaminated material and for suspected hazardous or contaminated
20 material. The Contractor shall transport hazardous or contaminated material and dispose of it
21 at a permitted facility. The Contractor shall provide the Engineer with a copy of the shipping
22 manifest or bill of lading indicating the amount of material hauled to disposal, and bearing the
23 disposal site operator’s confirmation for receipt of the material.

24 **Contaminated Water**

25 All water that is removed from the areas of contamination, including free water that leaches
26 from contaminated soil stockpiles or water that is suspected of being contaminated, shall be
27 collected, handled, and stored in a manner that prevents the spread of contamination to
28 adjacent soil or water. The Contractor shall transport contaminated water and dispose of it at a
29 permitted facility. The Contractor shall provide the Engineer with a copy of the shipping
30 manifest or bill of lading indicating the amount of material hauled to disposal, and bearing the
31 disposal site operator’s confirmation for receipt of the material.

32 **Asbestos Handling and Disposal**

33 Prior to performance of any Contract Work, the Contractor shall obtain all permits from,
34 and provide notification to, the Washington State Department of Labor and Industries, the

1 U.S. EPA, the local air pollution control agency, and other permitting and regulatory agencies
2 with jurisdiction over the Work involving asbestos as the law requires.

3 Prior to commencing asbestos related Work, the Contractor shall provide the Engineer with
4 written verification of approvals and notifications that have been given and/or obtained from
5 the required jurisdictional agencies, and the Contractor’s schedule for all Work involving
6 asbestos removal. The schedule shall include the sequencing and scheduling of asbestos related
7 Work, and coordination with Subcontractors. The Contractor shall notify the Engineer when all
8 approvals have been received and notifications have been made, as required by the agencies
9 involved.

10 The Contractor shall ensure the safety of all workers, visitors to the site, and the general
11 public in accordance with all applicable laws, rules, and regulations.

12 The Contractor shall designate a Washington State Certified Asbestos Supervisor (CAS) to
13 personally supervise the asbestos removal and to ensure that the handling and removal of
14 asbestos is accomplished by certified asbestos workers, pursuant to Washington State
15 Department of Labor and Industries standards. The Contractor shall ensure that the removal
16 and disposal of asbestos meets the requirements of EPA regulation 40 CFR Part 61, local health
17 department regulations, and all other applicable regulations.

18 Payment for asbestos removal, handling, disposal, cost of permits, and all other work will be
19 a MACC item.

20 **1-07.5(1)B Reporting and Restrictions**

21 The Contractor shall be responsible to immediately report to the Engineer any deviation
22 from the Contract Provisions pertaining to environmental compliance, including but not limited
23 to spills, unauthorized fill in waters of the State including wetlands, water quality standards,
24 noise, air quality, etc.

25 The following restrictions apply to all Work:

- 26 1. No Work shall occur within the jurisdictional areas unless authorized in the Contract
27 Provisions and associated environmental permits.
- 28 2. No materials shall be placed below the ordinary high water line except as may be
29 specified in the Contract.
- 30 3. No equipment shall enter waters of the State, except as may be specified
31 in the Contract.

1 **1-07.5(2) State Department of Fish and Wildlife**

2 In doing the Work, the Contractor shall:

- 3 1. Not degrade water in a way that would harm fish. (Criteria: Washington State Water
4 Quality Regulations.)
- 5 2. Release any fish stranded by the Project into a flowing stream or open water.
- 6 3. Replant any stream bank or shoreline area if the Project disturbs vegetative cover.
7 Replanted trees, brush, or grasses shall resemble the type and density of
8 surrounding growth, unless the Special Provisions permit otherwise.
- 9 4. Leave, when the Work is complete, an open-water channel at the lowest level of any
10 isolated pothole to connect it with the main body of water.
- 11 5. Prevent any fish-threatening silt buildup on the bed or bottom of any body of water.
- 12 6. Never block stream flow or fish passage.
- 13 7. Never remove gravel or other bottom material from the high-water flow channel
14 bed of any stream or from the bottom of any other body of water, except as may be
15 permitted by the Special Provisions.
- 16 8. Dispose of any Project debris by removal, burning, or placement above high-water
17 flows.
- 18 9. Immediately notify the Engineer and stop all Work causing impacts, if at any time, as
19 a result of Project activities, fish are observed in distress or a fish kill occurs.

20 If the Work in (1) through (3) above differs little from what the Contract requires, the
21 Contracting Agency will measure and pay for it at unit Contract prices. But if Contract items do
22 not cover those areas, the Contracting Agency will pay pursuant to Section 1-09.4. Work in (4)
23 through (8) above will be incidental to Contract pay items.

24 **1-07.5(3) State Department of Ecology**

25 In doing the Work, the Contractor shall:

- 26 1. Get a waste discharge permit from the Ecology Department before:
 - 27 a. Washing aggregate; or
 - 28 b. Discharging water from pit sites or excavations into a ground or surface
29 waterway when the water contains turbidity, silt, or foreign materials.

- 1 2. Give the Project Engineer a copy of each waste discharge permit before the Work
2 begins.
- 3 3. Control drainage and erosion in a manner that reduces waterway pollution.
- 4 4. Perform Work in such a manner that all materials and substances not specifically
5 identified in the Contract Documents to be placed in the water do not enter waters
6 of the State, including wetlands. These include, but are not limited to, petroleum
7 products, hydraulic fluid, fresh concrete, concrete wastewater, process wastewater,
8 slurry materials and waste from shaft drilling, sediments, sediment-laden water,
9 chemicals, paint, solvents, or other toxic or deleterious materials.
- 10 5. Use equipment that is free of external petroleum-based products.
- 11 6. Remove accumulations of soil and debris from drive mechanisms (wheels, tracks,
12 tires) and undercarriage of equipment prior to using equipment below the ordinary
13 high water line.
- 14 7. Clean loose dirt and debris from all materials placed below the ordinary high water
15 line. No materials shall be placed below the ordinary high water line without the
16 Engineer’s approval.
- 17 8. Notify the Engineer and Ecology Department immediately should oil, chemicals, or
18 sewage spill into waters of the State.

19 **1-07.5(4) Air Quality**

20 The Contractor shall comply with all rules of local air pollution authorities. If there are none,
21 air-quality rules of the State Department of Ecology shall govern the Work.

22 The *Washington Clean Air Act* requires that rock crushing, rock drilling, asphalt batch plants,
23 and concrete plants receive an air quality permit in advance of the operation. The air quality
24 permit process may include additional State Environment Policy Act (SEPA) requirements.
25 Contractors or operators should contact the appropriate air pollution control authority well in
26 advance of intended start-up. The permit process may require up to 30 days.

27 When the Work includes demolition of any existing facility, the Contractor shall comply with
28 the requirements of the National Emission Standards for Asbestos. Any requirement included in
29 State or Federal regulations on this subject that applies to the “owner or operator” shall be the
30 responsibility of the Contractor.

31 **1.07.5(5) Environmental Commitments**

32 At the time that these General Requirements were published, discussions were underway
33 with the Muckleshoot and Suquamish Indian Tribes, NOAA National Marine Fisheries Service,

1 the Army Corps of Engineers, the Environmental Protection Agency, WA State Department of
2 Ecology, WA State Department of Fish and Wildlife, US Fish and Wildlife, EPA, the Army Corps
3 of Engineers, Shorelines King County, and the City of Seattle regarding permitting requirements
4 and environmental commitments.

5 A preliminary list of the permitting requirements and environmental commitments is
6 attached. The Contractor will participate with WSF and the Design Team in providing
7 information to the authorities having jurisdiction during preconstruction and will be apprised of
8 these permitting and environmental commitments when finalized. Thereafter, it shall be the
9 responsibility of the Contractor to ensure that it conducts its operations and completes the
10 Work for this Contract in accordance with those permitting and environmental commitments.

11 **1-07.6 Permits and Licenses**

12 Contractors shall obtain all required permits and licenses and give any notices required.

13 The Contracting Agency will support the Contractor in efforts to obtain a temporary
14 operating permit in its name if:

- 15 1. A local rule or an agency policy prevent issuing the permit to a private firm;
- 16 2. The Contractor takes all action to obtain the permit;
- 17 3. The permit will serve the public interest;
- 18 4. The permit applies only to Work under the Contract;
- 19 5. The Contractor agrees in writing: (a) to comply with all the issuing agency requires, and
20 (b) to hold the Contracting Agency harmless for any Work-related liability incurred
21 under the permit; and
- 22 6. The permit costs the Contracting Agency nothing.

23 **1-07.6(1) Required Permits**

24 The Contracting Agency intends to apply for the below-listed permit(s) for this Project. All
25 contacts with the permitting agency concerning the below-listed permit(s) shall be through the
26 Engineer. The Contractor shall pick up and pay for these permits before beginning any
27 construction on site. The cost for these permits is a Negotiated Support Service.

28 The Contractor or its Subcontractors shall obtain additional permits as necessary. All costs
29 to obtain and comply with additional permits shall be included in the applicable sub-contract
30 bid package items for the work involved and is a MACC Cost. Copies of these permits are
31 required to be on site at all times.
32

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 Washington Department of Transportation – Ferries Division

NAME OF DOCUMENT	PERMITTING AGENCY	PERMIT REFERENCE NO.
Biological Opinion	USFWS	OIEWFW00-2013-F-0262
Biological Opinion	NOAA NMFS	2013/9585
Department of the Army Section 404 Individual Permit	Corps of Engineers Seattle District	TBA
Department of the Army Section 10 Individual Permit	Corps of Engineers Seattle District	TBA
Private Aids to Navigation (PATON)	US Coast Guard	
Corps of Engineers		
WA DNR		
King County		
Seattle DOT	TBA (This may be a Contractor obtained permit)	
Marine Mammal Protection Incidental Harassment Authorization	National Marine Fisheries Service	TBA
Section 401 Water Quality Certification	Department of Ecology	TBA
Coastal Zone Management Consistency Certification	Department of Ecology	TBA
Hydraulic Project Approval	Department of Fish & Wildlife	TBA
Building Permit	Seattle Building Department	

1 1-07.6(2) United States Coast Guard Requirements

2 The Contractor shall comply with all United States Coast Guard requirements.

3 The Contractor shall contact the Coast Guard at least 30 calendar days in advance of all
 4 Work in or near the navigable portion of the waterway and request that a Local Notice to
 5 Mariners be issued for the waterway at this site. The Contractor shall contact the Coast Guard
 6 for requirements related to the mooring of barges, placement of log booms, and all other
 7 equipment that could be a hazard to waterway users. Provisions shall be made for the removal,
 8 on 2 hours' notice of all equipment that would block or partially block the navigable portion of
 9 the waterway.

10 The Coast Guard contact is:

11 Bridge Administrator
 12 Thirteenth Coast Guard District
 13 915 Second Avenue, Suite 3510 45
 14 Seattle, WA 98174-1067
 15 Telephone: (206) 220-7282

1 All costs incurred in contacting the Coast Guard and in complying with all the requirements
2 specified herein shall be included in the MACC.

3 All costs in connection with delays in the construction caused by the Contractor’s failure to
4 contact the Coast Guard shall be at the Contractor’s expense.

5 **1-07.7 Load Limits**

6 **1-07.7(1) General**

7 While moving equipment or materials on any public Highway, the Contractor shall comply
8 with all laws that control traffic or limit loads. The Contract neither exempts the Contractor
9 from such laws nor licenses overloads. At the Engineer’s request, the Contractor shall provide
10 any facts needed to compute the weight of the equipment on the Roadway.

11 When the Contractor moves equipment or materials within the Project limits as shown in
12 the Plans, legal load limits shall apply on:

- 13 1. Any road open to and in use by public traffic; or
- 14 2. Any existing road not scheduled for major reconstruction under the current Contract; or
- 15 3. Any newly paved road (with final lift in place) built under this Contract. The Contractor
16 may haul overloads (not more than 25 percent above load limits) on such roads not
17 open to public traffic if this does not damage completed Work. The Contractor shall pay
18 all repair costs of any overload damage.

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

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

- 26 1. Describe loading details;
- 27 2. Describe the arrangement, movement, and position of equipment on the Structure or
28 over culverts and pipes; and
- 29 3. State that the Contractor assumes all risk for damage.

1 Unit prices shall cover all costs for operating over bridges and culverts. Nothing in this
2 Section affects the Contractor’s other responsibilities under these Specifications or under public
3 Highway laws.

4 **1-07.7(2) Load-Limit Restrictions**

5 1. Structures Designed for Direct Bearing of Live Loads – The gross or maximum load on
6 each vehicle axle shall not exceed the legal load limit by more than 35 percent. No more
7 than one vehicle shall operate over any Structure at one time. The Contractor shall
8 immediately remove any dirt, rock, or debris that may gather on the Structure’s
9 Roadway surface.

10 If the Contractor desires to utilize work methods resulting in load that exceed any of the
11 restrictions described above, the Contractor shall submit calculations and other
12 supporting information (as specified in Section 6-01.6 for bridges under construction) to
13 the Engineer for approval in accordance with Sections 6-01.6 and 6-01.9. The Engineer
14 will review the calculations and supporting information to determine if the loading
15 meets the criteria specified in Section 6-01.6. The Contractor shall not place or operate
16 construction vehicles or equipment on or over the Structure until receiving the
17 Engineer’s approval of the submittal.

18 2. Underpasses and Reinforced Concrete Box Culverts Under Embankments – Loads shall
19 not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles
20 spaced less than 10 feet apart. These limits are permitted only if the embankment has:
21 (a) been built to Specifications, and (b) reached at least 3 feet above the top of the
22 underpass or culvert.

23 When the embankment has reached 5 feet above the top of the underpass or culvert,
24 the Contractor may increase per-axle loads up to 100,000 pounds if outside wheel
25 spacing is at least 7 feet on axle centers.

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

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

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

6 b. For Class II reinforced concrete pipes, the maximum load for each axle shall be
7 80,000 pounds if outside wheel spacing is at least 7 feet on axle centers. In this
8 case, the embankment shall have risen above the top limit of compaction at least
9 6 feet.

10 **1-07.8 High-Visibility Apparel**

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

15 The Contractor shall ensure that a competent person as identified in the MUTCD selects the
16 appropriate high-visibility apparel suitable for the jobsite conditions.

17 High-visibility garments shall always be the outermost garments.

18 High-visibility garments shall be in a condition compliant with the ANSI 107-2004 and shall
19 be used in accordance with manufacturer recommendations.

20 **1-07.8(1) Traffic Control Personnel**

21 All personnel performing the Work described in Section 1-10 (including traffic control
22 supervisors, flaggers, spotters, and others performing traffic control labor of any kind) shall
23 comply with the following:

24 1. During daylight hours with clear visibility, workers shall wear a high-visibility
25 ANSI/ISEA 107-2004 Class 2 or 3 vest or jacket and hardhat meeting the high-visibility
26 headwear requirements of WAC 296-155-305; and

27 2. During hours of darkness (1/2 hour before sunset to 1/2 hour after sunrise) or other
28 low-visibility conditions (snow, fog, etc.), workers shall wear a high-visibility
29 ANSI/ISEA 107-2004 Class 2 or 3 vest or jacket, high-visibility lower garment meeting
30 ANSI/ISEA 107-2004 Class E, and hardhat meeting the high-visibility headwear
31 requirements of WAC 296-155-305.

1 **1-07.8(2) Non-Traffic Control Personnel**

2 All personnel, except those performing the Work described in Section 1-10, shall wear
3 high-visibility apparel meeting the ANSI/ISEA 107-2004 Class 2 or 3 standard.

4 **1-07.9 Wages**

5 **1-07.9(1) General**

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

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

16 By including the hourly minimum rates for wages and fringe benefits in the Contract
17 Provisions, the Contracting Agency does not imply that the Contractor will find labor available
18 at those rates. The Contractor shall be responsible for any amounts above the minimums that
19 will actually have to be paid. The Contractor shall bear the cost of paying wages above those
20 shown in the Contract Provisions.

21 When the Project is subject to both State and Federal hourly minimum rates for wages and
22 fringe benefits and when the two rates differ for similar kinds of labor, the Contractor shall not
23 pay less than the higher rate unless the State rates are specifically preempted by Federal law.
24 When the Project involves Highway Work, heavy Work, and building Work, the Contract
25 Provisions may list a Federal wage and fringe benefit rate for the Highway Work, and a separate
26 Federal wage and fringe benefit rate for both heavy Work and building Work. The area in which
27 the worker is physically employed shall determine which Federal wage and fringe benefit rate
28 shall be used to compare against the State wage and fringe benefit rate.

29 If employing labor in a class not listed in the Contract Provisions on state funded projects
30 only, the Contractor shall request a determination of the correct wage and benefits rate for
31 that class and locality from the Industrial Statistician, Washington State Department of Labor
32 and Industries (State L&I), and provide a copy of those determinations to the Project Engineer.

33 If employing labor in a class not listed in the Contract Provisions on Federally-funded
34 projects, the Contractor shall request a determination of the correct wage and benefit for that
35 class and locality from the U.S. Secretary of Labor through the Project Engineer. Generally, the

1 Contractor initiates the request by preparing standard form 1444 Request for Authorization of
2 Additional Classification and Rate, available at www.wdol.gov/docs/sf1444.pdf, and submitting
3 it to the Project Engineer for further action.

4 The Contractor shall ensure that any firm (Supplier, Manufacturer, or Fabricator) that falls
5 under the provisions of RCW 39.12 because of the definition “Contractor” in WAC 296 127-010,
6 complies with all the requirements of RCW 39.12.

7 The Contractor shall be responsible for compliance with the requirements of the DBRA and
8 RCW 39.12 by all firms (Subcontractors, lower tier Subcontractors, Suppliers, Manufacturers, or
9 Fabricators) engaged in any part of the Work necessary to complete this Contract. Therefore,
10 should a violation of this Subsection occur by any firm that is providing Work or materials for
11 completion of this Contract whether directly or indirectly responsible to the Contractor, the
12 Contracting Agency will take action against the Contractor, as provided by the provisions of the
13 Contract, to achieve compliance, including but not limited to, withholding payment on the
14 Contract until compliance is achieved.

15 In the event the Contracting Agency has an error (omissions are not errors) in the listing of
16 the hourly minimum rates for wages and fringe benefits in the Contract Provisions, the
17 Contractor, any Subcontractor, any lower tier Subcontractor, or any other firm that is required
18 to pay prevailing wages, shall be required to pay the rates as determined to be correct by State
19 L&I (or by the U.S. Department of Labor when that agency sets the rates). A change order will
20 be prepared to ensure that this occurs. The Contracting Agency will reimburse the Contractor
21 for the actual cost to pay the difference between the correct rates and the rates included in the
22 Contract Provisions, subject to the following conditions:

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

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

1 **Listing Recovery Act (and other) New Hire Opportunities with the Employment Security**
2 **Department**

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

9 WorkSource employees are aware that the Contractor has other commitments as part of
10 their business practices and as part of the Contract. Contractors may be subject to hiring
11 commitments such as Equal Employment Opportunity or union commitments. However,
12 utilizing WorkSource can be an essential effort as part of their various good faith efforts.

13 WorkSource is a resource that is available across the State. Contractors who have been
14 awarded WSDOT Contracts shall be prepared to discuss their recruitment plans and how
15 WorkSource will be incorporated into that effort at the preconstruction conference.
16 WorkSource has a simple process for requesting and reporting new hires.

17 The Contractor may contact the ARRA Business Unit at 877-453-5906 (toll free) or
18 ARRA@esd.wa.gov. There is additional information available on the website at

19 <https://fortress.wa.gov/esd/worksource>.

20 **1-07.9(2) Application of Wage Rates for the Occupation of Landscape Construction**

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

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

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

29 Laborers with the occupation description, Landscaping or Planting, or

30 Power Equipment Operators with the occupation description, Mulch Seeding Operator.

31 If Federal wage rates include one or more rates specified as applicable to landscaping work,
32 then Federal wage rates for all occupation descriptions, specific or general, must be considered

1 and compared with corresponding State wage rates. The higher wage rate, either State or
2 Federal, becomes the minimum wage rate for the Work performed in that occupation.

3 Contractors are responsible for determining the appropriate crafts necessary to perform the
4 Contract Work. If a classification considered necessary for performance of the Work is missing
5 from the Federal Wage Determination applicable to the Contract, the Contractor shall initiate a
6 request for approval of a proposed wage and benefit rate. The Contractor shall prepare and
7 submit Standard Form 1444, Request for Authorization of Additional Classification and Wage
8 Rate available at <http://www.wdol.gov/docs/sf1444.pdf>, and submit the completed form to the
9 Project Engineer’s office. The presence of a classification wage on the Washington State
10 Prevailing Wage Rates for Public Works Contracts does not exempt the use of form 1444 for the
11 purpose of determining a Federal classification wage rate.

12 **1-07.9(3) Federal Wage Rates for Highway, Heavy, and Building Construction**

13 The Federal wage rates for Highway Construction incorporated in this Contract have been
14 established by the Secretary of Labor under United States Department of Labor General
15 Decision No. WA140001. These rates are applicable to Highway construction.

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

19 The Federal wage rates for Building Construction incorporated in this Contract have been
20 established by the Secretary of Labor under United States Department of Labor General
21 Decision No. -Pending -. These rates are applicable to building construction

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

24 **1-07.9(4) Posting Notices**

25 Notices and posters shall be placed in areas readily accessible to read by employees. The
26 Contractor shall ensure the following are posted:

- 27 1. EEOC – P/E-1(revised 11/09) – Equal Employment Opportunity IS THE LAW published by
28 US Department of Labor. Post for projects with Federal-aid funding.
- 29 2. FHWA 1022 (revised 11/11) – NOTICE Federal-Aid Project published by Federal Highway
30 Administration (FHWA). Post for projects with Federal-aid funding.
- 31 3. WH 1321 (revised 04/09) – Employee Rights Under the Davis-Bacon Act published by
32 US Department of Labor. Post for projects with Federal-aid funding.

1 **1-07.9(5) Apprentices**

2 If employing apprentices, the Contractor shall submit to the Engineer written evidence
3 showing:

- 4 1. Each apprentice is enrolled in a program approved by the Washington State
5 Apprenticeship and Training Council;
- 6 2. The progression schedule for each apprentice; and
- 7 3. The established apprentice-journey level ratios and wage rates in the Project locality
8 upon which the Contractor will base such ratios and rates under the Contract. Any
9 worker for whom an apprenticeship agreement has not been registered and approved
10 by the Washington State Apprenticeship and Training Council shall be paid at the
11 prevailing hourly journey level rate as provided in RCW 39.12.021.

12 **1-07.9(6) Disputes**

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

17 **1-07.9(7) Required Documents**

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

- 21 1. A copy of an approved “Statement of Intent to Pay Prevailing Wages” State L&I’s form
22 number F700-029-000. The Contracting Agency will make no payment under this
23 Contract for the Work performed until this statement has been approved by State L&I
24 and a copy of the approved form has been submitted to the Engineer.
- 25 2. A copy of an approved “Affidavit of Prevailing Wages Paid”, State L&I’s form number
26 F700-007-000. The Contracting Agency will not grant Completion until all approved
27 Affidavit of Wages paid for Contractor and all Subcontractors have been received by the
28 Project Engineer. The Contracting Agency will not release to the Contractor any funds
29 retained under RCW 60.28.011 until all of the “Affidavit of Prevailing Wages Paid” forms
30 have been approved by State L&I and a copy of all the approved forms have been
31 submitted to the Engineer.

32 The Contractor shall be responsible for requesting these forms from State L&I and for
33 paying any approval fees required by State L&I.

1 Certified payrolls are required to be submitted by the Contractor to the Engineer, for the
2 Contractor and all Subcontractors or lower tier Subcontractors, on all Federal-aid projects and,
3 when requested in writing by the Engineer, on projects funded with only Contracting Agency
4 funds. If these payrolls are not supplied within 10 calendar days of the end of the preceding
5 weekly payroll period for Federal-aid projects or within 10 calendar days from the date of the
6 written request on projects with only Contracting Agency funds, any or all payments may be
7 withheld until compliance is achieved. Also, failure to provide these payrolls could result in
8 other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations
9 (29 CFR 5.12). All certified payrolls shall be complete and explicit. Employee labor descriptions
10 used on certified payrolls shall coincide exactly with the labor descriptions listed on the
11 minimum wage schedule in the Contract unless the Engineer approves an alternate method to
12 identify the labor used by the Contractor to compare with the labor listed in the Contract
13 Provisions. When an apprentice is shown on the certified payroll at a rate less than the
14 minimum prevailing journey wage rate, the apprenticeship registration number for that
15 employee from the State Apprenticeship and Training Council shall be shown along with the
16 correct employee classification code.

17 **1-07.9(8) Audits**

18 The Contracting Agency may inspect or audit the Contractor’s wage and payroll records as
19 provided in Section 1-09.12.

20 **1-07.10 Worker’s Benefits**

21 The Contractor shall make all payments required for unemployment compensation under
22 Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If any
23 payment required by Title 50 or Title 51 is not made when due, the Contracting Agency may
24 retain such payments from any money due the Contractor and pay the same into the
25 appropriate fund. Such payment will be made only after giving the Contractor 15 days’ prior
26 written notice of the Contracting Agency’s intent to disburse the funds to the Washington State
27 Department of Labor and Industries or Washington State Employment Security Department as
28 applicable. The payment will be made upon expiration of the 15 calendar day period if no legal
29 action has been commenced to resolve the validity of the claim. If legal action is instituted to
30 determine the validity of the claim prior to the expiration of the 15-day period, the Contracting
31 Agency will hold the funds until determination of the action or written settlement agreement of
32 the appropriate parties.

33 For Work on or adjacent to water, the Contractor shall make the determination as to
34 whether workers are to be covered under the Longshoremen’s and Harbor Worker’s
35 Compensation Act administered by the U.S. Department of Labor, or the State Industrial
36 Insurance coverage administered by the Washington State Department of Labor and Industries.

1 The Contractor shall include in the various items in the Bid Proposal all costs for payment of
2 unemployment compensation and for providing either or both of the insurance coverages. The
3 Contractor will not be entitled to any additional payment for: (1) failure to include such costs,
4 or (2) determinations made by the U.S. Department of Labor or the Washington State
5 Department of Labor and Industries regarding the insurance coverage.

6 The Public Works Contract Division of the Washington State Department of Labor and
7 Industries will provide the Contractor with applicable industrial insurance and medical aid
8 classification and premium rates. After receipt of a Revenue Release from the Washington State
9 Department of Revenue, the Contracting Agency will verify through the Department of Labor
10 and Industries that the Contractor is current with respect to the payments of industrial
11 insurance and medical aid premiums.

12 **1-07.11 Requirements for Nondiscrimination**

13 **1-07.11(1) General Application**

14 Discrimination in all phases of Contracted employment, Contracting activities, and training
15 is prohibited by Title VI of the Civil Rights Act of 1964, Section 162(a) of the Federal-Aid
16 Highway Act of 1973, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act
17 of 1975, the Justice System Improvement Act of 1979, the American with Disabilities Act of
18 1990, the Civil Rights Restoration Act of 1987, 49 CFR Part 21, RCW 49.60 and other related
19 laws and statutes. The referenced legal citations establish the minimum requirements for
20 affirmative action efforts and define the basic nondiscrimination provisions as required by this
21 Section of these *Standard Specifications*.

22 **1-07.11(2) Contractual Requirements**

- 23 1. The Contractor shall not discriminate against any employee or applicant for Contracted
24 employment because of race, creed, color, national origin, sex, age, marital status, or
25 the presence of any physical, sensory or mental disability.
- 26 2. The Contractor shall, in all solicitations or advertisements for employees, state that all
27 qualified applicants will be considered for employment, without regard to race, creed,
28 color, national origin, sex, age, marital status, or the presence of any physical, sensory,
29 or mental disability.
- 30 3. The Contractor shall insert the following notification in all solicitations for bids for Work
31 or material subject to Federal laws and regulations and made in connection with all
32 program and activities and, in adapted form, in all proposals for negotiated agreements:

33 **The Contractor in accordance to Title VI of the Civil Rights Act of 1964,**
34 **78 Stat.252, 42 U.S. Code 2000d to 2000d-4, and Title 49 Code of Federal**
35 **Regulations, Part 21, hereby notifies all bidders that it will affirmatively**

1 **ensure that in any contract entered into pursuant to this advertisement,**
2 **minority business enterprises will be afforded full opportunity to submit bids**
3 **in response to this invitation and will not be discriminated against on the**
4 **grounds of race, color national origin and sex in consideration for an award.**

5 4. The Contractor shall make decisions with regard to selection and retention of
6 Subcontractors, procurement of materials and equipment, and similar actions related to
7 the Contract without regard to race, creed, color, national origin, sex, age, marital
8 status, or the presence of any physical, sensory, or mental disability.

9 5. The Contractor shall send to each labor union, employment agency, or representative of
10 workers with which the Contractor has a collective bargaining agreement or other
11 contract or understanding, a notice advising the labor union, employment agency or
12 worker’s representative, of the Contractor’s commitments under this Contract with
13 regard to nondiscrimination.

14 6. The Contractor shall permit access to its books, records, and accounts by the
15 Contracting Agency for the purpose of investigating to ascertain compliance with these
16 Specifications. In the event that information required of a Contractor is in the
17 possession of another who fails or refuses to furnish this information, the Contractor
18 shall describe, in writing, what efforts were made to obtain the information.

19 7. The Contractor shall maintain records with the name and address of each
20 minority/female worker referred to the Contractor and what action was taken with
21 respect to the referred worker.

22 8. The Contractor shall notify the Contracting Agency whenever the union with which the
23 Contractor has a collective bargaining agreement has impeded the Contractor’s efforts
24 to effect minority/female workforce utilization. This being the case, the Contractor shall
25 show what relief they have sought under such collective bargaining agreements.

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

29 **1-07.11(2)A Equal Employment Opportunity (EEO) Responsibilities**

30 **Title VI Responsibilities**

31 During the performance of this Contract, the Contractor, for itself, its assignees, and
32 successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

33 1. **Compliance With Regulations** – The Contractor shall comply with the Regulations
34 relative to nondiscrimination in federally assisted programs of the Department of

- 1 Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as the
2 Regulations may be amended from time to time, (hereinafter referred to as the
3 Regulations), which are herein incorporated by reference and made a part of this
4 Contract.
- 5 2. **Nondiscrimination** – The Contractor, with regard to the Work performed by it during
6 the Contract, shall not discriminate on the grounds of race, color, sex, or national origin
7 in the selection and retention of Subcontractors, including procurement of materials
8 and leases of equipment. The Contractor shall not participate either directly or indirectly
9 in the discrimination prohibited by Section 21.5 of the Regulations, including
10 employment practices when the Contract covers a program set forth in Appendix B of
11 the Regulations.
- 12 3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment** – In
13 all solicitations either by competitive bidding or negotiations made by the Contractor for
14 Work to be performed under a subcontract, including procurement of materials or
15 leases of equipment, each potential Subcontractor or supplier shall be notified by the
16 Contractor of the Contractor’s obligations under this Contract and the Regulations
17 relative to nondiscrimination on the ground of race, color, sex, or national origin.
- 18 4. **Information and Reports** – The Contractor shall provide all information and reports
19 required by the Regulations or directives issued pursuant thereto, and shall permit
20 access to its books, records, accounts, other sources of information, and its facilities as
21 may be determined by the Washington State Department of Transportation or the
22 Federal Highway Administration to be pertinent to ascertain compliance with such
23 Regulations, orders, and instructions. Where any information required of a Contractor is
24 in the exclusive possession of another who fails or refuses to furnish this information,
25 the Contractor shall so certify to the Washington State Department of Transportation,
26 or the Federal Highway Administration as appropriate, and shall set forth what efforts it
27 has made to obtain the information.
- 28 5. **Sanctions for Noncompliance** – In the event of the Contractor’s noncompliance with the
29 nondiscrimination provisions of this Contract, the Washington State Department of
30 Transportation shall impose such Contract sanctions as it or the Federal Highway
31 Administration may determine to be appropriate, including, but not limited to:
- 32 a. Withholding of payments to the Contractor under the Contract until the
33 Contractor complies, and/or;
- 34 b. Cancellation, termination, or suspension of the Contract, in whole or in part.
- 35 6. **Incorporation of Provisions** – The Contractor shall include the provisions of paragraphs
36 (1) through (5) in every subcontract, including procurement of materials and leases of
37 equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

1 The Contractor shall take such action with respect to any Subcontractor or procurement
2 as the Washington State Department of Transportation or the Federal Highway
3 Administration may direct as a means of enforcing such provisions including sanctions
4 for noncompliance.

5 Provided, however, that in the event a Contractor becomes involved in, or is threatened
6 with, litigation with a Subcontractor or supplier as a result of such direction, the
7 Contractor may request the Washington State Department of Transportation enter into
8 such litigation to protect the interests of the state and, in addition, the Contractor may
9 request the United States to enter into such litigation to protect the interests of the
10 United States.

11 **1-07.11(3) Equal Employment Opportunity Officer**

12 The Contractor shall officially designate and make known to the Engineer during the
13 preconstruction conference and discussions the firm’s Equal Employment Opportunity Officer
14 (hereinafter referred to as the EEO Officer). The EEO Officer will also be responsible for making
15 him/herself known to each of the Contractor’s employees. The EEO Officer must possess the
16 responsibility, authority, and capability for administering and promoting an active and effective
17 Contractor program of equal employment opportunity.

18 **1-07.11(4) Dissemination of Policy**

19 **1-07.11(4)A Supervisory Personnel**

20 All members of the Contractor’s staff who are authorized to hire, supervise, promote, and
21 discharge employees, or who recommend such action, or who are substantially involved in such
22 action, shall be made fully cognizant of and shall implement the Contractor’s equal
23 employment opportunity policy and contractual responsibilities to provide equal employment
24 opportunity in each grade and classification of employment. To ensure that the above
25 agreement will be met, the following actions shall be taken as a minimum:

- 26 1. **EEO Meetings** – Periodic meetings of supervisory and personnel office employees shall
27 be conducted before the start of Work and then not less often than once every
28 6 months, at which time the Contractor’s equal employment opportunity policy and its
29 implementation shall be reviewed and explained. The meetings shall be conducted by
30 the EEO Officer or other knowledgeable company official.
- 31 2. **EEO Indoctrination** – All new supervisory or personnel office employees shall be given a
32 thorough indoctrination by the EEO Officer or other knowledgeable company official
33 covering all major aspects of the Contractor’s equal employment opportunity
34 obligations within 30 days following their reporting for duty with the Contractor.
- 35 3. **Internal EEO Procedures** – All personnel who are engaged in direct recruitment for the
36 Project shall be instructed by the EEO Officer or appropriate company official in the
37 Contractor’s procedures for locating and hiring minority group and female employees.

1 **1-07.11(4)B Employees, Applicants, and Potential Employees**

2 In order to make the Contractor’s equal employment opportunity policy known to all
3 employees, prospective employees, and potential sources of employees, e.g., schools,
4 employment agencies, labor unions (where appropriate), college placement officers, and
5 community organizations, the Contractor shall take the following actions:

- 6 1. **Notices and Posters** – Notices and posters setting forth the Contractor’s equal
7 employment opportunity policy shall be placed in areas readily accessible to employees,
8 applicants for employment, and potential employees.
- 9 2. **EEO Indoctrination** – The Contractor’s equal employment opportunity policy and the
10 procedures to implement such policy shall be brought to the attention of employees by
11 means of meetings, employee handbooks, or other appropriate means.

12 **1-07.11(5) Sanctions**

13 In the event of the Contractor is found in noncompliance with the provisions of
14 Section 1-07.11, the Contracting Agency may impose such Contract sanctions as it or the
15 Federal Highway Administration may determine necessary to gain compliance including, but
16 not limited to:

- 17 1. Progress payment requests may not be honored until the noncompliance is remedied to
18 the satisfaction of the Contracting Agency.
- 19 2. The Contract may be suspended, in whole or in part, until such time as the Contractor is
20 determined to be in compliance by the Contracting Agency.
- 21 3. The Contractor’s pre-qualification may be suspended or revoked pursuant to
22 WAC 468-16. The Contracting Agency may refer the matter to the Federal Highway
23 Administration (FHWA) for possible federal sanctions.
- 24 4. The Contract may be terminated.

25 **1-07.11(6) Incorporation of Provisions**

26 The Contractor shall include the provisions of Section 1-07.11(2) Contractual Requirements
27 (1) through (4) and the Section 1-07.11(5) Sanctions in every subcontract including
28 procurement of materials and leases of equipment. The Contractor shall take such action or
29 enforce sanctions with respect to a Subcontractor or supplier as the Contracting Agency or the
30 FHWA may direct as a means of enforcing such provisions. In the event a Contractor becomes
31 involved in litigation with a Subcontractor or supplier as a result of such direction, the
32 Contractor may request the Contracting Agency enter into such litigation to protect their

1 interests and the Contracting Agency may request the federal government to enter into such
2 litigation to protect the interests of the United States.

3 **1-07.11(7) Vacant**

4 **1-07.11(8) Vacant**

5 **1-07.11(9) Subcontracting, Procurement of Materials, and Leasing of Equipment**

6 **Nondiscrimination** – The Contractor shall not discriminate on the grounds of race, color,
7 religion, sex, national origin, age, or disability in the selection and retention of Subcontractors,
8 including procurement of materials and leases of equipment.

9 **Solicitation and Utilization** – The Contractor shall use their best effort to solicit bids from,
10 and to utilize, disadvantaged, minority, and women Subcontractors, or Subcontractors with
11 meaningful minority and women representation among their employees.

12 **Subcontractor EEO Obligations** – The Contractor shall notify all potential Subcontractors
13 and suppliers of the EEO obligations required by the Contract. The Contractor shall use their
14 efforts to ensure Subcontractors’ compliance with their equal employment opportunity
15 obligations.

16 **1-07.11(10) Records and Reports**

17 **1-07.11(10)A General**

18 The Contractor shall keep such records as are necessary to determine compliance with the
19 Contractor’s equal employment opportunity obligations. The records kept by the Contractor
20 shall be designated to indicate:

- 21 1. **Work Force Data** – The number of minority and nonminority group members and
22 women employed in each work classification on the Project.
- 23 2. **Good Faith Efforts – Unions** – The progress and efforts being made in cooperation with
24 unions to increase employment opportunities for minorities and women (applicable
25 only to contractors who rely in whole or in part on unions as a source of their work
26 force).
- 27 3. **Good Faith Efforts – Recruitment** – The progress and efforts being made in locating,
28 hiring, training, qualifying, and upgrading minority and female employees.
- 29 4. **Subcontracting** – The progress and efforts being made in securing the services of
30 disadvantaged, minority, and women Subcontractors or Subcontractors with meaningful
31 minority and female representation among their employees.

1 **1-07.11(10)B Required Records and Retention**

2 All records must be retained by the Contractor for a period of three years following
3 acceptance of the Contract Work. All records shall be available at reasonable times and places
4 for inspection by authorized representatives of either the Washington State Department of
5 Transportation or the Federal Highway Administration.

6 **Federal-Aid Highway Construction Contractors Annual EEO Report**

7 **FHWA #1391** – This form is required for all Federally assisted projects provided the Contract
8 is equal to or greater than \$10,000 and for every associated subcontract equal to or greater
9 than \$10,000. Each Contract requires separate reports filed for the Contractor and each
10 Subcontractor (subject to the above noted criteria). These forms are due by August 25th in
11 every year during which Work was performed in July. The payroll period to be reflected in the
12 report is the last payroll period in July in which Work was performed. This report is required of
13 each Contractor and Subcontractor for each Federally assisted contract on which the
14 Contractor or Subcontractor performs Work during the month of July.

15 **Monthly Employment Utilization Reports**

16 **WSDOT Form 820-010** – This form (or substitute form as approved by the Contracting
17 Agency) is required for all Federally assisted projects if the Contract is equal to or greater than
18 \$10,000 and for every associated subcontract equal to or greater than \$10,000. These monthly
19 reports are to be maintained in the respective Contractor or Subcontractor’s records.

20 **1-07.11(11) Requirement for Affirmative Action to Ensure Equal Employment Opportunity**
21 **(Executive Order 11246)**

- 22 1. The Contractor’s attention is called to the Equal Opportunity Clause and the Standard
23 Federal Equal Employment Opportunity Construction Contract Specifications set forth
24 herein.
- 25 2. The goals and timetables for minority and female participation set by the Office of
26 Federal Contract Compliance Programs, expressed in percentage terms for the
27 Contractor’s aggregate work force in each construction craft and in each trade on all
28 construction work in the covered area, are as follows:

29 Women – Statewide

30	<u>Timetable</u>	<u>Goal</u>
31	Until further notice	6.9%

1	<u>Minorities – by Standard Metropolitan Statistical Area (SMSA)</u>	
2	Spokane, WA:	
3	SMSA Counties:	
4	Spokane, WA	2.8
5	WA Spokane.	
6	Non-SMSA Counties	3.0
7	WA Adams; WA Asotin; WA Columbia; WA Ferry; WA Garfield; WA	
8	Lincoln; WA Pend Oreille; WA Stevens; WA Whitman.	
9	Richland, WA	
10	SMSA Counties:	
11	Richland Kennewick, WA	5.4
12	WA Benton; WA Franklin.	
13	Non-SMSA Counties	3.6
14	WA Walla Walla.	
15	Yakima, WA:	
16	SMSA Counties:	
17	Yakima, WA	9.7
18	WA Yakima.	
19	Non-SMSA Counties	7.2
20	WA Chelan; WA Douglas; WA Grant; WA Kittitas; WA Okanogan.	
21	Seattle, WA:	
22	SMSA Counties:	
23	Seattle Everett, WA	7.2
24	WA King; WA Snohomish.	
25	Tacoma, WA	6.2
26	WA Pierce.	
27	Non-SMSA Counties	6.1
28	WA Clallam; WA Grays Harbor; WA Island; WA Jefferson; WA Kitsap; WA	
29	Lewis; WA Mason; WA Pacific; WA San Juan; WA Skagit; WA Thurston;	
30	WA Whatcom.	
31	Portland, OR:	
32	SMSA Counties:	
33	Portland, OR-WA	4.5
34	WA Clark.	
35	Non-SMSA Counties	3.8
36	WA Cowlitz; WA Klickitat; WA Skamania; WA Wahkiakum.	

1 These goals are applicable to each nonexempt Contractor’s total on-site construction
2 workforce, regardless of whether or not part of that workforce is performing work on a
3 Federal, or Federally assisted project, contract, or subcontract until further notice.
4 Compliance with these goals and time tables is enforced by the Office of Federal
5 Contract Compliance Programs.

6 The Contractor’s compliance with the Executive Order and the regulations in 41 CFR
7 Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific
8 affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a),
9 and its efforts to meet the goals. The hours of minority and female employment and
10 training must be substantially uniform throughout the length of the Contract, in each
11 construction craft and in each trade, and the Contractor shall make a good faith effort to
12 employ minorities and women evenly on each of its projects. The transfer of minority or
13 female employees or trainees from Contractor to Contractor or from project to project
14 for the sole purpose of meeting the Contractor’s goal shall be a violation of the
15 Contract, the Executive Order, and the Regulations in 41 CFR Part 60-4. Compliance with
16 the goals will be measured against the total Work hours performed.

17 3. The Contractor shall provide written notification to the Office of Federal Contract
18 Compliance Programs (OFCCP) within 10 working days of award of any construction
19 subcontract in excess of \$10,000 or more that are Federally-funded, at any tier for
20 construction work under the Contract resulting from this solicitation. The notification
21 shall list the name, address, and telephone number of the Subcontractor; employer
22 identification number of the Subcontractor; estimated dollar amount of the
23 subcontract; estimated starting and completion dates of the subcontract; and the
24 geographical area in which the Contract is to be performed. The notification shall be
25 sent to:

26 U.S. Department of Labor
27 Office of Federal Contract Compliance Programs Pacific Region
28 Attn: Regional Director
29 San Francisco Federal Building
30 90 – 7th Street, Suite 18-300
31 San Francisco, CA 94103(415) 625-7800 Phone
32 (415) 625-7799 Fax

33 Additional information may be found at the U.S. Department of Labor website:
34 <http://www.dol.gov/ofccp/TAGuides/ctaguide.htm>

35 4. As used in this Notice, and in the Contract resulting from this solicitation, the Covered
36 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 Contractor, 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 Contractor 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

1 their participation in and compliance with the provisions of any such Hometown Plan.
2 Each Contractor or Subcontractor participating in an approved Plan is individually
3 required to comply with its obligations under the EEO clause, and to make a good faith
4 effort to achieve each goal under the Plan in each trade in which it has employees. The
5 overall good faith performance by other Contractors or Subcontractors toward a goal in
6 an approved Plan does not excuse any covered Contractor’s or Subcontractor’s failure to
7 take good faith effort to achieve the Plan goals and timetables.

8 4. The Contractor shall implement the specific affirmative action standards provided in
9 paragraphs 7a through 7p of this Special Provision. The goals set forth in the solicitation
10 from which this Contract resulted are expressed as percentages of the total hours of
11 employment and training of minority and female utilization the Contractor should
12 reasonably be able to achieve in each construction trade in which it has employees in
13 the covered area. Covered construction contractors performing construction work in
14 geographical areas where they do not have a Federal or Federally assisted construction
15 contract shall apply the minority and female goals established for the geographical area
16 where the work is being performed. The Contractor is expected to make substantially
17 uniform progress in meeting its goals in each craft during the period specified.

18 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union
19 with whom the Contractor has a collective bargaining agreement, to refer either
20 minorities or women shall excuse the Contractor’s obligations under these
21 specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

22 6. In order for the nonworking training hours of apprentices and trainees to be counted in
23 meeting the goals, such apprentices and trainees must be employed by the Contractor
24 during the training period, and the Contractor must have made a commitment to
25 employ the apprentices and trainees at the completion of their training, subject to the
26 availability of employment opportunities. Trainees must be trained pursuant to training
27 programs approved by the U.S. Department of Labor.

28 7. The Contractor shall take specific affirmative actions to ensure equal employment
29 opportunity. The evaluation of the Contractor’s compliance with these specifications
30 shall be based upon its effort to achieve maximum results from its action. The
31 Contractor shall document these efforts fully, and shall implement affirmative action
32 steps at least as extensive as the following:

- 33 a. Ensure and maintain a working environment free of harassment, intimidation,
34 and coercion at all sites, and in all facilities at which the Contractor’s employees
35 are assigned to work. The Contractor, where possible, will assign two or more
36 women to each construction project. The Contractor shall specifically ensure that
37 all foremen, superintendents, and other on-site supervisory personnel are aware
38 of and carry out the Contractor’s obligation to maintain such a working

- 1 environment, with specific attention to minority or female individuals working at
2 such sites or in such facilities.
- 3 b. Establish and maintain a current list of minority and female recruitment sources,
4 provide written notification to minority and female recruitment sources and to
5 community organizations when the Contractor or its unions have employment
6 opportunities available, and maintain a record of the organizations’ responses.
- 7 c. Maintain a current file of the names, addresses, and telephone numbers of each
8 minority and female off-the-street applicant and minority or female referral
9 from a union, a recruitment source, or community organization and of what
10 action was taken with respect to each such individual. If such individual was sent
11 to the union hiring hall for referral and was not referred back to the Contractor
12 by the union or, if referred, not employed by the Contractor, this shall be
13 documented in the file with the reason therefor, along with whatever additional
14 actions the Contractor may have taken.
- 15 d. Provide immediate written notification to the Director when the union or unions
16 with which the Contractor has a collective bargaining agreement has not
17 referred to the Contractor a minority person or woman sent by the Contractor,
18 or when the Contractor has other information that the union referral process has
19 impeded the Contractor’s efforts to meet its obligations.
- 20 e. Develop on-the-job training opportunity and/or participate in training programs
21 for the area which expressly include minorities and women, including upgrading
22 programs and apprenticeship and trainee programs relevant to the Contractor’s
23 employment needs, especially those programs funded or approved by the
24 U.S. Department of Labor. The Contractor shall provide notice of these programs
25 to the sources compiled under 7b above.
- 26 f. Disseminate the Contractor’s EEO policy by providing notice of the policy to
27 unions and training programs and requesting their cooperation in assisting the
28 Contractor in meeting its EEO obligations; by including it in any policy manual
29 and collective bargaining agreement; by publicizing it in the company
30 newspaper, annual report, etc.; by specific review of the policy with all
31 management personnel and with all minority and female employees at least
32 once a year; and by posting the company EEO policy on bulletin boards
33 accessible to all employees at each location where construction work is
34 performed.
- 35 g. Review, at least annually, the company’s EEO policy and affirmative action
36 obligations under these specifications with all employees having any
37 responsibility for hiring, assignment, layoff, termination, or other employment

- 1 decisions including specific review of these items with on-site supervisory
2 personnel such as Superintendents, General Foremen, etc., prior to the initiation
3 of construction work at any job site. A written record shall be made and
4 maintained identifying the time and place of these meetings, persons attending,
5 subject matter discussed, and disposition of the subject matter.
- 6 h. Disseminate the Contractor’s EEO policy externally by including it in any
7 advertising in the news media, specifically including minority and female news
8 media, and providing written notification to and discussing the Contractor’s EEO
9 policy with other Contractors and Subcontractors with whom the Contractor
10 does or anticipates doing business.
- 11 i. Direct its recruitment efforts, both oral and written to minority, female, and
12 community organizations, to schools with minority and female students, and to
13 minority and female recruitment and training organizations serving the
14 Contractor’s recruitment area and employment needs. Not later than one month
15 prior to the date for the acceptance of applications for apprenticeship or other
16 training by any recruitment source, the Contractor shall send written notification
17 to organizations such as the above, describing the openings, screening
18 procedures, and tests to be used in the selection process.
- 19 j. Encourage present minority and female employees to recruit other minority
20 persons and women and, where reasonable, provide after school, summer, and
21 vacation employment to minority and female youth both on the site and in other
22 areas of a Contractor’s work force.
- 23 k. Validate all tests and other selection requirements where there is an obligation
24 to do so under 41 CFR Part 60-3.
- 25 l. Conduct, at least annually, an inventory and evaluation of all minority and
26 female personnel for promotional opportunities and encourage these employees
27 to seek or to prepare for, through appropriate training, etc., such opportunities.
- 28 m. Ensure that seniority practices, job classifications, work assignments and other
29 personnel practices, do not have a discriminatory effect by continually
30 monitoring all personnel and employment related activities to ensure that the
31 EEO policy and the Contractor’s obligations under these specifications are being
32 carried out.
- 33 n. Ensure that all facilities and company activities are nonsegregated except that
34 separate or single-user toilet and necessary changing facilities shall be provided
35 to assure privacy between the sexes.

- 1 o. Document and maintain a record of all solicitations of offers for subcontracts
2 from minority and female construction contractors and suppliers, including
3 circulation of solicitations to minority and female contractor associations and
4 other business associations.
- 5 p. Conduct a review, at least annually, of all supervisors’ adherence to and
6 performance under the Contractor’s EEO policies and affirmative action
7 obligations.
- 8 8. Contractors are encouraged to participate in voluntary associations which assist in
9 fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts
10 of a contractor association, joint contractor-union, contractor-community, or other
11 similar group of which the Contractor is a member and participant, may be asserted as
12 fulfilling any one or more of the obligations under 7a through 7p of this Special Provision
13 provided that the Contractor actively participates in the group, makes every effort to
14 assure that the group has a positive impact on the employment of minorities and
15 women in the industry, ensures that the concrete benefits of the program are reflected
16 in the Contractor’s minority and female work-force participation, makes a good faith
17 effort to meet its individual goals and timetables, and can provide access to
18 documentation which demonstrate the effectiveness of actions taken on behalf of the
19 Contractor. The obligation to comply, however, is the Contractor’s and failure of such a
20 group to fulfill an obligation shall not be a defense for the Contractor’s noncompliance.
- 21 9. A single goal for minorities and a separate single goal for women have been established.
22 The Contractor, however, is required to provide equal employment opportunity and to
23 take affirmative action for all minority groups, both male and female, and all women,
24 both minority and non-minority. Consequently, the Contractor may be in violation of the
25 Executive Order if a particular group is employed in substantially disparate manner (for
26 example, even though the Contractor has achieved its goals for women generally, the
27 Contractor may be in violation of the Executive Order if a specific minority group of
28 women is underutilized).
- 29 10. The Contractor shall not use the goals and timetables or affirmative action standards to
30 discriminate against any person because of race, color, religion, sex, or national origin.
- 31 11. The Contractor shall not enter into any subcontract with any person or firm debarred
32 from Government contracts pursuant to Executive Order 11246.
- 33 12. The Contractor shall carry out such sanctions and penalties for violation of these
34 Specifications and of the Equal Opportunity Clause, including suspensions, terminations
35 and cancellations of existing subcontracts as may be imposed or ordered pursuant to
36 Executive Order 11246, as amended, and its implementing regulations by the Office of
37 Federal Contract Compliance Programs. Any Contractor who fails to carry out such

1 sanctions and penalties shall be in violation of these specifications and Executive
2 Order 11246, as amended.

3 13. The Contractor, in fulfilling its obligations under these Specifications, shall implement
4 specific affirmative action steps, at least as extensive as those standards prescribed in
5 paragraph 7 of this Special Provision, so as to achieve maximum results from its efforts
6 to ensure equal employment opportunity. If the Contractor fails to comply with the
7 requirements of the Executive Order, the implementing regulations, or these
8 Specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

9 14. The Contractor shall designate a responsible official to monitor all employment related
10 activity to ensure that the company EEO policy is being carried out, to submit reports
11 relating to the provisions hereof as may be required by the government and to keep
12 records. Records shall at least include, for each employee, their name, address,
13 telephone numbers, construction trade, union affiliation if any, employee identification
14 number when assigned, social security number, race, sex, status (e.g., mechanic,
15 apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per
16 week in the indicated trade, rate of pay, and locations at which the Work was
17 performed. Records shall be maintained in an easily understandable and retrievable
18 form; however, to the degree that existing records satisfy this requirement, the
19 Contractors will not be required to maintain separate records.

20 15. Nothing herein provided shall be construed as a limitation upon the application of other
21 laws which establish different standards of compliance or upon the application of
22 requirements for the hiring of local or other area residents (e.g., those under the Public
23 Works Employment Act of 1977 and the Community Development Block Grant
24 Program).

25 16. Additional assistance for Federal Construction Contractors on contracts administered by
26 Washington State Department of Transportation or by Local Agencies may be found at:

27 Washington State Dept. of Transportation
28 Office of Equal Opportunity
29 PO Box 47314
30 310 Maple Park Avenue SE
31 Olympia, WA 98504-7314
32 Ph: 360-705-7090
33 Fax: 360-705-6801
34 <http://www.wsdot.wa.gov/equalopportunity/default.htm>

1 **1-07.11(12) Disadvantaged Business Enterprise Condition of Award Participation**

2 The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and USDOT’s
3 official interpretations (i.e., Questions & Answers) apply to this Contract. Demonstrating
4 compliance with these Specifications is a Condition of Award (COA) of this Contract. Failure to
5 comply with the requirements of this Specification may result in your Bid being found to be
6 nonresponsive resulting in rejection or other sanctions as provided by Contract.

7 **DBE Abbreviations and Definitions**

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

12 **Disadvantaged Business Enterprise (DBE)** – A business firm certified by the Washington
13 State Office of Minority and Women’s Business Enterprises, as meeting the criteria outlined in
14 49 CFR 26 regarding DBE certification.

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

26 **DBE Commitment** – The dollar amount the Contractor indicates they will be subcontracting
27 to be applied towards the DBE Condition of Award Goal as shown on the DBE Utilization
28 Certification Form, and in the Bid Item break down for each DBE Subcontractor. This DBE
29 Commitment amount will be incorporated into the Contract and shall be considered a Contract
30 requirement. Any changes to the DBE Commitment shall require Engineer’s approval.

31 **DBE Condition of Award (COA) Goal** – An assigned numerical percentage of the Bid amount
32 of the Contract. This is the minimum amount that the Bidder must commit to by submission of
33 the Utilization Certification Form and/or by Good Faith Effort (GFE). The DBE COA Goal will also
34 be applied to change orders associated with this Contract.

35 **DBE Directory of Certified Firms** – A publication listing all Minority, Women, and
36 Disadvantaged Business Enterprises currently certified by the Washington State Office of

1 Minority and Women’s Business Enterprises (OMWBE). The on-line Directory is available to
2 contractors for their use in identifying and soliciting interest from DBE firms whose
3 participation on a contract may be counted toward achievement of the assigned DBE COA Goal.

4 **Description of Work** – Specific descriptions of work that the DBE is certified to perform, as
5 identified in the OMWBE Directory of Certified Firms, under the DBE’s profile page.

6 **Good Faith Efforts** – Efforts to achieve the DBE COA Goal or other requirements of this part
7 which, by their scope, intensity, and appropriateness to the objective, can reasonably be
8 expected to fulfill the program requirement.

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

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

22 **DBE COA Goal**

23 The Contracting Agency has established a COA Contract Goal in the amount of: 12% of the
24 MACC,

25 **DBE Eligibility/Selection of DBEs**

26 A Directory of Certified Firms is available at the OMWBE web site. A description of specific
27 items of work that a DBE is certified to perform is shown in the directory on the DBE’s profile
28 page.

29 **Crediting DBE Participation**

30 Subcontractors proposed as COA must be certified prior to the due date for bids on the
31 Contract. All non-COA DBE Subcontractors shall be certified before the subcontract on which it
32 is participating is executed.
33

1 DBE participation cannot be counted toward the Contractor’s contract goal until the
2 amount being counted has actually been paid to the DBE.

3 The following are some examples of what may be counted as DBE participation. In all cases
4 the DBE must be certified for the work being considered and must be capable of performing a
5 CUF during the execution of the Work.

6 **DBE Prime Contractor**

7 A DBE Contractor may only take credit for that portion of the total dollar value of the
8 Contract equal to the distinct, clearly defined portion of the Work that the DBE performs with
9 its own forces.

10 **DBE Subcontractor**

11 Only that portion of the total dollar value of the subcontract equal to the distinct, clearly
12 defined portion of the Work that the DBE performs with its own forces. Include the cost of
13 supplies and materials obtained by the DBE for its work on the contract, and equipment leased
14 by the DBE.

15 The supplies, materials, and equipment purchased or leased from the Contractor or its
16 affiliate shall not be credited. Including any Contractor’s resources available to DBE
17 subcontractors at no cost.

18 If a DBE subcontracts a portion of the Work of its contract to another firm, the value of the
19 subcontracted Work may be counted toward the DBE COA Goal only if the DBE’s Lower-Tier
20 Subcontractor is also a DBE. Work subcontracted to a non-DBE does not count towards the DBE
21 COA Goal.

22 Count expenditures toward DBE COA Goal only if the DBE is performing a commercially
23 useful function (CUF) on that contract.

24 **DBE Subcontract and Lower Tier Subcontract Documents**

25 There must be a subcontract agreement that complies with 49 CFR Part 26 and fully
26 describes the distinct elements of Work committed to be performed by the DBE. The
27 subcontract agreement shall incorporate requirements of the primary Contract. Subcontract
28 agreements of all tiers, including lease agreements shall be readily available at the project site
29 for the Engineer review.

30 **DBE Broker/Packager**

31 The value of fees or commissions charged by a DBE Broker or a DBE behaving in a manner of
32 a Broker for providing a bona fide service, such as professional, technical, consultant,

1 managerial services, or for providing bonds or insurance will only be credited towards meeting
2 the DBE COA Goal if the firm is determined to be performing a CUF.

3 **Force Account Work**

4 When the Contractor elects to utilize force account Work to meet the DBE COA Goal, as
5 demonstrated by listing this force account Work on the DBE Utilization Certification Form, for
6 the purposes of meeting DBE COA Goal, only 50% of the Proposal amount shall be credited
7 toward the Contractors Commitment to meet the DBE COA Goal.

8 One hundred percent of the actual amounts paid to the DBE for the force account Work
9 shall be credited towards DBE COA Goal.

10 **Trucking**

11 The DBE trucking firm receives credit for the value of the transportation services it provides
12 on the Contract using trucks it owns or leases, licenses, insures, and operates with drivers it
13 employs.

14 The Work that a DBE trucking firm performs with trucks it leases from other certified DBE
15 trucking firms qualify for 100% DBE credit.

16 Only the fees/commissions the DBE receives for arranging the transportation services
17 provided is credited when trucks are leased from non-DBE trucking firm. The trucking Work
18 subcontracted to any non-DBE trucking firm will not receive credit for Work done on the
19 project.

20 Truck registration and lease agreements shall be readily available at the project site for the
21 Engineer review.

22 **DBE Manufacturer and DBE Regular Dealer**

23 If materials or supplies are obtained from a DBE Manufacturer, 100 percent of the cost of
24 materials or supplies can count toward the DBE COA Goal. The DBE Manufacturer shall be
25 certified as such by OMWBE.

26 Sixty percent (60%) of the cost of materials or supplies purchased from a DBE Regular
27 Dealer may be credited toward meeting the DBE COA Goal. If the role of the DBE Regular
28 Dealer is determined to be that of a Broker, then the DBE credit shall be limited to the fee or
29 commission it receives for its services. Regular Dealer status is granted on a Contract-by-
30 Contract basis.

1 A firm wishing to be approved as a Regular Dealer must submit a request in writing to
2 WSDOT for approval, no later than ten working days prior to Bid opening. The Approved
3 Regular Dealers List is published on WSDOT’s Office of Equal Opportunity (OEO) web site.

4 Purchase of materials or supplies from a DBE which is neither a manufacturer nor a regular
5 dealer, (i.e. Broker) only the fees or commissions charged for assistance in the procurement of
6 the materials and supplies, or fees or transportation charges for the delivery of materials or
7 supplies required on a job site, can count toward DBE COA Goal, provided the fees are not
8 excessive as compared with fees customarily allowed for similar services. The cost of the
9 materials and supplies themselves cannot be counted toward DBE COA Goal.

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

13 **Disadvantaged Business Enterprise Utilization Certification FORM # 272-056 EF**

14 To be eligible for award of the Contract, the Bidder shall properly complete and submit a
15 Disadvantaged Business Enterprise Utilization Certification with the Bidder’s sealed Bid
16 Proposal, as specified in Section 1-02.9 Delivery of Proposal. The Bidder’s Disadvantaged
17 Business Enterprise Utilization Certification must clearly demonstrate how the Bidder intends to
18 meet the DBE COA Goal. A Disadvantaged Business Enterprise Utilization Certification (WSDOT
19 Form 272-056 EF) is included in your Proposal package for this purpose as well as instructions
20 on how to properly fill out the form.

21 The Bidder is advised that the items listed below when listed in the Utilization Certification
22 must have their amounts reduced to the percentages shown and those reduced amounts will
23 be the amount applied towards meeting the DBE COA Goal.

- 24 • Force account at 50%
- 25 • Regular dealer at 60%

26 In the event of arithmetic errors in completing the Disadvantaged Business Enterprise
27 Utilization Certification the amount listed to be applied towards the DBE COA Goal for each DBE
28 shall govern and the DBE total amount shall be adjusted accordingly.

29 Note: The Contracting Agency shall consider as non-responsive and shall reject any Bid
30 Proposal submitted that does not contain a Disadvantaged Business Enterprise
31 Utilization Certification Form that accurately demonstrates how the Bidder intends
32 to meet the DBE COA Goal.

1 Disadvantaged Business Enterprise Written Confirmation Document(s) FORM # 422-031 EF

2 The Bidder shall submit a Disadvantaged Business Enterprise Written Confirmation
3 Document (completed and signed by the DBE) for each DBE firm listed in the Bidder's
4 completed Disadvantaged Business Enterprise Utilization Certification submitted with the Bid.
5 Failure to do so will result in the associated participation being disallowed, which may cause the
6 Bid to be determined to be nonresponsive resulting in Bid rejection.

7 The Confirmation Documents provide confirmation from the DBEs that they are
8 participating in the Contract as provided in the Contractor's Commitment. The Confirmation
9 Documents must be consistent with the Utilization Certification.

10 A Disadvantaged Business Enterprise Written Confirmation Document (form No. 422-031 EF)
11 is included in your Proposal package for this purpose.

12 The form(s) shall be received as specified in the special provisions for Section 1-02.9
13 Delivery of Proposal.

14 It is prohibited for the Bidder to require a DBE to submit a Written Confirmation Document
15 with any part of the form left blank. Should the Contracting Agency determine that a Written
16 Confirmation Document was signed by a DBE that was not complete; the validity of the
17 document comes into question and the associated DBE participation may not receive credit.

18 Selection of Successful Bidder/Good Faith Efforts (GFE)

19 The successful Bidder shall be selected on the basis of having submitted the lowest
20 responsive Bid, which demonstrates a good faith effort to achieve the DBE COA Goal. Achieving
21 the DBE COA Goal may be accomplished in one of two ways, as follows:

22 **1. By meeting the DBE COA Goal**

23 The best indication of GFE is to document, through submission of the Disadvantaged
24 Business Enterprise Utilization Certification and supporting Disadvantaged Business Enterprise
25 Written Confirmation Document(s) that the Bidder has obtained enough DBE participation to
26 meet or exceed the assigned DBE COA Goal. That being the case, no additional GFE
27 documentation is required. Or;

28 **2. By documentation that the Bidder made adequate GFE to meet the DBE COA Goal**

29 The Bidder may demonstrate a GFE in whole or part through GFE documentation ONLY IN
30 THE EVENT a Bidder's efforts to solicit sufficient DBE participation have been unsuccessful. In
31 this case, the Bidder must supply GFE documentation in addition to the Disadvantaged Business
32 Enterprise Utilization Certification, and supporting Disadvantaged Business Enterprise (DBE)
33 Written Confirmation Document(s).

1 Note: In the case where the Bidder was awarded the contract based on demonstrating
2 adequate GFE the advertised DBE COA Goal will not be reduced to the Bidder’s
3 partial commitment. Further, the Bidder shall demonstrate a GFE during the life of
4 the Contract to attain the DBE COA Goal as assigned to the project.

5 GFE documentation shall be received, as specified in the special provisions for
6 Section 1-02.9 Delivery of Proposal.

7 Based upon all the relevant documentation submitted in Bid or as a supplement to Bid, the
8 Contracting Agency shall determine whether the Bidder has demonstrated sufficient GFE to
9 achieve DBE participation. The Contracting Agency will make a fair and reasonable judgment of
10 whether a Bidder that did not meet the DBE COA Goal through participation, made adequate
11 good faith efforts as demonstrated by the GFE documentation.

12 **Good Faith Effort (GFE) Documentation**

13 The following is a list of types of actions, which would be considered as part of the Bidder’s
14 GFE to achieve DBE participation. It is not intended to be a mandatory checklist, nor is it
15 intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in
16 appropriate cases.

- 17 1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid
18 meetings, advertising and/or written notices) the interest of all certified DBEs who have
19 the capability to perform the Work of the Contract. The Bidder must solicit this interest
20 within sufficient time to allow the DBEs to respond to the solicitation. The Bidder must
21 determine with certainty if the DBEs are interested by taking appropriate steps to follow
22 up initial solicitations.
- 23 2. Selecting portions of the Work to be performed by DBEs in order to increase the
24 likelihood that the DBE COA Goal will be achieved. This includes, where appropriate,
25 breaking out contract Work items into economically feasible units to facilitate DBE
26 participation, even when the Contractor might otherwise prefer to perform these Work
27 items with its own forces.
- 28 3. Providing interested DBEs with adequate information about the Plans, Specifications,
29 and requirements of the Contract in a timely manner to assist them in responding to a
30 solicitation.
 - 31 a. Negotiating in good faith with interested DBEs. It is the Bidder’s responsibility to
32 make a portion of the Work available to DBE subcontractors and suppliers and to
33 select those portions of the Work or material needs consistent with the available
34 DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of
35 such negotiation includes the names, addresses, and telephone numbers of DBEs
36 that were considered; a description of the information provided regarding the Plans

- 1 and Specifications for the Work selected for subcontracting; and evidence as to why
2 additional agreements could not be reached for DBEs to perform the Work.
- 3 b. A Bidder using good business judgment would consider a number of factors in
4 negotiating with subcontractors, including DBE subcontractors, and would take a
5 firm’s price and capabilities as well as the DBE COA Goal into consideration.
6 However, the fact that there may be some additional costs involved in finding and
7 using DBEs is not in itself sufficient reason for a Bidder’s failure to meet the DBE COA
8 Goal, as long as such costs are reasonable. Also, the ability or desire of a Contractor
9 to perform the Work of a Contract with its own organization does not relieve the
10 Bidder of the responsibility to make Good Faith Efforts. Contractors are not,
11 however, required to accept higher quotes from DBEs if the price difference is
12 excessive or unreasonable.
- 13 4. Not rejecting DBEs as being unqualified without sound reasons based on a thorough
14 investigation of their capabilities. The Contractor’s standing within its industry,
15 membership in specific groups, organizations, or associations and political or social
16 affiliations (for example union vs. non-union employee status) are not legitimate causes
17 for the rejection or non-solicitation of bids in the Contractor’s efforts to meet the DBE
18 COA Goal.
- 19 5. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or
20 insurance as required by the recipient or Contractor.
- 21 6. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies,
22 materials, or related assistance or services.
- 23 7. Effectively using the services of available minority/women community organizations;
24 minority/women contractors’ groups; local, State, and Federal minority/women
25 business assistance offices; and other organizations as allowed on a case-by-case basis
26 to provide assistance in the recruitment and placement of DBEs.
- 27 8. Documentation of GFE must include copies of each DBE and non-DBE subcontractor
28 quotes submitted to the Bidder when a non-DBE subcontractor is selected over a DBE
29 for Work on the Contract. (ref. updated DBE regulations – 26.53(b)(2)(vi) and App. A)

30 **Administrative Reconsideration of GFE Documentation**

31 Any Bidder has the right to reconsideration but only for the purpose of reassessing the GFE
32 documentation that was originally submitted with their Bid, and determined to be inadequate.

- 33 • The Bidder must request within 48 hours of GFE determination and schedule a
34 reconsideration hearing within seven calendar days of notification of being
35 nonresponsive or forfeit the right to reconsideration.

- 1 • The reconsideration decision on the adequacy of the Bidder’s GFE documentation
- 2 shall be made by an official who did not take part in the original determination.
- 3 • Only the GFE documentation submitted and evaluated to meeting the required DBE
- 4 COA Goal shall be considered. Bidder shall not introduce new documentation at the
- 5 reconsideration hearing.
- 6 • The Bidder shall have the opportunity to meet in person with the official for the
- 7 purpose of setting forth the Bidder’s position as to why the GFE documentation
- 8 demonstrates a sufficient effort.
- 9 • The reconsideration official shall provide the Bidder with a written decision on
- 10 reconsideration within five working days of the hearing explaining the basis for their
- 11 finding.

12 **Procedures between Award and Execution**

13 After Award and prior to Execution, the Contractor shall provide the additional information

14 described below. Failure to comply shall result in the forfeiture of the Bidder’s Proposal bond or

15 deposit.

- 16 1. Additional information for all successful DBEs as shown on the Disadvantaged Business
- 17 Enterprise Utilization Certification:
 - 18 a. Correct business name, federal employee identification number (if available),
 - 19 and mailing address.
 - 20 b. List of all Bid items (with a clear description of the Work to be performed)
 - 21 assigned to each successful DBE, including the dollar value.
 - 22 c. Description of partial items (if any) to be sublet to each successful DBE specifying
 - 23 the Work committed under each item to be performed and including the dollar
 - 24 value of the DBE portion.
 - 25 d. Total amounts shown for each DBE shall match the amount shown on the
 - 26 Disadvantaged Business Enterprise Utilization Certification. A breakdown that
 - 27 does not conform to the Disadvantaged Business Enterprise Utilization
 - 28 Certification or that demonstrates a different amount of DBE participation than
 - 29 that included in the Disadvantaged Business Enterprise Utilization Certification
 - 30 will be returned for correction.
- 31 2. A list of all firms who submitted a bid or quote in attempt to participate in this project
- 32 whether they were successful or not. Include the business name and mailing address.
- 33

1 Note: The firms identified by the Contractor may be contacted by the Contracting Agency
2 to solicit general information as follows: age of the firm and average of its gross
3 annual receipts over the past three-years.

4 **Procedures after Execution**

5 **Commercially Useful Function (CUF)**

6 The Contractor may only take credit for the payments made for Work performed by
7 a DBE that is determined to be performing a CUF. This applies to all DBEs performing
8 Work on a project, whether or not the DBEs are COA, if the Contractor wants to receive
9 credit for their participation. The Engineer will conduct CUF reviews to ascertain
10 whether DBEs are performing a CUF. A DBE performs a CUF when it is carrying out its
11 responsibilities of its contract by actually performing, managing, and supervising the
12 Work involved. The DBE must be responsible for negotiating price; determining quality
13 and quantity; ordering the material and installing (where applicable); and paying for the
14 material itself. If a DBE does not perform “all” of these functions on a furnish-and-install
15 contract, it has not performed a CUF and the cost of materials cannot be counted
16 toward DBE COA Goal. Leasing of equipment from a leasing company is allowed.
17 However, leasing/purchasing equipment from the Contractor is not allowed. Lease
18 agreements shall be readily available for review by the Engineer.

19 In order for a DBE traffic control company to be considered to be performing a CUF,
20 the DBE must be in control of its work inclusive of supervision. The DBE shall employ a
21 Traffic Control Supervisor who is directly involved in the management and supervision
22 of the traffic control employees and services.

23 The DBE does not perform a CUF if its role is limited to that of an extra participant in
24 a transaction, contract, or project through which the funds are passed in order to obtain
25 the appearance of DBE participation.

26 The Engineer will use the following factors in determining whether a DBE trucking
27 company is performing a CUF:

- 28 • The DBE shall be responsible for the management and supervision of the entire
29 trucking operation. The owner demonstrates business related knowledge, shows
30 up on site and is active in running the business.
- 31 • The DBE finances are independently controlled by the DBE.
- 32 • The DBE shall with its own workforce, operate at least one fully licensed, insured,
33 and operational truck used on the Contract. Employees are shown exclusively on
34 the DBE payroll.
- 35 • The DBE may lease trucks without drivers from a non-DBE truck leasing
36 company. If the DBE leases trucks from a non-DBE truck leasing company and

- 1 uses its own employees as drivers, it is entitled to credit for the total value of
2 these hauling services.
- 3 • Lease agreements for trucks shall indicate that the DBE has exclusive use of and
4 control over the truck. This does not preclude the leased truck from working for
5 others provided it is with the consent of the DBE and the lease provides the DBE
6 absolute priority for use of the leased truck.
 - 7 • Leased trucks shall display the name and identification number of the DBE.
 - 8 • Leased trucks shall be driven by DBE employees included in the DBE’s payroll.

9 The DBE may lease trucks from another DBE including a DBE owner-operator. The
10 DBE who leases trucks from another DBE shall claim participation for the total value of
11 the transportation services the lessee DBE provides on the Contract.

12 **Joint Checking**

13 A joint check is issued by a Contractor to a Subcontractor and to a material supplier
14 for items or services to be incorporated into a project.

15 A joint check agreement must be approved by the Engineer and requested by the
16 DBE involved using the DBE Joint Check Request Form (form #) prior to its use. The
17 form must accompany the DBE Joint Check Agreement between the parties involved,
18 including the conditions of the arrangement and expected use of the joint checks.

19 The approval to use joint checks and the use will be closely monitored by the
20 Engineer. To receive DBE credit for performing a CUF with respect to obtaining materials
21 and supplies, a DBE must “be responsible for negotiating price, determining quality and
22 quantity, ordering the material and installing (where applicable) and paying for the
23 material itself.” The Contractor shall submit DBE Joint Check Request Form for the
24 Engineer approval prior to using a joint check.

25 Material costs paid by the Contractor directly to the material supplier are not
26 allowed. If proper procedures are not followed or the Engineer determines that the
27 arrangement results in lack of independence for the DBE involved, no DBE credit will be
28 given for the DBE’s participation as it relates to the material cost.

29 **Prompt Payment**

30 Refer to Section 1-08.1 for Prompt Payment requirements associated with this
31 contract.

32 **Reporting**

33 All certified DBE Work whether COA or race neutral participation is reported. The
34 Contractor shall submit a Monthly Report of Amounts Credited as DBE Participation to
35 the Project Engineer each month, regardless of whether payments were made or Work
36 occurred, between Execution of the Contract and the final amounts paid to DBE

1 contractor or Completion of the Contract using the application available at:
2 <https://remoteapps.wsdot.wa.gov/mapsdata/tools/dbeparticipation/>. The monthly
3 report is due 20 calendar days following the end of the month. After Execution of the
4 Contract, the Contractor shall send an e-mail to DBEAdmin@wsdot.wa.gov containing
5 the following information: the first and last name, e-mail address, title and phone
6 number of the person that will be submitting the above documents for the Contractor.
7 The e-mail shall include the WSDOT contract number they will be reporting on. After
8 receipt of this information by WSDOT, the Contractor will receive an e-mail containing
9 their username and password for the application and a link to the application. Reporting
10 instructions are available in the application.

11 In the event that the payments to a DBE contractor have been made by an entity
12 other than the Contractor, as in the case of a lower-tier Subcontractor or supplier, then
13 the Contractor shall obtain evidence of payments from the paying entity and report
14 these payments to the Engineer.

15 **Changes in COA Work Committed to DBE**

16 The Contractor shall utilize the COA DBEs to perform the work and supply the materials for
17 which each is committed unless approved by the Engineer. The Contractor shall not be entitled
18 to any payment for work or material completed by the Contractor or subcontractors that was
19 committed to be completed by the COA DBEs.

20 **Owner Initiated Changes**

21 The Engineer will consider the impact on DBE participation in instances where the
22 Engineer changes Work that was committed to a DBE at the time of Contract Award. In
23 such instances, the Contractor shall not be required to substitute for the Work but is
24 encouraged to do so. The Engineer may direct DBE participation or solicitation of DBEs
25 as part of a change order.

26 **Contractor-Initiated Changes**

27 The Contractor cannot reduce the amount of work of a COA DBE without good
28 cause, even if the Contractor continues to meet the DBE COA Commitment through
29 other means. Reducing a COA DBE's Commitment is viewed as a partial DBE
30 termination, subject to the procedures below.

31 **Original Quantity Underruns**

32 In the event that Work committed to a DBE firm as part of the COA underruns the
33 original planned quantities the Contractor is encouraged to substitute the remaining
34 applicable Work to another DBE but is not required to do so.

35 **Contractor Proposed DBE Substitutions**

36 Requests to substitute a COA DBE must be for good cause (see DBE termination
37 process below), and requires the written approval of the Engineer. After receiving a

1 termination with good cause approval, the Contractor may only replace a DBE with
2 another certified DBE. When any changes encountered between Contract Award and
3 Execution that result in a substitution of COA DBE, the substitute DBE shall be certified
4 prior to the due date for bids on the Contract.

5 **DBE Termination**

6 Termination of a COA DBE (or an approved substitute DBE) is only allowed in whole
7 or in part with prior written approval of the Engineer. The Contractor must have good
8 cause to terminate a COA DBE.

9 Good cause typically includes situations where the DBE Subcontractor is unable or
10 unwilling to perform the work of its subcontract. Good cause may exist if:

- 11 • The DBE fails or refuses to execute a written contract.
- 12 • The DBE fails or refuses to perform the Work of its subcontract in a way
13 consistent with normal industry standards.
- 14 • The DBE fails or refuses to meet the Contractor’s reasonable
15 nondiscriminatory bond requirements.
- 16 • The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness.
- 17 • The DBE is ineligible to work on public works projects because of suspension
18 and debarment proceedings pursuant to federal law or applicable State law.
- 19 • The DBE voluntarily withdraws from the project, and provides written notice
20 of its withdrawal.
- 21 • The DBE’s work is deemed unsatisfactory by the Engineer and not in
22 compliance with the contract.
- 23 • The DBE’s owner dies or becomes disabled with the result that the DBE is
24 unable to complete its Work on the contract.

25 Good cause does not exist if:

- 26 • The Contractor seeks to terminate a COA DBE so that the Contractor can self-
27 perform the Work.
- 28 • The Contractor seeks to terminate a COA DBE so the Contractor can
29 substitute another DBE contractor or non-DBE contractor after Contract
30 Award.
- 31 • The failure or refusal of the COA DBE to perform its Work on the subcontract
32 results from the bad faith or discriminatory action of the Contractor (e.g., the
33 failure of the Contractor to make timely payments or the unnecessary placing
34 of obstacles in the path of the DBE’s Work).

35 Prior to requesting termination, the Contractor shall give notice in writing to the DBE
36 with a copy to the Engineer of its intent to request to terminate DBE Work and the
37 reasons for doing so. The DBE shall have five (5) working days to respond to the

1 Contractor’s notice. The DBE’s response shall either support the termination or advise
2 the Engineer and the Contractor of the reasons it objects to the termination of its
3 subcontract.

4 When a COA DBE is terminated, or fails to complete its work on the contract for any
5 reason, the Contractor shall substitute with another DBE, substitute other DBE
6 participation or provide documentation of GFE. A plan to achieve the COA DBE
7 Commitment shall be submitted to the Engineer within 2 working days of the approval
8 of termination or the Contract shall be suspended until such time the substitution plan
9 is submitted.

10 **Decertification/Graduation**

11 When a DBE is “decertified” or “graduates” from the DBE program during the course
12 of the Contract, the participation of that DBE shall continue to count towards the DBE
13 COA Goal as long as the subcontract with the DBE was executed prior to the
14 decertification notice. The Contractor is obligated to substitute when a DBE does not
15 have an executed subcontract agreement at the time of decertification/graduation.

16 **Consequences of Non-Compliance**

17 **Breach of Contract**

18 Each contract with a Contractor (and each subcontract the Contractor signs with a
19 Subcontractor) must include the following assurance clause:

20 The Contractor, subrecipient, or Subcontractor shall not discriminate on the basis of
21 race, color, national origin, or sex in the performance of this contract. The Contractor
22 shall carry out applicable requirements of 49 CFR Part 26 in the award and
23 administration of DOT-assisted contracts. Failure by the Contractor to carry out these
24 requirements is a material breach of this contract, which may result in the termination
25 of this contract or such other remedy as the recipient deems appropriate, which may
26 include, but is not limited to:

- 27 (1) Withholding monthly progress payments;
- 28 (2) Assessing sanctions;
- 29 (3) Liquidated damages; and/or
- 30 (4) Disqualifying the Contractor from future bidding as non-responsible.

31 **Notice**

32 If the Contractor or any Subcontractor, Consultant, Regular Dealer, or service
33 provider is deemed to be in non-compliance, the Contractor will be informed in writing,
34 by certified mail by the Engineer that sanctions will be imposed for failure to meet the

1 DBE COA Commitment and/or submit documentation of good faith efforts. The notice
2 will state the specific sanctions to be imposed which may include impacting a Contractor
3 or other entity’s ability to participate in future contracts.

4 **Sanctions**

5 If it is determined that the Contractor’s failure to meet all or part of the DBE COA
6 Commitment is due to the Contractor’s inadequate good faith efforts throughout the
7 life of the Contract, including failure to submit timely, required Good Faith Efforts
8 information and documentation, the Contractor may be required to pay DBE penalty
9 equal to the amount of the unmet Commitment, in addition to the sanctions outlined in
10 Section 1-07.11(5).

11 **Payment**

12 Compensation for all costs involved with complying with the conditions of this
13 Specification and any other associated DBE requirements is included in payment for the
14 associated Contract items of Work, except otherwise provided in the specifications.

15 **1-07.11(13) Special Training Provisions**

16 **General Requirements**

17 The Contractor’s equal employment opportunity, affirmative action program shall include
18 the requirements set forth below. The Contractor shall provide on-the-job training aimed at
19 developing trainees to journeyman status in the trades involved. The number of training hours
20 shall be determined. Trainees shall not be assigned less than 400 hours. The Contractor may
21 elect to accomplish training as part of the Work of a Subcontractor; however, the Prime
22 Contractor shall retain the responsibility for complying with these Special Provisions. The
23 Contractor shall also ensure that this training provision is made applicable to any subcontract
24 that includes training.

25 **Trainee Approval**

26 The Federal government requires Contracting Agencies to include these training provisions
27 as a condition attached to the receipt of Federal Highway funding. The Federal government has
28 determined that the training and promotion of members of certain minority groups and women
29 is a primary objective of this training provision. The Contractor shall make every effort to enroll
30 minority groups and women trainees to the extent such persons are available within a
31 reasonable recruitment area. This training provision is not intended and shall not be used to
32 discriminate against any applicant for training, whether that person is a minority, woman, or
33 otherwise. A non-minority male trainee or apprentice may be approved provided the following
34 requirements are met:

- 35 1. The Contractor is otherwise in compliance with the Contract’s Equal Employment
36 Opportunity and On-the-Job Training requirements and provides documentation of the
37 efforts taken to fill the specific training position with either minorities or females;

- 1 2. Or, if not otherwise in compliance, furnishes evidence of his/her systematic and direct
2 recruitment efforts in regard to the position in question and in promoting the
3 enrollment and/or employment of minorities and females in the craft which the
4 proposed trainee is to be trained;
- 5 3. And the Contractor has made a good faith effort towards recruiting of minorities and
6 women. As a minimum, this good faith effort shall consist of the following:
- 7 • Distribution of written notices of available employment opportunities with the
8 Contractor and enrollment opportunities with its unions. Distribution should
9 include but not be limited to minority and female recruitment sources and
10 minority and female community organizations;
 - 11 • Records documenting the Contractor’s efforts, and the outcome of those efforts,
12 to employ minority and female applicants and/or refer them to unions;
 - 13 • Records reflecting the Contractor’s efforts in participating in developing minority
14 and female on-the-job training opportunities, including upgrading programs and
15 apprenticeship opportunities;
 - 16 • Distribution of written notices to unions and training programs disseminating the
17 Contractor’s EEO policy and requesting cooperation in achieving EEO and OJT
18 obligations.

19 No employee shall be employed as a trainee in any classification in which the employee
20 has successfully completed a training course leading to journeyman status or in which the
21 employee has been employed as a journeyman. The Contractor’s records shall document
22 the methods for determining the trainee’s status and findings in each case. When feasible,
23 25 percent of apprentices or trainees in each occupation shall be in their first year of
24 apprenticeship or training.

25 For the purpose of this Specification, acceptable training programs are those employing
26 trainees/apprentices registered with the following:

- 27 1. Washington State Department of Labor & Industries — State Apprenticeship
28 Training Council (SATC) approved apprenticeship agreement:
- 29 a. Pursuant to RCW 49.04.060, an apprenticeship agreement shall be;
 - 30 i. an individual written agreement between an employer and apprentice
 - 31 ii. a written agreement between (an employer or an association of
32 employers) and an organization of employees describing conditions of
33 employment for apprentices
 - 34 iii. a written statement describing conditions of employment for apprentices
35 in a plant where there is no bona fide employee organization.

1 All such agreements shall conform to the basic standards and other provisions of
2 RCW Chapter 49.

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

5 Or

6 3. Trainees participating in a non-BAT/SATC program, which has been approved by the
7 contracting agency for the specific project.

8 4. For assistance in locating trainee candidates, the Contractor may call WSDOT’s OJT
9 Support Services Technical Advisor at (360) 705-7088, (206) 587-4954 or toll free at
10 1-866-252-2680.

11 **Obligation to Provide Information**

12 Upon starting a new trainee, the Contractor shall furnish the trainee a copy of the approved
13 program the Contractor will follow in providing the training. Upon completion of the training,
14 the Contractor shall provide the Contracting Agency with a certification showing the type and
15 length of training satisfactorily completed by each trainee.

16 **Training Program Approval**

17 The Training Program shall meet the following requirements:

18 1. The Training Program (DOT Form 272-049) must be submitted to the Engineer for
19 approval prior to commencing Contract Work and shall be resubmitted when
20 modifications to the program occur.

21 2. The minimum length and type of training for each classification will be as established
22 in the training program as approved by the Contracting Agency.

23 3. The Training Program shall contain the trades proposed for training, the number of
24 trainees, the hours assigned to the trade and the estimated beginning work date for
25 each trainee.

26 4. Unless otherwise specified, Training Programs will be approved if the proposed
27 number of training hours equals the training hours required by the Contract and the
28 trainees are not assigned less than 400 hours each.

29 5. After approval of the training program, information concerning each individual
30 trainee and good faith effort documentation shall be submitted on DOT
31 Form 272-050.

- 1 6. In King County, laborer trainees or apprentices will not be approved on contracts
2 containing less than 2,000 training hours as specified in this Section. In King County,
3 no more than twenty percent (20%) of hours proposed for trainees or apprentices
4 shall be in the laborer classification when the Contract contains 2,000 or more hours
5 of training as specified in this Section. Trainees shall not be assigned less than
6 400 hours.
- 7 7. Flagging programs will not be approved. Other programs that include flagging
8 training will only be approved if the flagging portion is limited to an orientation of
9 not more than 20 hours.
- 10 8. It is the intention of these provisions that training is to be provided in the
11 construction crafts rather than clerk-typists or secretarial-type positions. Training is
12 permissible in lower level management positions such as office engineers,
13 estimators, timekeepers, etc., where the training is oriented toward construction
14 applications. Some off-site training is permissible as long as the training is an integral
15 part of an approved training program.
- 16 9. It is normally expected that a trainee will begin training on the Project as soon as
17 feasible after start of Work, utilizing the skill involved and remain on the Project as
18 long as training opportunities exist in the Work classification or upon completion of
19 the training program. It is not required that all trainees be on board for the entire
20 length of the Contract. The number trained shall be determined on the basis of the
21 total number enrolled on the Contract for a significant period.
- 22 10. Wage Progressions: Trainees will be paid at least the applicable ratios or wage
23 progressions shown in the apprenticeship standards published by the Washington
24 State Department of Labor and Industries. In the event that no training program has
25 been established by the Department of Labor and Industries, the trainee shall be
26 paid in accordance with the provisions of RCW 39.12.021 which reads as follows:

27 Apprentice workmen employed upon public works projects for whom an apprenticeship
28 agreement has been registered and approved with the State Apprenticeship Council
29 pursuant to RCW 49.04, must be paid at least the prevailing hourly rate for an apprentice of
30 that trade. Any workman for whom an apprenticeship agreement has not been registered
31 and approved by the State Apprenticeship Council shall be considered to be a fully qualified
32 journeyman, and, therefore, shall be paid at the prevailing hourly rate for journeymen.

33 **Compliance**

34 In the event that the Contractor is unable to accomplish the required training hours but can
35 demonstrate a good faith effort to meet the requirements as specified, then the Contracting
36 Agency will adjust the training goals accordingly.

1 **Requirements for Non BAT/SATC Approved Training Programs**

2 Contractors who are not affiliated with a program approved by BAT or SATC may have their
3 training program approved provided that the program is submitted for approval on DOT
4 Form 272-049, and the following standards are addressed and incorporated in the Contractor’s
5 program:

- 6 • The program establishes minimum qualifications for persons entering the training
7 program.
- 8 • The program shall outline the Work processes in which the trainee will receive
9 supervised work experience and training on-the-job and the allocation of the
10 approximate time to be spent in each major process. The program shall include the
11 method for recording and reporting the training completed shall be stated.
- 12 • The program shall include a numeric ratio of trainees to journeymen consistent with
13 proper supervision, training, safety, and continuity of employment. The ratio
14 language shall be specific and clear as to application in terms of job site and
15 workforce during normal operations (normally considered to fall between 1:10 and
16 1:4).
- 17 • The terms of training shall be stated in hours. The number of hours required for
18 completion to journeyman status shall be comparable to the apprenticeship hours
19 established for that craft by the SATC. The following are examples of programs that
20 are currently approved:

<u>CRAFT</u>	<u>HOURS</u>
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

- 29 • The method to be used for recording and reporting the training completed shall be
30 stated.
- 31 • A numeric ratio of trainees to journeymen shall be established. It shall be consistent
32 with proper supervision, training, safety, and continuity of employment. The ratio
33 language shall be specific and clear as to application in terms of job site and
34 workforce during normal operations.

35 **Measurement**

36 The Contractor may request that the total number of “training” hours for the Contract be
37 increased subject to approval by the Contracting Agency. This reimbursement will be made
38 even though the Contractor receives additional training program funds from other sources,
39 provided such other sources do not prohibit other reimbursement. Reimbursement to the

1 Contractor for off-site training as indicated previously may only be made when the Contractor
2 does one or more of the following and the trainees are concurrently employed on a Federal-aid
3 project:

- 4 • contributes to the cost of the training,
- 5 • provides the instruction to the trainee,
- 6 • pays the trainee’s wages during the off-site training period.

7 Reimbursement will be made upon receipt of a certified invoice that shows the related
8 payroll number, the name of trainee, total hours trained under the program, previously paid
9 hours under the Contract, hours due this estimate, and dollar amount due this estimate. The
10 certified invoice shall show a statement indicating the Contractor’s effort to enroll minorities
11 and women when a new enrollment occurs. If a trainee is participating in a SATC/BAT approved
12 apprenticeship program, a copy of the certificate showing apprenticeship registration must
13 accompany the first invoice on which the individual appears. Reimbursement for training
14 occurring prior to approval of the training program will be allowed if the Contractor verbally
15 notifies the Engineer of this occurrence at the time the apprentice/trainee commences work. A
16 trainee/apprentice, regardless of craft, must have worked on the Contract for at least 20 hours
17 to be eligible for reimbursement.

18 **Payment**

19 The Contractor will be reimbursed under the item “Training” per hour for each hour of
20 training for each employee as a Negotiated Support Service.

21 **1-07.12 Federal Agency Inspection**

22 Federal laws, rules, and regulations shall be observed by the Contractor on Federal-aid
23 projects. This Work is subject to inspection by the appropriate Federal agency. The Contractor
24 shall cooperate with the Federal agencies in these inspections. These inspections shall not make
25 the Federal Government a party to the Contract and shall not constitute an interference with
26 the rights of the Contracting Agency or the Contractor.

27 **1-07.13 Contractor’s Responsibility for Work**

28 **1-07.13(1) General**

29 All Work and material for the Contract, including any change order Work, shall be at the
30 sole risk of the Contractor until the entire improvement has been completed as determined by
31 the Engineer, except as provided in this Section.

32 The Contractor shall rebuild, repair, restore, and make good all damages to any portion of
33 the permanent or temporary Work occurring before the Physical Completion Date and shall
34 bear all the expense to do so, except damage to the permanent Work caused by: (a) acts of
35 God, such as earthquake, floods, or other cataclysmic phenomenon of nature, or (b) acts of the

1 public enemy or of governmental authorities; or (c) slides in cases where Section 2-03.3(11) is
2 applicable; provided, however, that these exceptions shall not apply should damages result
3 from the Contractor’s failure to take reasonable precautions or to exercise sound engineering
4 and construction practices in conducting the Work.

5 If the performance of the Work is delayed as a result of damage by others, an extension of
6 time will be evaluated in accordance with Section 1-08.8.

7 Nothing contained in this Section shall be construed as relieving the Contractor of
8 responsibility for, or damage resulting from, the Contractor’s operations or negligence, nor
9 shall the Contractor be relieved from full responsibility for making good any defective Work or
10 materials as provided for under Section 1-05.

11 **1-07.13(2) Relief of Responsibility for Completed Work**

12 Upon written request, the Contractor may be relieved of the duty of maintaining and
13 protecting certain portions of the Work, as described below, which have been completed in all
14 respects in accordance with the requirements of the Contract. If the Engineer provides written
15 approval, the Contractor will be relieved of the responsibility for damage to said completed
16 portions of the Work resulting from use by public traffic or from the action of the elements or
17 from any other cause, but not from damage resulting from the Contractor’s operations or
18 negligence.

19 Portions of the Work for which the Contractor may be relieved of the duty of maintenance
20 and protection as provided in the above paragraph include but are not limited to the following:

- 21 1. The completion of 1/4 mile of Roadway or 1/4 mile of one Roadway of a divided
22 Highway or a frontage road including the Traveled Way, Shoulders, drainage control
23 facilities, planned Roadway protection Work, lighting, and any required traffic control
24 and access facilities.
- 25 2. A bridge or other Structure of major importance.
- 26 3. A complete unit of a traffic control signal system or of a Highway lighting system.
- 27 4. A complete unit of permanent Highway protection Work.
- 28 5. A building that is functionally complete and open to the public.
- 29 6. Any Contract Proposal item.

1 **1-07.13(3) Relief of Responsibility for Damage by Public Traffic**

2 When it is necessary for public traffic to utilize a Highway facility during construction, the
3 Contractor will be relieved of responsibility for damages to permanent Work by public traffic
4 under the following circumstances:

- 5 1. The Work is in accordance with the Contract Plans or approved stage construction plans,
- 6 2. The Work is on a section of Roadway required by the Contract to be opened to public
7 traffic, and
- 8 3. The traffic control is in accordance with the approved Traffic Control Plans.

9 If traffic is relocated to another section of Roadway, the Contractor shall resume
10 responsibility for the Work until such time as the section of Roadway is again open to public
11 traffic or the Contractor submits a written request for Work that is completed to a point where
12 relief can be granted in accordance with Section 1-07.13(2).

13 **1-07.13(4) Repair of Damage**

14 The Contractor shall promptly repair all damage to either temporary or permanent Work as
15 ordered by the Engineer. For damage qualifying for relief under Sections 1-07.13(1), 1-07.13(2),
16 1-07.13(3), or 8-17.5, payment will be made in accordance with Section 1-09.4, using the
17 estimated Negotiated Support Service item “Reimbursement for Third Party Damage”.

18 In the event the Contracting Agency pays for damage to the Contractor’s Work or for
19 damage to the Contractor’s equipment caused by third parties, any claim the Contractor had or
20 may have had against the third party shall be deemed assigned to the Contracting Agency, to
21 the extent of the Contracting Agency’s payment for such damage.

22 Payment will be limited to repair of damaged Work only. No payment will be made for delay
23 or disruption of Work.

24 For the purpose of providing a common Proposal for all Bidders, the Contracting Agency has
25 entered an amount for “Reimbursement for Third Party Damage” in the Proposal to become a
26 part of the total Bid by the Contractor.

27 **1-07.14 Responsibility for Damage**

28 The State, Governor, Commission, Secretary, and all officers and employees of the State,
29 including but not limited to those of the Department, will not be responsible in any manner: for
30 any loss or damage that may happen to the Work or any part; for any loss of material or
31 damage to any of the materials or other things used or employed in the performance of Work;
32 for injury to or death of any persons, either workers or the public; or for damage to the public

1 for any cause which might have been prevented by the Contractor, or the workers, or anyone
2 employed by the Contractor.

3 The Contractor shall be responsible for any liability imposed by law for injuries to, or the
4 death of, any persons or damages to property resulting from any cause whatsoever during the
5 performance of the Work, or before final acceptance.

6 Subject to the limitations in this Section, and RCW 4.24.115, the Contractor shall indemnify,
7 defend, and save harmless the State, Governor, Commission, Secretary, and all officers and
8 employees of the State from all claims, suits, or actions brought for injuries to, or death of, any
9 persons or damages resulting from construction of the Work or in consequence of any
10 negligence or breach of Contract regarding the Work, the use of any improper materials in the
11 Work, caused in whole or in part by any act or omission by the Contractor or the agents or
12 employees of the Contractor during performance or at any time before final acceptance. In
13 addition to any remedy authorized by law, the State may retain so much of the money due the
14 Contractor as deemed necessary by the Engineer to ensure the defense and indemnification
15 obligations of this Section until disposition has been made of such suits or claims.

16 Subject to the limitations in this Section and RCW 4.24.115, the Contractor shall indemnify,
17 defend, and save harmless any county, city, or region, its officers, and employees connected
18 with the Work, within the limits of which county, city, or region the Work is being performed,
19 all in the same manner and to the same extent as provided above for the protection of the
20 State, its officers and employees, provided that no retention of money due the Contractor be
21 made by the State except as provided in RCW 60.28, pending disposition of suits or claims for
22 damages brought against the county, city, or region.

23 Pursuant to RCW 4.24.115, if such claims, suits, or actions result from the concurrent
24 negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the
25 Contractor or the Contractor's agent or employees, the indemnity provisions provided in the
26 preceding paragraphs of this Section shall be valid and enforceable only to the extent of the
27 Contractor's negligence or the negligence of its agents and employees.

28 The Contractor shall bear sole responsibility for damage to completed portions of the
29 Project and to property located off the Project caused by erosion, siltation, runoff, or other
30 related items during the construction of the Project. The Contractor shall also bear sole
31 responsibility for any pollution of rivers, streams, ground water, or other waters that may occur
32 as a result of construction operations.

33 The Contractor shall exercise all necessary precautions throughout the life of the Project to
34 prevent pollution, erosion, siltation, and damage to property.

35 The Contracting Agency will forward to the Contractor all claims filed against the State
36 according to RCW 4.92.100 that are deemed to have arisen in relation to the Contractor's Work
37 or activities under this Contract, and, in the opinion of the Contracting Agency, are subject to
38 the defense, indemnity, and insurance provisions of these Standard Specifications. Claims will

1 be deemed tendered to the Contractor and insurer, who has named the State as a named
2 insured or an additional insured under the Contract’s insurance provisions, once the claim has
3 been forwarded via certified mail to the Contractor. The Contractor shall be responsible to
4 provide a copy of the claim to the Contractor’s designated insurance agent who has
5 obtained/met the Contract’s insurance provision requirements.

6 Within 60 calendar days following the date a claim is sent by the Contracting Agency to the
7 Contractor, the Contractor shall notify the Claimant and WSDOT (Risk Management Office,
8 PO Box 47418, Olympia, WA 98504-7418) of the following:

- 9 a. Whether the claim is allowed or is denied in whole or in part, and, if so, the specific
10 reasons for the denial of the individual claim, and if not denied in full, when payment has
11 been or will be made to the claimant(s) for the portion of the claim that is allowed, or
- 12 b. If resolution negotiations are continuing. In this event, status updates will be reported
13 no longer than every 60 calendar days until the claim is resolved or a lawsuit is filed.

14 If the Contractor fails to provide the above notification within 60 calendar days, then the
15 Contractor shall yield to the Contracting Agency sole and exclusive discretion to allow all or part
16 of the claim on behalf of the Contractor, and the **Contractor shall be deemed to have WAIVED**
17 **any and all defenses, objections, or other avoidances to the Contracting Agency’s allowance**
18 **of the claim, or the amount allowed by the Contracting Agency**, under common law,
19 constitution, statute, or the Contract and these *Standard Specifications*. If all or part of a claim
20 is allowed, the Contracting Agency will notify the Contractor via certified mail that it has
21 allowed all or part of the claim and make appropriate payments to the claimant(s) with State
22 funds.

23 Payments of State funds by the Contracting Agency to claimant(s) under this Section will be
24 made on behalf of the Contractor and at the expense of the Contractor, and the Contractor
25 shall be unconditionally obligated to reimburse the Contracting Agency for the “total
26 reimbursement amount”, which is the sum of the amount paid to the claimant(s), plus all costs
27 incurred by the Contracting Agency in evaluating the circumstances surrounding the claim, the
28 allowance of the claim, the amount due to the claimant, and all other direct costs for the
29 Contracting Agency’s administration and payment of the claim on the Contractor’s behalf. The
30 Contracting Agency will be authorized to withhold the total reimbursement amount from
31 amounts due the Contractor, or, if no further payments are to be made to the Contractor under
32 the Contract, the Contractor shall directly reimburse the Contracting Agency for the amounts
33 paid within 30 days of the date notice that the claim was allowed was sent to the Contractor. In
34 the event reimbursement from the Contractor is not received by the Contracting Agency within
35 30 days, interest shall accrue on the total reimbursement amount owing at the rate of
36 12 percent per annum calculated at a daily rate from the date the Contractor was notified that
37 the claim was allowed. The Contracting Agency’s costs to enforce recovery of these amounts
38 are additive to the amounts owing.

1 The Contractor specifically assumes all potential liability for actions brought by employees
2 of the Contractor and, solely for the purpose of enforcing the defense and indemnification
3 obligations set forth in Section 1-07.14, the Contractor specifically waives any immunity granted
4 under the State industrial insurance law, Title 51 RCW. This waiver has been mutually
5 negotiated by the parties. The Contractor shall similarly require that each Subcontractor it
6 retains in connection with the Project comply with the terms of this paragraph, waive any
7 immunity granted under Title 51 RCW, and assume all liability for actions brought by employees
8 of the Subcontractor.

9 **1-07.15 Temporary Water Pollution/Erosion Control**

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

14 The Contractor shall perform all temporary water pollution/erosion control measures
15 shown in the Plans, specified in the Special Provisions, proposed by the Contractor and
16 approved by the Engineer, or ordered by the Engineer as Work proceeds.

17 **1-07.15(1) Spill Prevention, Control, and Countermeasures Plan**

18 The Contractor shall prepare and implement a Project-specific spill prevention, control, and
19 countermeasures plan (SPCC Plan) for the duration of the Project. The Contractor shall submit
20 the plan to the Project Engineer no later than the date of the preconstruction conference. No
21 on-site construction activities may commence until the Contracting Agency accepts an SPCC
22 Plan for the Project. An SPCC Plan template and guidance information is available at
23 www.wsdot.wa.gov/environment/hazmat/spillprevention.htm.

24 The SPCC Plan shall address all fuels, petroleum products, and hazardous materials, as
25 defined in Chapter 447 of the *WSDOT Environmental Procedures Manual M 31-11*. Occupational
26 safety and health requirements that may pertain to SPCC Plan implementation are contained in,
27 but not limited to, WAC 296-824 and WAC 296-843. The SPCC Plan shall address conditions that
28 may be required by Section 3406 of the current International Fire Code, or as approved by the
29 local Fire Marshal.

30 **Implementation Requirements**

31 The Contractor shall update the SPCC Plan throughout Project construction so that the
32 written plan reflects actual site conditions and practices. The Contractor shall update the SPCC
33 Plan at least annually and maintain a copy of the updated SPCC Plan on the Project site. The
34 Contractor shall fully implement the SPCC Plan, as accepted and updated, at all times.

1 **SPCC Plan Element Requirements**

2 The SPCC Plan shall set forth the following information in the following order:

- 3 1. **Responsible Personnel** – Identify the names, titles, and contact information for the
4 personnel responsible for implementing and updating the plan and for responding to
5 spills.
- 6 2. **Spill Reporting** – List the names and telephone numbers of the Federal, State, and
7 local agencies the Contractor shall notify in the event of a spill.
- 8 3. **Project and Site Information** – Describe the following items:
- 9 a. The Project Work.
- 10 b. The site location and boundaries.
- 11 c. The drainage pathways from the site.
- 12 d. Nearby waterways and sensitive areas and distances from the site.
- 13 4. **Potential Spill Sources** – Describe each of the following for all potentially hazardous
14 materials brought or generated on-site (including materials used for equipment
15 operation, refueling, maintenance, or cleaning):
- 16 a. Name of material and its intended use.
- 17 b. Estimated maximum amount on site at any one time.
- 18 c. Location(s) (including any equipment used below the ordinary high water
19 line) where the material will be staged, used, and stored and the distance(s)
20 from nearby waterways and sensitive areas.
- 21 5. **Preexisting Contamination** – Describe any preexisting contamination and
22 contaminant sources (such as buried pipes or tanks) in the Project area that are
23 described in the Contract Provisions and Plans. Identify equipment and Work
24 practices that shall be used to prevent the release of contamination.
- 25 6. **Spill Prevention and Response Training** – Describe how and when all Project
26 personnel, including refueling personnel and other Subcontractors, shall be trained
27 in spill prevention, containment, and response and in the location of spill response
28 kits.

- 1 7. **Spill Prevention** – Describe the following items:
- 2 a. The contents and locations of spill response kits that the Contractor shall
3 supply and maintain that are appropriately stocked, located in close
4 proximity to hazardous materials and equipment, and immediately
5 accessible.
- 6 b. Security measures for potential spill sources to prevent accidental spills and
7 vandalism.
- 8 c. Methods used to prevent stormwater from contacting hazardous materials.
- 9 d. Secondary containment for each potential spill source listed in 4, above.
10 Secondary containment Structures shall be in accordance with Section S9.D.9
11 of Ecology’s Construction Stormwater General NPDES Permit, where
12 secondary containment means placing tanks or containers within an
13 impervious Structure capable of containing 110 percent of the volume
14 contained in the largest tank within the containment Structure.
15 Double-walled tanks do not require additional secondary containment.
- 16 e. BMP methods used to prevent discharges to ground or water during mixing
17 and transfer of hazardous materials and fuel. Methods to control pollutants
18 shall use BMPs in accordance with Ecology’s Construction Stormwater
19 General NPDES Permit. BMP guidance is provided in Ecology’s Stormwater
20 Management Manuals, such as *Volume II – Construction Stormwater*
21 *Pollution Prevention, BMP C153*, and *Volume IV – Source Control BMPs*.
- 22 f. Refueling procedures for equipment that cannot be moved from below the
23 ordinary high water line.
- 24 g. Daily inspection and cleanup procedures that ensure all equipment used
25 below the ordinary high water line is free of all external petroleum-based
26 products.
- 27 h. Routine equipment, storage area, and Structure inspection and maintenance
28 practices to prevent drips, leaks, or failures of hoses, valves, fittings,
29 containers, pumps, or other systems that contain or transfer hazardous
30 materials.
- 31 i. Site inspection procedures and frequency.
- 32 8. **Spill Response** – Outline the response procedures the Contractor shall follow for
33 each scenario listed below, indicating that if hazardous materials are encountered or
34 spilled during construction, the Contractor shall do everything possible to control

1 and contain the material until appropriate measures can be taken. Include a
2 description of the actions the Contractor shall take and the specific on-site spill
3 response equipment that shall be used to assess the spill, secure the area, contain
4 and eliminate the spill source, clean up spilled material, decontaminate equipment,
5 and dispose of spilled and contaminated material:

- 6 a. A spill of each type of hazardous material at each location identified in 4,
7 above.
- 8 b. Stormwater that has come into contact with hazardous materials.
- 9 c. A release or spill of any preexisting contamination and contaminant source
10 described in 5, above.
- 11 d. A release or spill of any unknown preexisting contamination and contaminant
12 sources (such as buried pipes or tanks) encountered during Project Work.
- 13 e. A spill occurring during Work with equipment used below the ordinary high
14 water line.

15 If the Contractor will use a Subcontractor for spill response, provide contact
16 information for the Subcontractor under item 1 (above), identify when the
17 Subcontractor shall be used, and describe actions the Contractor shall take while
18 waiting for the Subcontractor to respond.

19 **9. Project Site Map** – Provide a map showing the following items:

- 20 a. Site location and boundaries.
- 21 b. Site access roads.
- 22 c. Drainage pathways from the site.
- 23 d. Nearby waterways and sensitive areas.
- 24 e. Hazardous materials, equipment, and decontamination areas identified in 4,
25 above.
- 26 f. Preexisting contamination or contaminant sources described in 5, above.
- 27 g. Spill prevention and response equipment described in 7 and 8, above.

28 **10. Spill Report Forms** – Provide a copy of the spill report form(s) that the Contractor
29 shall use in the event of a release or spill.

1 **11. Spill Prevention, Control and Countermeasures Plan**

2 The SPCC Plan shall identify specific measures that will be used to minimize debris
3 from entering the water and will provide specific examples of acceptable methods
4 (i.e.: floats, netting, and sheeting). Tarps or other devices such as plywood panels
5 shall be rigged under and to the sides of the pier to prevent decking debris from
6 entering the water by catching falling debris including, dirt, dust, sawdust, etc.

7 See Environmental Commitments in these Special Provisions for additional
8 requirements.

9 12. The Contractor shall immediately notify the Engineer and the WSF Terminal
10 Supervisor of any spill, including, but not limited to, petroleum products, hydraulic
11 fluid, chemical materials or liquids, and sewage. If neither the Engineer nor the
12 WSF Terminal Supervisor is available, the Contractor shall immediately notify the
13 WSF Operations Center at (206) 515-3456.

14 **Payment**

15 The SPCC Plan is an Negotiated Support Service(NSS)in the MACC .

16 When the written SPCC Plan is accepted by the Contracting Agency, the Contractor shall
17 receive 50 percent of the lump sum NSS price for the plan.

18 The remaining 50 percent of the lump sum price will be paid after the materials and
19 equipment called for in the plan are mobilized to the Project.

20 The lump sum payment for the “SPCC Plan” shall be full pay for all costs associated with
21 creating and updating the accepted SPCC Plan, and all costs associated with the setup of
22 prevention measures and for implementing the current SPCC Plan as required by this
23 Specification.

24 As to other costs associated with releases or spills, including restocking spill kits, the
25 Contractor may request payment as provided for in the Contract. No payment shall be made if
26 the release or spill was caused by or resulted from the Contractor’s operations, negligence, or
27 omissions.

28 **1-07.16 Protection and Restoration of Property**

29 **1-07.16(1) Private/Public Property**

30 The Contractor shall not use Contracting Agency owned or controlled property other than
31 that directly affected by the Contract Work without the approval of the Engineer. If the
32 Engineer grants such approval, the Contractor shall then vacate the area when ordered to do so

1 by the Engineer. Approval to temporarily use the property shall not create any entitlement to
2 further use or to compensation for any conditions or requirements imposed.

3 The Contractor shall protect private or public property on or in the vicinity of the Work site.
4 The Contractor shall ensure that it is not removed, damaged, destroyed, or prevented from
5 being used unless the Contract so specifies.

6 Property includes land, utilities, trees, landscaping, improvements legally on the
7 right-of-way, markers, monuments, buildings, Structures, pipe, conduit, sewer or water lines,
8 signs, and other property of all description whether shown on the Plans or not.

9 If the Engineer orders, or if otherwise necessary, the Contractor shall install protection,
10 acceptable to the Engineer, for property such as that listed in the previous paragraph. The
11 Contractor is responsible for locating and protecting all property that is subject to damage by
12 the construction operation.

13 If the Contractor (or agents/employees of the Contractor) damage, destroy, or interfere
14 with the use of such property, the Contractor shall restore it to original condition. The
15 Contractor shall also halt any interference with the use of the property. If the Contractor
16 refuses or does not respond immediately, the Engineer may have such property restored by
17 other means and subtract the cost from money that will be or is due the Contractor.

18 The Contractor may access the worksite from adjacent properties. The Contractor shall not
19 use or allow others to use this access to merge with public traffic. During non-working hours,
20 the Contractor shall provide a physical barrier that is either locked or physically unable to be
21 moved without equipment. The access shall not go through any existing Structures. The access
22 may go through fencing. The Contractor shall control or prevent animals from entering the
23 worksite to the same degree that the animals were controlled before the fence was removed.
24 The Contractor shall prevent persons not involved in the Contract Work from entering the
25 worksite through the access or through trails and pathways intersected by the access. If the
26 Contract Documents require that existing trails or pathways be maintained during construction,
27 the Contractor will ensure the safe passage of trail or pathway users. The Contractor shall
28 effectively control airborne particulates that are generated by use of the access. The location
29 and use of the access shall not adversely affect wetlands or sensitive areas in any manner. The
30 Contractor shall be responsible for obtaining all haul road agreements, permits and/or
31 easements associated with the access. The Contractor shall replace any fence, repair any
32 damage, and restore the site to its original state when the access is no longer needed. The
33 Contractor shall bear all costs associated with this worksite access.

1 **1-07.16(2) Vegetation Protection and Restoration**

2 There is no existing vegetation to protect.

3 **1-07.16(2)A Wetland and Sensitive Area Protection**

4 There are no wetlands.

5 **1-07.16(3) Vacant**

6 **1-07.16(4) Archaeological and Historical Objects**

7 Archaeological or historical objects, such as ruins, sites, buildings, artifacts, fossils, or other
8 objects of antiquity that may have significance from a historical or scientific standpoint, which
9 may be encountered by the Contractor, shall not be further disturbed. The Contractor shall
10 immediately notify the Engineer of any such finds.

11 The Engineer will determine if the material is to be salvaged. The Contractor may be
12 required to stop Work in the vicinity of the discovery until such determination is made. The
13 Engineer may require the Contractor to suspend Work in the vicinity of the discovery until
14 salvage is accomplished.

15 If the Engineer finds that the suspension of Work in the vicinity of the discovery increases or
16 decreases the cost or time required for performance of any part of the Work under this
17 Contract, the Engineer will make an adjustment in payment or the time required for the
18 performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

19 **1-07.16(4)A Inadvertent Discovery of Human Skeletal Remains**

20 If human skeletal remains are encountered by the Contractor, the remains shall not be
21 further disturbed. The Contractor shall immediately notify the Engineer of any such finds, and
22 shall cease all Work adjacent to the discovery, in an area adequate to provide for the total
23 security and protection of the integrity of the skeletal remains. The Engineer may require the
24 Contractor to suspend Work in the vicinity of the discovery until final determinations are made
25 and removal of the skeletal remains is completed.

26 If the Engineer finds that the suspension of Work in the vicinity of the discovery increases or
27 decreases the cost or time required for performance of any part of the Work under this
28 Contract, the Engineer will make an adjustment in payment or the time required for the
29 performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

1 **1-07.16(5) Contractor Parking**

2 The Contractor shall be responsible for acquiring their own parking for personnel and other
3 vehicles. Delivery vehicles will be allowed access. The Contractor shall coordinate times and
4 location of deliveries with the Engineer.

5 **1-07.16(6) Tribal Rights and Interests**

6 The impacts of the project on tribal rights and interests will have been resolved in
7 agreements between the contracting agency, the Suquamish Indian Tribe, and the Muckleshoot
8 Indian Tribe. Interference with Tribal Treaty rights could result from construction activities such
9 as barge location and movement and demolition and dredging activities. The following
10 provision outlines commitments for the Contractor to implement and comply with related to
11 avoiding, minimizing, and resolving the impacts of this Project on Treaty rights.

12 **Impacts to Fish Operations**

13 If the Contractor’s activities and operations require the movement of nets or cause damage
14 to fishing gear, the Contractor shall notify the Engineer immediately.

15 **Barge Operations Schedule**

16 Barge schedules and haul routes shall be provided to the Contracting Agency to be shared
17 with the tribal interests identified above.

18 **Gear Damage and Replacement**

19 Any claims for damages for tribal fishing gear damage shall be paid or compensated as
20 stated in the Memorandum of Agreements with the Muckleshoot or Suquamish Indian Tribes.

21 **1-07.16(7) Payment**

22 All costs to comply with this Section and for the protection and repair specified in this
23 Section, unless otherwise stated, are incidental to the Contract and are the responsibility of the
24 Contractor. The Contractor shall include all related costs in the MACC or, where specified, in its
25 budget for Negotiated Support Services.

26 **1-07.17 Utilities and Similar Facilities**

27 The Contractor shall protect all private and public utilities from damage resulting from the
28 Work. Among others, these utilities include: telephone, telegraph, and power lines; pipelines,
29 sewer and water lines; railroad tracks and equipment; and Highway lighting and signing
30 systems, and intelligent transportation systems (ITS). All costs required to protect public and
31 private utilities shall be at the Contractor’s expense, except as provided otherwise in this
32 Section.

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

5 **1-07.17(1) Utility Construction, Removal, or Relocation by the Contractor**

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

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

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

20 **1-07.17(2) Utility Construction, Removal, or Relocation by Others**

21 Any authorized agent of the Contracting Agency or utility owners may enter the Highway
22 right-of-way to repair, rearrange, alter, or connect their equipment. The Contractor shall
23 cooperate with such effort and shall avoid creating delays or hindrances to those doing the
24 work. As needed, the Contractor shall arrange to coordinate Work schedules.

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

33 When others delay the Work through late performance of utility work, the Contractor shall
34 adhere to the requirements of Section 1-04.5. The Contracting Agency will either suspend Work
35 according to Section 1-08.6, or order the Contractor to coordinate the Work with the work of
36 the utility owner in accordance with Section 1-04.4. When ordered to coordinate the Work with

1 the work of the utility owner, the Contractor shall prosecute the Work in a way that will
2 minimize interference and delay for all forces involved.

3 **1-07.18 Public Liability and Property Damage Insurance**

4 The Contractor shall obtain and keep in force the following policies of insurance. The
5 policies shall be with companies or through sources approved by the State Insurance
6 Commissioner pursuant to RCW 48.05. Unless otherwise indicated below, the policies shall be
7 kept in force from the execution date of the Contract until the date of acceptance by the
8 Secretary (Section 1-05.12).

- 9 1. Owners and Contractors Protective (OCP) Insurance providing bodily injury and property
10 damage liability coverage, with limits of \$3,000,000 per occurrence and per project in
11 the aggregate for each policy period, written on Insurance Services Office (ISO)
12 form CG0009 1204, together with Washington State Department of Transportation
13 amendatory endorsement CG 2908 1195, specifying the Contracting Agency, the State,
14 the Governor, the Commission, the Secretary, the Department, and all officers and
15 employees of the State as named insured.
- 16 2. Commercial General Liability (CGL) Insurance written under ISO Form CG0001 or its
17 equivalent, with minimum limits of \$3,000,000 per occurrence and in the aggregate for
18 each 1-year policy period. This coverage may be any combination of primary, umbrella,
19 or excess liability coverage affording total liability limits of not less than \$3,000,000 per
20 occurrence and in the aggregate. Products and completed operations coverage shall be
21 provided for a period of 3 years following Substantial Completion of the Work.
- 22 3. Commercial Automobile Liability Insurance providing bodily injury and property damage
23 liability coverage for all owned and nonowned vehicles assigned to or used in the
24 performance of the Work, with a combined single limit of not less than \$1,000, 000 per
25 occurrence. This coverage may be any combination of primary, umbrella, or excess
26 liability coverage affording total liability limits of not less than \$1,000,000 per
27 occurrence, with the State named as an additional insured or designated insured in
28 connection with the Contractor’s Performance of the Contract. If pollutants are to be
29 transported, MCS 90 and CA 99 48 endorsements are required on the Commercial
30 Automobile Liability insurance policy unless in-transit pollution risk is covered under a
31 Pollution Liability insurance policy.
- 32 4. **Marine Liability.** The Contractor shall provide marine protections and indemnity (P&I)
33 insurance for all liabilities arising out of the (i) operation of a watercraft or vessel used
34 on the Project that is owned, leased, or chartered by the Contractor or any Related
35 Entity, (ii) the movement and/or storage of materials for the Project, and (iii) the
36 operation, maintenance, and dismantling of any moorage site for the storage of
37 materials and equipment. The coverage specified in subsections (ii) and (iii) above is not

- 1 required if such coverage is to be provided un the CGL policy described in
2 Section 1-07.18(2) above. The policy or policies shall include, among other things,
3 coverage for bodily injury, claims arising pursuant to the Jones Act, claims for
4 maintenance and cure and claims under the LHWCA, property damage, damage to cargo
5 while loading, carrying or unloading cargo, damage to piers and docks, pollution liability
6 (to the extent it is not provided pursuant to the insurance coverage required under
7 Section 1-07.18(6)), charterer’s liability, collision liability, and removal of wreckage as
8 required by law. Such coverage shall be for primary limits of not less than \$1,000,000
9 per occurrence and excess limits of not less than \$25,000,000. If any watercraft or
10 vessels are leased or chartered with crew, evidence of non-owned watercraft liability
11 insurance complying with the requirements of the Section will be acceptable but must
12 be provided to WSDOT prior to use of the watercraft or vessel. The Indemnified Parties
13 shall be additional insureds with respect to liability arising out of the Project or any acts,
14 errors, or omissions of any Related Entity, whether occurring on or off the Site.
- 15 5. **Excess Liability.** Contractor shall provide excess liability coverage with annual limits of
16 not less than \$100,000,000 which will provide coverage as broad as the primary
17 coverages set forth herein, including Owners and Contractors Protective Insurance,
18 Commercial General Liability, Automobile Liability, Contractor’s Marine Liability and
19 Contractor’s Pollution Liability in excess of the amounts set forth in Sections 1-07.18(1),
20 1-07.18(2), 1-07.18(3), 1-07.18(4) and 1-07.18 (6), respectively. Solely with respect to
21 the products/complete operations coverage required under Section 1-07.18(2), a single
22 aggregate limit (\$100,000,000) shall apply to all occurrences for the six-year period
23 following Completion of the Project. The Indemnified Parties shall be additional insureds
24 with respect to liability arising out of the Project or any acts, errors, or omissions of any
25 Related Entity, whether occurring on or off the site, to the extent that they are not
26 named on any of the foregoing policies as named insureds.
- 27 6. **Builder’s Risk Insurance.** Builder’s Risk Insurance providing Broad Perils (All Risk)
28 coverage upon any Work at the site, to the full insurable value thereof. This insurance
29 shall include the Contractor, its Subcontractors of every tier, and the State of
30 Washington as named insured on the policy. Coverage shall be included for all materials
31 and supplies to be incorporated into the Work at the jobsite, while in transit to the
32 jobsite, or while stored away from the jobsite.
- 33 7. **Contractor’s Pollution Liability Insurance.** The Contractor shall obtain Contractor’s
34 Pollution Liability Insurance (CPL) with minimum “per project” limits of \$25,000,000 per
35 occurrence and in the aggregate for claims, including investigation, defense, or
36 settlement costs and expenses for bodily injury and property damage (including natural

1 resources damages and loss of use of tangible property that has not been physically
2 injured) arising out of:

- 3 a. Pollution conditions caused or made worse by the Contractor’s performance of
4 the Work, including clean-up costs for a newly caused condition or a historical
5 condition that is made worse; and;
- 6 b. The vicarious liability of Subcontractors of any tier.

7 The Contractor shall be Named Insured and the Contracting Agency, the State, the
8 Governor, the Commission, the Secretary, the Department, all officers and employees of
9 the State, and their respective members, directors, officers, employees, agents, and
10 consultants (collectively the “Additional Insureds”) shall be included as Additional
11 Insureds, or, as appropriate, a Named Insured, under this policy and coverage.

12 8. The Contractor shall be Named Insured and the Contracting Agency, the State, the
13 Governor, the Commission, the Secretary, the Department, all officers and employees of
14 the State, and their respective members, directors, officers, employees, agents, and
15 consultants (collectively the “Additional Insureds”) shall be included as Additional
16 Insureds for all policies and coverages specified in this Section, with the exception of the
17 OCP policy. Said insurance coverage shall be primary and noncontributory insurance
18 with respect to the insureds and the Additional Insureds. Any insurance or
19 self-insurance beyond that specified in this Contract that is maintained by any
20 Additional Insured shall be in excess of such insurance and shall not contribute with it.
21 All insurance coverage required by this Section shall be written and provided by
22 “occurrence-based” policy forms rather than by “claims made” forms.

23 All endorsements adding Additional Insureds to required policies shall be issued on
24 (i) form CG 20 10 11 85 or a form deemed equivalent by the Contracting Agency,
25 providing the Additional Insureds with all policies and coverages set forth in this Section,
26 with the exception of the OCP and Commercial Auto policies, or (ii) form CA 20 48 or
27 forms deemed equivalent by Contracting Agency, providing the Additional Insureds with
28 all coverages required under the Commercial Automobile Liability.

29 9. The coverage limits to be provided by the Contractor for itself and to the Contracting
30 Agency and Additional Insureds pursuant to this Section or any Special Provision, shall
31 be on a “per project” aggregate basis with the minimum limits of liability as set forth
32 herein for both general liability and products/completed operations claims. The
33 additional insured coverage required under this Section for products/completed
34 operations claims shall remain in full force and effect for not less than three years
35 following Substantial Completion of the Project. If the Contractor maintains, at any time,
36 coverage limits for itself in excess of limits set forth in this Section 1-07.18 or any Special
37 Provision, then those additional coverage limits shall also apply to the Contracting

1 Agency and the Additional Insured. This includes, but is not limited to, any coverage
2 limits provided under any risk financing program of any description, whether such limits
3 are primary, excess, contingent, or otherwise.

4 10. All insurance policies and coverages required under Sections 1-07.18 and 1-07.10 shall
5 contain a waiver of subrogation against the Contracting Agency, the State, and any
6 Additional Insureds, and their respective departments, agencies, boards, and
7 commissions, and their respective officers, officials, agents, and employees for losses
8 arising from Work performed by or on behalf of the Contractor. This waiver has been
9 mutually negotiated by the parties.

10 11. Where applicable, the Contractor shall cause each Subcontractor to provide insurance
11 that complies with all applicable requirements of the Contractor-provided insurance as
12 set forth herein, in circumstances where the Subcontractor is not covered by the
13 Contractor-provided insurance. The Contractor shall have sole responsibility for
14 determining the limits of coverage required, if any, to be obtained by Subcontractors,
15 which determination shall be made in accordance with reasonable and prudent business
16 practices. In the event that a Subcontractor is required to add the Contractor as an
17 Additional Insured pursuant to its Contract for Work at the Project, then the Contractor
18 shall also cause each Subcontractor to include the Contracting Agency and the
19 Additional Insureds, as Additional Insureds as well, for primary and noncontributory
20 limits of liability under each Subcontractor’s Commercial General Liability, Commercial
21 Automobile Liability, and any other coverages that may be required pursuant to a
22 “Special Provision”.

23 12. Unless specifically noted otherwise in the Contract Documents, the parties to this
24 Contract do not intend by any of the provisions of this Contract to cause the public or
25 any member thereof or any other Person to be a third-party beneficiary of the Contract
26 Documents. Nothing in this Contract authorizes anyone not a party to this Contract or a
27 designated third-party beneficiary to this Contract to maintain a suit for personal
28 injuries or property damage pursuant to the terms or provisions of this Contract. It is the
29 further intent of the Contracting Agency and the Contractor in executing the Form of
30 Contract that no individual, firm, corporation, or any combination thereof that supplies
31 materials, labor, services, or equipment to the Contractor for the performance of the
32 Work shall become thereby a third-party beneficiary of this Contract.

33 The Contract Documents shall not be construed to create a contractual relationship of
34 any kind between the Contracting Agency and a Subcontractor or any other Person
35 except the Contractor.

36 13. The Contracting Agency’s and Contractor’s Protective Insurance policy shall not be
37 subject to a deductible or contain provisions for a deductible. The Commercial General
38 Liability policy and the Commercial Automobile Liability Insurance policy may, at the

1 discretion of the Contractor, contain such provisions. If a deductible applies to any claim
2 under these policies, then payment of that deductible will be the responsibility of the
3 Contractor, notwithstanding any claim of liability against the Contracting Agency.
4 However, in no event shall any provision for a deductible provide for a deductible in
5 excess of \$50,000.00.

6 14. With the exception of the Commercial Automobile liability coverage, no policies of
7 insurance required under this Section shall contain an arbitration or alternative dispute
8 resolution clause applicable to disputes between the insurer and its insureds. Any and
9 all disputes concerning (i) terms and scope of insurance coverage afforded by the
10 policies required hereunder and/or (ii) extra contractual remedies and relief, which may
11 be afforded policy holders in connection with coverage disputes, shall be resolved in
12 Washington Superior Court, applying Washington law.

13 15. Prior to Contract execution, the Contractor shall file with the Department of
14 Transportation, Contract Payment Section, PO Box 47420, Olympia, WA 98504-7420,
15 ACORD Form Certificates of Insurance evidencing the minimum insurance coverages
16 required under these Specifications. Within 30 days of being awarded a Contract, the
17 Contractor shall provide the Department with complete copies, which may be electronic
18 copies, of all insurance policies required under this Section and any Special Provisions.

19 16. The Contractor shall provide written notice to the Engineer of any policy cancellations
20 and provide the Department of Transportation, Contract Payment Section,
21 PO Box 47420, Olympia, WA 98504-7420, by U.S. Mail, notice of any policy cancellation
22 within two business days of receipt of cancellation.

23 17. Failure on the part of the Contractor to maintain the insurance as required, or not to
24 provide certification and copies of the insurance prior to the time specified in
25 Subsection 12 above, shall constitute a material breach of Contract upon which the
26 Contracting Agency may, after giving 5-business days' notice to the Contractor to
27 correct the breach, immediately terminate the Contract or, at its discretion, procure or
28 renew such insurance and pay any and all premiums in connection therewith, with any
29 sums so expended to be repaid to the Contracting Agency on demand, or at the sole
30 discretion of the Contracting Agency, offset against funds due the Contractor from the
31 Contracting Agency. All costs for insurance, including any payments of deductible
32 amounts, shall be considered incidental to and included in the unit Contract prices and
33 no additional payment will be made.

34 **1-07.19 Gratuities**

35 The Contractor shall not extend any loan, gratuity, or gift of money in any form whatsoever
36 to any employee or officer of the Contracting Agency; nor will the Contractor rent or purchase
37 any equipment or materials from any employee or officer of the Contracting Agency. Before

1 payment of the final estimate will be made, the Contractor shall execute and furnish the
2 Contracting Agency an affidavit certifying compliance with these provisions of the Contract.

3 The Contractor shall comply with all applicable sections of the State Ethics law, RCW 42.52,
4 which regulates gifts to State officers and employees. Under that statute, any Contracting
5 Agency officer or employee who has or will participate with the Contractor regarding any
6 aspect of this Contract is prohibited from seeking or accepting any gift, gratuity, favor, or
7 anything of economic value from the Contractor. Accordingly, neither the Contractor nor any
8 agent or representative shall offer anything of economic value as a gift, gratuity, or favor
9 directly or indirectly to any such officer or employee.

10 **1-07.20 Patented Devices, Materials, and Processes**

11 The Contractor shall assume all costs arising from the use of patented devices, materials, or
12 processes used on or incorporated in the Work, and agrees to indemnify, defend, and save
13 harmless the State, Governor, Commission, Secretary, and their duly authorized agents and
14 employees from all actions of any nature for, or on account of the use of any patented devices,
15 materials, or processes.

16 **1-07.21 Rock Drilling Safety Requirements**

17 It shall be the Contractor's responsibility to maintain safe working conditions during rock
18 drilling, by keeping dust concentration below the threshold limit value or by providing those
19 protective devices that may be required by the State Department of Labor and Industries.

20 **1-07.22 Use of Explosives**

21 Use of explosives is prohibited.

22 **1-07.23 Public Convenience and Safety**

23 The Contractor shall be responsible for providing adequate safeguards, safety devices,
24 protective equipment, and any other needed actions to protect the life, health, and safety of
25 the public, and to protect property in connection with the performance of the Work covered by
26 the Contract. The Contractor shall perform any measures or actions the Engineer may deem
27 necessary to protect the public and property. The responsibility and expense to provide this
28 protection shall be the Contractor's except that which is to be furnished by the Contracting
29 Agency as specified in other Sections of these Specifications. Nothing contained in this Contract
30 is intended to create any third-party beneficiary rights in favor of the public or any individual
31 utilizing the Highway facilities being constructed or improved under this Contract.

1 **1-07.23(1) Construction under Traffic**

2 To support continued operation of two WSF routes and two King County routes during
3 construction and maintain the sailing schedules and the current level of service for all modes,
4 the Contracting Agency has identified the following elements that shall remain operational at
5 all times:

- 6 • Two berthing slips for WSF ferries;
- 7 • Two berthing slips for the Water Taxis;
- 8 • Vehicle access at Yesler Way, two vehicle egress lanes at Marion Street, and two vehicle
9 egress lanes at Yesler Way at all times;
- 10 • Minimal holding capacity on the dock for 450 vehicles;
- 11 • Passenger space sufficient to accommodate processing and queuing for walk-on
12 customers, including accessible restrooms;
- 13 • Accessible route from the street to the vessel passenger deck;
- 14 • Accessible ticket sales, restrooms, and vertical circulation;
- 15 • Separated pedestrian egress and access from/to vessels;
- 16 • Grade separation of foot passengers and vehicles and the connection to the Marion
17 Street pedestrian bridge;
- 18 • Temporary vehicle access across the dock to allow safe and efficient vehicle loading and
19 unloading during construction; and
- 20 • Systems and utilities operational at all times, including security, communications, and
21 sales.

22 The Engineer may authorize short-term duration closures of the key elements listed above.
23 Failure to meet the completion requirements of the closure will be cause for Liquidated
24 Damages per 1-08.9.

25 **1-07.23(2) Construction and Maintenance of Detours**

26 Unless otherwise approved, the Contractor shall maintain two-way traffic during
27 construction. The Contractor shall build, maintain in a safe condition, keep open to traffic, and
28 remove when no longer needed:

- 29 1. Detours and detour bridges that will accommodate traffic diverted from the Roadway,
30 bridge, sidewalk, or path during construction;
- 31 2. Detour crossings of intersecting Highways; and
- 32 3. Temporary approaches.

1 Construction, maintenance, and removal of all detours shown in the Plans or proposed by
2 the Contracting Agency is a Negotiated Support Service.

3 The Contractor shall pay all costs to build, maintain, and remove any other detours,
4 whether built for the Contractor’s convenience or to facilitate construction operations. Any
5 detour proposed by the Contractor shall not be built until the Engineer approves. Surfacing and
6 paving shall be consistent with traffic requirements.

7 Upon failure of the Contractor to immediately provide, maintain, or remove detours or
8 detour bridges when ordered to do so by the Engineer, the Contracting Agency may, without
9 further notice to the Contractor or the Surety, provide, maintain, or remove the detours or
10 detour bridges and deduct the costs from any payments due or coming due the Contractor.

11 **1-07.23(3) Maintenance and Protection of Ferry Traffic**

12 The Contractor shall maintain access to and from the ferry vessels for both pedestrian and
13 vehicular traffic at all times. The Contractor shall promptly and diligently remove any
14 equipment, employees, or materials that would impede or delay ferry vessel arrivals or
15 departures. The Contractor shall provide and maintain such barriers, barricades, signs, and
16 lighting necessary to protect and safeguard pedestrians and vehicles as shown in the Plans. The
17 Contractor shall keep all sidewalks, crosswalks, and other pedestrian routes and access points
18 open and clear at all times unless permitted otherwise by the Engineer in an approved traffic
19 control plan.

20 **Payment**

21 All costs associated with maintenance and protection of traffic shall be included in the
22 Contractor’s budget for Negotiated Support Services.

23 **1-07.24 Rights-of-Way**

24 All rights-of-way for the completed facility will be provided by the Contracting Agency in
25 advance of construction. Any exceptions will be noted in the Special Provisions. Should the
26 necessary right-of-way not be available as provided in the Contract, an extension of time will be
27 considered in accordance with Section 1-08.8.

28 **1-07.25 Opening of Sections to Traffic**

29 The Contracting Agency reserves the right to use and open to traffic any portion of the
30 Work before the Physical Completion Date of the entire Contract without constituting
31 acceptance of any of the Work. This action will not cause the Contracting Agency to incur any
32 liability to the Contractor except as may otherwise be provided in the Contract.

33 If the Contracting Agency opens any portion of the Work prior to the Physical Completion
34 Date of the entire Contract because early opening is specified in the Contract or when the

1 Contractor has failed to prosecute the Work continuously and efficiently, any Work remaining
2 shall be performed by the Contractor at the unit Contract prices for the items of Work involved.
3 No additional payment will be made for costs incurred by the Contractor because of:
4 (1) inconvenience, additional length of travel to conform to established traffic patterns and
5 planned access features; (2) compliance with statutes governing traffic regulations and
6 limitations of loads; or (3) additional flagging costs necessary to protect the operations and the
7 traveling public. The Contractor shall take all costs due to traffic using portions of the Work into
8 account when submitting the Bid Proposal, and the unit Contract prices for the various items of
9 Work involved shall include these costs.

10 **1-07.26 Personal Liability of Public Officers**

11 Neither the Governor, the Commission, the Secretary, the Engineer, nor any other officer or
12 employee of the State shall be personally liable for any acts or failure to act in connection with
13 the Contract, it being understood that in such matters, they are acting solely as agents of the
14 State.

15 **1-07.27 No Waiver of State’s Legal Rights**

16 The State shall not be precluded or estopped by any measurement, estimate, or certificate
17 made either before or after the completion and acceptance of the Work and payment therefore
18 from showing the true amount and character of the Work performed and materials furnished
19 by the Contractor, or from showing that any such measurement, estimate, or certificate is
20 untrue or incorrectly made, or that the Work or materials do not conform in fact to the
21 Contract. The State shall not be precluded or estopped, notwithstanding any such
22 measurement, estimate, or certificate, and payment in accordance therewith, from recovering
23 from the Contractor and the Sureties such damages as it may sustain by reason of the
24 Contractor’s failure to comply with the terms of the Contract. Neither the acceptance by the
25 Secretary, nor any payment for the whole or any part of the Work, nor any extension of time,
26 nor any possession taken by the State shall operate as a waiver of any portion of the Contract
27 or of any power herein reserved or any right to damages herein provided, or bar recovery of
28 any money wrongfully or erroneously paid to the Contractor. A waiver of any breach of the
29 Contract shall not be held to be a waiver of any other or subsequent breach.

30 The Contractor and the State recognize that the impact of overcharges to the State by the
31 Contractor resulting from antitrust law violations by the Contractor’s suppliers or
32 Subcontractors adversely affects the State rather than the Contractor. Therefore, the
33 Contractor agrees to assign to the State any and all claims for such overcharges.

34 **1-07.28 Severability**

35 If a provision of this Contract is found by a court of competent jurisdiction to be
36 unenforceable, the validity and enforceability of the remaining provisions shall remain

1 unaffected and the parties shall negotiate an equitable adjustment of this Contract so that the
2 purposes of this Contract are effected.

3 **1-08 Prosecution and Progress**

4 In accordance with RCW 39.10.370, the Contracting Agency and the Contractor may
5 negotiate the scopes of work to be procured by bid and the price and scope of work for the
6 Negotiated Self-Perform portion of the Project provided that the negotiated Self-Perform
7 portion of the Project is work that is customarily performed by the Contractor with its own
8 forces and with equipment that it owns or customarily rents and operates with its own forces.
9 The Negotiated Self-Perform Work shall not exceed fifty percent of the Cost of the Work to
10 construct the Project in the negotiated Maximum Allowable Construction Cost. Fifty percent
11 (50%) of the labor to complete the Negotiated Self-Perform Work shall be performed by
12 employees of the Contractor.

13 **1-08.1 Negotiated Self-Perform Work**

14 At the beginning and at the completion of negotiations, the Contractor shall provide to the
15 Contracting Agency a detailed description and break down of the scope of work proposed to be
16 performed, along with the certified Cost or Pricing Data (consistent with and as defined in
17 FAR 2.101) so that THE CONTRACTING AGENCY may perform a cost analysis as part of the
18 negotiation.

19 **1-08.1(1) Certified Cost or Pricing Data**

20 The certified Cost or Pricing Data must include:

- 21 a. all material and equipment costs;
- 22 b. direct labor costs;
- 23 c. subcontract specific general conditions costs; e.g., any superintendents, foremen,
24 Project Managers, Project Engineers, and all other on-site personnel, field office
25 requirements, supplies and equipment, vehicles and any utility requirements
26 beyond those required to be provided by the Contractor in its capacity as
27 Contractor; and,
- 28 d. any and all other direct costs, including any additional bonding and insurance costs
29 above and beyond that required to be provided as the Contractor, associated with
30 the subcontract scope of work proposed to be performed.

1 **1-08.1(2) Negotiated Self Perform Work Fee**

2 If the Contracting Agency and the Contractor agree on a cost for the Negotiated
3 Self-Perform Work, the total cost for the Negotiated Self-Perform Work will be multiplied by
4 the Negotiated Subcontract Fee Percentage bid by the Contractor in its response to the Request
5 for Final Proposals to determine the Negotiated Self-Perform Work Fee

6 **1-08.1(3) Minimum Value of Negotiated Self Perform Work**

7 The minimum value of Negotiated Self-Perform Work performed by the Contractor or its
8 affiliated is zero percent (0%) of the Cost of the Work for the Project.

9 **1-08.1(4) Failure to Agree on the Price for Negotiated Self Perform Work**

10 If the Contracting Agency and the Contractor cannot agree on the price for the Negotiated
11 Self-Perform Work, Contractor must competitively procure the Work. Contractor may compete
12 for the Work consistent with the requirements of Section 1-08.2(10) Contractor Subcontract
13 Work.

14 **1-08.2 GC/CM Subcontract Bidding Procedure**

15 A. Subcontract Buy Out

- 16 1. Competitive Bidding Required. Other than (a) the Specified General Conditions
17 Work, (b) Negotiated Support Services, and (c) subcontract package Work
18 negotiated directly with the Contractor, all Work must be competitively bid with
19 public bid openings. When subcontract bid packages are awarded, they must be
20 awarded to the responsible bidder with the lowest responsive bid that has met any
21 eligibility requirements established pursuant to RCW 39.10.400.
- 22 2. The buyout of major subcontracts shall be completed within six months of execution
23 of the Contract, unless approved in writing by Contracting Agency.
- 24 3. Updated Subcontract Packaging Plan and Other Requirements. Before soliciting
25 subcontract bids, the Contractor must submit, for review by the Contracting Agency:
26 (1) an update of the Subcontract Packaging Plan, that was developed under the
27 separately executed Preconstruction Services Agreement, outlining the subcontract
28 packages the Contractor intends to negotiate with Contracting Agency and those it
29 will solicit with bid package estimates and a procurement schedule for each
30 package; (2) an updated Small Business/DBE Plan outlining the outreach and
31 voluntary goal achievement strategies the Contractor intends to implement, and
32 addressing the Contractor's proposed actions to comply with the requirements of
33 the Diversity Program Provisions; (3) bidding instructions; and (4) standard
34 subcontractor agreements; and (5) an updated Construction Schedule.

- 1 4. Modification of Subcontract Packaging Plan. During subcontract buyout, the
2 Contractor may request a change for Contracting Agency’s approval in its
3 Subcontract Packaging Plan. In no event shall the sum of all final bid package
4 estimates in the Subcontract Packaging Plan as revised exceed the Maximum Total
5 Subcontract Package Cost.
- 6 5. Self-Performance by GC/CM
- 7 a. Negotiated Subcontract Package Work. Consistent with RCW 39.10.370,
8 Contracting Agency may negotiate with the Contractor to perform certain
9 subcontract package Work. The negotiation of such work will be open-book and
10 consistent with the following:
- 11 i. At the beginning (and again upon completion) of negotiations, Contractor
12 must provide to Contracting Agency a detailed description and breakdown of
13 the subcontract scope of work proposed to be performed, along with
14 certified Cost or Pricing Data (consistent with and as defined in FAR 2.101) so
15 that Contracting Agency may perform a cost analysis as part of the
16 negotiation.
- 17 1. The certified Cost or Pricing Data must include all (A) material and
18 equipment costs; (B) direct labor costs; (C) subcontract-specific general
19 conditions costs (e.g., [i] any superintendents, foremen, project
20 managers, project engineers, and all other on-site and off-site personnel
21 [whether supervisory, administrative, or otherwise] supporting or
22 working directly on the project, [ii] field office requirements, supplies,
23 and equipment, [iii] vehicles, and [iv] any utility requirements beyond
24 those required to be provided by the Contractor in its capacity as the
25 GC/CM); and (D) any and all other direct costs (including applicable taxes
26 and any additional bonding or insurance costs above and beyond that
27 required to be provided as the GC/CM); associated with the subcontract
28 scope of work proposed to be performed.
- 29 2. If Contracting Agency and the Contractor agree on a cost for the
30 subcontract scope of work proposed to be performed, the total
31 lump-sum subcontract package cost will be the sum of (A) the agreed
32 cost, and (B) the agreed cost multiplied by the Negotiated Subcontract
33 Fee Percentage.
- 34 ii. The minimum value of negotiated subcontract work to be performed by the
35 Contractor or its affiliated companies is zero percentage (0%) of the
36 Maximum Total Subcontract Package Cost plus Provisional Sums or
37 Allowances.

- 1 iii. In no event may the total value of all negotiated subcontract work performed
2 by the Contractor and its affiliated companies exceed fifty percentage (50%)
3 of the Maximum Total Subcontract Package Cost plus Provisional Sums or
4 Allowances.
- 5 iv. If Contracting Agency and the Contractor cannot agree on the price for the
6 negotiated subcontract Work, Contractor must competitively procure the
7 subcontract Work. Contractor may compete for such work, consistent with
8 the limitations and requirements of subsection (b), below.
- 9 b. Competitively Procured Subcontract Package Work. The Contractor may bid on
10 subcontract work and/or supply of equipment and materials, which it
11 customarily performs or supplies. The Contractor’s interest in the Work must not
12 diminish its duty to aggressively seek competition for bid packages.
- 13 i. In the event the Contractor will be bidding on subcontract work, Contracting
14 Agency will manage, with the Contractor’s assistance, the following steps in
15 the bidding process: issuing the request for bids, distribution of the
16 Contractor’s bidding documents as necessary, receipt of requests for
17 information, distribution of clarifications/addendum, public bid opening, and
18 review of any responsible bidder requirements.
- 19 ii. Notice of the Contractor’s intention to bid must be included in the public
20 solicitation for bids for that package.
- 21 iii. The Contractor must provide staff to superintend and manage subcontract
22 packages it self-performs that it obtains by competitive bid that is separate
23 and distinct from the staff involved in the management of the Contract. In no
24 event may the Contractor or its subsidiaries purchase equipment or materials
25 for assignment to Subcontractors for installation or warranty.
- 26 c. In no event may the value of the subcontract work performed by the Contractor
27 and its affiliated companies, whether competitively procured or negotiated,
28 exceed 70% of the Maximum Total Subcontract Package Cost plus Provisional
29 Sums or Allowances.
- 30 6. Pre-Bid Determination of Subcontractor Eligibility. Contracting Agency and the
31 Contractor may determine subcontractor eligibility to bid on certain bid packages
32 based on the process set forth in RCW 39.10.400. Subcontract bid packages will be
33 awarded to the responsible pre-qualified bidder submitting the lowest responsive
34 bid.
- 35 7. Alternative Subcontractor Selection Process. The Contractor may choose to select a
36 mechanical, an electrical Subcontractor, or both, using the alternative selection

1 process set forth in RCW 39.10.385 for subcontracts with an anticipated value that
2 will exceed \$3 Million. Upon recommendation by the Contractor, Contracting
3 Agency and the Contractor must determine that it is in the best interest of the
4 project and the public to use this selection method. Contracting Agency’s decision to
5 not approve alternative subcontractor selection shall be final and shall not
6 constitute delay. In the event the Contractor elects to select a mechanical, an
7 electrical subcontractor, or both, using the alternative selection process all costs
8 associated with the selection process shall be negotiated as support services under
9 this Contract. If Contracting Agency allows the Contractor or an affiliated company
10 to compete for the electrical and/or mechanical Work using the alternative selection
11 process set forth in RCW 39.10.385, Contracting Agency will manage the solicitation
12 and selection process. The Contractor shall provide assistance as requested by
13 Contracting Agency.

14 8. Subcontractor Bid Packages. The Contractor:

15 a. Shall not use any Allowances, unless approved in advance by Contracting
16 Agency;

17 b. May use Provisional Sums with prior approval by Contracting Agency.

18 c. May not use any Alternates without prior approval from Contracting Agency,
19 unless such Alternates were specified in the Contract;

20 d. Shall ensure subcontract agreements are in compliance with the provisions of
21 RCW 39.10 and include applicable FTA requirements; and

22 e. Shall not make changes to the final bid package documents without prior
23 Contracting Agency review.

24 9. Cost of Subcontract Buy Out Process. The Contractor is responsible for all
25 subcontracting procurement process costs, to be paid for as Specified General
26 Conditions work, which will include, but are not limited to, all labor costs associated
27 with developing solicitations for subcontract packages, pre-qualification and
28 subcontract procurement, site tours, responding to questions from bidders, bidding
29 of packages, contract award, bid protests, and all costs associated with negotiating
30 subcontract packages proposed to be performed by Contractor. Costs for
31 advertising, printing, and website posting are also included as Specified General
32 Conditions costs.

- 1 10. Solicitation of Subcontractors. Solicitation of subcontractors by the Contractor must
2 be made as follows:
- 3 a. Solicitation of Subcontractor bid packages must be in compliance with
4 RCW 39.10.
- 5 b. A Contracting Agency representative must be present at each bid opening to
6 observe the procedure.
- 7 c. Solicitations for bids shall be advertised at least two weeks in advance of the bid
8 submittal deadline, and again one week in advance, in the Seattle Daily Journal
9 of Commerce.
- 10 d. Bidders may obtain the bid results by telephone from the Contractor. All such
11 calls will be referred to the Contractor.
- 12 e. Solicitation documents shall include responsiveness requirements, Subcontractor
13 Responsibility criteria, and bidding and protest procedures.
- 14 11. Single Subcontract Bid. If the Contractor receives a single bid for a subcontract bid
15 package, the Contractor will perform a cost / price analysis to verify the
16 reasonableness of the bid received and submit that analysis to Contracting Agency
17 for review and concurrence, which concurrence will not be unreasonably withheld.
- 18 12. Bid Protest. Contractor is responsible for reviewing and responding to bid protests
19 and shall adhere to the requirements of RCW 39.10.380 in such event. Contractor
20 will also provide notice of any protests to Contracting Agency, including copies of
21 the protests and any proposed responses to the protesting entity, at least 48 hours
22 prior to granting or denying the protest.
- 23 B. The Contractor shall be responsible for obtaining from its Subcontractors and submitting
24 to Contracting Agency all required certifications, documentation, and submittals,
25 including but not limited to technical submittals, federal certificates, small business
26 compliance forms, or other documentation that is required to be submitted under the
27 terms of this Contract. The Contractor shall be responsible for ensuring that all Contract
28 requirements provided for in the Contract Documents that are specific to
29 subcontracting will be included in Subcontracts, including but not limited to all reporting
30 requirements and mandatory FTA provisions set forth in Section 00 73 73.
- 31 C. The Contractor is responsible for evaluating each of its Subcontractors under this
32 Contract and shall award subcontracts only to Subcontractors who meet the
33 Responsibility criteria of RCW 39.04.350. All Subcontractors shall be properly licensed,
34 registered, or certified, as applicable, to perform the assigned Work. If requested by
35 Contracting Agency, the Contractor shall provide documentation regarding the

- 1 Contractor’s evaluation of any Subcontractor’s responsibility and that the Subcontractor
2 is properly licensed, registered or certified, as applicable. The Contractor shall require all
3 Subcontractors to comply with all provisions of this Contract and shall pass down the
4 requirements of this Contract to its Subcontractors so that all the provisions of this
5 Contract are fully effective.
- 6 D. Within thirty (30) days of the signing of each subcontract, the Contractor shall submit to
7 Contracting Agency a Business Participation Plan. The Business Participation Plan shall
8 identify the Subcontractor, provide the data on which the responsibility determination
9 was based, provide the socio-economic profile data of the Subcontractor, and a listing of
10 the sub-tier subcontractors (including socio-economic profile data for each) that the
11 Subcontractor intends to utilize in performing their Work. The Contractor shall include a
12 copy of the subcontract (or at least that portion of the subcontract that demonstrates
13 that all required federal clauses were included in the subcontract) with the Business
14 Participation Plan. The copy of the subcontract that is submitted to Contracting Agency
15 shall have been signed by both the Contractor and the Subcontractor. A sample Business
16 Participation Plan form will be provided by Contracting Agency.
- 17 E. Contractor shall submit a Monthly Report on Subcontractors, on a form provided by
18 Contracting Agency, as part of its monthly progress payment request. Submission of a
19 completed Monthly Report of Subcontractors shall be a condition precedent to
20 Contracting Agency processing progress payment requests.
- 21 F. If the Contractor believes that a Small Business / Disadvantage Business Enterprise
22 (SB/DBE) Subcontractor that was listed at any tier to fulfill the Contractor’s SB/DBE
23 commitment may not be able to successfully complete any portion of the subcontracted
24 Work, the Contractor shall immediately identify to the Engineer the Subcontractor at
25 issue, the reason for believing such subcontractor may not be able to perform the
26 subcontracted Work, and any actions being taken by the Contractor to mitigate such
27 possibility.
- 28 G. No Work shall be subcontracted to new Subcontractors without written notification to
29 Contracting Agency, on a form provided by Contracting Agency. No substitutions shall
30 be made for any Small Business / Disadvantaged Business Enterprise Subcontractor that
31 was listed to fulfill the Contractor’s SB/DBE commitment without written notification to,
32 and approval by, Contracting Agency. The Contractor’s Request for Substitution of
33 Subcontractors shall be made on a form provided by Contracting Agency.
- 34 H. Subcontracting shall create no contract between Contracting Agency and the
35 Subcontractor, nor shall the Subcontractor have any rights against Contracting Agency
36 by reason of its Subcontract with the Contractor. The Contractor shall be responsible for
37 all Work furnished, and no Subcontract shall relieve the Contractor of any of the
38 Contractor’s obligations or liabilities under the Contract.

- 1 I. The Contractor shall be fully responsible and liable for the acts or omissions of all
2 Subcontractors and Suppliers including persons directly or indirectly employed by them,
3 their guests, and invitees.
- 4 J. The Contractor shall have sole responsibility for managing and coordinating the
5 operations of its Subcontractors and Suppliers, including the settlement of disputes with
6 or between them.
- 7 K. If a Subcontractor’s work fails to meet Contract requirements or demonstrates careless
8 or unacceptable workmanship and the Subcontractor fails to respond to notice of such
9 defective work or to improve workmanship, the Engineer may direct the Contractor to
10 replace the Subcontractor by rebidding or negotiating the performance of the work or
11 perform the work itself.
- 12 L. The Contractor bears all the risk and responsibility for cost overruns and delay resulting
13 from a subcontractor’s inability to perform and the Subcontractor shall not again be
14 employed on the Work. The Contractor shall not be entitled to additional compensation
15 for replacement of Subcontractors.
- 16 M. The on-site production of materials produced by other than the Contractor’s forces shall
17 be considered as subcontracted. The erection, establishment, or reopening of on-site
18 plants for production of materials and the operation thereof in the production of said
19 materials for use on the Work shall conform to the requirements relating to labor and
20 insurance set forth in the Contract Documents.
- 21 N. Contractor must perform all work required to subcontract the installation of Owner
22 Furnished Equipment, if any.
- 23 O. Savings:
- 24 1. If the Contractor completes all Work of the subcontract bid packages, including
25 subcontract bid package Work for which the Contractor is the successful bidder, in a
26 total amount less than the negotiated Maximum Total Subcontract Package Cost,
27 any remaining savings and the associated Fixed GC/CM Fee will be returned to
28 Contracting Agency, as a deductive change order.
- 29 2. Contracting Agency and the Contractor shall meet within six months of Contract
30 execution and, thereafter, at Contracting Agency’s request, to review any potential
31 cost savings from the Maximum Total Subcontract Package Cost realized by the
32 award of subcontracts. The parties will come to a mutual agreement regarding how
33 much of the savings should be retained pending performance of the Work by the
34 Subcontractors and how much can be returned, including the associated Fixed
35 GC/CM Fee amount as a deductive change order to Contracting Agency.

1 **1-08.3 Progress Schedule**

2 **1-08.3(1) General Requirements**

3 The Contractor shall submit Type C Progress Schedules and Schedule Updates to the
4 Engineer for approval.

5 Schedules shall show Work that complies with all time and order of Work requirements in
6 the Contract. Scheduling terms and practices shall conform to the standards established in
7 Construction Planning and Scheduling, Second Edition, published by the Associated General
8 Contractors of America. Except for Weekly Look-Ahead Schedules, all schedules shall meet
9 these General Requirements, and provide the following information:

- 10 1. Include all activities necessary to physically complete the Project.
- 11 2. Show the planned order of Work activities in a logical sequence.
- 12 3. Show durations of Work activities in working days as defined in Section 1-08.5.
- 13 4. Show activities in durations that are reasonable for the intended Work.
- 14 5. Define activity durations in sufficient detail to evaluate the progress of individual
15 activities on a daily basis.
- 16 6. Show the Physical Completion of all Work within the authorized Contract time.

17 Total float belongs to the Project and shall not be for the exclusive benefit of any party.

18 The Contracting Agency allocates its resources to a Contract based on the total time allowed
19 in the Contract. The Contracting Agency may accept a Progress Schedule indicating an early
20 Physical Completion Date but cannot guarantee the Contracting Agency's resources will be
21 available to meet an accelerated schedule. No additional compensation will be allowed if the
22 Contractor is not able to meet their accelerated schedule due to the unavailability of
23 Contracting Agency's resources or for other reasons beyond the Contracting Agency's control.

24 If the Engineer determines that the Progress Schedule or any necessary Schedule Update
25 does not provide the required information, then the schedule will be returned to the
26 Contractor for correction and resubmittal.

27 The Engineer's approval of any schedule shall not transfer any of the Contractor's
28 responsibilities to the Contracting Agency. The Contractor alone shall remain responsible for
29 adjusting forces, equipment, and Work schedules to ensure completion of the Work within the
30 time(s) specified in the Contract.

1 **1-08.3(2) Progress Schedule Types**

2 **1-08.3(2)A Vacant**

3 **1-08.3(2)B Vacant**

4 **1-08.3(2)C Type C Progress Schedule**

5 Type C Progress Schedules shall conform to all of the requirements of this Section.

6 The Contractor shall submit a printed copy of a preliminary Type C Progress Schedule no
7 later than the first working day as defined in Section 1-08.5. The preliminary schedule shall
8 comply with all of these requirements and the requirements of Section 1-08.3(1), except that it
9 may be limited to only those activities occurring within the first 60 working days of the Project.

10 The Contractor shall submit a printed copy of a Type C Progress Schedule no later than
11 60 calendar days after the date the Contract is executed.

12 Each time that a preliminary schedule, Progress Schedule, or Schedule Update is submitted,
13 the Contractor shall provide the Engineer with an electronic copy (.xer file type extension) of
14 that schedule. Each submitted progress and update schedule shall have a unique file name and
15 date identifier. Regardless of the type of software used, the schedule data provided to the
16 Engineer shall be saved on a CD-ROM in Primavera Project Manager Enterprise Version, P6 6.0
17 or later version.

18 Type C Progress Schedules shall display at least the following additional information:

- 19 1. A time scaled logic diagram.
- 20 2. Activities for traffic detours and closures.
- 21 3. Milestones for required delivery of State furnished materials, if any.
- 22 4. Activities for State furnished traffic control resources, if any.
- 23 5. Activities for fabrication of materials longer than 90 calendar days lead time.
- 24 6. Fixed constraints shall be identified on the activity listing, supplemented with a
25 written narrative describing why the constraint exists.
- 26 7. Milestones for interim or stage completion dates.
- 27 8. Activities for scheduled outages on illumination systems, ITS systems, traffic signal
28 systems, and other electrical service outages.

1 9. Nighttime activities shall be so coded.

2 10. Activities for all submittals requiring State review, including the allowable review
3 duration.

4 All calendars used shall be created as Project calendars, not global or resource calendars. If
5 multiple calendars are applied to the Progress Schedule, the Contractor shall submit a written
6 narrative describing the purpose of each one.

7 Schedule files shall not contain User Defined Fields (UDFs), all activity codes shall be Project
8 level, no resources shall be assigned to activities and no Project codes shall be assigned.

9 If requested by the Engineer, the Contractor shall supplement the Progress Schedule with
10 written explanations for each lead and lag time used, and a written explanation describing the
11 assumed production rates and planned resource allocations to support the activity durations
12 provided in the schedule. The written explanations shall be documented as a notebook topic
13 under “Assumptions and Basis”.

14 **1-08.3(2)D Weekly Look-Ahead Schedule**

15 Each week that Work will be performed, the Contractor shall submit a Weekly Look-Ahead
16 Schedule showing the Contractor’s and all Subcontractors’ proposed Work activities for the
17 next two weeks. The Weekly Look-Ahead Schedule shall include the description, duration, and
18 sequence of Work, along with the planned hours of Work. This schedule may be a network
19 schedule, bar chart, or other standard schedule format. The Weekly Look-Ahead Schedule shall
20 be submitted to the Engineer by the midpoint of the week preceding the scheduled Work or
21 some other mutually agreed upon submittal time.

22 **1-08.3(3) Schedule Updates**

23 The Contractor shall submit a printed copy of a Type C Schedule Update to the Engineer by
24 the first business day of each month, starting the month after the Progress Schedule is
25 accepted, or some other mutually agreed upon submittal time.

26 In addition to the other requirements of this Section, Schedule Updates shall reflect at least
27 the following information:

28 1. The actual duration and sequence of as-constructed Work activities, including changed
29 Work.

30 2. Approved time extensions.

31 3. Any construction delays or other conditions that affect the progress of the Work.

1 4. Any modifications to the as-planned sequence or duration of remaining activities,
2 supplemented with a written narrative describing each change and the reason for the
3 change.

4 5. The physical completion of all remaining Work in the remaining Contract Time.

5 6. Progress on partially completed activities shall be indicated using percent complete.

6 Activity numbers on Schedule Updates shall be the same as the Progress Schedule, with the
7 exception of deleted or added activities.

8 Unresolved requests for time extensions shall be reflected in the Schedule Update by
9 assuming no time extension will be granted, and by showing the effects to follow-on activities
10 necessary to physically complete the Project within the currently authorized time for
11 completion.

12 **1-08.3(4) Measurement**

13 Schedule Updates will be measured per each for each update submitted and approved per
14 the requirements of Section 1-08.3(3). Schedule updates that are returned for correction will
15 not be measured.

16 **1-08.3(5) Payment**

17 Contractor shall include a line item for “Type C Progress Schedule” and for “Schedule
18 Updates” in its Schedule of Values for the Project. All Work for 1-08.3 shall be a Specified
19 General Condition. Payment will be made in accordance with the following:

20 “Type C Progress Schedule”, lump sum.

21 The Lump Sum price for “Type C Progress Schedule” shall be full payment for all costs for
22 furnishing the Type C Progress Schedule and preliminary Type C Progress Schedule.

23 “Schedule Update”, per each.

24 All costs for providing Weekly Look-Ahead Schedules are considered incidental to the
25 Contract and are to be included in Specified General Conditions.

26 **1-08.4 Prosecution of Work**

27 The Contractor shall begin Work within 10 calendar days from the date of execution of the
28 Contract by the Contracting Agency, unless otherwise approved in writing. The Contractor shall
29 diligently pursue the Work to the Physical Completion Date within the time specified in the
30 Contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the

1 Contractor of the responsibility to complete the Work within the time(s) specified in the
2 Contract.

3 When shown in the Plans, the first order of Work shall be the installation of high visibility
4 fencing to delineate all areas for protection or restoration, as described in the Contract.
5 Installation of high visibility fencing adjacent to the Roadway shall occur after the placement of
6 all necessary signs and traffic control devices in accordance with Section 1-10.1(2). Upon
7 construction of the fencing, the Contractor shall request the Engineer to inspect the fence. No
8 other Work shall be performed on the site until the Contracting Agency has accepted the
9 installation of high visibility fencing, as described in the Contract.

10 **Ferry Wakes**

11 The Contractor shall coordinate the timing of Work with water-borne equipment to avoid
12 conflicts with ferry traffic. If, during construction, the Contractor experiences difficulty
13 controlling equipment due to ferry caused water turbulence, the Contractor may request that
14 the Engineer coordinate with the ferry operations to restrict ferry speeds and thus reduce the
15 impact of ferry wakes on the Contractor’s operations. No special compensation or extension of
16 time will be made if ferry operations are unable to comply.

17 **1-08.5 Time for Completion**

18 The Contractor shall complete all physical Contract Work within 1325 working days. or as
19 extended by the Engineer in accordance with Section 1-08.8.

20 a. The Contracting Agency may at its discretion elect to define Time for Partial Completion of the
21 work once the phasing plan for the project has been approved.

22 b. All Contract Work as shown on the Contract Drawings shall be substantially complete
23 within the time set forth above.

24 Every day will be counted as a “working day” unless it is a nonworking day or an Engineer
25 determined unworkable day. A nonworking day is defined as a Saturday, a Sunday, a whole or
26 half day on which the Contract specifically prohibits Work on the critical path of the
27 Contractor’s approved progress schedule, or one of these holidays: January 1, the third Monday
28 of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11,
29 Thanksgiving Day, the day after Thanksgiving, and Christmas Day. When any of these holidays
30 fall on a Sunday, the following Monday shall be counted a nonworking day. When the holiday
31 falls on a Saturday, the preceding Friday shall be counted a nonworking day. The days between
32 December 25 and January 1 will be classified as nonworking days.

33 An unworkable day is defined as a half or whole day the Engineer declares to be unworkable
34 because of weather or conditions caused by the weather that prevents satisfactory and timely
35 performance of the Work shown on the critical path of the Contractor’s approved progress

1 schedule. Other conditions beyond the control of the Contractor may qualify for an extension of
2 time in accordance with Section 1-08.8.

3 Contract time shall begin on the first working day following the 21st calendar day after the
4 date the Contracting Agency executes the Contract. If the Contractor and the Engineer mutually
5 agree, the Contractor may proceed with ordering long lead time materials and early work, the
6 scope of which has been mutually agreed by the Contractor and Engineer before the Contract is
7 executed.

8 Each working day shall be charged to the Contract as it occurs, until the Contract Work is
9 physically complete. If Substantial Completion has been granted and all the authorized working
10 days have been used, charging of working days will cease. Each week the Engineer will provide
11 the Contractor a statement that shows the number of working days: (1) charged to the Contract
12 the week before; (2) specified for the Physical Completion of the Contract; and (3) remaining
13 for the Physical Completion of the Contract. The statement will also show the nonworking days
14 and any half or whole day the Engineer declares as unworkable. Within 10 calendar days after
15 the date of each statement, the Contractor shall file a written protest of any alleged
16 discrepancies in it. To be considered by the Engineer, the protest shall be in sufficient detail to
17 enable the Engineer to ascertain the basis and amount of time disputed. By not filing such
18 detailed protest in that period, the Contractor shall be deemed as having accepted the
19 statement as correct.

20 The Engineer will give the Contractor written notice of the Physical Completion Date for all
21 Work the Contract requires. That date shall constitute the Physical Completion Date of the
22 Contract, but shall not imply the Secretary's acceptance of the Work or the Contract.

23 The Engineer will give the Contractor written notice of the Completion Date of the Contract
24 after all the Contractor's obligations under the Contract have been performed by the
25 Contractor. The following events must occur before the Completion Date can be established:

- 26 1. The physical Work on the Project must be complete; and
- 27 2. The Contractor must furnish all documentation required by the Contract and required
28 by law, to allow the Contracting Agency to process final acceptance of the Contract. The
29 following documents must be received by the Project Engineer prior to establishing a
30 Completion Date:
 - 31 a. Certified Payrolls (Federal-aid Projects).
 - 32 b. Material Acceptance Certification Documents.
 - 33 c. Quarterly Reports of Amounts Paid as MBE/WBE Participants, or Quarterly
34 Reports of Amounts Credited as DBE Participation, as required by the Contract
35 Provisions.

- 1 d. Final Contract Voucher Certification.
- 2 e. Copies of the approved “Affidavit of Prevailing Wages Paid” for the Contractor
- 3 and all Subcontractors.

4 **1-08.6 Suspension of Work**

5 The Engineer may order suspension of all or any part of the Work if:

- 6 1. Unsuitable weather prevents satisfactory and timely performance of the Work; or
- 7 2. The Contractor does not comply with the Contract; or
- 8 3. It is in the public interest.

9 When ordered by the Engineer to suspend or resume Work, the Contractor shall do so

10 immediately.

11 If the Work is suspended for reason (1) above, the period of Work stoppage will be counted

12 as unworkable days. But if the Engineer believes the Contractor should have completed the

13 suspended Work before the suspension, all or part of the suspension period may be counted as

14 working days. The Engineer will set the number of unworkable days (or parts of days) by

15 deciding how long the suspension delayed the entire Project.

16 If the Work is suspended for reason (2) above, the period of Work stoppage will be counted

17 as working days. The lost Work time, however, shall not relieve the Contractor from any

18 Contract responsibility.

19 If the performance of all or any part of the Work is suspended, delayed, or interrupted for

20 an unreasonable period of time by an act of the Contracting Agency in the administration of the

21 Contract, or by failure to act within the time specified in the Contract (or if no time is specified,

22 within a reasonable time), the Engineer will make an adjustment for any increase in the cost or

23 time for the performance of the Contract (excluding profit) necessarily caused by the

24 suspension, delay, or interruption. However, no adjustment will be made for any suspension,

25 delay, or interruption if (1) the performance would have been suspended, delayed, or

26 interrupted by any other cause, including the fault or negligence of the Contractor, or (2) an

27 equitable adjustment is provided for or excluded under any other provision of the Contract.

28 If the Contractor believes that the performance of the Work is suspended, delayed, or

29 interrupted for an unreasonable period of time and such suspension, delay, or interruption is

30 the responsibility of the Contracting Agency, the Contractor shall immediately submit a written

31 notice of protest to the Engineer as provided in Section 1-04.5. No adjustment shall be allowed

32 for any costs incurred more than 10 calendar days before the date the Engineer receives the

33 Contractor’s written notice of protest. If the Contractor contends damages have been suffered

1 as a result of such suspension, delay, or interruption, the protest shall not be allowed unless the
2 protest (stating the amount of damages) is asserted in writing as soon as practicable, but no
3 later than the date of the Contractor's signature on the Final Contract Voucher Certification.
4 The Contractor shall keep full and complete records of the costs and additional time of such
5 suspension, delay, or interruption and shall permit the Engineer to have access to those records
6 and any other records as may be deemed necessary by the Engineer to assist in evaluating the
7 protest.

8 The Engineer will determine if an equitable adjustment in cost or time is due as provided in
9 this Section. The equitable adjustment for increase in costs, if due, shall be subject to the
10 limitations provided in Section 1-09.4, provided that no profit of any kind will be allowed on any
11 increase in cost necessarily caused by the suspension, delay, or interruption.

12 Request for extensions of time will be evaluated in accordance with Section 1-08.8.

13 The Engineer's determination as to whether an adjustment should be made will be final as
14 provided in Section 1-05.1.

15 No claim by the Contractor under this clause shall be allowed unless the Contractor has
16 followed the procedures provided in this Section and in Sections 1-04.5 and 1-09.11.

17 **1-08.7 Maintenance during Suspension**

18 Before and during any suspension (as described in Section 1-08.6), the Contractor shall
19 protect the Work from damage or deterioration. Suspension shall not relieve the Contractor
20 from anything the Contract requires unless this Section states otherwise.

21 At no expense to the Contracting Agency, the Contractor shall provide through the
22 construction area safe, smooth, and unobstructed Roadways and pedestrian access routes for
23 public use during the suspension (as required in Section 1-07.23 or the Special Provisions). This
24 may include a temporary road, alternative pedestrian access route, or detour.

25 If the Engineer determines that the Contractor failed to pursue the Work diligently before
26 the suspension, or failed to comply with the Contract or orders, then the Contractor shall
27 maintain the temporary Roadway in use during suspension. In this case, the Contractor shall
28 bear the maintenance costs. If the Contractor fails to maintain the temporary Roadway, the
29 Contracting Agency will do the Work and deduct all resulting costs from payments due to the
30 Contractor.

31 If the Engineer determines that the Contractor has pursued the Work diligently before the
32 suspension, then the Contracting Agency will maintain the temporary Roadway (and bear its

1 cost). This Contracting Agency-provided maintenance work will include only routine
2 maintenance of:

- 3 1. The Traveled Way, Auxiliary Lanes, Shoulders, and detour surface;
- 4 2. Roadway drainage along and under the traveled Roadway or detour; and
- 5 3. All barricades, signs, and lights needed for directing traffic through the temporary
6 Roadway or detour in the construction area.

7 The Contractor shall protect and maintain all other Work in areas not used by traffic. All
8 costs associated with protecting and maintaining such Work shall be the responsibility of the
9 Contractor except those costs associated with implementing the TESC Plan according to
10 Section 8-01.

11 After any suspension during which the Contracting Agency has done the routine
12 maintenance, the Contractor shall accept the traveled Roadway or detour as is when Work
13 resumes. The Contractor shall make no claim against the Contracting Agency for the condition
14 of the Roadway or detour.

15 After any suspension, the Contractor shall resume all responsibilities the Contract assigns
16 for the Work.

17 **1-08.8 Extensions of Time**

18 The Contractor shall submit any requests for time extensions to the Engineer in writing no
19 later than 10 working days after the delay occurs. The requests for time extension shall be
20 limited to the effect on the critical path of the Contractor’s approved schedule attributable to
21 the change or event giving rise to the request.

22 To be considered by the Engineer, the request shall be in sufficient detail (as determined by
23 the Engineer) to enable the Engineer to ascertain the basis and amount of the time requested.
24 The request shall include an updated schedule that supports the request and demonstrates that
25 the change or event: (1) had a specific impact on the critical path, and except in cases of
26 concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by
27 resequencing of the Work or by using other reasonable alternatives. If a request combined with
28 previous extension requests equals 20 percent or more of the original Contract time, then the
29 Contractor’s letter of request must bear consent of Surety. In evaluating any request, the
30 Engineer will consider how well the Contractor used the time from Contract execution up to the
31 point of the delay and the effect the delay has on any completion times included in the Special
32 Provisions. The Engineer will evaluate and respond within 15 calendar days of receiving the
33 request.

1 The authorized time for Physical Completion will be extended for a period equal to the time
2 the Engineer determines the Work was delayed because of:

- 3 1. Adverse weather causing the time requested to be unworkable, provided that the
4 Engineer had not already declared the time to be unworkable and the Contractor has
5 filed a written protest according to Section 1-08.5.
- 6 2. Any action, neglect, or default of the Contracting Agency, its officers, or employees, or
7 of any other contractor employed by the Contracting Agency.
- 8 3. Fire or other casualty for which the Contractor is not responsible.
- 9 4. Strikes.
- 10 5. Any other conditions for which these Specifications permit time extensions such as:
 - 11 a. In Section 1-04.4, if a change increases the time to do any of the Work including
12 unchanged Work.
 - 13 b. In Section 1-04.5, if increased time is part of a protest that is found to be a valid
14 protest.
 - 15 c. In Section 1-04.7, if a changed condition is determined to exist that caused a delay in
16 completing the Contract.
 - 17 d. In Section 1-05.3, if the Contracting Agency does not approve properly prepared and
18 acceptable drawings within 30 calendar days.
 - 19 e. In Section 1-07.13, if the performance of the Work is delayed as a result of damage
20 by others.
 - 21 f. In Section 1-07.17, if the removal or the relocation of any utility by forces other than
22 the Contractor caused a delay.
 - 23 g. In Section 1-07.24, if a delay results from all the Right-of-Way necessary for the
24 construction not being purchased and the Special Provisions does not make specific
25 provisions regarding unpurchased Right-of-Way.
 - 26 h. In Section 1-08.6, if the performance of the Work is suspended, delayed, or
27 interrupted for an unreasonable period of time that proves to be the responsibility
28 of the Contracting Agency.
 - 29 i. In Section 1-09.11, if a dispute or claim also involves a delay in completing the
30 Contract and the dispute or claim proves to be valid.
 - 31 j. In Section 1-09.6, for Work performed on a force account basis.

1 6. If the actual quantity of Work performed for a Bid item was more than the original Plan
2 quantity and increased the duration of a critical activity. Extensions of time will be
3 limited to only that quantity exceeding the original Plan quantity.

4 7. Exceptional causes not specifically identified in items 1 through 6, provided the request
5 letter proves the Contractor had no control over the cause of the delay and could have
6 done nothing to avoid or shorten it.

7 Working days added to the Contract by time extensions, when time has overran, shall only
8 apply to days on which liquidated damages or direct engineering have been charged, such as
9 the following:

- 10 • If Substantial Completion has been granted prior to all of the authorized working days
11 being used, then the number of days in the time extension will eliminate an equal
12 number of days on which direct engineering charges have accrued. If the Substantial
13 Completion Date is established after all of the authorized working days have been used,
14 then the number of days in the time extension will eliminate an equal number of days
15 on which liquidated damages or direct engineering charges have accrued.
- 16 • The Engineer will not allow a time extension for any cause listed above if it resulted
17 from the Contractor’s default, collusion, action or inaction, or failure to comply with the
18 Contract.

19 The Contracting Agency considers the time specified in the Special Provisions as sufficient to
20 do all the Work. For this reason, the Contracting Agency will not grant a time extension for:

- 21 1. Failure to obtain all materials and workers unless the failure was the result of
22 exceptional causes as provided above in Subsection 7;
- 23 2. Changes, protests, increased quantities, or changed conditions (Section 1-04) that do
24 not delay the completion of the Contract or prove to be an invalid or inappropriate time
25 extension request;
- 26 3. Delays caused by nonapproval of Drawings or Plans as provided in Section 1-05.3;
- 27 4. Rejection of faulty or inappropriate equipment as provided in Section 1-05.9;
- 28 5. Correction of thickness deficiency as provided in Section 5-05.5(1)B.

29 The Engineer will determine whether the time extension should be granted, the reasons for
30 the extension, and the duration of the extension, if any. Such determination will be final as
31 provided in Section 1-05.1.

1 **1-08.9 Liquidated Damages**

2 Delayed completion of Work as described in 1-08.5 above will result in impacts to the
3 traveling public, increase fuel consumption, increase vehicle operating costs, increase pollution,
4 and cause other inconveniences and harm.

5 Accordingly, the Contractor agrees:

- 6 1. **To pay (according to the following formula) liquidated damages for each working day**
7 **beyond the number of working days established for Physical Completion, and**
- 8 2. To authorize the Engineer to deduct these liquidated damages from any money due or
9 coming due the Contractor.

10 Liquidated Damages Formula for failure to complete the physical Work of the Contract on
11 time:

12 $LD=0.15C/T$

13 LD = Liquidated Damages per working day (rounded to the nearest dollar)

14 C = original MACC

15 T = original Time for physical completion

16 Closure of the key operational elements listed in Section 1-07.23(1) beyond the scheduled
17 opening times approved by the Contracting Agency in the Final Maintenance of Operations Plan
18 will result in delays to the traveling public, increase fuel consumption, vehicle operating cost,
19 and other inconveniences and harm. Accordingly, the Contractor agrees:

- 20 1. To pay (according to the following formula) liquidated damages for each daily
21 occurrence, and
- 22 2. To authorize the Engineer to deduct these liquidated damages from any money due or
23 coming due the Contractor.

24 Liquidated Damages Formula for closure of key operational elements:

25 $LD=\$16xDPTxDD/60$

26 LD = Liquidated Damages per working day (rounded to the nearest dollar)

27 DPT = Daily Passenger Total (Vehicle and Walk-on passengers) based on Yearly Average
28 ridership or Yearly Peak ridership data for affected routes

29 DD = Daily Delay per passenger (min/day)

1 **1-08.10 Termination of Contract**

2 **1-08.10(1) Termination for Default**

3 The Contracting Agency may terminate the Contract upon the occurrence of any one or
4 more or the following events:

- 5 1. If the Contractor fails to supply sufficient skilled workers or suitable materials or
6 equipment;
- 7 2. If the Contractor refuses or fails to prosecute the Work with such diligence as will
8 ensure its Physical Completion within the original Physical Completion time and any
9 extensions of time which may have been granted to the Contractor by change order or
10 otherwise;
- 11 3. If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for
12 the benefit of creditors, or if the Contractor or a third party files a petition to take
13 advantage of any debtor's act or to reorganize under the bankruptcy or similar laws
14 concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or
15 for any of the Contractor's property on account of the Contractor's insolvency, and the
16 Contractor or its successor in interest does not provide adequate assurance of future
17 performance in accordance with the Contract within 15 calendar days of receipt of a
18 request for assurance from the Contracting Agency;
- 19 4. If the Contractor disregards laws, ordinances, rules, codes, regulations, orders or similar
20 requirements of any public entity having jurisdiction;
- 21 5. If the Contractor disregards the authority of the Contracting Agency;
- 22 6. If the Contractor performs Work which deviates from the Contract, and neglects or
23 refuses to correct rejected Work; or
- 24 7. If the Contractor otherwise violates in any material way any provisions or requirements
25 of the Contract.

26 Once the Contracting Agency determines that sufficient cause exists to terminate the
27 Contract, written notice shall be given to the Contractor and its Surety indicating that the
28 Contractor is in breach of the Contract and that the Contractor is to remedy the breach within
29 15 calendar days after the notice is sent. In case of an emergency such as potential damage to
30 life or property, the response time to remedy the breach after the notice may be shortened. If

1 the remedy does not take place to the satisfaction of the Contracting Agency, the Engineer
2 may, by serving written notice to the Contractor and Surety either:

- 3 1. Transfer the performance of the Work from the Contractor to the Surety; or
- 4 2. Terminate the Contract and, at the Contracting Agency’s option, prosecute it to
5 completion by Contract or otherwise. Any extra costs or damages to the Contracting
6 Agency shall be deducted from any money due or coming due to the Contractor under
7 the Contract.

8 If the Engineer elects to pursue one remedy, it will not bar the Engineer from pursuing other
9 remedies on the same or subsequent breaches.

10 Upon receipt of a notice that the Work is being transferred to the Surety, the Surety shall
11 enter upon the premises and take possession of all materials, tools, and appliances for the
12 purpose of completing the Work included under the Contract and employ by contract or
13 otherwise any person or persons satisfactory to the Engineer to finish the Work and provide the
14 materials without termination of the Contract. Such employment shall not relieve the Surety of
15 its obligations under the Contract and the bond. If there is a transfer to the Surety, payments
16 on estimates covering Work subsequent to the transfer shall be made to the extent permitted
17 under law to the Surety or its agent without any right of the Contractor to make any claim.

18 If the Engineer terminates the Contract or provides such sufficiency of labor or materials as
19 required to complete the Work, the Contractor shall not be entitled to receive any further
20 payments on the Contract until all the Work contemplated by the Contract has been fully
21 performed. The Contractor shall bear any extra expenses incurred by the Contracting Agency in
22 completing the Work, including all increased costs for completing the Work, and all damages
23 sustained, or which may be sustained, by the Contracting Agency by reason of such refusal,
24 neglect, failure, or discontinuance of Work by the Contractor. If liquidated damages are
25 provided in the Contract, the Contractor shall be liable for such liquidated damages until such
26 reasonable time as may be required for Physical Completion of the Work. After all the Work
27 contemplated by the Contract has been completed, the Engineer will calculate the total
28 expenses and damages for the completed Work. If the total expenses and damages are less
29 than any unpaid balance due the Contractor, the excess will be paid by the Contracting Agency
30 to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor
31 and the Surety shall be jointly and severally liable to the Contracting Agency and shall pay the
32 difference to the State of Washington, Department of Transportation on demand.

33 In exercising the Contracting Agency’s right to prosecute the Physical Completion of the
34 Work, the Contracting Agency shall have the right to exercise its sole discretion as to the
35 manner, method, and reasonableness of the costs of completing the Work. In the event that
36 the Contracting Agency takes Bids for remedial Work or Physical Completion of the Project, the
37 Contractor shall not be eligible for the Award of such Contracts.

1 In the event the Contract is terminated, the termination shall not affect any rights of the
2 Contracting Agency against the Contractor. The rights and remedies of the Contracting Agency
3 under the Termination Clause are in addition to any other rights and remedies provided by law
4 or under this Contract. Any retention or payment of monies to the Contractor by the
5 Contracting Agency will not release the Contractor from liability.

6 If a notice of termination for default has been issued and it is later determined for any
7 reason that the Contractor was not in default, the rights and obligations of the parties shall be
8 the same as if the notice of termination had been issued pursuant to Termination for Public
9 Convenience in Section 1-08.10(2). This shall include termination for default because of failure
10 to prosecute the Work, and the delay was found to be excusable under the provisions of
11 Section 1-08.8.

12 **1-08.10(2) Termination for Public Convenience**

13 The Engineer may terminate the Contract in whole, or from time to time in part, whenever:

- 14 1. The Contractor is prevented from proceeding with the Work as a direct result of an
15 Executive Order of the President with respect to the prosecution of war or in the
16 interest of national defense; or an Executive Order of the President or Governor of
17 the State with respect to the preservation of energy resources;
- 18 2. The Contractor is prevented from proceeding with the Work by reason of a
19 preliminary, special, or permanent restraining order of a court of competent
20 jurisdiction where the issuance of such restraining order is primarily caused by acts
21 or omissions of persons or agencies other than the Contractor; or
- 22 3. The Engineer determines that such termination is in the best interests of the
23 Contracting Agency.

24 **1-08.10(3) Termination for Public Convenience Payment Request**

25 After receipt of Termination for Public Convenience as provided in Section 1-08.10(2), the
26 Contractor shall submit to the Contracting Agency a request for costs associated with the
27 termination. The request shall be prepared in accordance with the claim procedures outlined in
28 Sections 1-09.11 and 1-09.12. The request shall be submitted promptly but in no event later
29 than 90 calendar days from the effective date of termination.

30 The Contractor agrees to make all records available to the extent deemed necessary by the
31 Engineer to verify the costs in the Contractor's payment request.

1 **1-08.10(4) Payment for Termination for Public Convenience**

2 Whenever the Contract is terminated in accordance with Section 1-08.10(2), payment will
3 be made in accordance with Section 1-09.5 for the actual Work performed.

4 If the Contracting Agency and the Contractor cannot agree as to the proper amount of
5 payment, then the matter will be resolved as outlined in Section 1-09.13 except that, if the
6 termination occurs because of the issuance of a restraining order as provided in
7 Section 1-08.10(2), the matter will be resolved through mandatory and binding arbitration as
8 described in Sections 1-09.13(3)A and B, regardless of the amount of the claim.

9 **1-08.10(5) Responsibility of the Contractor and Surety**

10 Termination of a Contract shall not relieve the Contractor of any responsibilities under the
11 Contract for Work performed. Nor shall termination of the Contract relieve the Surety or
12 Sureties of obligations under the Contract Bond or retainage bond for Work performed.

13 **1-09 Measurement and Payment**

14 **1-09.1 Measurement of Quantities**

15 In measuring all acceptably completed Bid items of Work, the Engineer will:

- 16 1. Use United States standard measure;
- 17 2. Make all measurements as described in this Section, unless individual Specifications
18 require otherwise;
- 19 3. Follow methods generally recognized as conforming to good engineering practice;
- 20 4. Conform to the usual practice of the Contracting Agency by carrying measurements
21 and computations to the proper significant figure or fraction of units for each item;
22 and
- 23 5. Measure horizontally or vertically (unless otherwise specified).

24 The terms listed below shall be defined as follows in all measurements under this Section:

25 “Lump Sum” (when used as an item of payment): complete payment for the Work
26 described for that item in the Contract.

27 “Gage” (in measurement of plates): the U.S. Standard Gage.

1 “Gage” (in measurement of galvanized sheets used to manufacture corrugated metal
2 pipe, metal plate pipe culverts and arches, and metal cribbing): that specified in
3 AASHTO M 36, M 167, M 196, M 197, or M 219.

4 “Gage” (in measurement of wire): that specified in AASHTO M 32.

5 “Ton”: 2,000 pounds of avoirdupois weight.

6 Items of payment that have “Lump Sum” or “Force Account” in the Bid item of Work shall
7 have no specific unit of measurement requirement.

8 For each basis of measurement listed below, the Engineer will use the method of
9 measurement described. For Bid items or materials measured on the basis of:

10 **Hour** – Measured for each hour that Work is actually performed. Portions of an hour will
11 be rounded up to a half hour.

12 **Square Yard or Square Foot** – The measurement shall be a calculation from the neat
13 dimensions shown in the Plans or as altered by the Engineer. If there is an exception within
14 the measured area where the item of Work is not performed (such as a drainage vault
15 within a measured sidewalk) and if the exception area is greater than 9 square feet, then
16 the area of the exception will be subtracted from the payment area calculated from the
17 neat dimensions.

18 **Linear Foot** (pipe culverts, guard rail, underdrains, etc.) – Measured parallel to the
19 Structure’s base or foundation, unless the Plans require otherwise.

20 **Weight** – Weighed as required in Section 1-09.2.

21 **Volume** (of excavation and embankment) – Measured by the average-end-area method
22 or by the finite element analysis method utilizing digital terrain modeling techniques. All or
23 some computations may be based on ground elevations and other data derived
24 photogrammetrically. The Engineer may correct for curvature.

25 **Volume** (in the hauling vehicle) – Measured at the point of delivery. Hauling vehicles
26 may be of any size or type the Engineer approves provided that the body is of such shape
27 that the actual contents may be readily and accurately determined. If the Engineer requires,
28 the Contractor shall level loads at the delivery point to facilitate measurement.

29 For each item listed below, the Engineer will use the method of measurement described:

30 **Structures** – Measured on the neat lines shown in the Plans or as altered by the
31 Engineer. When a complete Structure or structural unit is specified as the unit
32 of measurement, the unit shall include all fittings and accessories.

1 **Timber** – Measured by the thousand board feet (MBM) actually used in the Structure.
2 Measurements will be based on nominal widths and thicknesses and the extreme length of
3 each piece.

4 **Standard Manufactured Items** (fence, wire, plates, rolled shapes, pipe conduit, etc.,
5 when specified) – Measured by the manufacturer’s identification of gage, unit weight,
6 section dimension, etc. The Engineer will accept manufacturing tolerances set by each
7 industry unless cited Specifications require more stringent tolerances.

8 **Cement** – Measured by the pound, ton, or sack. A sack shall be 94 pounds.

9 **Asphalt** – Measured by the gallon or ton. If measured by gallon, measurement will be
10 made at 60 F (or will be corrected to the volume at 60 F in keeping with ASTM D 1250). If
11 shipped by rail, truck, or transport, measurement will be by net certified scale masses or
12 certified volumes (corrected for material lost enroute or not actually incorporated into the
13 Work).

14 No measurement will be made for:

- 15 1. Work performed or materials placed outside lines shown in the Plans or set by the
16 Engineer;
- 17 2. Materials wasted, used, or disposed of in a manner contrary to the Contract;
- 18 3. Rejected materials (including those rejected after placement if the rejection resulted
19 from the Contractor’s failure to comply with the Contract);
- 20 4. Hauling and disposing of rejected materials;
- 21 5. Material remaining on hand after the Work is completed, except as provided in
22 Sections 1-09.5 and 1-09.10; or
- 23 6. Any other Work or material contrary to any Contract Provision.

24 **1-09.2 Weighing Equipment**

25 **1-09.2(1) General Requirements for Weighing Equipment**

26 Unless specified otherwise, any Highway or bridge construction materials to be
27 proportioned or measured and paid for by weight shall be weighed on a scale.

28 **Scales** – Scales shall:

- 29 1. Be accurate to within 0.5 percent of the correct weight throughout the range of use;
- 30 2. Not include spring balances;

- 1 3. Include beams, dials, or other reliable readout equipment;
- 2 4. Be built to prevent scale parts from binding, vibrating, or being displaced and to
- 3 protect all working parts from falling material, wind, and weather; and
- 4 5. Be carefully maintained, with bunkers and platforms kept clear of accumulated
- 5 materials that could cause errors and with knife edges given extra care
- 6 and protection.

7 **Scale Operations** – “Contractor-provided scale operations” are defined as operations where
8 a scale is set up by the Contractor specifically for the Project and most, if not all, material
9 weighed on the scale is utilized for Contract Work. In this situation, the Contractor shall provide
10 a person to operate the Project scale, write tickets, perform scale checks, and prepare reports.

11 “Commercial Scale Operations” include the use of established scales used to sell materials
12 to the public on a regular basis. In addition, for the purposes of this Specification, all batch,
13 hopper, and belt scales are considered to be commercial scales. When a commercial scale is
14 used as the Project scale, the Contractor may utilize a commercial scale operator provided it is
15 at no additional cost to the Contracting Agency.

16 In addition, the Contractor shall ensure that:

- 17 1. The Engineer is allowed to observe the weighing operation and check the daily scale
- 18 weight record;
- 19 2. Scale verification checks are performed at the direction of the Contracting Agency
- 20 (see Section 1-09.2(5));
- 21 3. Several times each day, the scale operator records and makes certain the platform
- 22 scale balances and returns to zero when the load is removed; and
- 23 4. Test results and scale weight records for each day’s hauling operations are provided
- 24 to the Engineer daily. Unless otherwise approved, reporting shall utilize WSDOT
- 25 Form 422-027, Scalemans’ Daily Report.

26 **Trucks and Tickets** – Each truck to be weighed shall bear a unique identification number.
27 This number shall be legible and in plain view of the scale operator. Each vehicle operator shall
28 obtain a weigh or load ticket from the scale operator. The Contracting Agency will provide item

1 quantity tickets for scales that are not self-printing. The Contractor shall provide tickets for
2 self-printing scales. All tickets shall, at a minimum, contain the following information:

- 3 1. Date of haul;
- 4 2. Contract number;
- 5 3. Contract unit Bid item;
- 6 4. Unit of measure;
- 7 5. Identification number of hauling vehicle; and
- 8 6. Weight delivered:
 - 9 a. Net weight in the case of batch and hopper scales.
 - 10 b. Gross weight, tare , and net weight in the case of platform scales (tare may be
11 omitted if a tare beam is used).
 - 12 c. Approximate load-out weight in the case of belt conveyor scales.

13 The vehicle operator shall deliver the ticket in legible condition to the material receiver at
14 the material delivery point. The material delivery point is defined as the location where the
15 material is incorporated into the permanent Work.

16 **1-09.2(2) Specific Requirements for Batching Scales**

17 Each batching scale shall be designed to support a weighing container. The arrangement
18 shall make it convenient for the operator to remove material from the weighing container while
19 watching readout devices. Any weighing container mounted on a platform scale shall have its
20 center of gravity directly over the platform centerline. Batching scales used for portland cement
21 concrete or hot mix asphalt shall not be used for batching other materials.

22 Readout devices used for batching or hopper scales shall be marked at intervals evenly
23 spaced throughout and shall be based on the nominal rated capacity of the scale. These
24 intervals shall not exceed one-tenth of 1 percent of the nominal rated capacity. Before use at a
25 new site and then at 6-month intervals, all batching and hopper scales shall be: approved under
26 rules of the Weights and Measures Section of the Washington State Department of Agriculture,
27 or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In either
28 case, the Contractor shall provide the Engineer with a copy of the final test results.

1 **1-09.2(3) Specific Requirements for Platform Scales**

2 Each platform scale shall be able to weigh the entire hauling vehicle or combination of
3 connected vehicles at one time. No part of the vehicle or vehicle combination will be permitted
4 off the platform as it is weighed. A tare weight shall be taken of each hauling vehicle at least
5 once daily.

6 Any platform scale shall be installed and maintained with the platform level and with rigid
7 bulkheads at either end to prevent binding or shifting. The readout device shall be marked at
8 intervals of no more than 40 pounds. Test records shall show results to the nearest 20 pounds.
9 During weighing operations, weights shall be read and recorded to the nearest 100 pounds.
10 Before use at a new site and then at 6-month intervals, any platform scale shall be: approved
11 under rules of the Washington State Department of Agriculture’s Weights and Measures
12 Section, or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In
13 either case, the Contractor shall provide the Engineer with a copy of the final test results.

14 **1-09.2(4) Specific Requirements for Belt Conveyor Scales**

15 The Engineer may approve conveyor-belt weighing of untreated materials if the method
16 and device meet all general requirements for weighing equipment. The recording tape,
17 odometer, totalizer, calibration adjustment, and clock-time imprinter shall be kept locked and
18 the Engineer shall retain all keys. All belt-conveyor scales shall comply with the requirements
19 for Belt-Conveyor Scales in the National Institute of Standards and Technology (NIST) Handbook
20 No. 44, except where these Specifications modify those requirements.

21 A static load test shall be made: each day after the belt-conveyor has run continuously for
22 about 30 minutes, and again, immediately after the air temperature changes significantly. If the
23 static load test reveals a need for adjustment, the Contractor shall perform a chain test. The
24 Contractor shall make the computation of the test chain calibration, the calibration procedures
25 and results, and related records available for the Engineer’s review. The test chain shall be
26 clearly marked with its calibration, carried in a suitable container, and kept immediately
27 available for testing.

28 **1-09.2(5) Measurement**

29 **Scale Verification Checks** – The Engineer will verify the accuracy of each batch, hopper, or
30 platform scale. The frequency of verification checks will be such that at least one test weekly is
31 performed for each scale used in weighing Contract items of Work.

32 Verification checks may not be routinely conducted for weighed material, whose proposal
33 quantity multiplied by the unit Bid price, has a value less than \$20,000.

1 The verification will consist of one of the following methods and be at the Contractor’s
2 option:

- 3 1. Weigh a loaded truck on a separate certified platform scale designated by the
4 Contractor, for the purpose of scale verification.
- 5 2. Weigh a vehicle that weighs at least 10,000 pounds on a separate certified scale and
6 then check the Project scale with it.
- 7 3. Establish a certified fixed load weighing at least 10,000 pounds as a check-weight. The
8 certification shall consist of an affidavit affirming the correct weight of the fixed load.

9 Should the scale verification check reveal a weight difference of more than 0.5 percent, a
10 second scale verification check shall be performed immediately. If the weight differences of
11 both comparison checks exceed the 0.5-percent limit and the scale has been overweighing, the
12 Contractor shall immediately stop weighing and the scale shall be recertified at the Contractor’s
13 expense. If the weight difference of both comparison checks exceed the 0.5-percent limit and
14 the scale is underweighing, it shall be adjusted immediately. Contractor will not be
15 compensated for any loss from underweighing.

16 **Belt Scales** – To test the accuracy of a belt-conveyor scale, the Contractor shall weigh five or
17 more payloads from sequential hauling units and compare these weights with weights of the
18 same payloads taken on a separate certified platform scale. If the test results fluctuate, the
19 Engineer may require more than five check loads. Conveyor weights will be based on tonnage
20 values taken from the sealed odometer at the beginning and end of each check period.

21 If scale verification checks shows the scale has been under weighing, it shall be adjusted
22 immediately. The Contractor shall not be compensated for any loss from under weighing.

23 If scale verification checks show the scale has been overweighing, its operation will cease
24 immediately until adjusted.

25 **Minor Construction Items** – If the Specifications and Plans require weight measurement for
26 minor construction items, the Contractor may request permission to convert volume to weight.
27 If the Engineer approves, an agreed factor may be used to make this conversion and volume
28 may be used to calculate the corresponding weight for payment.

29 **1-09.2(6) Payment**

30 Unless specified otherwise, the Contracting Agency will pay for no materials received by
31 weight unless the materials have been weighed as required in this Section or as required by
32 another method the Engineer has approved in writing.

33 The Contractor shall not be compensated for any loss from underweighing that is revealed
34 by scale verification checks.

1 If scale verification checks reveal that the scale is overweighing, then payment for all
2 material weighed since the last valid scale verification check will be adjusted. The Contracting
3 Agency will calculate the combined weight of all materials weighed after the last verification
4 check showing accurate results. This combined weight will then be reduced for payment by the
5 percentage of scale error that exceeds 0.5 percent unless the Contractor demonstrates to the
6 satisfaction of the Engineer that the defect in the scale was present for a lesser period of time.

7 Unit Contract prices for the various pay items of the Project cover all costs related to
8 weighing and proportioning materials for payment. These costs include but are not limited to:

- 9 1. Furnishing, installing, certifying, and maintaining scales;
- 10 2. Providing a weigher to operate a Contractor-provided scale;
- 11 3. Providing a weigher to operate a commercial scale, if necessary;
- 12 4. Providing self-printing tickets, if necessary;
- 13 5. Rerouting a truck for verification weighing;
- 14 6. Assisting the Engineer with scale verification checks;
- 15 7. Any other related costs associated with meeting the requirements of this Section.

16 **1-09.3 Scope of Payment**

17 The payment provided for in the Contract shall be full payment to the Contractor for:

- 18 1. Furnishing all materials and performing all Work under the Contract (including
19 changes in the work, materials, or Plans) in a complete and acceptable manner;
- 20 2. All risk, loss, damage, or expense of whatever character arising out of the nature or
21 prosecution of the Work; and
- 22 3. All expense incurred resulting from a suspension or discontinuance of the Work as
23 specified under the Contract.

24 The payment of any estimate or retained percentage shall not relieve the Contractor of the
25 obligation to make good any defective Work or materials.

26 Unless the Plans and Special Provisions provide otherwise, the unit Contract prices for the
27 various Bid items shall be full payment for all labor, materials, supplies, equipment, tools, and
28 all other things required to completely incorporate the item into the Work as though the item
29 were to read "In Place".

1 If the “Payment” clause in the Specifications, for an item included in the Proposal, covers
2 and considers all Work and material essential to that item, then the Work or materials will not
3 be measured or paid for under any other item that may appear elsewhere in the Proposal or
4 Specifications.

5 Certain payment items appearing in these Specifications may be modified in the Plans and
6 Proposal to include:

- 7 1. The words “For Structure”, “For Concrete Barrier”, “For Bridge”, etc., with the intent of
8 clarifying specific use of the item; or
- 9 2. The words “Site (Site Designation)”, with the intent of clarifying where a specific item of
10 Work is to be performed.

11 Modification of payment items in this manner shall in no way change the intent of the
12 Specifications relating to these items.

13 **1-09.4 Equitable Adjustment**

14 The equitable adjustment provided for elsewhere in the Contract shall be determined in
15 one or more of the following ways:

- 16 1. If the parties are able to agree, the price will be determined by using:
 - 17 a. Unit prices; or
 - 18 b. Other agreed upon prices;
- 19 2. If the parties cannot agree, the price will be determined by the Engineer using:
 - 20 a. Unit prices; or
 - 21 b. Other means to establish costs.

22 The following limitations shall apply in determining the amount of the equitable
23 adjustment:

- 24 1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the
25 AGC/WSDOT Equipment Rental Agreement in effect at the time the Work is performed
26 as referred to in Section 1-09.6, and
- 27 2. To the extent any delay or failure of performance was concurrently caused by the
28 Contracting Agency and the Contractor, the Contractor shall be entitled to a time
29 extension for the portion of the delay or failure of performance concurrently caused,

1 provided it make such a request pursuant to Section 1-08.8; however, the Contractor
2 shall not be entitled to any adjustment in Contract price.

3 3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be
4 allowed.

5 4. No claim for consequential damages of any kind will be allowed.

6 **1-09.5 Deleted or Terminated Work**

7 The Engineer may delete Work by change order as provided in Section 1-04.4 or may
8 terminate the Contract in whole or part as provided in Section 1-08.10(2). When the Contract is
9 terminated in part, the partial termination shall be treated as a deletion change order for
10 payment purposes under this Section.

11 Payment for completed items will be at unit Contract prices.

12 When any item is deleted in whole or in part by change order or when the Contract is
13 terminated in whole or in part, payment for deleted or terminated Work will be made
14 as follows:

15 1. Payment will be made for the actual number of units of Work completed at the unit
16 Contract prices unless the Engineer determines the unit prices are inappropriate for the
17 Work actually performed. When that determination is made by the Engineer, payment
18 for Work performed will be as mutually agreed. If the parties cannot agree the Engineer
19 will determine the amount of the equitable adjustment in accordance with
20 Section 1-09.4;

21 2. Payment for partially completed lump sum items will be as mutually agreed. If the
22 parties cannot agree, the Engineer will determine the amount of the equitable
23 adjustment in accordance with Section 1-09.4;

24 3. To the extent not paid for by the Contract prices for the completed units of Work, the
25 Contracting Agency will pay as part of the equitable adjustment those direct costs
26 necessarily and actually incurred by the Contractor in anticipation of performing the
27 Work that has been deleted or terminated;

28 4. The total payment for any one item in the case of a deletion or partial termination shall
29 not exceed the Bid price as modified by approved change orders less the estimated cost
30 (including overhead and profit) to complete the Work and less any amount paid to the
31 Contractor for the item;

1 5. The total payment where the Contract is terminated in its entirety shall not exceed the
2 total Contract price as modified by approved change orders less those amounts paid to
3 the Contractor before the effective date of the termination; and

4 6. No claim for damages of any kind or for loss of anticipated profits on deleted or
5 terminated Work will be allowed because of the termination or change order.

6 Contract time shall be adjusted as the parties agree. If the parties cannot agree, the
7 Engineer will determine the equitable adjustment for Contract time.

8 Acceptable materials ordered by the Contractor prior to the date the Work was terminated
9 as provided in Section 1-08.10(2) or deleted as provided in Section 1-04.4 by the Engineer, will
10 either be purchased from the Contractor by the Contracting Agency at the actual cost and shall
11 become the property of the Contracting Agency, or the Contracting Agency will reimburse the
12 Contractor for the actual costs connected with returning these materials to the suppliers.

13 **1-09.6 Force Account**

14 The terms of the Contract or of a change order may call for Work or material to be paid for
15 by force account. If so, then the objective of this Specification is to reimburse the Contractor for
16 all costs associated with the Work, including costs of labor, small tools, supplies, equipment,
17 specialized services, materials, applicable taxes and overhead and to include a profit
18 commensurate with those costs. The amount to be paid shall be determined as described in
19 this Section.

20 1. **For Labor** – Labor reimbursement calculations shall be based on a “Project Labor List”
21 (List) prepared and submitted by the Contractor and by any Subcontractor before that
22 firm commences force account Work. Once a List is approved by the Engineer, it shall be
23 used to calculate force account labor payment until a new List is submitted and
24 approved. The Engineer may compare the List to payrolls and other documents and
25 may, at any time, require the Contractor to submit a new List. The Contractor may
26 submit a new List at any time without such a requirement. Prior payment calculations
27 shall not be adjusted as a result of a new List.

28 To be approved, the List must be accurate and meet the requirements of this Section. It
29 shall include regular time and overtime rates for all employees (or work classifications)
30 expected to participate in force account Work. The rates shall include the basic wage
31 and fringe benefits, the current rates for Federal Insurance Compensation Act (FICA),
32 Federal Unemployment Tax Act (FUTA), and State Unemployment Tax Act (SUTA); the
33 company’s present rates for Medical Aid and Industrial Insurance premiums; and the
34 planned payments for travel and per diem compensation.

35 In the event that an acceptable initial List or requested revised List is not received by the
36 time that force account calculations are begun, the Engineer will develop a List

1 unilaterally utilizing the best data available, that will be used until a Contractor’s List is
2 received and approved. Again, prior calculations, prepared using the Engineer’s List, will
3 not be revised as a result of differences with the Contractor’s List.

4 In addition to compensation for direct labor costs defined above, the Contracting
5 Agency will pay Contractor 29 percent of the sum of the costs calculated for labor
6 reimbursement to cover Project overhead, general company overhead, profit, bonding,
7 insurance required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and any
8 other costs incurred. This amount will include any costs of safety training and health
9 tests, but will not include such costs for unique force account Work that is different
10 from typical Work and which could not have been anticipated at time of Bid.

11 2. **For Materials** – The Contracting Agency will reimburse invoice cost for Contractor-
12 supplied materials. For the purpose of this provision, “Materials” shall include those
13 items incorporated into the Work, supplies used during the Work and items consumed.
14 This cost shall include freight and handling charges and applicable taxes. Before Work is
15 started, the Engineer may require the Contractor to obtain multiple quotations for the
16 materials to be utilized and select the vendor with prices and terms most advantageous
17 to the Contracting Agency.

18 The Contracting Agency will provide a list of the types and quantities of Contractor-
19 supplied materials witnessed by the Contracting Agency as being utilized in force
20 account Work. The list will be furnished promptly after the material is incorporated, on
21 a daily basis unless agreed otherwise. The Contractor may propose corrections to the list
22 and will supply prices for the materials and other costs and return the list to the
23 Contracting Agency. To support the prices, the Contractor shall attach valid copies of
24 vendor invoices. If invoices are not available for materials from the Contractor’s stocks,
25 the Contractor shall certify actual costs (at a reasonable level) by affidavit. The Engineer
26 will review the prices and any Contractor-proposed corrections and, if reasonable,
27 approve the completed list. Once approved, the prices will be utilized in the calculation
28 of force account reimbursement for materials.

29 If, in the case of non-invoiced materials supported by Contractor affidavit, the price
30 appears to be unreasonable, the Engineer will determine the cost for all or part of those
31 materials, utilizing the best data available.

32 The Contracting Agency reserves the right to provide materials. In this case, the
33 Contractor will receive no payment for any costs, overhead, or profit arising from the
34 value of the materials themselves. Additional costs to handle and place the Agency
35 furnished material shall be compensated as described in this Specification.

36 In addition to compensation for direct materials cost, the Contracting Agency will pay
37 the Contractor 21 percent of the sum of the costs calculated for materials

1 reimbursement to cover Project overhead, general company overhead, profit, bonding,
2 insurance required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and any
3 other costs incurred.

4 3. **For Equipment** – The Contracting Agency will reimburse the Contractor for the cost of
5 equipment utilized in the Work. The equipment provided by the Contractor shall be of
6 modern design and in good working condition. For the purpose of this provision,
7 “provided” shall mean that the equipment is owned (either through outright ownership
8 or through a long-term lease) and operated by the Contractor or Subcontractor or that
9 the equipment is rented and operated by the Contractor or Subcontractor. Equipment
10 that is rented with operator shall not be included here, but shall be considered a service
11 and addressed according to Subsection 4 of this provision.

12 The amount of payment for any Contractor-owned equipment that is utilized shall be
13 determined according to the version of the AGC/WSDOT Equipment Rental Agreement
14 which is in effect at the time the force account is authorized. The rates listed in the
15 Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental
16 Agreement) shall be full compensation for all fuel, oil, lubrication, ordinary repairs,
17 maintenance, and all other costs incidental to furnishing and operating the equipment
18 except labor for operation.

19 Payment for rented equipment will be made on the basis of a valid invoice, covering the
20 time period of the Work. Before Work is started, the Engineer may require the
21 Contractor to obtain multiple quotations for the rental of equipment to be utilized and
22 select the vendor with prices and terms most advantageous to the Contracting Agency.
23 In the event that prior quotations are not obtained and the vendor is not a firm
24 independent from the Contractor or Subcontractor, then after-the-fact quotations may
25 be obtained by the Engineer from the open market in the vicinity and the lowest such
26 quotation may be used in place of submitted invoice.

27 In addition to the payments for Contractor-owned and rented equipment, one or more
28 lump-sum payments may be made for small tools. The amount to be paid shall be
29 determined as outlined in the AGC/WSDOT Equipment Rental Agreement.

30 The Contracting Agency will add 21 percent to equipment costs to cover Project
31 overhead, general company overhead, profit, bonding, insurance, required by
32 Sections 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.
33 This markup will be over and above those equipment costs and will not be adjusted for
34 any equipment overhead amounts included in the Blue Book rates.

35 Copies of the AGC/WSDOT Equipment Rental Agreement will be maintained on the
36 Contracting Agency’s website at www.wsdot.wa.gov.

1 4. **For Services** – Compensation under force account for specialized services shall be made
2 on the basis of an invoice from the providing entity. A “specialized service” shall be one
3 that is typically billed through invoice in standard industry practice. Before Work is
4 started, the Engineer may require the Contractor to obtain multiple quotations for the
5 service to be utilized and select the provider with prices and terms most advantageous
6 to the Contracting Agency. In the event that prior quotations are not obtained and the
7 service invoice is submitted by a Subcontractor, then after-the-fact quotations may be
8 obtained by the Engineer from the open market in the vicinity and the lowest such
9 quotation may be used in place of the submitted invoice.

10 Except as noted below, the Contracting Agency will pay the Contractor an additional
11 21 percent of the sum of the costs included on invoices for specialized services to cover
12 Project overhead, general company overhead, profit, bonding, insurance required by
13 Sections 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

14 When a supplier of services is compensated through invoice, but acts in the manner of a
15 Subcontractor, as described in Subsection 6 of this provision, then markup for that
16 invoice shall be according to Subsection 6, “Contractor Markup on Subcontractors’
17 Work”.

18 5. **For Mobilization** – Force account mobilization is defined as the preparatory Work
19 performed by the Contractor including procurement, loading, and transportation of
20 tools and equipment, and personal travel time (when such travel time is a contractual
21 obligation of the Contractor or a customary payment for the Contractor to all
22 employees). Mobilization also includes the costs incurred during demobilization. Pro
23 rata adjustments may be made when the mobilization applies to both force account and
24 other Contract Work. The Contracting Agency will pay for mobilization for off-site
25 preparatory Work for force account items provided that notice has been provided
26 sufficiently in advance to allow the Engineer to witness the activity, if desired.

27 Any costs experienced during mobilization activities for labor, equipment, materials, or
28 services shall be listed in those Sections of the force account summary and paid
29 accordingly.

30 6. **For Contractor Markup on Subcontractor’s Work** – When Work is performed on a force
31 account basis by one or more approved Subcontractors, by lower-tier Subcontractors or
32 suppliers, or through invoice by firm(s) acting in the manner of a Subcontractor, the
33 Contractor will be allowed an additional markup, from the table below, applied to the
34 costs computed for Work done by each Subcontractor through Subsections 1, 2, 3, and
35 4, to compensate for all administrative costs, including Project overhead, general
36 company overhead, profit, bonding, insurance required by Sections 1-07.10 and 1-07.18,
37 Business & Occupation tax, and any other costs incurred.

1 A firm may be considered to be acting as a Subcontractor when the Engineer observes
2 one or more of the following characteristics:

3 a. The person in charge of the firm’s activities takes an active role in managing the
4 overall Project, including extensive coordination, interpretation of Plans,
5 interaction with the Contracting Agency or management of a complex and
6 interrelated operation.

7 b. Rented equipment is provided fueled, operated, and maintained by the firm.
8 Operators of rented equipment are supervised directly by the firm’s
9 representative. There is little interaction between the Contractor and the
10 employees of the firm.

11 c. The firm appears to be holding the risk of performance and quality of the Work.

12 d. The firm appears to be responsible for liability arising from the Work.

13 Markups on Work Performed by Subcontractor(s):

14 (1) On amounts paid for Work performed by each Subcontractor on each force
15 account and calculated through

16 Subsections 1-4, up to \$25,000 12 percent

17 (2) On amounts greater than \$25,000 up to \$100,000 10 percent

18 (3) On amounts greater than \$100,000 7 percent

19 The amounts and markup rates shall be calculated separately for each Subcontractor on
20 each force account item established.

21 The payments provided above shall be full payment for all Work done on a force account
22 basis. The calculated payment shall cover all expenses of every nature, kind, and description,
23 including those listed above and any others incurred on the Work being paid through force
24 account. Nothing in this provision shall preclude the Contractor from seeking an extension of
25 time or time-related damages to unchanged Work arising as a result of the force account Work.
26 The amount and costs of any Work to be paid by force account shall be computed by the
27 Engineer, and the result shall be final as provided in Section 1-05.1.

28 An item that has been Bid at a unit price or lump sum in the Proposal will not be paid as
29 force account unless a change as defined in Section 1-04.4 has occurred and the provisions
30 require a payment adjustment. Items which are included in the Proposal as Force Account or
31 which are added by change order as Force Account may, by agreement of the parties at any
32 time, be converted to agreed unit prices or lump sums applicable to the remaining Work.

1 **1-09.7 Mobilization**

2 Mobilization consists of preconstruction expenses and the costs of preparatory Work and
3 operations performed by the Contractor which occur before 10 percent of the total original
4 Contract amount is earned from other Contract items. Items which are not to be included in the
5 item of Mobilization include but are not limited to:

- 6 1. Any portion of the Work covered by the specific Contract item or incidental Work which
7 is to be included in a Contract item or items.
- 8 2. Profit, interest on borrowed money, overhead, or management costs.
- 9 3. Any costs of mobilizing equipment for force account Work.

10 Based on the lump sum Contract price for “Mobilization”, partial payments will be made as
11 follows:

- 12 1. When 5 percent of the total original Contract amount is earned from other Contract
13 items, excluding amounts paid for materials on hand, 50 percent of the amount Bid for
14 mobilization, or 5 percent of the total original Contract amount, whichever is the least,
15 will be paid.
- 16 2. When 10 percent of the total original Contract amount is earned from other Contract
17 items, excluding amounts paid for materials on hand, 100 percent of the amount Bid for
18 mobilization, or 10 percent of the total original Contract amount, whichever is the least,
19 will be paid.
- 20 3. When the Substantial Completion Date has been established for the Project, payment of
21 any amount Bid for mobilization in excess of 10 percent of the total original Contract
22 amount will be paid.

23 Nothing herein shall be construed to limit or preclude partial payments otherwise provided
24 by the Contract.

25 **1-09.8 Payment for Material on Hand**

26 The Contracting Agency may reimburse the Contractor for materials purchased before use
27 of the materials in the Work if the materials:

- 28 1. Meet the requirements of the Plans and Specifications;
- 29 2. Are delivered to or stockpiled near the Project or other Engineer-approved storage sites;
30 and

- 1 3. Consist of: sand, gravel, surfacing materials, aggregates, reinforcing steel, bronze plates,
2 structural steel, machinery, piling, timber and lumber (not including forms or falsework),
3 large signs unique to the Project, prestressed concrete beams or girders, or other
4 materials the Engineer may approve.

5 The Contracting Agency may reimburse the Contractor for traffic signal controllers as
6 follows:

- 7 1. Fifty percent when the traffic signal controller and all components are received and
8 assembled into a complete unit at the State Materials Laboratory.
- 9 2. One hundred percent when the traffic signal controller is approved for shipment to the
10 Project by the State Materials Laboratory.

11 The Contractor shall provide sufficient written evidence of production costs to enable the
12 Engineer to compute the cost of Contractor-produced materials (such as sand, gravel, surfacing
13 material, or aggregates). For other materials, the Contractor shall provide invoices from
14 material suppliers. Each invoice shall be detailed sufficiently to enable the Engineer to
15 determine the actual costs. Payment for materials on hand shall not exceed the total Contract
16 cost for the Contract item.

17 If payment is based upon an unpaid invoice, the Contractor shall provide the Engineer with
18 a paid invoice within 60 calendar days after the Contracting Agency's initial payment for
19 materials on hand. If the paid invoice is not furnished in this time, any payment the Contracting
20 Agency had made will be deducted from the next progress estimate and withheld until the paid
21 invoice is supplied.

22 The Contracting Agency will not pay for material on hand when the invoice cost is less than
23 \$2,000. As materials are used in the Work, credits equaling the partial payments for the
24 materials will be taken on future estimates. Each month, no later than the estimate due date,
25 the Contractor shall submit a letter to the Project Engineer that clearly states: (1) the amount
26 originally paid on the invoice (or other record of production cost) for the items on hand, (2) the
27 dollar amount of the material incorporated into each of the various work items for the month,
28 and (3) the amount that should be retained in material on hand items. If Work is performed on
29 the items and the Contractor does not submit a letter, all of the previous material on hand
30 payment will be deducted on the estimate. Partial payment for materials on hand shall not
31 constitute acceptance. Any material will be rejected if found to be faulty even if partial
32 payment for it has been made.

33 **1-09.9 Payments**

34 The basis of payment will be the actual quantities of Work performed according to the
35 Contract and as specified for payment.

1 The Contractor shall submit a complete breakdown of all lump sum bid items showing the
2 quantity and dollar value assigned to each part of the Work. Upon acceptance of the complete
3 breakdowns of the various lump sum prices by the Engineer, the prices shall be used as the
4 basis for all requests for complete payment and partial payment of lump sum items. The
5 Contractor is advised that payment for Work under any of the lump sum price items will not be
6 made until the Contractor’s complete breakdown has been approved by the Engineer.

7 Partial payment for lump sum items may be made monthly for items with a lump sum price
8 exceeding \$2,500. The Contractor shall submit for approval a partial payment breakdown of the
9 lump sum item in easy to read tabulation form no later than 30 days prior to the first progress
10 estimate cut-off date for payment of the individual item. The Engineer reserves the right to
11 direct adjustments within the partial payment breakdown and to retain all authority in the
12 method of partial progress payments.

13 The Contract partial payment breakdown shall assign a percentage to each element of
14 material, Work, and direct and indirect costs. The elements shall total to 100 percent of the
15 lump sum price. The partial payment breakdown shall include and not be limited to the
16 following:

- 17 a. Percentages for the estimated materials costs of the major individual elements within
18 each lump sum item.
- 19 b. Percentages for the estimated labor and equipment costs to install the major individual
20 elements within each lump sum item.
- 21 c. Percentages for direct costs of the individual elements including mobilization of labor or
22 equipment, bonding and insurance, office engineering – including shop drawings,
23 warranty or guaranty costs, startup of systems, demobilization, and final cleanup.
- 24 d. Percentages of estimate costs for items to be turned over to the State such as tools,
25 spare parts, operation and maintenance manuals, training, manufacturer’s warranties,
26 and required certifications. This percentage shall not be less than 5 percent of the lump
27 sum bid item price unless specific documentation is submitted to justify a lower
28 percentage.
- 29 e. Percentages for estimated indirect costs including Project Office, District Office, and
30 Home Office overhead, and business occupation taxes as a part of the lump sum item
31 price.
- 32 f. Percentage for profit shall be considered as distributed throughout the direct costs for
33 items a, b, c, and d above.

34 After Engineer’s approval of the Contractor’s complete breakdown, and as item work
35 progresses, the Contractor shall initiate requests for partial payment by submitting to the

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1 Engineer a monthly estimate of the percentage of progress to date, the percentages previously
2 paid, and the percentages of payment requested for the current estimate. The estimate format
3 shall present the approved partial payment breakdown in a clear tabular form and be
4 submitted at least five calendar days prior to the progress estimate cut-off date.

5 Payments will be made for Work and labor performed and materials furnished under the
6 Contract according to the price in the Proposal unless otherwise provided.

7 Partial payments will be made once each month, based upon partial estimates prepared by
8 the Engineer. The determination of payments under the Contract will be final in accordance
9 with Section 1-05.1. Unless otherwise provided, payments will be made from the Motor Vehicle
10 Fund.

11 Failure to perform any of the obligations under the Contract by the Contractor may be
12 decreed by the Contracting Agency to be adequate reason for withholding any payments until
13 compliance is achieved.

14 Upon completion of all Work and after final inspection (Section 1-05.11), the amount due
15 the Contractor under the Contract will be paid based upon the final estimate made by the
16 Engineer and presentation of a Final Contract Voucher Certification signed by the Contractor.
17 Such voucher shall be deemed a release of all claims of the Contractor unless a claim is filed in
18 accordance with the requirements of Section 1-09.11 and is expressly excepted from the
19 Contractor's certification on the Final Contract Voucher Certification. The date the Secretary
20 signs the Final Contract Voucher Certification constitutes the final acceptance date
21 (Section 1-05.12).

22 If the Contractor fails, refuses, or is unable to sign and return the Final Contract Voucher
23 Certification or any other documentation required for completion and final acceptance of the
24 Contract, the Contracting Agency reserves the right to establish a Completion Date (for the
25 purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract.
26 Unilateral final acceptance will occur only after the Contractor has been provided the
27 opportunity, by written request from the Engineer, to voluntarily submit such documents. If
28 voluntary compliance is not achieved, formal notification of the impending establishment of a
29 Completion Date and unilateral final acceptance will be provided by certified letter from the
30 Secretary to the Contractor, which will provide 30 calendar days for the Contractor to submit
31 the necessary documents. The 30 calendar day period will begin on the date the certified letter
32 is received by the Contractor. The date the Secretary unilaterally signs the Final Contract
33 Voucher Certification shall constitute the Completion Date and the final acceptance date
34 (Section 1-05.12). The reservation by the Contracting Agency to unilaterally accept the Contract
35 will apply to Contracts that are Physically Completed in accordance with Section 1-08.5, or for
36 Contracts that are terminated in accordance with Section 1-08.10. Unilateral final acceptance of
37 the Contract by the Contracting Agency does not in any way relieve the Contractor of their

1 responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations
2 that affect the Work under the Contract.

3 Payment to the Contractor of partial estimates, final estimates, and retained percentages
4 shall be subject to controlling laws.

5 **1-09.10 Payment for Surplus Processed Materials**

6 After the Contract is completed, the Contractor will be reimbursed actual production costs
7 for surplus processed material produced by the Contractor from Contracting Agency-provided
8 sources if its value is \$3,000 or more (determined by actual production costs).

9 The quantity of surplus material eligible for reimbursement of production costs shall be the
10 quantity produced (but an amount not greater than 110 percent of Plan quantity or as specified
11 by the Engineer), less the actual quantity used. The Contracting Agency will determine the
12 actual amount of surplus material for reimbursement.

13 The Contractor shall not dispose of any surplus material without permission of the Engineer.
14 Surplus material shall remain the property of the Contracting Agency without reimbursement
15 to the Contractor if it is not eligible for reimbursement.

16 **1-09.11 Disputes and Claims**

17 When protests occur during a Contract, the Contractor shall pursue resolution through the
18 Project Engineer. The Contractor shall follow the procedures outlined in Section 1-04.5.

19 If the negotiations using the procedures outlined in Section 1-04.5 fail to provide
20 satisfactory resolution of protests, then the Contractor shall provide the Project Engineer with
21 written notification that the Contractor will continue to pursue the dispute in accordance with
22 the provisions of Section 1-09.11. The written notification shall be provided within 7 calendar
23 days after receipt of the Engineer’s written determination that the Contractor’s protest is
24 invalid pursuant to Section 1-04.5. The Contractor’s written notice of dispute shall indicate
25 whether the Contractor prefers to resolve the dispute through the use of a Disputes Review
26 Board as outlined in Section 1-09.11(1), or to submit a formal claim directly to the Contracting
27 Agency pursuant to Section 1-09.11(2).

28 If a Disputes Review Board is requested by the Contractor, the Contracting Agency will
29 notify the Contractor in writing whether the use of a Disputes Review Board is agreed upon
30 within 7 calendar days after receiving the Contractor’s written notice of dispute. If both parties
31 to the dispute agree, then the dispute will be referred to a Disputes Review Board according to
32 Section 1-09.11(1). If the parties do not mutually agree to establish a Disputes Review Board,
33 then none shall be used, and the Contractor shall submit a formal claim directly to the
34 Contracting Agency as outlined in Section 1-09.11(2), Claims.

1 In spite of any protest or dispute, the Contractor shall proceed promptly with the Work as
2 the Engineer orders.

3 **1-09.11(1) Disputes Review Board**

4 In order to assist in the resolution of disputes arising out of the Work of this Project, the
5 Contract provides for the establishment of a Disputes Review Board (DRB), hereinafter called
6 the “Board.” The Board is created as part of the disputes resolution process to be utilized when
7 normal Contracting Agency-Contractor dispute resolution is unsuccessful and prior to the filing
8 of a Section 1-09.11(2) claim.

9 The Board will consider disputes referred to it and furnish recommendations to the
10 Contracting Agency and Contractor to assist in the resolution of the differences between them.
11 The purpose of the Board response to such issues is to provide nonbinding findings and
12 recommendations designed to expose the disputing parties to an independent view of the
13 dispute.

14 The Board members will be trained in disputes resolution or have experience in disputes
15 resolution, and be knowledgeable in the type of construction involved in the Project and shall
16 discharge their responsibilities impartially and independently considering the facts and
17 conditions related to the matters under consideration and the provisions of the Contract.

18 **1-09.11(1)A Disputes Review Board Membership**

19 The Board shall consist of one member selected by the Contracting Agency and one
20 member selected by the Contractor, with these two members to select the third member. The
21 first two members shall be mutually acceptable to both the Contracting Agency and the
22 Contractor. If one or both of the two members selected are not acceptable to the Contracting
23 Agency or Contractor, another selection shall be made.

24 The Contracting Agency and Contractor shall each select a member and negotiate an
25 agreement, separate and apart from this Contract, with their respective Board member within
26 the first 60 calendar days after execution of the Contract.

27 The agreements with these two Board members shall contain language imposing the “Scope
28 of Work” and “Suggested Administrative Procedures” included in the Appendix to these Special
29 Provisions. These negotiated agreements shall also include clauses that require the respective
30 selected members to immediately pursue selection of a third member. The goal is to obtain a
31 third Board member who will complement the first two by furnishing a needed expertise, which
32 will facilitate the Board’s operations.

33 The Contracting Agency has entered into “standby” agreements with a number of potential
34 third members. The qualifications of these potential members have been reviewed and deemed
35 acceptable by both the State of Washington Department of Transportation and the Associated
36 General Contractors of Washington. The names of these potential members will be provided to

1 the first two members for consideration. If a selection can be made from the standby list, then
2 the Board may be immediately seated with the execution of a task order under the
3 corresponding standby agreement. Should the first two members decide to select a third
4 member not on the list of standby candidates, then the selected person will be accepted to the
5 Board after he or she executes a standby agreement (Third Party Member Disputes Review
6 Board Consultant Agreement). The acceptable format for this agreement and all accompanying
7 exhibits may be obtained by contacting WSDOT Consulting Services at
8 <http://www.wsdot.wa.gov/Business/Consulting/Agreements/DisputesReview> or may be
9 obtained from the Project Engineer. The fee for the third member shall be included in a task
10 order, issued by the Project Engineer, after the third member standby agreement is fully
11 executed.

12 In the event of an impasse in selection of the third member, either the Contracting Agency
13 or the Contractor, or both, may appeal to the Thurston County Superior Court for selection of a
14 third member by the court from a list or lists submitted to the court by the Contracting Agency
15 and/or the Contractor. An impasse shall be considered to have been reached if the two
16 members appointed by the Contracting Agency and the Contractor to the Board have been
17 unable to appoint the third member in a period of 60 calendar days after the approval of the
18 last of such two members.

19 In case a member of the Board needs to be replaced, the replacement member will be
20 appointed in the same manner as the replaced member was appointed. The appointment of a
21 replacement Board member will begin promptly upon determination of the need for
22 replacement and shall be completed within 30 calendar days.

23 Service of a Board member may be terminated at any time with not less than 30 calendar
24 days' notice as follows:

- 25 1. The Contracting Agency may terminate service of the Contracting Agency appointed
26 member.
- 27 2. The Contractor may terminate service of the Contractor appointed member.
- 28 3. The third member's services may be terminated by agreement of the other two
29 members.
- 30 4. By resignation of the member.

31 Termination of a member will be followed by appointment of a substitute as specified
32 above.

33 No member shall have a financial interest in the Contract, except for payments for services
34 on the Board. The Contracting Agency-selected member and the Contractor-selected member
35 shall not have been employed by the party who selected them within a period of 1 year; except

1 that, service as a member of other Disputes Review Boards on other contracts will not preclude
2 a member from serving on the Board for this Contract.

3 Compensation for the Board members, and the expenses of operation of the Board, shall be
4 shared by the Contracting Agency and Contractor in accordance with the following:

- 5 1. The Contracting Agency will compensate directly the wages and travel expense for its
6 selected member.
- 7 2. The Contractor shall compensate directly the wages and travel expense for its selected
8 member.
- 9 3. The Contracting Agency and Contractor shall share equally in the third member’s wages
10 and travel expense, and all of the operating expenses of the Board. These equally shared
11 expenses shall be billed to and paid by the Contracting Agency. The Contractor’s share
12 will be deducted from monies due or coming due the Contractor.
- 13 4. The Contracting Agency, through the Engineer, will provide administrative services, such
14 as conference facilities and secretarial services, to the Board and the Contracting Agency
15 will bear the costs for this service.

16 The Contracting Agency and Contractor shall indemnify and hold harmless the Board
17 Members from and against all claims, damages, losses, and expenses, including but not limited
18 to attorney’s fees arising out of and resulting from the actions and recommendations of the
19 Board.

20 **1-09.11(1)B Disputes Review Board Procedures**

21 The Board, the Contracting Agency, and the Contractor shall develop by agreement the
22 Board’s rules of operation and procedures to be followed for the Project. The Agreement shall
23 include the frequency of the Board’s visits to the Project and its interactions with the
24 Contracting Agency and the Contractor to keep abreast of the construction development and
25 potential disputes.

26 In developing the agreement, the parties shall take into consideration their respective
27 duties and responsibilities set forth in the “Scope of Work” section of their agreements, which
28 is included in the Appendix of these Special Provisions.

29 The parties may also consider the “Suggested Administrative Procedures” for the Board’s
30 operation included in their agreements, which is included in the Appendix of these Special
31 Provisions. These Procedures express, in general terms, the policy for the creation and
32 operation of the Board and are intended to supplement the Special Provisions to the extent
33 that no conflict with such provisions is created.

1 No dispute shall be referred to the Board unless the Contractor has complied with the
2 procedures of Section 1-04.5. If the dispute is not resolved by the procedures outlined in
3 1-04.5, then the Board will consider the matter in dispute and provide recommendations
4 concerning:

- 5 1. The interpretation of the Contract.
- 6 2. Entitlement to additional compensation or time for performance
- 7 3. Other subjects mutually agreed by the Contracting Agency and Contractor to be a Board
8 issue.

9 **Procedure for Consideration of Disputes**

- 10 1. Once a protest has been denied as described in Section 1-04.5, the Board members will
11 be contacted and advised of the existence of the dispute. A hearing will be scheduled to
12 be conducted at the next regular Project visit or at such other time, as agreed to by the
13 parties.
- 14 2. The Contractor and the Contracting Agency shall each be afforded an opportunity to be
15 heard by the Board and to offer evidence. Either party furnishing any written evidence
16 or documentation to the Board must furnish copies of such information to the other
17 party a minimum of 15 calendar days prior to the date the Board sets to convene the
18 hearing for the dispute. Either party shall produce such additional evidence as the Board
19 may deem necessary to an understanding and determination of the dispute and furnish
20 copies to the other party.
- 21 3. After the hearing is concluded, the Board shall meet in private and reach a conclusion
22 supported by two or more members. Its findings and recommendations, together with
23 its reasons, shall then be submitted as a written report to both parties. The
24 recommendations shall be based on the pertinent Contract Provisions and facts and
25 circumstances involved in the dispute. The Contract shall be interpreted and construed
26 in accordance with the laws of the State of Washington. The Board shall make every
27 effort to reach a unanimous decision. If this proves impossible, the dissenting member
28 may prepare a minority report.
- 29 4. Within 30 calendar days of receiving the Board recommendations, both the Contracting
30 Agency and the Contractor shall respond to the other in writing signifying that the
31 dispute is either resolved or remains unresolved. Although both parties should place
32 weight upon the Board recommendations, the recommendations are not binding.

33 In the event the Board's recommendations do not lead to resolution of the dispute, all
34 Board records and written recommendations, including any minority reports, will be admissible
35 as evidence in any subsequent litigation.

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

3 **1-09.11(2) Claims**

4 If the Contractor claims that additional payment is due and the Contractor has pursued and
5 exhausted all the means provided in Sections 1-04.5 and 1-09.11(1) to resolve a dispute,
6 including the use of a Disputes Review Board if one was established, the Contractor may file a
7 claim as provided in this Section. The Contractor agrees to waive any claim for additional
8 payment if the written notifications provided in Section 1-04.5 are not given, or if the Engineer
9 is not afforded reasonable access by the Contractor to complete records of actual cost and
10 additional time incurred as required by Section 1-04.5, or if a claim is not filed as provided in
11 this Section. The fact that the Contractor has provided a proper notification, provided a
12 properly filed claim, or provided the Engineer access to records of actual cost shall not in any
13 way be construed as proving or substantiating the validity of the claim. If the claim, after
14 consideration by the Engineer, is found to have merit, the Engineer will make an equitable
15 adjustment either in the amount of costs to be paid or in the time required for the Work, or
16 both. If the Engineer finds the claim to be without merit, no adjustment will be made.

17 All claims filed by the Contractor shall be in writing and in sufficient detail to enable the
18 Engineer to ascertain the basis and amount of the claim. All claims shall be submitted to the
19 Project Engineer as provided in Section 1-05.15. As a minimum, the following information must
20 accompany each claim submitted:

- 21 1. A detailed factual statement of the claim for additional compensation and time, if any,
22 providing all necessary dates, locations, and items of Work affected by the claim.
- 23 2. The date on which facts arose which gave rise to the claim.
- 24 3. The name of each Contracting Agency individual, official, or employee involved in or
25 knowledgeable about the claim.
- 26 4. The specific provisions of the Contract which support the claim and a statement of the
27 reasons why such provisions support the claim.
- 28 5. If the claim relates to a decision of the Engineer which the Contract leaves to the
29 Engineer’s discretion or as to which the Contract provides that the Engineer’s decision is
30 final, the Contractor shall set out in detail all facts supporting its position relating to the
31 decision of the Engineer.
- 32 6. The identification of any documents and the substance of any oral communications that
33 support the claim.

- 1 7. Copies of any identified documents, other than Contracting Agency documents and
2 documents previously furnished to the Contracting Agency by the Contractor, that
3 support the claim (manuals which are standard to the industry, used by the Contractor,
4 may be included by reference).

- 5 8. If an extension of time is sought:
 - 6 a. The specific days and dates for which it is sought,
 - 7 b. The specific reasons the Contractor believes a time extension should be granted,
 - 8 c. The specific provisions of Section 1-08.8 under which it is sought, and
 - 9 d. The Contractor’s analysis of its progress schedule to demonstrate the reason for
10 a time extension.

- 11 9. If additional compensation is sought, the exact amount sought and a breakdown of that
12 amount into the following categories:
 - 13 a. Labor;
 - 14 b. Materials;
 - 15 c. Direct equipment. The actual cost for each piece of equipment for which a claim
16 is made or in the absence of actual cost, the rates established by the
17 AGC/WSDOT Equipment Rental Agreement which was in effect when the Work
18 was performed. In no case shall the amounts claimed for each piece of
19 equipment exceed the rates established by that Equipment Rental Agreement
20 even if the actual cost for such equipment is higher. The Contracting Agency may
21 audit the Contractor’s cost records as provided in Section 1-09.12 to determine
22 actual equipment cost. The following information shall be provided for each
23 piece of equipment:
 - 24 (1) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12
25 “G”, Tractor Crawler ROPS & Dozer Included Diesel);
 - 26 (2) The hours of use or standby; and
 - 27 (3) The specific day and dates of use or standby;
 - 28 d. Job overhead;
 - 29 e. Overhead (general and administrative);

1 f. Subcontractor’s claims (in the same level of detail as specified herein is required
2 for any Subcontractor’s claims); and

3 g. Other categories as specified by the Contractor or the Contracting Agency.

4 10. A notarized statement shall be submitted to the Project Engineer containing the
5 following language:

6 Under the penalty of law for perjury or falsification, the undersigned,

7 _____,
8 (name) (title)

9 of _____
10 (company)

11 hereby certifies that the claim for extra compensation and time, if any, made herein
12 for Work on this Contract is a true statement of the actual costs incurred and time
13 sought, and is fully documented and supported under the Contract between the
14 parties.

15 Dated _____/s/ _____

16 Subscribed and sworn before me this _____ day of _____

17 _____
18 Notary Public

19 My Commission Expires: _____

20 It will be the responsibility of the Contractor to keep full and complete records of the costs
21 and additional time incurred for any alleged claim. The Contractor shall permit the Engineer to
22 have access to those records and any other records as may be required by the Engineer to
23 determine the facts or contentions involved in the claim. The Contractor shall retain those
24 records for a period of not less than three years after final acceptance.

25 The Contractor shall pursue administrative resolution of any claim with the Engineer or the
26 designee of the Engineer.

27 Failure to submit with the Final Contract Voucher Certification such information and details
28 as described in this Section for any claim shall operate as a waiver of the claims by the
29 Contractor as provided in Section 1-09.9.

1 Provided that the Contractor is in full compliance with all the provisions of this Section and
2 after the formal claim document has been submitted, the Contracting Agency will respond, in
3 writing, to the Contractor as follows:

- 4 1. Within 45 calendar days from the date the claim is received by the Contracting Agency if
5 the claim amount is less than \$100,000;
- 6 2. Within 90 calendar days from the date the claim is received by the Contracting Agency if
7 the claim amount is equal to or greater than \$100,000; or
- 8 3. If the above restraints are unreasonable due to the complexity of the claim under
9 consideration, the Contractor will be notified within 15 calendar days from the date the
10 claim is received by the Contracting Agency as to the amount of time which will be
11 necessary for the Contracting Agency to prepare its response.

12 Full compliance by the Contractor with the provisions of this Section is a contractual
13 condition precedent to the Contractor’s right to seek judicial relief.

14 **1-09.11(3) Time Limitation and Jurisdiction**

15 For the convenience of the parties to the Contract, it is mutually agreed by the parties that
16 any claims or causes of action which the Contractor has against the State of Washington arising
17 from the Contract shall be brought within 180 calendar days from the date of final acceptance
18 (Section 1-05.12) of the Contract by the State of Washington; and it is further agreed that any
19 such claims or causes of action shall be brought only in the Superior Court of Thurston County.
20 The parties understand and agree that the Contractor’s failure to bring suit within the time
21 period provided, shall be a complete bar to any such claims or causes of action. It is further
22 mutually agreed by the parties that when any claims or causes of action which the Contractor
23 asserts against the State of Washington arising from the Contract are filed with the State or
24 initiated in court, the Contractor shall permit the State to have timely access to any records
25 deemed necessary by the State to assist in evaluating the claims or action.

26 **1-09.12 Audits**

27 **1-09.12(1) General**

28 The Contractor’s wage, payroll, and cost records on this Contract shall be open to inspection
29 or audit by representatives of the Contracting Agency, the U.S. Department of Transportation,
30 and the Comptroller General of the United States during the life of the Contract and for a
31 period of not less than six (6) years after the date of final acceptance of the Contract. The
32 Contractor shall retain these records for that period. The Contractor shall also guarantee that
33 the wage, payroll, and cost records of any affiliated company and all Subcontractors and all
34 lower-tier Subcontractors shall be retained and open to similar inspection or audit for the same
35 period of time. The audit may be performed by employees of the Contracting Agency, the U.S.

1 Department of Transportation, the Comptroller General of the United States, or by an auditor
2 under contract with the Contracting Agency. The Contractor, Subcontractors, or lower-tier
3 Subcontractors shall provide adequate facilities, acceptable to the Engineer, for the audit
4 during normal business hours. The Contractor, Subcontractors, or lower-tier Subcontractors
5 shall make a good faith effort to cooperate with the auditors. If an audit is to be commenced
6 more than 60 calendar days after the final acceptance date of the Contract, the Contractor will
7 be given 20 calendar days' notice of the time when the audit is to begin. If any litigation, claim,
8 or audit arising out of, in connection with, or related to this Contract is initiated, the wage,
9 payroll, and cost records shall be retained until such litigation, claim, or audit involving the
10 records is completed.

11 For a project procured as a heavy civil construction project, an independent audit, paid for
12 by the public body, must be conducted to confirm the proper accrual of costs as outlined in the
13 Contract.

14 **1-09.12(2) Claims Audits**

15 All claims filed against the Contracting Agency shall be subject to audit at any time following
16 the filing of the claim. Failure of the Contractor, Subcontractors, or lower-tier Subcontractors to
17 maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim
18 or to permit the auditor access to the books and records of the Contractor, Subcontractors, or
19 lower-tier Subcontractors shall constitute a waiver of a claim and shall bar any recovery
20 thereunder.

21 **1-09.12(3) Required Documents for Audits**

22 As a minimum, the auditors shall have available to them the following documents:

- 23 1. Daily time sheets and supervisor's daily reports.
- 24 2. Collective Bargaining Agreements.
- 25 3. Insurance, welfare, and benefits records.
- 26 4. Payroll registers.
- 27 5. Earnings records.
- 28 6. Payroll tax forms.
- 29 7. Material invoices and requisitions.
- 30 8. Material cost distribution worksheet.
- 31 9. Equipment records (list of company equipment, rates, etc.).

- 1 10. Vendors', rental agencies', Subcontractors', and lower-tier Subcontractors' invoices.
- 2 11. Contracts between the Contractor and each of its Subcontractors, and all lower-tier
- 3 Subcontractor contracts and supplier contracts.
- 4 12. Subcontractors' and lower-tier Subcontractors' payment certificates.
- 5 13. Canceled checks (payroll and vendors).
- 6 14. Job cost reports, including monthly totals.
- 7 15. Job payroll ledger.
- 8 16. General ledger.
- 9 17. Cash disbursements journal.
- 10 18. Financial statements for all years reflecting the operations on this Contract. In
- 11 addition, the Contracting Agency may require, if it deems appropriate, additional
- 12 financial statements for 3 years preceding execution of the Contract and 3 years
- 13 following final acceptance of the Contract.
- 14 19. Depreciation records on all company equipment whether these records are
- 15 maintained by the company involved, its accountant, or others.
- 16 20. If a source other than depreciation records is used to develop costs for the
- 17 Contractor's internal purposes in establishing the actual cost of owning and
- 18 operating equipment, all such other source documents.
- 19 21. All documents which relate to each and every claim, together with all documents
- 20 which support the amount of damages as to each claim.
- 21 22. Worksheets or software used to prepare the claim establishing the cost components
- 22 for items of the claim including but not limited to labor; benefits and insurance;
- 23 materials; equipment; Subcontractors; and all documents which establish the time
- 24 periods, individuals involved, the hours for the individuals, and the rates for the
- 25 individuals.
- 26 23. Worksheets, software, and all other documents used by the Contractor to prepare
- 27 its Bid.

28 An audit may be performed by employees of the Contracting Agency or a representative of
29 the Contracting Agency. The Contractor and its Subcontractors shall provide adequate facilities
30 acceptable to the Contracting Agency for the audit during normal business hours. The
31 Contractor and all Subcontractors shall cooperate with the Contracting Agency's auditors.

1 **1-09.13 Claims Resolution**

2 **1-09.13(1) General**

3 Prior to seeking claim resolution through nonbinding alternative dispute resolution
4 processes, binding arbitration, or litigation, the Contractor shall proceed under the
5 administrative procedures in Sections 1-04.5 and 1-09.11 and any Special Provision provided in
6 the Contract for resolution of disputes. The provisions of these Sections must be complied with
7 in full, as a condition precedent to the Contractor’s right to seek claim resolution through any
8 nonbinding alternative dispute resolution process, binding arbitration or litigation.

9 **1-09.13(2) Nonbinding Alternative Disputes Resolution (ADR)**

10 Nonbinding ADR processes are encouraged and available upon mutual agreement of the
11 Contractor and the Contracting Agency for all claims submitted in accordance with
12 Section 1-09.11, provided that:

- 13 1. All the administrative remedies provided for in the Contract have been exhausted;
- 14 2. The Contracting Agency has been given the time and opportunity to respond to the
15 Contractor as provided in Section 1-09.11(2); and
- 16 3. The Contracting Agency has determined that it has sufficient information concerning the
17 Contractor’s claims to participate in a nonbinding ADR process.

18 The Contracting Agency and the Contractor mutually agree that the cost of the nonbinding
19 ADR process shall be shared equally by both parties with each party bearing its own
20 preparation costs.

21 The type of nonbinding ADR process shall be agreed upon by the parties and shall be
22 conducted within the State of Washington at a location mutually acceptable to the parties.

23 The Contractor agrees that the participation in a nonbinding ADR process does not in any
24 way waive the requirement that binding arbitration or litigation proceedings must commence
25 within 180 calendar days of final acceptance of the Contract, the same as any other claim or
26 causes of action as provided in Section 1-09.11(3).

27 **1-09.13(3) Claims \$250,000 or Less**

28 The Contractor and the Contracting Agency mutually agree that those claims which total
29 \$250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by nonbinding
30 ADR processes, shall be resolved through mandatory and binding arbitration as described
31 herein.

1 1-09.13(3)A Administration of Arbitration

2 Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall
3 be administered through the American Arbitration Association (AAA) using the following
4 arbitration methods:

- 5 1. The current version of the Construction Industry Arbitration Rules and Mediation Fast
6 Track Procedures shall be used for claims with an amount less than \$75,000.
- 7 2. The current version of the Construction Industry Arbitration Rules and Mediation
8 Regular Track Procedures shall be used for claims with an amount equal to or greater
9 than \$75,000 and less than \$250,000.

10 The Contracting Agency and the Contractor mutually agree the venue of any arbitration
11 hearing shall be within the State of Washington and any such hearing shall be conducted within
12 the State of Washington.

13 The Contracting Agency and the Contractor mutually agree to be bound by the decision of
14 the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the
15 Superior Court of Thurston County. The decision of the arbitrator and the specific basis for the
16 decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

17 1-09.13(3)B Procedures to Pursue Arbitration

18 If the dispute cannot be resolved through administrative procedures provided in
19 Sections 1-04.5 and 1-09.11, and any Special Provision provided in the Contract for resolution of
20 disputes or through a mutually agreed upon nonbinding ADR process, the Contractor shall
21 advise the Engineer, in writing, that mandatory and binding arbitration is desired. The parties
22 may agree on an arbitration process, or, if the parties cannot agree, a demand for arbitration
23 shall be filed by the Contractor, in accordance with the AAA rules, with the Contracting Agency,
24 and with the AAA. Selection of the arbitrator and the administration of the arbitration shall
25 proceed in accordance with AAA rules using arbitrators from the list developed by the AAA,
26 except that: for claims under \$25,000 using the Northwest Region Expedited Commercial
27 Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited
28 Procedure of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the
29 appropriate rule of the AAA as determined by the dollar amount of the claim as provided in
30 Section 1-09.13(3)A.

31 Unresolved disputes which do not involve delays or impacts to unchanged Work may be
32 brought to binding arbitration prior to Physical Completion of the Project, provided that:

- 33 1. All the administrative remedies provided for in the Contract have been exhausted;
- 34 2. The dispute has been pursued to the claim status as provided in Section 1-09.11(2); and
- 35 3. The Contractor certifies in writing that claims for delays or impacts to the Work will not
36 result from the dispute.

1 Unless the Contracting Agency and the Contractor agree otherwise, all other unresolved
2 claims (disputes which have been pursued to the claim status) which arise from a Contract must
3 be brought in a single arbitration hearing and only after Physical Completion of the Contract.
4 The total of those unresolved claims cannot be greater than \$250,000 to be eligible for
5 arbitration.

6 In addition, the Contractor agrees arbitration proceedings must commence, by filing of the
7 aforementioned demand for arbitration, within 180 calendar days of final acceptance of the
8 Contract, the same as any other claim or causes of action as provided in Section 1-09.11(3).

9 The scope and extent of discovery shall be determined by the arbitrator in accordance with
10 AAA rules. In addition, each party for claims greater than \$25,000 shall serve upon the other
11 party a “statement of proof”. The statement of proof shall be served, with a copy to the AAA,
12 no less than 20 calendar days prior to the arbitration hearing and shall include:

- 13 1. The identity, current business address, and residential address of each witness who will
14 testify at the hearing;
- 15 2. The identity of a witness as an expert if an expert witness is to be called, a statement as
16 to the subject matter and the substance of the facts and opinions on which the expert is
17 expected to testify, a summary of the grounds for each opinion, and a resume of the
18 expert’s qualifications; and
- 19 3. A list of each document that the party intends to offer in evidence at the arbitration
20 hearing. Either party may request from the other party a copy of any document listed. If
21 such a request is made, a copy of the document shall be provided within 5 calendar days
22 from the date the request is received.

23 The arbitrator may permit a party to call a witness or offer a document not shown or
24 included in the statement of proof only upon a showing of good cause.

25 **1-09.13(4) Claims in Excess of \$250,000**

26 The Contractor and the Contracting Agency mutually agree that those claims in excess of
27 \$250,000, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR
28 processes, shall be resolved through litigation unless the parties mutually agree to resolve the
29 claim through binding arbitration.

30 **1-10 Temporary Traffic Control**

31 **1-10.1 General**

32 Temporary traffic control refers to the control of all types of traffic, including vehicles,
33 bicyclists, and pedestrians (including pedestrians with disabilities). The Contractor, utilizing

1 Contractor labor and Contractor-provided equipment and materials (except when such labor,
2 equipment, or materials are to be provided by the Contracting Agency as specifically identified
3 herein), shall plan, manage, supervise, and perform all temporary traffic control activities
4 needed to support the Work of the Contract.

5 **1-10.1(1) Materials**

6 Materials shall meet the requirements of the following Sections:

7	Stop/Slow Paddles	9-35.1
8	Construction Signs	9-35.2
9	Wood Sign Posts	9-35.3
10	Sequential Arrow Signs	9-35.4
11	Portable Changeable Message Signs	9-35.5
12	Barricades	9-35.6
13	Traffic Safety Drums	9-35.7
14	Traffic Cones	9-35.9
15	Tubular Markers	9-35.10
16	Warning Lights and Flashers	9-35.11
17	Transportable Attenuator	9-35.12
18	Tall Channelizing Devices	9-35.13
19	Portable Temporary Traffic Control Signal	9-35.14

20 **1-10.1(2) Description**

21 The Contractor shall provide flaggers and all other personnel required for labor for traffic
22 control activities and not otherwise specified as being furnished by the Contracting Agency.

23 The Contractor shall perform all procedures necessary to support the Contract Work.

24 Unless otherwise permitted by the Contract or approved by the Project Engineer, the
25 Contractor shall keep all existing pedestrian routes and access points (including sidewalks,
26 paths, and crosswalks) open and clear at all times.

27 The Contractor shall provide signs and other traffic control devices not otherwise specified
28 as being furnished by the Contracting Agency. The Contractor shall erect and maintain all
29 construction signs, warning signs, detour signs, and other traffic control devices necessary to
30 warn and protect the public at all times from injury or damage as a result of the Contractor's
31 operations, which may occur on or adjacent to Highways, roads, streets, sidewalks, or paths. No
32 Work shall be done on or adjacent to any Traveled Way until all necessary signs and traffic
33 control devices are in place.

34 The traffic control resources and activities described shall be used for the safety of the
35 public, of the Contractor's employees, and of the Contracting Agency's personnel; and to

1 facilitate the movement of the traveling public. Traffic control resources and activities may be
2 used for the separation or merging of public and construction traffic when such use is in
3 accordance with a specific approved traffic control plan.

4 Upon failure of the Contractor to immediately provide flaggers; erect, maintain, and remove
5 signs; or provide, erect, maintain, and remove other traffic control devices when ordered to do
6 so by the Engineer, the Contracting Agency may, without further notice to the Contractor or the
7 Surety, perform any of the above and deduct all of the costs from the Contractor’s payments.

8 The Contractor shall be responsible for providing adequate labor, sufficient signs, and other
9 traffic control devices, and for performing traffic control procedures needed for the protection
10 of the Work and the public at all times regardless of whether or not the labor, devices, or
11 procedures have been ordered by the Engineer, furnished by the Contracting Agency, or paid
12 for by the Contracting Agency.

13 Wherever possible when performing Contract Work, the Contractor’s equipment shall
14 follow normal and legal traffic movements. The Contractor’s ingress and egress of the Work
15 area shall be accomplished with as little disruption to traffic as possible. Traffic control devices
16 shall be removed by picking up the devices in a reverse sequence to that used for installation.
17 This may require moving backwards through the work zone. When located behind barrier or at
18 other locations shown on approved traffic control plans, equipment may operate in a direction
19 opposite to adjacent traffic.

20 The Contractor is advised that the Contracting Agency may have entered into operating
21 agreements with one or more law enforcement organizations for cooperative activities. Under
22 such agreements, at the sole discretion of the Contracting Agency, law enforcement personnel
23 may enter the work zone for enforcement purposes and may participate in the Contractor’s
24 traffic control activities. The responsibility under the Contract for all traffic control resides with
25 the Contractor and any such participation by law enforcement personnel in Contractor traffic
26 control activities will be referenced in the Special Provisions or will be preceded by an
27 agreement and, if appropriate, a cost adjustment. Nothing in this Contract is intended to create
28 an entitlement, on the part of the Contractor, to the services or participation of the law
29 enforcement organization.

30 **1-10.1(3) Contracting Agency Furnished Labor**

31 The Contracting Agency will provide the following labor, equipment, and/or materials
32 resources to the Contractor for use on the Project.

33 Directing traffic and work zone flagging in the holding lanes and immediate vicinity of the
34 facility will be provided using Contracting Agency labor.

1 The Contractor shall notify the Engineer when each resource is to be utilized and shall
2 provide a minimum of seven (07) working days advance notice to allow any necessary
3 arrangements to be made.

4 **1-10.2 Traffic Control Management**

5 **1-10.2(1) General**

6 It is the Contractor’s responsibility to plan, conduct, and safely perform the Work. The
7 Contractor shall manage temporary traffic control with his or her own staff. Traffic control
8 management responsibilities shall be formally assigned to one or more company supervisors
9 who are actively involved in the planning and management of field Contract activities. The
10 Contractor shall provide the Engineer with a copy of the formal assignment. The duties of traffic
11 control management may not be subcontracted.

12 The Contractor shall designate an individual or individuals to perform the duties of the
13 primary Traffic Control Supervisor (TCS). The designation shall also identify an alternate TCS
14 who can assume the duties of the primary TCS in the event of that person’s inability to perform.
15 The TCS shall be responsible for safe implementation of approved Traffic Control Plans provided
16 by the Contractor.

17 The primary and alternate TCS shall be certified by one of the organizations listed in the
18 Special Provisions. Possession of a current Washington State TCS card and flagging card by the
19 primary and alternate TCS is mandatory. A traffic control management assignment and a TCS
20 designation are required on all projects that will utilize traffic control.

21 The Contractor shall maintain 24-hour telephone numbers at which the Contractor’s
22 assigned traffic control management personnel and the TCS can be contacted and be available
23 upon the Engineer’s request at other than normal working hours. These persons shall have the
24 resources, ability, and authority to expeditiously correct any deficiency in the traffic control
25 system.

26 **1-10.2(1)A Traffic Control Management**

27 The responsibilities of the Contractor’s traffic control management personnel shall include:

28 1. Overseeing and approving the actions of the Traffic Control Supervisor (TCS) to ensure
29 that proper safety and traffic control measures are implemented and consistent with
30 the specific requirements created by the Contractor’s work zones and the Contract.
31 Some form of oversight shall be in place and effective even when the traffic control
32 management personnel are not present at the jobsite.

33 2. Providing the Contractor’s designated TCS with approved Traffic Control Plans (TCPs)
34 which are compatible with the Work operations and traffic control for which the plans

1 will be implemented. Having the latest adopted edition of the *Manual on Uniform*
2 *Traffic Control Devices for Streets and Highways* (MUTCD), including the *Washington*
3 *State Modifications to the MUTCD M 24-01* the most current edition of the *Public*
4 *Rights-of-Way Accessibility Guidelines* (PROWAG), which can be downloaded from the
5 United States Access Board website at www.access-board.gov/prowac under Revised
6 Draft Guidelines (2005), and applicable Standards and Specifications available at all
7 times on the Project.

8 3. Discussing proposed traffic control measures and coordinating implementation of the
9 Contractor-adopted traffic control plan(s) with the Engineer.

10 4. Coordinating all traffic control operations, including those of Subcontractors and
11 suppliers, with each other and with any adjacent construction or maintenance
12 operations.

13 5. Coordinating the Project activities (such as ramp closures, road closures, and lane
14 closures) with appropriate police, fire control agencies, city or county engineering,
15 medical emergency agencies, school districts, and transit companies.

16 6. Overseeing all requirements of the Contract that contribute to the convenience, safety,
17 and orderly movement of vehicular and pedestrian traffic.

18 7. Reviewing the TCS's diaries daily and being aware of field traffic control operations.

19 8. Being present on site a sufficient amount of time to adequately satisfy the above-listed
20 responsibilities.

21 Failure to carry out any of the above-listed responsibilities shall be a failure to comply with
22 the Contract and may result in a suspension of Work as described in Section 1-08.6.

23 **1-10.2(1)B Traffic Control Supervisor**

24 A Traffic Control Supervisor (TCS) shall be present on the Project whenever flagging or other
25 traffic control labor is being utilized or less frequently, as authorized by the Engineer.

26 The TCS shall personally perform all the duties of the TCS. During nonwork periods, the TCS
27 shall be available to the job site within a 45-minute time period after notification by the
28 Engineer.

29 The TCS's duties shall include:

30 1. Having a current set of approved traffic control plans (TCPs), applicable Contract
31 Provisions as provided by the Contractor, the latest adopted edition of the MUTCD,
32 including the *Washington State Modifications to the MUTCD*, the book *Quality*

- 1 *Guidelines for Temporary Work Zone Traffic Control Devices*, the most current edition of
2 the PROWAG, and applicable Standards and Specifications.
- 3 2. Inspecting traffic control devices and nighttime lighting for proper location, installation,
4 message, cleanliness, and effect on the traveling public. Traffic control devices shall be
5 inspected at least once per hour during working hours, except that Class A signs need to
6 be checked once a week and nighttime lighting needs to be checked only once a shift.
7 Traffic control devices left in place for 24 hours or more shall also be inspected once
8 during the nonworking hours when the devices are initially set up (during daylight or
9 darkness, whichever is opposite of the working hours). The TCS shall correct, or arrange
10 to have corrected, any deficiencies noted during these inspections.
- 11 3. Preparing a daily traffic control diary on each day that traffic control is performed using
12 WSDOT Form 421-040A and 421-040B, and submitting the diary to the Engineer no later
13 than the end of the next working day. The Contractor may use alternate forms if
14 approved by the Engineer. Diary entries shall include, but not be limited to:
- 15 a. Time of day when signs and traffic control devices are installed and removed,
16 b. Location and condition of signs and traffic control devices,
17 c. Revisions to the traffic control plan,
18 d. Lighting utilized at night, and
19 e. Observations of traffic conditions.
- 20 4. Making minor revisions to the traffic control plan to accommodate site conditions
21 provided that the original intent of the traffic control plan is maintained and the revision
22 has the concurrence of both the Contractor and the Engineer.
- 23 5. Attending traffic control coordinating meetings or coordination activities as necessary
24 for full understanding and effective performance.
- 25 6. Ensuring that all needed traffic control devices and equipment are available and in good
26 working condition prior to the need to install or utilize the devices.
- 27 7. Ensuring that all pedestrian routes or access points, existing or temporary, are kept clear
28 and free of obstructions and that all temporary pedestrian routes or access points are
29 detectable and accessible to persons with disabilities as provided for in the approved
30 Plans.

1 The TCS may perform the Work described in Section 1-10.3(1)A Flaggers or in
2 Section 1-10.3(1)B Other Traffic Control Labor and be compensated under those Bid items,
3 provided that the duties of the TCS are accomplished.

4 **1-10.2(2) Traffic Control Plans**

5 The traffic control plan or plans appearing in the Contract Documents show a method of
6 handling vehicle, bicycle, and pedestrian traffic. All construction signs, flaggers, and other traffic
7 control devices are shown on the traffic control plan(s) except for emergency situations. If the
8 Contractor proposes adding the use of flaggers to a plan, this will constitute a modification
9 requiring approval by the Engineer. The modified plans shall show locations for all the required
10 advance warning signs and a safe, protected location for the flagging station. If flagging is to be
11 performed during hours of darkness, the plan shall include appropriate illumination for the
12 flagging station.

13 When the Contractor's chosen method of performing the Work in the Contract requires
14 some form of temporary traffic control, for vehicles, bicyclists, or pedestrians, the Contractor
15 shall either: (1) designate and adopt, in writing, the traffic control plan or plans from the
16 Contract Documents that support that method; or (2) submit a Contractor's plan that modifies,
17 supplements, or replaces a plan from the Contract Documents. Any Contractor-proposed
18 modification, supplement, or replacement shall show the necessary construction signs, flaggers,
19 and other traffic control devices required to support the Work. Any Contractor-proposed traffic
20 control plan shall conform to the established standards for plan development as shown in the
21 MUTCD, Part 6, and the most current edition of the PROWAG. The Contractor's submittal,
22 either designating and adopting a traffic control plan from the Contract Documents or
23 proposing a Contractor-developed plan, shall be provided to the Engineer for approval at least
24 10 calendar days in advance of the time the signs and other traffic control devices are
25 scheduled to be installed and utilized. The Contractor shall be solely responsible for submitting
26 any proposed traffic control plan or modification, obtaining the Engineer's approval, and
27 providing copies of the approved traffic control plans to the Traffic Control Supervisor.

28 **1-10.2(3) Conformance to Established Standards**

29 Flagging, signs, and all other traffic control devices and procedures furnished or provided
30 shall conform to the standards established in the latest WSDOT adopted edition of the MUTCD,
31 published by the U.S. Department of Transportation and the *Washington State Modifications to*
32 *the MUTCD*, and the most current edition of the *Public Rights-of-Way Accessibility Guidelines*
33 (PROWAG). Judgment of the quality of devices furnished will be based upon *Quality Guidelines*
34 *for Temporary Traffic Control Devices*, published by the American Traffic Safety Services
35 Association. Copies of the MUTCD and *Quality Guidelines for Temporary Control Devices* may be
36 purchased from the American Traffic Safety Services Association, 15 Riverside Parkway,
37 Suite 100, Fredericksburg, VA 22406-1022. The *Washington State Modifications to the MUTCD*
38 may be obtained from the Department of Transportation, Olympia, WA 98504. The most

1 current edition of the *Public Rights-of-Way Accessibility Guidelines* (PROWAG) can be
2 downloaded from the United States Access Board website at www.access-board.gov/prowac
3 under *Revised Draft Guidelines (2005)*.

4 In addition to the standards of the MUTCD described above, the Contracting Agency has
5 crashworthiness requirements for most work zone devices. The *National Cooperative Highway*
6 *Research Project (NCHRP) Report 350* and the *AASHTO Manual for Assessing Safety Hardware*
7 (MASH) have established requirements for crash testing. Work zone devices are divided into
8 four categories. Each of those categories is described below:

9 **Category 1** includes those items that are small and lightweight, channelizing, and
10 delineating devices that have been in common use for many years and are known to be
11 crashworthy by crash testing of similar devices or years of demonstrable safe performance.
12 These include cones, tubular markers, flexible delineator posts, and plastic drums. All
13 Category 1 devices used on the Project shall meet the requirements of NCHRP 350 or MASH
14 as certified by the manufacturer of the device.

15 **Category 2** includes devices that are not expected to produce significant vehicular
16 velocity change, but may otherwise be hazardous. Examples of this class are barricades,
17 portable sign supports, and signs. All Category 2 devices shall meet the requirements of
18 NCHRP 350 or MASH. For the purpose of definition, a sign support and sign shall be
19 considered a single unit. A new sign may be purchased for an existing sign support and the
20 entire unit will be defined as “existing equipment.”

21 **Category 3** is for hardware expected to cause significant velocity changes or other
22 potentially harmful reactions to impacting vehicles. Barriers, fixed sign supports, crash
23 cushions, transportable attenuators and other work zone devices not meeting the
24 definitions of Category 1 or Category 2 are examples from this category. Many Category 3
25 devices are defined in the design of the Project. Where this is the case, NCHRP 350 or MASH
26 requirements have been incorporated into the design and the Contractor complies with the
27 requirements by constructing devices according to the Plans and Specifications. Where the
28 device is a product chosen by the Contractor, the device chosen must be compliant with the
29 requirements of NCHRP 350 or MASH.

30 **Category 4** includes portable or trailer-mounted devices such as arrow displays,
31 temporary traffic signals, area lighting supports, and portable changeable message signs.
32 Crash testing is not required for these devices.

33 The condition of signs and traffic control devices shall be acceptable or marginal as defined
34 in the book *Quality Guidelines for Temporary Traffic Control Devices*, and will be accepted based
35 on a visual inspection by the Engineer. The Engineer’s decision on the condition of a sign or
36 traffic control device shall be final. A sign or traffic control device determined to be
37 unacceptable shall be removed from the Project and replaced within 12 hours of notification.

1 **1-10.3 Traffic Control Labor, Procedures, and Devices**

2 **1-10.3(1) Traffic Control Labor**

3 The Contractor shall furnish all personnel for flagging; for the execution of all procedures
4 related to temporary traffic control; and for the setup, maintenance, and removal of all
5 temporary traffic control devices and construction signs necessary to control vehicular, bicycle,
6 and pedestrian traffic during construction operations.

7 Vests and other high-visibility apparel shall be in conformance with Section 1-07.8.

8 **1-10.3(1)A Flaggers**

9 Flaggers shall be posted where shown on approved Traffic Control Plans or where directed
10 by the Engineer. All flaggers shall possess a current flagging card issued by the State of
11 Washington, Oregon, Montana, or Idaho. The flagging card shall be immediately available and
12 shown to the Contracting Agency upon request.

13 Flagging stations shall be shown on Traffic Control Plans at locations where construction
14 operations require stopping or diverting public traffic. Flagging stations shall be staffed only
15 when flagging is required. This staffing may be continuous or intermittent, depending on the
16 nature of the construction activity. Whenever a flagger is not required to stop or divert traffic,
17 the flagger shall move away from the flagging station to a safer location. During hours of
18 darkness, flagging stations shall be illuminated in a manner that ensures that flaggers can easily
19 be seen but that does not cause glare to the traveling public.

20 Flagger station illumination shall meet the requirements of the MUTCD and these
21 Specifications.

22 The Contractor shall provide portable lighting equipment capable of sufficiently illuminating
23 a flagger and the station without creating glare for oncoming motorists, yet will meet the
24 mobility requirements of the operation. The lighting stations shall be located on the same side
25 of the roadway as the flagger and aimed either parallel or perpendicular to the traveled lanes
26 to minimize glare. The lighting devices shall be located 5 to 10 feet from the edge of the travel
27 lane with a mounting height of 15 to 25 feet above the ground. The flagger should be visible
28 and discernable as a flagger from a distance of 1,000 feet.

29 Flaggers shall be equipped with portable two-way radios, with a range suitable for the
30 Project. The radios shall be capable of having direct contact with project management
31 (foremen, superintendents, etc.).

32 The Contractor shall furnish Stop/Slow paddles conforming to the requirements of
33 Section 9-35.1 for all flagging operations.

1 **1-10.3(1)B Other Traffic Control Labor**

2 In addition to flagging duties, the Contractor shall provide personnel for all other traffic
3 control procedures required by the construction operations and for the labor to install,
4 maintain, and remove any traffic control devices shown on the Traffic Control Plans.

5 **1-10.3(2) Traffic Control Procedures**

6 **1-10.3(2)A One-Way Traffic Control**

7 The Project Work may require that traffic be maintained on a portion of the Roadway
8 during the progress of the Work using one-way traffic control. If this is the case, the
9 Contractor's operation shall be confined to one-half the Roadway, permitting traffic on the
10 other half. If shown on an approved Traffic Control Plan or directed by the Engineer, one-way
11 traffic control, in accordance with the MUTCD, shall be provided and shall also conform to the
12 following requirements:

- 13 1. In any one-way traffic control configuration, side roads and approaches will be closed or
14 controlled by a flagger or by appropriate approved signing. A side road flagger will
15 coordinate with end flaggers where there is line of sight and with the pilot car where the
16 end flaggers cannot be seen.
- 17 2. Queues of vehicles will be allowed to take turns passing through the work zone in the
18 single open lane. When one-way traffic control is in effect, Contractor vehicles shall not
19 use the open traffic lane except while following the same rules and routes required of
20 the public traffic.
- 21 3. As conditions permit, the Contractor shall, at the end of each day, leave the Work area
22 in such condition that it can be traveled without damage to the Work, without danger to
23 traffic, and without one-way traffic control. If, in the opinion of the Engineer, one-way
24 traffic control cannot be dispensed with after working hours, then the operation will be
25 continued throughout the non-working hours.

26 **1-10.3(2)B Lane Closure Setup/Takedown**

27 Where allowed by the Contract and where shown on approved Traffic Control Plans or
28 directed by the Engineer, the Contractor shall set up traffic control measures to close one or

1 more lanes of a multi-lane facility. When this is to occur, the following sequence shall be
2 followed:

- 3 1. If the Plans show a portable changeable message sign, it shall be established in advance
4 of the operation far enough back to provide warning of both the operation and any
5 queue of traffic that has formed during the operation.
- 6 2. Advance warning signs are set up on the Shoulder of the Roadway opposite the lane to
7 be closed.
- 8 3. Advance warning signs are set up on the same Shoulder as the lane to be closed.
- 9 4. A transportable attenuator, with arrow board, is moved into place at the beginning of
10 the closure taper.
- 11 5. Channelization devices are placed to mark the taper and the length of the closure as
12 shown on the Traffic Control Plan.

13 Once the lane is closed, the transportable attenuator/arrow board combination shall be
14 replaced with an arrow board without attenuator.

15 If additional lanes are to be closed, this shall be done in sequence with previous lane
16 closures using the same sequence of activities. A transportable attenuator with arrow board is
17 required during the process of closing each additional lane and is to be replaced with an arrow
18 board without attenuator after the lane is closed. Each closed lane shall be marked with a
19 separate arrow board at all times.

20 Traffic control for lane closures shall be removed in the reverse order of its installation.

21 **1-10.3(2)C Mobile Operations**

22 Where construction operations are such that movement along the length of a Roadway is
23 continuous or near-continuous to the extent that a stationary traffic control layout will not be
24 effective, the Contractor may implement a moving, or mobile, traffic control scheme. Such
25 moving control shall always be conducted in the same direction as the adjacent traffic.

26 Where shown on an approved Traffic Control Plan or where directed by the Engineer,
27 mobile traffic control shall consist of portable equipment, moving with the operation.
28 A portable changeable message sign shall be established in advance of the operation far
29 enough back to provide warning of both the operation and of any queue of traffic that has
30 formed during the operation. The advance sign shall be continuously moved to stay near the
31 back of the queue at all times. A transportable attenuator, with arrow board, shall be
32 positioned and maintained at a fixed distance upstream of the Work. A shadow vehicle, with

1 transportable attenuator shall be positioned and maintained immediately upstream of the
2 Work.

3 **1-10.3(2)D Patrol and Maintain Traffic Control Measures**

4 At all times, when temporary traffic control measures are in place, the Contractor shall
5 provide for patrolling and maintaining these measures. The Work shall consist of resetting
6 errant devices, assuring visibility of all devices, cleaning and repairing where necessary,
7 providing maintenance for all equipment, including replacing batteries and light bulbs, as well
8 as keeping motorized and electronic items functioning, and adjusting the location of devices to
9 respond to actual conditions, such as queue length, unanticipated traffic conflicts, and other
10 areas where planned traffic control has proven ineffective.

11 This Work shall be performed by the Contractor, either by or under the direction of the
12 Traffic Control Supervisor. Personnel, with vehicles if necessary, shall be dispatched so that all
13 traffic control can be reviewed at least once per hour during working hours and at least once
14 during each non-working day.

15 **1-10.3(3) Traffic Control Devices**

16 Traffic control devices, including signs, furnished or provided shall conform to the standards
17 established in the latest WSDOT-adopted edition of the *Manual on Uniform Traffic Control*
18 *Devices for Streets and Highways* (MUTCD) published by the U.S. Department of Transportation
19 and the *Washington State Modifications to the MUTCD*. Requirements for pedestrian traffic
20 control devices are addressed in the MUTCD.

21 **1-10.3(3)A Construction Signs**

22 All construction signs required by approved Traffic Control Plans, as well as any other
23 appropriate signs directed by the Engineer, shall be furnished by the Contractor. The Contractor
24 shall provide the posts or supports and erect and maintain the signs in a clean, neat, and
25 presentable condition until the need for the signs has ended. Post-mounted signs shall be
26 installed as shown in the Standard Plans. When the need for construction signs has ended, the
27 Contractor, upon approval of the Engineer, shall remove all signs, posts, and supports from the
28 Project and the signs shall remain the property of the Contractor.

29 No passing zones on the existing Roadway that are marked with paint striping and which
30 striping is to be obliterated by construction operations shall be replaced by “Do Not Pass” and
31 “Pass With Care” signs. The Contractor shall provide and install the posts and signs. The signs
32 shall be maintained by the Contractor until the signs are removed or until the Contract is
33 Physically Completed. When the Project includes striping by the Contractor, the signs and posts
34 shall be removed by the Contractor when the no passing zones are reestablished by striping.
35 The signs and posts will become the property of the Contractor. When the Contractor is not
36 responsible for striping and when the striping by others is not completed when the Project is

1 Physically Completed, the posts and signs shall be left in place and shall become the property of
2 the Contracting Agency.

3 All existing signs, new permanent signs installed under this Contract, and construction signs
4 installed under this Contract that are inappropriate for the traffic configuration at a given time
5 shall be removed or completely covered in accordance with Section 8-21.3(3). Construction
6 signs will be divided into two classes. Class A construction signs are those signs that remain in
7 service throughout the construction or during a major phase of the Work. Construction signs
8 are mounted on posts, existing fixed Structures, or substantial supports of a semi-permanent
9 nature. Class A signs will be designated as such on the approved Traffic Control Plan. “Do Not
10 Pass” and “Pass With Care” signs are classified as Class A construction signs. Sign and support
11 installation for Class A signs shall be in accordance with the Contract Plans or the Standard
12 Plans. Class B construction signs are those signs that are placed and removed daily, or are used
13 for short durations which may extend for 1 to 3 days. Class B signs are mounted on portable or
14 temporary mountings. Tripod-mounted signs in place more than 3 days in any one location,
15 unless approved by the Project Engineer, shall be required to be post-mounted and shall be
16 classified as Class A construction signs.

17 Where it is necessary to add weight to signs for stability, sand bags or other similar ballast
18 may be used, but the top of the ballast shall not be more than 4 inches above the Roadway
19 surface, and shall not interfere with the breakaway features of the device. The Contractor shall
20 follow the manufacturer’s recommendations for sign ballasting.

21 Signs, posts, or supports that are lost, stolen, damaged, destroyed, or which the Engineer
22 deems to be unacceptable while the use of the sign, post, or support is required on the Project
23 shall be replaced by the Contractor.

24 **1-10.3(3)B Sequential Arrow Signs**

25 Where shown on an approved Traffic Control Plan or where ordered by the Engineer, the
26 Contractor shall provide, operate, and maintain sequential arrow signs. A sequential arrow sign
27 is required for all lane closure tapers on a multilane facility. A separate sequential arrow sign
28 shall be used for each closed lane. The arrow sign shall not be used to laterally shift traffic.
29 When used in the caution mode, the four corner mode shall be used.

30 **1-10.3(3)C Portable Changeable Message Sign**

31 Where shown on an approved Traffic Control Plan or where ordered by the Engineer, the
32 Contractor shall provide, operate, and maintain portable changeable message signs (PCMS). A
33 PCMS shall be placed behind a barrier or guardrail whenever possible, but shall at a minimum
34 provide 4 feet of lateral clearance to the edge of the travelled lane and be delineated by
35 channelization devices. The Contractor shall remove the PCMS from the clear zone when not in
36 use unless protected by a barrier or guardrail.

1 **1-10.3(3)D Barricades**

2 Where shown on an approved Traffic Control Plan or where ordered by the Engineer, the
3 Contractor shall provide, install, and maintain barricades. Barricades shall be kept in good
4 repair and shall be removed immediately when, in the opinion of the Engineer, the barricades
5 are no longer functioning as designed.

6 Where it is necessary to add weight to barricades for stability, sand bags or other similar
7 ballast may be used, but the height shall not be more than 4 inches above the Roadway surface
8 and shall not interfere with the breakaway features of the device. The Contractor shall follow
9 the manufacturer’s recommendation for sign ballasting.

10 **1-10.3(3)E Traffic Safety Drums**

11 Where shown on an approved Traffic Control Plan, or where ordered by the Engineer, the
12 Contractor shall provide, install, and maintain traffic safety drums.

13 Used drums may be utilized, provided all drums used on the Project are of essentially the
14 same configuration and the devices conform to Section 1-10.2(3).

15 The drums shall be designed to resist overturning by means of a weighted lower unit that
16 will separate from the drum when impacted by a vehicle.

17 Drums shall be regularly maintained to ensure that the drums are clean and that the drums
18 and reflective material are in good condition. If the Engineer determines that a drum has been
19 damaged beyond usefulness, or provides inadequate reflectivity, a replacement drum shall be
20 furnished.

21 When the Engineer determines that the drums are no longer required, the drums shall be
22 removed from the Project and shall remain the property of the Contractor.

23 **1-10.3(3)F Vacant**

24 **1-10.3(3)G Traffic Cones and Tall Channelizing Devices**

25 Where shown on an approved Traffic Control Plan or where ordered by the Engineer, the
26 Contractor shall provide, install, and maintain traffic cones or tall channelizing devices. Cones
27 and tall channelizing devices shall be kept in good repair and shall be removed immediately
28 when directed by the Engineer. Where wind or moving traffic frequently displaces cones or tall
29 channelizing devices, an effective method of stabilizing the devices, such as stacking two
30 together at each location, shall be employed, or heavier weighted bases may be necessary.

1 1-10.3(3)H Tubular Markers

2 Where shown on an approved Traffic Control Plan or where ordered by the Engineer, the
3 Contractor shall provide, install, and maintain tubular markers. Tubular markers shall be kept in
4 good repair and shall be removed immediately when directed by the Engineer. Tubular markers
5 are secondary devices and are not to be used as substitutes for cones or other delineation
6 devices without an approved Traffic Control Plan.

7 Where the Traffic Control Plan shows pavement-mounted tubular markers, the adhesive
8 used to fasten the base to the pavement shall be suitable for the purpose, as approved by the
9 Engineer. During the removal of pavement-mounted tubular markers, care shall be taken to
10 avoid damage to the existing pavement. Any such damage shall be repaired by the Contractor
11 at no cost to the Contracting Agency.

12 1-10.3(3)I Warning Lights and Flashers

13 Where shown attached to traffic control devices on an approved Traffic Control Plan or
14 where ordered by the Engineer, the Contractor shall provide and maintain flashing warning
15 lights. Lights attached to advance warning signs shall be Type B, high-intensity. Lights attached
16 to traffic safety drums, barricades, or other signs shall be Type C, steady-burning low intensity
17 or, where attention is to be directed to a specific device, Type A, flashing low intensity units.

18 1-10.3(3)J Transportable Attenuator

19 Where shown on an approved Traffic Control Plan or where ordered by the Engineer, the
20 Contractor shall provide, operate, and maintain transportable impact attenuators consistent
21 with the requirements of Section 9-35.12. These attenuators shall be available on site for the
22 entire duration of the projected use.

23 The transportable attenuator shall be positioned to separate and protect construction work
24 zone activities from normal traffic flow.

25 During use, the attenuator shall be in the full down-and-locked position. For stationary
26 operations, the parking brake of the host vehicle shall be set.

27 A transportable attenuator may be used in lieu of a temporary impact attenuator when
28 approved by the Engineer as part of a stage traffic control shift to protect an object such as
29 blunt barrier end or bridge pier column that is located within the Work zone clear zone. This
30 use of a transportable attenuator is restricted to a maximum of 3 days or approved extension
31 by the Project Engineer.

1 1-10.3(3)K Portable Temporary Traffic Control Signal

2 Where shown on an approved Traffic Control Plan, the Contractor shall provide, operate,
3 maintain, and remove a portable temporary traffic control signal system to provide alternating
4 one-lane traffic operations on a two-way facility. A portable temporary traffic control signal
5 system shall be defined as two traffic control units that operate together. The system shall be
6 trailer-mounted, fully self-contained, and designed so that it can be easily transported and
7 deployed at different locations.

8 The Contractor shall submit the manufacturer’s specifications for the portable temporary
9 traffic control signal to the Engineer for approval at the pre-construction meeting or a minimum
10 of two weeks prior to installation, whichever occurs first. A manufacturer’s representative is
11 required to demonstrate the capabilities of the temporary portable signal prior to approval and
12 provide training to Contractor personnel as necessary.

13 Remote manual control of the portable traffic control signal by the Traffic Control
14 Supervisor (TCS) or a qualified operator may be allowed if necessitated by Work area or traffic
15 conditions and as approved by the Engineer.

16 Maximum length between signal heads shall be 1,500 feet unless otherwise shown on the
17 Plans or ordered by the Project Engineer in accordance with Section 1-04.4.

18 The Project Engineer, or designee, will inspect the signal system at initial
19 installation/operation and approve the signal timing. Final approval will be based on the results
20 of the operational inspection.

21 The Traffic Control Supervisor shall monitor and ensure that the Portable Temporary Traffic
22 Control Signal is fully operational and maintained as specified by the manufacturer. This Work
23 may include cleaning and replacing lamps and other routine maintenance as needed.

24 If repairs or adjustments are required, the Contractor shall respond immediately and
25 provide flagger traffic control, if the Roadway cannot be safely reopened to two-way traffic,
26 until such time that repairs can be made. The Contractor shall either repair the signal or replace
27 with a backup unit within 24 hours.

28 The Engineer will monitor the traffic and signal operation and order adjustments as needed
29 based on traffic conditions. Timing adjustments require the approval of the Project Engineer.

30 As shown on the Traffic Control Plan, temporary stop bars and “STOP HERE ON RED Signs
31 (R10-6) shall be provided at the location traffic is expected to stop during the red display. The
32 stop bar locations shall be illuminated at night. The illumination shall be the responsibility of
33 the Contractor and shall be adjusted to ensure minimal glare to motorists.

1 When not in operation, remove signal heads from the view of traffic or cover signal heads
2 with bags made of non-ripping material specifically designed for covering signal heads. Do not
3 use trash bags of any type. Remove, cover, fold, or turn all inappropriate signs so that the signs
4 are not readable by oncoming traffic.

5 The Contractor shall provide and install all field wiring to make a complete and operational
6 portable traffic control signal and shall maintain the system throughout the life of the Contract.

7 Portable temporary traffic signals shall not be installed within 300 feet of at-grade railroad
8 crossings or if driveways or Roadway access points are located between the portable temporary
9 traffic control signals.

10 **1-10.4 Measurement**

11 **1-10.4(1) Negotiated Support Service Items**

12 Work for Section 1-10 may contain some or all of the following Negotiated Support Services
13 items, measured as noted:

14 “Flaggers” will be measured by the hour. Hours will be measured for each flagging station,
15 shown on an approved Traffic Control Plan, when that station is staffed in accordance with
16 Section 1-10.3(1)A. When a flagging station is staffed on an intermittent basis, no deduction will
17 be made in measured hours provided that the person staffing the station is in a standby mode
18 and is not performing other duties.

19 “Other Traffic Control Labor” will be measured by the hour. Time spent on activities other
20 than those described herein will not be measured under this item. The hours of one person will
21 be measured for each patrol route that the Contractor performs the Work described under
22 Section 1-10.3(2)E, Patrol and Maintain Traffic Control Measures, regardless of the actual
23 number of persons per route. Hours will be measured for each person engaged in any one of
24 the following activities:

- 25 • Operating a pilot vehicle during one-way piloted traffic control.
- 26 • Operating a traffic control vehicle or a chase vehicle during a rolling
27 slowdown operation.
- 28 • Operating a vehicle or placing/removing traffic control devices during the setup or
29 takedown of a lane closure. Performing preliminary Work to prepare for placing and
30 removing these devices.
- 31 • Operating any of the moving traffic control equipment, or adjusting signing during a
32 mobile operation as described in Section 1-10.3(2)D.
- 33 • Placing and removing Class B construction signs. Performing preliminary Work to
34 prepare for placing and removing these signs.

- 1 • Relocation of Portable Changeable Message Signs within the Project limits.
- 2 • Installing and removing Barricades, Traffic Safety Drums, Cones, Tubular Markers
- 3 and Warning Lights and Flashers to carry out approved Traffic Control Plan(s).
- 4 Performing preliminary Work to prepare for installing these devices.

5 “Construction Signs, Class A” will be measured by the square foot of panel area for each
6 sign designated on an approved Traffic Control Plan as Class A or for each construction sign
7 installed as ordered by the Engineer and designated as Class A at the time of the order. Class A
8 signs may be used in more than one location and will be measured for each new installation.
9 Class B construction signs will not be measured. Sign posts or supports will not be measured.

10 “Sequential Arrow Sign” will be measured by the hour for the time that each sign is
11 operating as shown on an approved Traffic Control Plan.

12 “Portable Changeable Message Sign” will be measured by the hour for the time that each
13 sign is operating as shown on an approved Traffic Control Plan.

14 “Transportable Attenuator” will be measured per each one time only for each host vehicle
15 with mounted or attached impact attenuator used on the Project. The final pay quantity shall
16 be the maximum number of transportable attenuators in place at any one time.

17 “Operation of Transportable Attenuator” will be measured by the hour for each
18 transportable attenuator manned and operated. Manned and operated shall be when the
19 transportable attenuator has an operator and is required to move, in operating position, with
20 the construction operation or when moving the transportable attenuator from one position to
21 another on the Project.

22 **1-10.4(2) Owner-Provided Resources**

23 The Contract Provisions may call for specific items of labor, materials, or equipment, noted
24 in Section 1-10 as the responsibility of the Contractor, to be supplied by the Contracting
25 Agency. When this occurs, there will be no adjustment in measurement of unit quantities.

26 **1-10.5 Payment**

27 **1-10.5(1) Traffic Control Management**

28 All costs incurred by the Contractor in performing the Contract Work defined in
29 Section 1-10 is a Specified General Condition with the exception of the costs for Negotiated
30 Support Services Items listed in 1- 10.5(2) below.

1 **1-10.5(2) Negotiated Support Service Items**

2 The following are typical Negotiated Support Service Items and will be paid for as noted:

- 3 a. "Pedestrian Traffic Control", lump sum.
- 4 b. "Flaggers", per hour.
- 5 c. "Other Traffic Control Labor", per hour
- 6 d. "Construction Signs Class A", per square foot.
- 7 e. "Sequential Arrow Sign", per hour.
- 8 f. "Portable Changeable Message Sign", per hour.
- 9 g. "Transportable Attenuator", per each.
- 10 h. "Operation of Transportable Attenuator", per hour.
- 11 i. "Repair Transportable Attenuator", lump sum.
- 12 j. "Other Temporary Traffic Control", lump sum.
- 13 k. "Portable Temporary Traffic Control Signal", lump sum.

14 **END OF DIVISION 1**