Design-Build Contract

Chapter 1 General Provisions

Washington State Department of Transportation

I-405, SR 520 to SR 522 Stage 1 (Kirkland Stage 1)

Request For Proposal

July 15, 2005

INTERSTATE 405 Corridor Program

Congestion Relief & Bus Rapid Transit Projects

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Chapter 1

General Provisions

1-01 DEFINITIONS AND TERMS

1-01.1 GENERAL

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

1-01.2 ABBREVIATIONS

1-01.2(1) Associations and Miscellaneous

AAA	American Arbitration Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADO	Award Determination Official
ADR	Alternative Dispute Resolution
AGA	American Gas Association
AGC	Associated General Contractors of America
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMS	Aerospace Material Specification
ANSI	American National Standards Institute
APA	American Plywood Association
APE	Area of Potential Effect
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road & Transportation Builders Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BAFO	Best and Final Offer
CFR	Code of Federal Regulations
CLI	Chain Link Institute

CRAB	County Road Administration Board
CRSI	Concrete Reinforcing Steel Institute
DIPRA	Ductile Iron Pipe Research Association
EEI	Edison Electric Institute
EIA	Electronic Industries Alliance
EPA	Environmental Protection Agency
ESAL	Equivalent Single Axle Loads
FHWA	Federal Highway Administration
FOP	Field Operating Procedure
FSS	Federal Specifications and Standards, General Services Administration
HAL	High Accident Location
HAC	High Accident Corridor
HUD	United States Department of Housing and Urban Development
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
ITE	Institute of Transportation Engineers
IES	Illumination Engineering Society
IMSA	International Municipal Signal Association
LID	Local Improvement District
LPI	Lighting Protection Institute
MSHA	Mine Safety and Health Act
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NRMCA	National Ready Mix Concrete Association
OMWBE	Office of Minority and Women's Business Enterprises
OSHA	Occupational Safety and Health Administration
PAL	Pedestrian Accident Location
PCA	Portland Cement Association
PPI	Plastic Pipe Institute
P/PCI	Precast/Prestressed Concrete Institute
QPL	Qualified Products List
RAM	Request for Approval of Material
RCW	Revised Code of Washington (Laws of the State)
RID	Road Improvement District
ROW	Right of Way
SAE	Society of Automotive Engineers
SEPA	State Environmental Policy Act
SOP	Standard Operating Procedure
SPUI	Single Point Urban Interchange
SSPC	Steel Structures Painting Council
TIA	Telecommunications Industry Association
TIB	Transportation Improvement Board

TRB	Transportation Research Board
UL	Underwriters Laboratory
ULID	Utility Local Improvement District
UMTA	Urban Mass Transit Administration
WAC	Washington Administrative Code
WAQTC	Western Alliance for Quality Transportation Construction
WCLIB	West Coast Lumber Inspection Bureau
WISHA	Washington Industrial Safety and Health Administration
WRI	Wire Reinforcement Institute
WSDOE	Washington State Department of Ecology
WSDOT	Washington State Department of Transportation
WWPA	Western Wood Products Association

1-01.2(2) Items of Work

ACP	Asphalt Concrete Pavement
Agg.	Aggregate
Al.	Aluminum
ATB	Asphalt Treated Base
ATC	Alternative Technical Concept
BST	Bituminous Surface Treatment
CCTV	Closed Circuit Television
Cl.	Class
Cfm	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Comb.	Combination
Conc.	Concrete
CPF	Composite Pay Factor
Crib.	Cribbing
Culv.	Culvert
cy or cu yd.	Cubic Yard
Diam.	Diameter
ESAL	Equivalent Single Axle Loads
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
Gph	Gallon per Hour
Gpm	Gallon per Minute
Hund.	Hundred
HMA	Hot Mix Asphalt
In.	Inch
Incl.	Including
ITS	Intelligent Transportation System
JMCIF	Job Mix Compliance Incentive Factor
JMF	Job Mix Formula
Lb	Pound(s)

LED	Light Emitting Diode
LF or Lin. Ft.	Linear Foot (Feet)
LS	Lump Sum
M	Thousand
MBM	Thousand Feet Board Measure
MUTS	Minimum Ultimate Tensile Strength
PCPS	Precast Prestressed
Pres.	Pressure
PSI	Pounds per Square Inch
PVC	Polyvinyl Chloride
RAP	Recycled Asphalt Pavement
Reg.	Regulator
Reinf.	Reinforced, Reinforcing
Sec.	Section
St.	Steel
Str.	Structural
sy or sq. yd.	Square Yard(s)
Th.	Thick or Thickness
Tr.	Treatment
Va	Air Voids
VC	Vitrified Clay
VFA	Voids Filled with Asphalt
VMA	Voids in Mineral Aggregate
VMS	Variable Message Sign

1-01.3 DEFINITIONS

1-01.3(1) Defined Terms

The following capitalized terms shall have the following meanings:

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

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

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

Basic Configuration - The elements of the Project discussed in Section 2.1.4.2 shown in the Conceptual Plans (RFP Appendices M1,M2, M3) and/or Pre-Approved Design Deviations (RFP

Appendix O2), as such elements may have been modified (with WSDOT's permission) in the Proposal.

Betterment - With respect to the Technical Proposal, any item included in the Design-Builder's Technical Proposal which clarifies the Design-Builder's intention to exceed a requirement included in the Contract Documents. For example, a Betterment may be associated with schedule, management, organization, and/or design details.

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

(a) any upgrade necessary for safe and effective construction of the Project;

(b) replacement devices or materials that meet equivalent standards although they are not identical;

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

(d) any upgrading required by applicable Governmental Rules;

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

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

(g) any discretionary decision by a Utility Owner contemplated within a particular Utility Standard.

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

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

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

Category A Change Proposal - A proposal for a change in a Category A requirement.

Category A Requirements - The requirements of the Contract Documents designated as "Category A" in Section 1-04.4(3).

Category B Change Proposal (CBCP) - A proposal for a change in a Category B requirement.

Category B Requirements - The requirements of the Contract Documents designated as "Category B" in Section 1-04.4(3).

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

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

Collateral Savings - Those measurable net reductions in WSDOT's costs of operation resulting from the VECP, including costs of maintenance by WSDOT, logistics and WSDOT-furnished property.

Commission, Washington State Transportation Commission - The appointive body having authority over state transportation matters as provided by law.

Completion Date/Completion - The day the Work is completed and all the obligations of the Design-Builder under the Contract are fulfilled by the Design-Builder. All documentation required by the Contract and Applicable Law must be furnished by the Design-Builder before establishment of this date.

Conceptual Design - Preliminary design concept, including the Basic Configuration, presented in RFP Section 2.1 and the RFP Appendices.

Conceptual Plans - The plans included in RFP Appendix M.

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

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

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

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

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

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

will form the basis for determining progress of the Work and establishing progress payments owing.

Contract Time - The period of time in calendar days, including adjustment thereto authorized by WSDOT, designated in the Special Provisions or Contract Form for Substantial Completion of the Work

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

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

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

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

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

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

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

Disadvantaged Business Enterprise or DBE - A for-profit small business concern that is certified as a DBE by the Washington State Office of Minority and Women's Business Enterprises.

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

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

Environmental Laws - All Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material into the environment including into the air, surface water, or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material, or otherwise relating to the protection of public health, public welfare, public safety or the environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the Comprehensive Environmental

Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"), as amended by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Hazardous Materials Transportation Uniform Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. §1531 et seq.; the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §703 et seq.; Fish and Game Code §1600 et seq.; the Washington Model Toxics Control Act, 70.105D RCW; and the Washington Hazardous Waste Management Act, 70.105 RCW; the Washington Water Pollution Control Act; the Clean Air Washington Act; the Washington Solid Waste Management laws; the Washington Underground Petroleum Storage Tanks Act, the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, all as amended and supplemented previously or in the future.

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

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

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

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

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

Geotechnical Baseline Report - The geotechnical report supplied by WSDOT for use by Proposers in preparing their proposals.

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

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

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

Hazardous Materials - Any (a) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law; (c) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimus amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) hazardous building materials including but not limited to asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground). The term "Hazardous Materials" includes Hazardous Waste.

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

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

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

(a) Service Line Relocations;

(b) All work necessary to Protect in Place Utilities (including completed Prior Relocations) requiring such protection on account of the Project (except for encasement of the HDBE sewer pipe described in Section 2.10);

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

(d) All work necessary to remove any Utilities (whether or not in use as of the Proposal Date) in situations for which leaving the Utilities in place is not feasible or not permitted, or for facilities which are to be removed to accommodate or permit construction of the Project, regardless of whether replacements for such Utilities are being or have been installed in other locations; and

(e) All work necessary to abandon in place any Utility in accordance with proper Utility Owner and/or industry procedures (e.g., flushing, capping, slurry backfill, etc.)

regardless of whether replacements for such Utilities are being or have been installed in other locations.

Indemnified Parties - The State, Commission, Secretary, and all officers and employees of the State.

Independent Assurance Inspection (IAI) - An unbiased and independent inspection of the Design-Builder's Quality Assurance Systems used to verify the reliability of the tests results and inspections obtained in the regular quality Assurance inspection, sampling and testing activities.

Independent Assurance Testing (IAT) - A test conducted to check the calibration of the testing equipment and processes being used.

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

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

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

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

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

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

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

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

Physical Completion Date, Physical Completion - The day all of the construction Work is physically completed on the Project, including all Punch List Work as well as initial plantings. All documentation required by the Contract and by law does not necessarily need to be furnished by the Design-Builder by this date as set forth in the Contract Documents.

Pre-Approved Design Deviations - Deviations identified by WSDOT as being required to accomplish the Basic Configuration that differ from WSDOT established standards required in the Contract Documents. These deviations, if any, are identified in the Technical Specifications.

Prior Relocation – The Utility Relocations described in Section 2.10.7.4 of the Technical Specifications.

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

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

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

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

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

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

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

Quality Assurance Team - A joint Design-Builder and WSDOT team effort responsible for reviewing and responding to materials issues as indicated in this proposal.

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

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

Quality Management Plan (QMP) - The plan, developed by the Design-Builder, which identifies the Design-Builder's overall framework for implementation of its Quality Control and Quality Assurance programs across all aspects of the Project, including, but not limited to, management, administration, design, construction, maintenance of public and private facilities, geotechnical investigations, and environmental monitoring and compliance.

Quality Verification - Sample and testing frequency for verification test performed by WSDOT or its agent to validate the Design-Builder's Quality Assurance sampling and testing.

Reasonable Accuracy - The meaning set forth in Section 1-07.17(9).2.

Reference Documents - The documents designated as such by WSDOT in the RFP. The Reference Documents are provided to the Proposers for reference purposes in connection with submittal of Proposals.

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

Released For Construction Documents - The Design Documents stamped "Released for Construction" by the Design-Builder in accordance with the Design-Builder's QMP.

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

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

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

Relocation Work - The work necessary for Relocation of Utilities to accommodate the Project (excluding the Prior Relocations), whether performed by the Design-Builder or by or on behalf of a Utility Owner, including labor, equipment and materials associated with design, design review, construction, construction management, permit processing and fees, inspection, real property acquisition, and administrative and overhead costs.

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

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

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

Service Line - A Utility line, the function of which is to connect directly the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Body's local lighting and electrical systems, traffic control systems, communication systems, irrigation systems, or lateral line as used in RCW 19.122.

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

Special Provisions - Supplemental specifications and modifications to the Standard Specifications noted in RFP Appendix B1.

Standard Plans - A manual of specific plans or drawings adopted by WSDOT or by the Design-Builder with WSDOT's approval, which show frequently recurring components of work that have been standardized for use.

Standard Specifications - Divisions 2 through 9 of the Standard Specifications for Road, Bridge and Municipal Construction: 2004, published by WSDOT, subject to the modifications set forth in Section 1-03.3 and any modifications contained in the Special Provisions. Division 1 of said publication is superseded in its entirety by these General Provisions.

State - The State of Washington acting through its representatives.

Statistical-based Verification - Verification of the Design-Builder's QA test results through statistical comparison with the Department's Verification test results.

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

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

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

Subsurface Utility Engineering or SUE - An engineering process for accurately identifying the quality of subsurface utility information needed for highway plans, and for acquiring and managing that level of information during the development of a highway project.

Substantial Completion Date, Substantial Completion - The day WSDOT determines that it has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only completion of initial planting, minor incidental work, replacement of temporary substitute facilities, and/or correction or repair remains for the Physical Completion of the Project.

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

Technical Proposal - The part of a Proposal detailing, among other things, schedule, management, organization, and design details of the Project.

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

Utility - A privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system, fire or police signal system as well as streetlights associated with city-owned roadways. However, when used in the context of the Relocation of facilities to accommodate the Project, the term "Utility" or "utility" excludes (a) storm water facilities, and (b) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any service lateral connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service lateral.

Utility Delay - The meaning set forth in Section 1-07.17 (11).

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

Utility Information - The information regarding Utilities included in RFP Appendices U1 through U5, the information about known Utilities included in Technical Specifications Section 2.10 and any other information WSDOT includes in the RFP with regard to identification of Utilities. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

Utility Owner - Any private entity or public body (including city, county, state, public corporation or public district) that owns and/or operates a Utility, including cooperative utilities.

Utility Owner Project - The design and construction by or at the direction of a Utility Owner of a new Utility other than as part of a relocation. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

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

Utility Work - The meaning set forth in Section 1-07.17 (1).

Value Engineering Change Proposal (VECP) - A proposal by the Design-Builder for a change in a Category A requirement as specified in Section 1-04.4(4).1.

Verification Tests - Those tests performed by WSDOT on a random basis to verify that the Design-Builder is following proper QC/QA procedures and that such procedures appear to be effective in assuring quality.

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

Working Drawings - Shop drawings, shop plans, erection plans, falsework plans, framework plans, cofferdam, cribbing and shoring plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data, including a schedule of submittal dates.

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

1-01.3(2) Other Definitions

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

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

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

Business Day - Any day that is not a weekend or legal holiday recognized by the State of Washington.

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

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

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

Hold Point - Mandatory verification points identified in the Design-Builder's WSDOT-approved Quality Management plan beyond which Work cannot proceed until verification is performed and a written release is granted by the Design-Builder's Quality organization.

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

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

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

Roadway - The portion of the right-of-way within the outside limits of the side slopes.

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

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

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

Substructure - The part of the structure below:

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

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

Superstructure - The part of the structure above:

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

(a) from the back of pavement seat to the back of pavement seat when the endwalls are attached to the superstructure, or

(b) from the expansion joint at the end pier to the expansion joint at the other end pier when the endwalls are not attached to the superstructure.

Superstructures include, but are not limited to, girders, slab, barrier, and railing attached to the superstructure.

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

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

1-02 CERTIFICATIONS AND REPRESENTATIONS

1-02.1 RESPONSIBILITY FOR DESIGN

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

Design-Builder specifically acknowledges and agrees that:

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

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

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

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

1-02.2 DISCLAIMER REGARDING DOCUMENTATION

The Design-Builder is not entitled to rely on any document or information provided by WSDOT, except to the extent expressly provided otherwise in the Contract Documents. The Design-Builder may rely on the Conceptual Design only for purposes of establishing the Basic

Configuration. WSDOT does not represent or warrant that the information contained in the Conceptual Design is either complete or accurate or that such information conforms to the requirements of the Contract Documents, except as otherwise provided herein with respect to the Basic Configuration. Unless stated otherwise in the contract, the Design-Builder is not entitled to rely on the Reference Documents.

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

1-02.3 DESIGN PROFESSIONAL LICENSING REQUIREMENT

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

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

1-02.4 EXAMINATION OF SITE OF WORK

1-02.4(1) General

The Design-Builder has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed all attached and referenced documents provided by WSDOT, including the Geotechnical Baseline Report and hydrology reports, if any, inspected and examined the Site and surrounding locations and undertaken other

appropriate activities sufficient to familiarize itself with surface and subsurface conditions discernible from the surface affecting the Project, to the extent the Design-Builder deemed necessary or advisable for submittal of a Proposal. As a result of such review, inspection, examination and other activities, the Design-Builder is familiar with and accepts the physical requirements of the Work, including:

1. The nature and location of the Work;
2. The general and local conditions which can affect the Work or its cost, including:
   (a) conditions bearing upon acquisition, transportation, disposal, handling, and storage of materials;
   (b) the availability of labor, materials, water, electric power, and roads;
   (c) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
   (d) the conformation and condition of the ground;
   (e) the character of equipment and facilities needed preliminary to and during Work performance; and,
   (f) the site biological hazards and associated physical hazards.
3. The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work site (including material sites), the Geotechnical Baseline Report, as well as from the RFP and information made a part of the Contract; and
4. The adequacy of time allowed for the completion of the Work.

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

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

It is the Design-Builder's responsibility to make interpretations and draw conclusions with respect to the character of the geotechnical materials encountered and their impact upon its Work.

Any failure of the Design-Builder to take the actions described and acknowledged in this clause shall not relieve the Design-Builder from responsibility for estimating properly the difficulty and

cost of successfully performing the Work, or from performance of the Work without additional expense to WSDOT.

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

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

The Contract Price reflects what the Design-Builder anticipates to be the cost of completing the Work, including design, engineering, jobsite and home office overhead, temporary facilities, methods, materials, labor, and equipment. Except as the Contract may provide, the Design-Builder shall receive no payment for any costs in excess of the Contract Price.

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

1. The Longshoremen's and Harbor Worker's Compensation Act (administered by U.S. Department of Labor); and/or
2. The State Industrial Insurance (administrated by the Washington State Department of Labor and Industries).

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

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

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

1-02.4(2) Subsurface Information

WSDOT has made subsurface investigation of the site of the proposed Work. The boring log data and soil sample test data accumulated by WSDOT are available for inspection by the Design-Builders. The boring logs shall be considered as part of the Contract. However, WSDOT makes no representation or warranty expressed or implied that:

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

WSDOT makes no representations, guarantees, or warranties as to the condition, materials, or proportions of the materials between the specific borings regardless of any subsurface information WSDOT included in the RFP or otherwise made available to Proposers.

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

1-02.5 FURTHER ASSURANCES

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

1-02.6 INTENTIONALLY OMITTED

1-02.7 INTENTIONALLY OMITTED

1-02.8 NONCOLLUSION DECLARATION AND LOBBYING CERTIFICATION

1-02.8(1) Noncollusion Declaration

When required by Section 112(c) Title 23, United States Code, a declaration shall be provided certifying that the bidder has not taken part in collusion or other action that would restrain competitive bidding.

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

Therefore, by signing the Proposal, the bidder will be deemed to have signed and agreed to the requirements of the Noncollusion Declaration.

1-02.8(2) Lobbying Certification

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

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

The Design-Builder shall ensure that a Certification for Federal-Aid Contracts (Form DOT 272-040) is included in every contract with any Subcontractor whose contract exceeds $100,000. By

signing the contract any Subcontractor will be deemed to have signed and agreed to the conditions and requirements of the Certification for Federal-Aid Contracts. The Design-Builder shall keep evidence in their files that such Subcontractor has committed to this requirement.

Section 319 of Public Law 101-121 also provides that, if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Design-Builder shall complete and submit to WSDOT the Standard Form LLL, DISCLOSURE OF LOBBYING ACTIVITIES, in accordance with the instructions on the form. Any Subcontractor or lower tier subcontractor whose contract exceeds $100,000 shall disclose in the same manner as the Design-Builder, except that, Standard Form LLL shall be submitted to the Design-Builder for processing to WSDOT.

Audits will be conducted to ensure compliance with this Section. The Certification for Federal-Aid Contracts (Form DOT 272-040) may be reproduced from the Proposal form. The disclosure form is available from WSDOT's Pre-Contract Office, Transportation Building, Olympia, Washington 98504.

1-02.9 INTENTIONALLY OMITTED

1-02.10 INTENTIONALLY OMITTED

1-02.11 INTENTIONALLY OMITTED

1-02.12 INTENTIONALLY OMITTED

1-02.13 INTENTIONALLY OMITTED

1-02.14 INTENTIONALLY OMITTED

1-02.15 INTENTIONALLY OMITTED

1-03 INTERPRETATON OF CONTRACT DOCUMENTS

1-03.1 CONTRACT DOCUMENTS

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

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

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

1-03.2 ORDER OF PRECEDENCE

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

1. Change Orders and Supplemental Agreements
2. The Design Build Contract (Contract Form)
3. WSDOT identified Betterments from the Design-Builder's Proposal listed in the Contract Form
4. General Provisions – RFP Chapter 1
5. Technical Specifications – RFP Chapter 2
6. Special Provisions – RFP Appendix B1
7. Amendments to the Standard Specifications – RFP Appendix B2
8. Standard Specifications
9. All other RFP Documents listed as Contract Documents in RFP Appendix A; and
10. Design-Builder's Proposal Documents.

Notwithstanding the order of precedence listed above:

1. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document.
2. In the event of a conflict among any Mandatory Standards, the order of precedence designated in the Technical Specifications shall prevail. However, if the Design-Builder's Proposal has a higher standard than all of the respective listed Mandatory Standards, the Design-Builder shall adhere to the higher standard identified in the Proposal. The Design-Builder shall immediately notify

WSDOT of any such conflict(s) upon becoming aware of said conflict(s).

On plans, working drawings, and WSDOT Standard Plans, calculated dimensions shall take precedence over scaled dimensions.

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

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

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

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

1-03.4 CONTRACT BOND

The successful Proposer shall provide an executed Contract Bond in an amount equal to 100% of the Contract Price allocable to the cost of the Project construction and post-construction phase of the Work.

This Contract Bond shall:

1. Be on a WSDOT furnished form;
2. Be signed by an approved Surety (or Sureties) that:
   (a). Is registered with the Washington State Insurance Commissioner, and
   (b). Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
3. Be conditioned upon the faithful performance of the Contract by the Design-Builder within the prescribed time; and
4. Guarantee that the Surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure:

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

(b) Of the Design-Builder (or the Subcontractors or lower tier subcontractors of the Design-Builder) to pay all laborers, mechanics, Subcontractors, lower tier subcontractors, material, or any other person who provides supplies or provisions for carrying out the work.

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

1-03.5 AMBIGUITIES

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

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

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

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

The Design-Builder may from time to time request in writing that WSDOT provide information, clarifications and interpretations of ambiguous or uncertain design requirements set forth in the Contract Documents (an "interpretive engineering decision"). WSDOT may issue a written approval of the Design-Builder's proposed interpretive engineering decision (if any), may issue its own interpretive engineering decision or may disapprove any interpretive engineering decision the Design-Builder proposes. WSDOT shall promptly respond in writing to any such application for an interpretive engineering decision, including explanation of any disapproval of such application or any differing interpretation; provided that (a) no presumption of approval or

disapproval shall arise by reason of delay by WSDOT in issuing its written determination and (b) no interpretive engineering decision by WSDOT shall form the basis for an increase in the Contract Price or extension of the Contract Time, unless WSDOT expressly provides otherwise in writing. If the Design-Builder disputes WSDOT's disposition of the application, such dispute shall be subject to resolution in accordance with the Contract Documents. In any dispute over interpretive engineering decisions, the Design-Builder shall bear the burden of proving that WSDOT's interpretation is incorrect or unreasonable.

1-03.6 INTERPRETATIONS:

In the Contract Documents, where appropriate:

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

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

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

1-03.7 APPROVALS AND ACCEPTANCES

The terms "approved" and "approval," when used in the context of obtaining WSDOT's approval of a specific approach, proposal, plan, schedule, analysis or design submitted by the Design-Builder, means that WSDOT's representative is in agreement with the specific approach, proposal, plan, schedule, analysis or design and that the submittal itself and its contents appear to conform to the respective requirements of the Contract Documents for that submittal. In all cases where approvals or consents are required to be provided by WSDOT or the Design-Builder under the Contract Documents, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where

sole discretion is specified the decision shall be final, binding and not subject to dispute resolution hereunder.

The oversight, spot checks, audits, reviews, tests and inspections conducted by WSDOT do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. No acceptances or approval by WSDOT shall constitute a waiver of any warranty or legal or equitable right under the Contract Documents, at law or in equity. WSDOT may require remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with requirements of the Contract Documents, regardless of whether previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were conducted by WSDOT. The Design-Builder agrees and acknowledges that any such activity or failure to conduct any such activity by WSDOT is solely for the benefit and protection of WSDOT, does not create or impose upon WSDOT any duty or obligation toward the Design-Builder to cause it to fulfill the requirements of the Contract Documents, may not be relied upon by the Design-Builder or used as evidence in determining whether the Design-Builder has fulfilled the requirements of the Contract Documents, and may not be asserted by the Design-Builder against WSDOT as a defense, legal or equitable, to, or as relief from, the Design-Builder's obligation to fulfill the requirements of the Contract Documents. Regardless of any such activity or failure to conduct any such activity by WSDOT, the Design-Builder at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents.

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

1-03.8 COMPUTATION OF PERIODS

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

1-03.9 WAIVER

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision of the Contract Documents, notwithstanding any course of dealing or custom of the trade. Furthermore, if the parties make and/or implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and/or implementation thereof will not be binding in the event of any future disputes.

1-03.10 LIMITATION ON THIRD PARTY BENEFICIARIES

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

1-03.11 SEVERABILITY

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

1-03.12 HEADINGS

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

1-03.13 AMENDMENTS

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

1-03.14 GOVERNING LAW

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

1-03.15 ESCROWED PROPOSAL DOCUMENTS

1-03.15(1) Scope and Purpose

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

The Design-Builder shall submit a legible copy of all EPD documentation to a banking institution designated by WSDOT. Such documentation shall be placed in escrow with the banking institution and preserved by that institution as specified in this specification.

1-03.15(2) EPD Documentation

"EPD" documentation as used in this specification means any writings, working papers, computer printouts, charts, and any other data compilations of any nature which contain or reflect all information, data, and calculations used by the Design-Builder to determine the Proposal for this Project. The Design-Builder shall submit its EPD documentation in hardcopy and whenever possible shall also provide electronic copies. The EPF documentation shall include, but is not limited to, equipment rates, overhead rates, labor rates, efficiency and/or productivity factors, and arithmetic extensions. The EPD documentation shall also include detailed information from all Subcontractors identified in the Proposal and any other potential Subcontractors who provided data upon which the Proposal is based. The EPD documentation shall include any manuals which are standard to the industry used by the Design-Builder in determining the Proposal for this Project. Such manuals may be included in the EPD documentation by reference. The EPD documents do not include documents provided by WSDOT for use by the Design-Builder in developing the Proposal.

1-03.15(3) Submittal of EDP Documentation

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

1-03.15(4) Affidavit

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

the Design-Builder to determine its Proposal for the Project and that all such documentation has been enclosed in the sealed container.

1-03.15(5) Verification

The banking institution upon receipt of the sealed container shall place the container in a safety deposit box, vault, or other secure place, and immediately notify WSDOT in writing that the container has been received. Upon receipt of such notice, WSDOT will promptly notify the Design-Builder in writing that WSDOT will open the sealed container to verify that the affidavit has been enclosed and to compare the EPD documents listed in the affidavit with the actual documentation enclosed in the container to ensure that all of the EPD documents have been submitted and that the copies are legible. The notification will advise the Design-Builder of the date and time the container will be opened and the name of the WSDOT employee who will verify the contents of the container. The WSDOT employee verifying the contents of the escrow container will not be involved or connected with the review, evaluation, or resolution of any claim by the Design-Builder made to WSDOT in connection with the Contract for which the verification was made. The Design-Builder may have representatives present at the opening.

1-03.15(6) Supplementation

EPD documents listed in the affidavit but not enclosed in the sealed container through error or oversight shall be submitted in a sealed container within 5 calendar days after the opening of the original container. Also, any EPD documents that are illegible shall be replaced with legible copies and furnished within 5 calendar days after the opening of the original container. The face of the container shall be marked "Supplemental EPD Documents". The same procedure used in verifying the contents of the original container shall be used in verifying the contents of the supplemental submittal.

1-03.15(7) Duration and Use

The EPD documentation and affidavit shall remain in escrow during the life of the Contract and will be returned to the Design-Builder by the banking institution, provided that the Design-Builder has signed the Final Contract Voucher Certification and has not reserved any claims on the Final Contract Voucher Certification against WSDOT arising out of the Contract. In the event that claims against WSDOT are reserved on the Final Contract Voucher Certification, the EPD documentation and affidavit shall remain in escrow. If the claims are not resolved and litigation ensues, WSDOT may serve a request upon the Design-Builder to authorize the banking institution, in writing, to release the EPD documents and affidavit in escrow to WSDOT. The Design-Builder shall respond to the request within 20 calendar days after service of the request. If the Design-Builder objects or does not respond to the request within 20 calendar days after service of the request, WSDOT may file a motion under the Civil Rules requesting the court to enter an order directing the banking institution to deliver the EPD documents and affidavit in escrow to WSDOT. The banking institution shall release the EPD documents and affidavit as follows:

1. To WSDOT upon receipt of a letter from the Design-Builder authorizing the release;

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

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

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

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

1-03.15(9) Confidentiality of Proposal Documentation

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

1-03.15(10) Cost and Escrow Instructions

The cost of the escrow will be borne by WSDOT. WSDOT will provide escrow instructions to the banking institution consistent with this specification.

1-04 SCOPE OF THE WORK

1-04.1 INTENT OF CONTRACT

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

The parties intend for the Contract to be a lump-sum design-build contract obligating the Design-Builder to perform all Work necessary to complete the Project within the Contract Time, for the Contract Price, subject only to certain specified limited exceptions. The Design-Builder will be required to coordinate its Work with WSDOT's other contractors including contractors who are engaged in other WSDOT contracts or other Persons who are engaged in construction work in the overall vicinity of the Project. To allow WSDOT to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting the Design-Builder's ability to make claims for an increase to the Contract Price or an extension of the Contract Time.

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

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

1-04.1(1) Work Included in the Contract

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

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

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

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

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

(ii) Otherwise to do everything required by and in accordance with the Contract Documents;

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

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

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

(iii) Will be present (or its approved designee will be present) at the Site at all times that Work is performed, and (iv) will be available to execute instructions and directions from WSDOT or its authorized representatives;

(c) Obtain and pay the cost of obtaining all Governmental Approvals including Governmental Approvals required to implement any Approved ATC(s) incorporated into the Contract Documents;

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

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

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

(i) Compliance with Environmental Laws and Federal Requirements,

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

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

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

(h) Provide and maintain facilities as described in the Technical Specifications for the use of the Design-Builder, WSDOT, WSDOT's Engineer and other persons reasonably designated by WSDOT;

(i) Cooperate with WSDOT in its oversight of the design of the Project, its oversight and spot checks during construction, and other matters relating to the Work;

(j) Supervise and be responsible to WSDOT for acts and omissions of the Design-Builder's employees, agents, officers and Subcontractors and other Persons performing portions of the Work for whom the Design-Builder may be contractually or legally responsible, as though all such Persons were directly employed by the Design-Builder;

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

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

(n) Comply with all applicable terms and conditions of all Utility Agreements; and

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

1-04.2 INTENTIONALLY OMITTED

1-04.3 INTENTIONALLY OMITTED

1-04.4 CHANGES

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

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

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

If WSDOT determines that a change in the Work directed by WSDOT increased or decreased the Design-Builder's costs or time required for performance of the Work, WSDOT will make an equitable adjustment, excluding the loss of anticipated profits, to the Contract. The equitable adjustment will be by agreement with the Design-Builder. However, if the parties are unable to agree, WSDOT will determine the amount of the equitable adjustment in accordance with Section 1-09.4 and adjust the time as WSDOT deems appropriate. Extensions of time will be evaluated in accordance with Section 1-08.8. WSDOT's decision concerning equitable adjustment and extension of time shall be final as provided in Section 1-05.1.

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

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

1. A written Change Order approved by WSDOT, or
2. A written order from WSDOT before actually receiving the written Change Order.

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

1-04.4(1) Minor Changes

Payments or credits for any change amounting to $5,000 or less may be authorized as a "Minor Change". At the discretion of WSDOT, this procedure for Minor Changes may be used in lieu of the more formal procedures as outlined in Section 1-04.4, Changes.

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

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

1-04.4(2) Matters Not Eligible for Change Orders

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

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

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

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

(d) Action or inaction of a Subcontractor (unless arising from causes which otherwise give rise to a right to a Change Order);

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

(f) Groundwater levels or subsurface moisture content

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

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

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

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

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

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

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

(n) All events beyond the control of WSDOT except for events that WSDOT has agreed to assume liability for in the Contract; and

(o) Any situations which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract or arise out of the nature of the Work.

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

1-04.4(3) Category A and Category B Changes

The parties desire for the Design-Builder to have significant flexibility in determining how best to design and construct the Project within the parameters established by the Contract Documents. Notwithstanding the foregoing, WSDOT approval is required with respect to any proposed changes in the Category A and B Requirements. This Section 1-04.4 sets forth the requirements applicable to requests for modifications in Category A and B Requirements submitted by the Design-Builder. Changes in Category A Requirements may be submitted as Value Engineering Change Proposals (“VECPs”) provided the request qualifies as a VECP as provided herein; and changes in Category B Requirements may be submitted as Category B Change Proposals (“CBCPs”) provided the request qualifies as a CBCP as provided herein.

The requirements of the Contract Documents shall be designated as either "Category A Requirements" or "Category B Requirements" in accordance with the following table:

Contract Requirement Designation	Change Category
Chapter 1 General Provisions	Category A
Chapter 2 Technical Specifications - Mandatory Standards	Category A
Chapter 2 Technical Specifications - All except Mandatory Standards	Category B
RFP Appendix B1 - Special Provisions	Category B
RFP Appendix B2 - Amendments to the Standard Specifications	Category B
Proposal Documents	Category A
Basic Configuration	Category A

In general, Category A Requirements may be changed only through VECPs or WSDOT-Directed Changes, and Category B Requirements may be changed only through CBCPs or WSDOT-Directed Changes.

1-04.4(4) Value Engineering Change Proposals (VECPs)

Although the parties anticipate that only limited opportunity for VECPs will occur due to the nature of the Category A Requirements, the Design-Builder is encouraged to submit VECPs whenever it identifies potential savings. WSDOT may also request the Design-Builder to develop and submit a specific VECP. The Design-Builder has the right to refuse to consider such WSDOT-initiated VECPs.

1-04.4(4).1 Definition of VECP

A VECP is a proposal developed and documented by the Design-Builder which:

(a) Would modify or require a change in any of the Category A Requirements in order to be implemented (including any changes to the Basic Configuration); and

(b) Reduces the cost of the Project without impairing essential functions or characteristics of the facility (including service life, economy of operation, ease of maintenance, desirability and safety) as determined by WSDOT in its sole discretion, and provided that it is not based solely upon a change in quantities.

1-04.4(4).2 Required Information

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

(a) A statement that the submission is a VECP, and a narrative description of the proposed change.

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

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

(d) Itemization of the Contract requirements (with reference to specific sections) which must be changed if the VECP is approved.

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

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

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

(h) A complete cost analysis including (i) a cost estimate for the existing Contract requirements compared to the Design-Builder's cost estimate of the proposed

changes and (ii) an estimate of any additional costs that will be incurred by WSDOT, including any additional Right-of-Way and Relocation costs.

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

1-04.4(4).3 WSDOT Review and Approval or Rejection

Review of VECPs

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

Approval of VECPs

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

Rejection of VECPs

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

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

1-04.4(4).4 Contract Price Adjustment

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

Estimated Net Savings

The term "estimated net savings" as used in this Section shall mean (a) the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform it according to the proposed change, less (b) the costs of studying and preparing the VECP as proven by the Design-Builder and Approved by WSDOT in accordance with the Change Order procedures set forth herein, less (c) any additional costs incurred by WSDOT

(including costs relating to any Relocations and Right-of-Way) resulting from the VECP. The Design-Builder's profit shall not be considered part of the cost.

Collateral and Future Savings

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

Price Adjustment Factor

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

VECPs Affecting ROW Plans

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

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

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

(y) The incremental reduction in costs (if any) for not acquiring the unnecessary real property; and

(z) The additional construction costs to be incurred.

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

Payment Due Date

The Design-Builder's share of any VECP cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the VECP had the VECP not been implemented.

1-04.4(5) Category B Change Proposals

Changes in Category B Requirements will be allowed only with the prior written Approval of WSDOT. Proposed changes which are "equal to or better than" the underlying requirement may be implemented without any sharing of the Design-Builder's cost savings (but without any additional cost to WSDOT), provided WSDOT has Approved a CBCP as provided in this Section 1-04.4.

1-04.4(5).1 Required Information

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

(a) A statement that the submission is a CBCP, and a narrative description of the proposed change.

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

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

(d) Itemization of the Contract requirements (with reference to specific sections) which must be changed if the CBCP is Approved.

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

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

(g) An estimate of any additional costs that will be incurred by WSDOT if the CBCP is Approved, including any additional Right-of-Way and Relocation costs.

Any additional information requested by WSDOT shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations and field change sheets.

1-04.4(5).2 WSDOT Review and Approval or Rejection

Review of CBCPs

Upon receipt of a CBCP, WSDOT will process it expeditiously, but shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section. The Design-Builder may withdraw all or part of any CBCP at any time prior to approval by WSDOT.

Approval of CBCPs

WSDOT may Approve any CBCP submitted, in whole or in part. Until a CBCP is approved in writing by WSDOT, the Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of WSDOT as to rejection or Approval of any CBCP shall be at the sole discretion of WSDOT and shall be final and not subject to, dispute resolution or appeal.

Rejection of CBCPs

WSDOT will determine whether a CBCP qualifies for consideration and evaluation. CBCPs that requires excessive time or costs for review, evaluation or investigations, or that are not consistent with WSDOT's design policies and basic design criteria may be rejected.

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

1-04.4(5).3 Reimbursement of WSDOT Costs

If WSDOT Approves a CBCP submitted by the Design-Builder pursuant to this Section 1-04.4, the Contract Price shall be adjusted to provide a credit to WSDOT to compensate WSDOT for its additional costs in connection with implementation of the CBCP. The credit may be determined based on actual or estimated costs, or a combination, at WSDOT's option.

The Design-Builder acknowledges and agrees that estimates of items such as additional Right-of-Way may be significantly different from the actual cost, and if the amount of the credit is based on actual costs, the Design-Builder will be liable for the actual cost regardless of the fact that it differs from the original estimate. In addition, WSDOT may require, as a condition to review of a CBCP, that the Design-Builder reimburse WSDOT's costs of such review, which costs shall be payable regardless of whether the CBCP is approved.

1-04.4(6) Changes Which Are Not VECPs or CBCPs

WSDOT may be willing to consider changes in Category A and B Requirements which do not qualify as VECPs or CBCPs, provided that WSDOT reserves the right to require a reduction in the Contract Price of up to 100% of the cost savings associated with such changes, as a condition to Approval of any such proposals.

1-04.4(7) Use of VECPs and CBCPs by WSDOT

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

1-04.4(8) Basic Configuration Changes

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

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

If a VECP results in a material change in Basic Configuration, any cost savings from such VECP shall be shared in accordance with Section 1-04.4(4).

The Design-Builder shall be responsible for any cost increases and/or delays resulting from changes in requirements and obligations of the Design-Builder relating to the Project due to inaccuracies in the Basic Configuration which do not necessitate a material change in the Basic Configuration. In such event, no change in the Work shall be deemed to have occurred and no Change Order shall be issued for any such cost increases and/or delays.

1-04.5 PROCEDURE AND PROTEST BY THE DESIGN-BUILDER

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

1. endorsing it,
2. writing a separate acceptance, or
3. not protesting in the way this Section provides.

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

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

1. Immediately give a signed written notice of protest to WSDOT before doing the Work;
2. Supplement the written protest within 30 calendar days with a written statement and supporting documents providing the following:
   (a) The date and nature of the protested order, direction, instruction, interpretation or determination;
   (b) A full discussion of the circumstances which caused the protest, including names of persons involved, time, duration and nature of the Work involved, and a review of the Contract Documents/Design Documents referenced to support the protest;
   (c) The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how that estimate was determined; and
   (d) An analysis of the progress schedule showing the schedule change or disruption if the Design-Builder is asserting a schedule change or disruption.
3. If the protest is continuing, the information required above shall be supplemented monthly until the protest is resolved.

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

WSDOT will evaluate all protests provided the procedures in this Section are followed. If WSDOT determines that a protest is valid, WSDOT will adjust payment for Work or time by an equitable adjustment in accordance with Section 1-09.4. Extensions of time will be evaluated in accordance with Section 1-08.8. No adjustment will be made for an invalid protest.

If WSDOT determines that the protest is invalid, that determination, with an explanation, shall be provided in writing to the Design-Builder. If the Design-Builder does not accept WSDOT's determination, either party may refer the dispute to a Disputes Review Board. If the parties mutually agree, the protest may be defaulted to Section 1-09.11(2), Claims, bypassing the Disputes Review Board process. Otherwise, submittal of the dispute to a Disputes Review Board is a condition precedence to any further protest.

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

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

Disputes Review Board

In order to assist in the resolution of disputes arising out of the work of this project, the Contract provides for the establishment of a Disputes Review Board, hereinafter called the "Board." The Board is created as part of the disputes resolution process to be utilized when normal WSDOT-

Design-Builder dispute resolution is unsuccessful and prior to the filing of a Section 1-09.11(2) claim.

The Board will consider disputes referred to it and furnish recommendations to WSDOT and the Design-Builder to assist in the resolution of the differences between them. The purpose of the Board response to such issues is to provide nonbinding findings and recommendations designed to expose the disputing parties to an independent view of the dispute.

The Board members will be especially knowledgeable in the type of construction involved in the Project. At least one member of the Board shall have expertise in the interpretation of contracts and applicable law. The Board members shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract.

The Board shall consist of one member selected by WSDOT and one member selected by the Design-Builder, with these two members to select the third member. The first two members shall be mutually acceptable to both WSDOT and the Design-Builder. If one or both of the two members selected are not acceptable to WSDOT or the Design-Builder, another selection shall be made.

WSDOT and the Design-Builder shall each select their member and negotiate an agreement, separate and apart from this Contract, with their respective Board member within the first 60 calendar days after Notice to Proceed. The agreements with these two Board members shall contain language imposing the "Scope of Work" and "Suggested Administrative Procedures" attached as an Appendix to the Contract. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first two by furnishing a needed expertise, which will facilitate the Board's operations. WSDOT has entered into "standby" agreements with a number of potential third members. The qualifications of these potential members have been reviewed and deemed acceptable by both WSDOT and the Associated General Contractors of Washington. The names of these potential members will be provided to the first two members for consideration. If a selection can be made from the standby list, then the Board may be immediately seated with the execution of a task order under the corresponding standby agreement. Should the first two members decide to select a third member not on the list of standby candidates, then the selected person will be accepted to the Board after he or she executes a standby agreement (Third Party Member Disputes Review Board Consultant Agreement). Information about the acceptable format for this agreement and all accompanying exhibits as well as the processing and approval procedure is available from WSDOT. The fee for the third member shall be negotiated with the first two members and shall be included in a task order, issued by WSDOT after the third member standby agreement is fully executed.

In the event of an impasse in selection of the third member, either WSDOT or the Design-Builder or both may appeal to the Thurston County Superior Court for selection of a third member by the court from a list or lists submitted to the court by WSDOT and/or the Design-Builder. An impasse shall be considered to have been reached if the two members appointed by WSDOT and the Design-Builder to the Board have been unable to appoint the third member in a period of 60 calendar days after the approval of the last of such two members.

In case a member of the Board needs to be replaced, the replacement member will be appointed in the same manner as the replaced member was appointed. The appointment of a replacement Board member will begin promptly upon determination of the need for replacement and shall be completed within 30 calendar days.

Service of a Board member may be terminated at any time with not less than 30 calendar days notice as follows:

1. WSDOT may terminate service of WSDOT's appointed member.
2. The Design-Builder may terminate service of the Design-Builder's appointed member.
3. The third member's services may be terminated by agreement of the other two members.
4. By resignation of the member.

Termination of a member will be followed by appointment of a substitute as specified above.

No member shall have a financial interest in the Contract, except for payments for services on the Board. No member shall have been employed by either party or an affiliate of either party within a period of two years prior to award of this Contract or during the term of this Contract; except that, service as a member of other Disputes Review Boards on other contracts will not preclude a member from serving on the Board for this Contract.

Compensation for the Board members, and the expenses of operation of the Board, shall be shared by WSDOT and the Design-Builder in accordance with the following:

1. WSDOT will compensate directly the wages and travel expense for its selected member.
2. The Design-Builder shall compensate directly the wages and travel expense for its selected member.
3. WSDOT and the Design-Builder shall share equally in the third member's wages and travel expense, and all of the operating expenses of the Board. These equally shared expenses shall be billed to and paid by WSDOT. The Design-Builder's share will be deducted from monies due or coming due the Design-Builder.
4. WSDOT will provide administrative services, such as conference facilities and secretarial services, to the Board and WSDOT will bear the costs for this service.

Disputes Review Board Procedures

The Board, WSDOT, and the Design-Builder shall develop by agreement the Board's rules of operation and procedures to be followed for the Project. The agreement shall include the frequency of the Board's visits to the Project and its interactions with WSDOT and the Design-Builder to keep abreast of the construction development and potential disputes.

In developing the Agreement, the parties shall take into consideration their respective duties and responsibilities set forth in the "Scope of Work" section of their agreements, the form of which is included in the Appendix of the Contract.

The parties may also consider the "Suggested Administrative Procedures" for the Board's operation included in their agreements, the form of which is included in RFP Appendix F7. These Procedures express, in general terms, the policy for the creation and operation of the Board.

Disputes, as used in this Section, will refer only to protests properly submitted in accordance with Section 1-04.5. If WSDOT has determined the protest to be invalid and either the Design-Builder or WSDOT has elected to refer the matter to the Board, then the Board shall consider the issue and provide recommendations concerning:

1. The interpretation of the Contract
2. Entitlement to additional compensation or time for performance
3. The amount of additional compensation or time for performance following a recommendation of entitlement by the Board provided that; (1) the parties were not able to reach a resolution as to the amount of the equitable adjustment or time; (2) the WSDOT Engineer has made a unilateral determination of the amount of compensation for time; and (3) the Design-Builder has protested WSDOT's unilateral determination.
4. Other subjects mutually agreed by WSDOT and the Design-Builder to be a Board issue.

Procedure for Consideration of Disputes

1. Once a protest has been denied as described in Section 1-04.5, the Board members will be contacted and advised of the existence of the dispute. A hearing will be scheduled to be conducted at the next regular project visit or at such other time, as agreed to by the parties.
2. The Design-Builder and WSDOT shall each be afforded an opportunity to be heard by the Board and to offer evidence. Either party furnishing any written evidence or documentation to the Board must furnish copies of such information to the other party a minimum of 15 calendar days prior to the date the Board sets to convene the hearing for the dispute. Either party shall produce such additional evidence as the Board may deem necessary to an understanding and determination of the dispute and furnish copies to the other party.
3. After the hearing is concluded, the Board shall meet in private and reach a conclusion supported by two or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent Contract provisions and facts and circumstances involved in the dispute. The Contract shall be interpreted and construed in accordance with the laws of the State of Washington. The Board shall make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report.
4. Within 30 calendar days of receiving the Board recommendations, both WSDOT and the Design-Builder shall respond to the other in writing signifying that the dispute is

either resolved or remains unresolved. Although both parties should place weight upon the Board recommendations, the recommendations are not binding.

In the event the Board's recommendations do not lead to resolution of the dispute, all Board records and written recommendations, including any minority reports, will be admissible as evidence in any subsequent arbitration or litigation.

Submittal of a dispute to the Board will be a condition precedent to the filing for arbitration or litigation in a court of law unless WSDOT and the Design-Builder have agreed to default the dispute to Section 1-09.11(2) Claims. If the Board's assistance does not lead to resolution of the dispute, causing the Design-Builder to file a Section 1-09.11(2) Claim, or if the parties default the dispute to that section, full compliance by the Design-Builder with the provisions of that section is a contractual condition precedent to the Design-Builder's right to commence arbitration or litigation.

Unless otherwise noted, disputes, claims, counterclaims and other matters in question between WSDOT and the Design-Builder that are not resolved will be decided in the Superior Court of Thurston County, Washington, which shall have exclusive jurisdiction and venue over all matters in question between WSDOT and the Design-Builder.

The Contract shall be interpreted and construed in accordance with the laws of the State of Washington.

1-04.6 INTENTIONALLY OMITTED

1-04.7 DIFFERING SITE CONDITIONS (CHANGED CONDITIONS)

Differing Site Conditions shall mean (a) subsurface or latent physical conditions encountered at the Site differing materially from those indicated in the Geotechnical Baseline Report (RFP Appendices G1 and G4) and/or the Supplemental Boring Project (RFP Appendix G5)and which are not discoverable from a reasonable investigation and analysis of the site including subsurface conditions, (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work site characteristics, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Date.

Harmful/Hazardous Materials shall not be considered to be Differing Site Conditions if they are in a category for which unit prices were provided in the Proposal Documents.

Harmful/Hazardous Materials in other categories may be considered to be Differing Site Conditions only if the Work effort associated with remediation has a material adverse cost or delay impact. The party discovering such conditions shall promptly notify the other party in writing of the specific differing site conditions before they are disturbed and before the affected Work is performed.

Upon written notification, WSDOT will investigate the conditions and if it determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. WSDOT will notify the Design-Builder of his/her determination whether or not an adjustment of the

Contract is warranted. Notwithstanding the above, the Design-Builder shall be entitled to equitable adjustment adjusting the Contract Price only for the actual, reasonable cost increase resulting from Differing Site Conditions which in the aggregate exceeds $500,000.00. The responsibility for the first $500,000.00 worth of Differing Site Conditions shall rest solely with the Design-Builder.

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

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

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

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

Burden of Proof

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

Insurance Claims

Prior to filing any request for a Change Order relating to a Differing Site Condition, the Design-Builder shall inquire if insurance proceeds may be available to cover costs in connection with such item. If the Design-Builder finds that reasonable grounds for filing an insurance claim exist, then the Design-Builder shall so notify WSDOT. WSDOT shall not be in default for failure to pay any amounts which the Design-Builder or WSDOT finds may be covered by insurance, unless and until the claim is denied by the insurance company. The Design-Builder shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending the insurance company's determination regarding the claim. Upon denial of any such claim by the insurance company and receipt of a Change Order request, WSDOT will process the Change Order request. WSDOT shall have the right to contest the denial of any insurance claim, and the Design-Builder shall cooperate with WSDOT in that regard. Notwithstanding anything to the contrary contained in Section 1-04.4, the Design-Builder shall not be obligated to include amounts which may be covered by insurance in any Change Order request until 20 days after the insurance company has denied the claim. However, the notice requirements of Section 1-04.4 shall remain effective with respect to the event in question.

1-04.8 PROGRESS ESTIMATES AND PAYMENTS

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

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

1-04.9 INTENTIONALLY OMITTED

1-04.10 USE OF MATERIALS FOUND ON THE PROJECT

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

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

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

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

1-04.11 FINAL CLEANUP

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

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

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

1-05 CONTROL OF WORK

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

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

1-05.1 AUTHORITY OF WSDOT

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

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

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

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

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

At the Design-Builder's risk, WSDOT may suspend all or part of the Work if:

1. The Design-Builder fails to fulfill Contract terms, to carry out WSDOT's orders, or to correct unsafe conditions of any nature; or
2. It is in the public interest.

Nothing in these General Provisions or in the Contract requires WSDOT to provide the Design-Builder with direction or advice on how to do the Work. If WSDOT approves or recommends any method or manner for doing the Work or producing materials, the approval or recommendation shall not:

1. Guarantee that following the method or manner will result in compliance with the Contract
2. Relieve the Design-Builder of any risks or obligations under the Contract, or
3. Create any WSDOT liability.

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

1-05.2 AUTHORITY OF ASSISTANTS AND INSPECTORS

The WSDOT Engineer may appoint assistants and inspectors to assist in determining that the Work and materials meet the Contract requirements. Assistants and inspectors have the authority to reject defective material and suspend Work that is being done improperly, subject to the final decisions of the WSDOT Engineer or, when appropriate, WSDOT.

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

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

1-05.3 PLANS AND WORKING DRAWINGS

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

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

1-05.3(2) Required Approvals

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

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

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

1-05.3(2).1 Railroad Approvals

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

1-05.3(3) Design Documents

The Design-Builder shall furnish the Design Documents to WSDOT and shall address WSDOT's comments prior to designating them as the Released For Construction Documents. The Design-Builder shall construct the Project in accordance with the Released For Construction Documents. The Released For Construction Documents may be changed only with WSDOT concurrence.

1-05.3(4) Working Drawings

The Design-Builder shall submit supplemental working drawings as required by the Contract Documents. Except as noted, all drawings and other submittals shall be delivered directly to the WSDOT Engineer. The drawings shall be on sheets measuring 22-inches x 34-inches, 11-inches x 17-inches, or on sheets with dimensions in multiples of 8 ½-inches x 11-inches. If the WSDOT Engineer elects to offer any comments, they will be submitted to the Design-Builder within 10 business days.

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

1-05.4 PERFORMANCE

1-05.4(1) Performance Standards

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

1-05.5 INTENTIONALLY OMITTED

1-05.6 INSPECTION OF WORK AND MATERIALS

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

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

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

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

The Design-Builder, if advised to do so by WSDOT, shall permit representatives from other agencies to inspect the Work when it is to be done:

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

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

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

No material from the crushing or screen operation will be accepted until after WSDOT has approved the design and operation of the sampling equipment. The Design-Builder shall bear all costs of providing the sampling equipment, the power to operate it, and the space for its use.

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

1-05.7 REMOVAL OF DEFECTIVE WORK

WSDOT will not pay for defective work, including any work and/or materials that do not conform to the Contract. At WSDOT's order, the Design-Builder shall immediately remedy, remove, replace, or dispose of defective Work or materials and bear all costs of doing so.

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

1-05.8 VACANT

1-05.9 INTENTIONALLY OMITTED

1-05.10 GUARANTEES

The Design-Builder shall furnish to WSDOT any guarantee or warranty furnished as a customary trade practice in connection with the purchase of any equipment, materials, or items incorporated into the Project.

1-05.11 FINAL INSPECTION

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

1-05.12 FINAL ACCEPTANCE

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

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

Final Acceptance shall not constitute acceptance of any unauthorized or non-compliant Work or material. WSDOT shall not be barred from requiring the Design-Builder to remove, replace, repair, or dispose of any Work or material that is defective, unauthorized or that otherwise fails to comply with the Contract Documents or from recovering damages for any such Work or material. Neither Completion nor Final Acceptance shall relieve the Design-Builder of any obligations and/or responsibilities relating to warranty requirements designated in the Contract Documents.

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

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

1-05.12(2) Replacement of Contract Bond

Provided that all conditions to Physical Completion have occurred, the Design-Builder shall have the right to replace the Performance Bond with a replacement performance bond (Warranty Bond) in an amount and in form satisfactory to WSDOT in WSDOT's sole discretion (provided that said Warranty Bond shall not be required to exceed 10% of the Contract Price) or with such other security as is Approved by WSDOT in its sole discretion, guaranteeing due and punctual performance of all obligations of the Design-Builder under the Contract Documents which survive Final Acceptance.

1-05.12(3) Assignment of Causes of Action

The Design-Builder hereby offers and agrees to assign to WSDOT all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), arising from purchases of goods, services or materials pursuant to the Contract or any

Subcontract. This assignment shall be made and become effective at the time WSDOT tenders final payment to the Design-Builder, without further acknowledgment by the parties.

1-05.13 SUPERINTENDENTS, LABOR, AND EQUIPMENT OF THE DESIGN-BUILDER

At all times, the Design-Builder shall keep at the Work site a set of the approved for construction plans, specifications and working drawings. The Design-Builder shall devote the attention required to make reasonable progress on the Work and shall cooperate fully with WSDOT representatives.

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

All design and engineering Work furnished by the Design-Builder shall be performed by or under the supervision of Persons licensed to practice architecture, engineering, or surveying (as applicable) in the State of Washington, and by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Released For Construction Documents prepared or checked by them.

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

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

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

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

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

1-05.13(1) Emergency Contact List

The Design-Builder shall submit an Emergency Contact List to WSDOT no later than five calendar days after the date the Contract is executed. The list shall include, at a minimum, the Design-Builder's Project Manager, or equivalent, the Project Superintendent and the Traffic Control Supervisor. The list shall identify a representative with delegated authority to act as the emergency contact on behalf of the Design-Builder and include one or more alternates. The emergency contact shall be available upon WSDOT's request at other than normal working hours. The Emergency Contact List shall include 24-hour telephone numbers for all individuals identified as emergency contacts or alternates.

1-05.14 COOPERATION WITH OTHER CONTRACTORS

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

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

1-05.15 METHOD OF SERVING NOTICES

Any written notice to the Design-Builder required under the Contract may be served on the Design-Builder either personally or by mailing or by delivery to the last post office address known to WSDOT.

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

1-06 CONTROL OF MATERIALS

1-06.1 INTENTIONALLY OMITTED

1-06.2 ACCEPTANCE OF MATERIALS

1-06.2(1) Intentionally Omitted

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

1-06.2(2).1General

Where specified, Quality Assurance sampling and testing will be done by the Design-Builder's Quality Assurance Organization. The Construction Quality Assurance Manager shall statistically evaluate the material for acceptance by the provisions of this subsection. All test results for a lot will be analyzed collectively and statistically by the quality level analysis procedures shown at the end of this subsection to determine the total percent of the lot that is within specification limits and to determine an appropriate pay factor. Lots and sublots are defined in the appropriate subsection of this RFP for the material being statistically evaluated.

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

Any necessary rounding off of test results or calculations will be accomplished according to the following rule:

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

1-06.2(2).2Financial Incentive

As an incentive to produce superior quality material, a pay factor less than 1.00 may be obtained with the maximum item pay factor being 1.05, with the maximum incentive pay being 1.00. A lot containing non-specification material will be accepted provided the Composite Pay Factor reaches the minimum value specified elsewhere. A lot containing non-specification material which fails to obtain at least the specified minimum Composite Pay Factor shall be rejected by the Construction QA Manager. The Construction QA Manager shall take one or more of the following actions when rejected material has been incorporated into the work:

1. Require complete removal and replacement with specification material at no additional cost to WSDOT.
2. At the Design-Builder's written request, and with WSDOT concurrence, allow corrective work at no additional cost to WSDOT and then an appropriate price reduction that may range from no reduction to payment based on the unit prices in Table 5.

3. At the Design-Builder's written request and with WSDOT concurrence, allow material to remain in place with an appropriate price reduction that may range from a designated percentage reduction to no payment, based on the unit prices in Table 5.

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

1. All test results are within the allowable limits specified for the item, or
2. All test results are greater than or equal to a minimum specification limit, or
3. All test results are less than or equal to a maximum specification limit.

Computation of the quality level in these instances will be for determining the amount of any incentive which might be warranted.

Lots represented by less than 3 samples or unsampled lots will be exempt from statistical based acceptance.

1-06.2(2).3Removed and Rejected Materials

The Design-Builder may, prior to sampling, elect to remove any defective material and replace it with new material at no expense to WSDOT. Any such new material will be sampled, tested, and evaluated for acceptance as a part of the sublot in accordance with this statistical sampling and testing procedure.

The Construction Quality Assurance Manager may reject a sublot which tests show to be defective. Such rejected material shall not be used in the work, and the results of tests run on the rejected material will not be included in the original lot acceptance tests.

1-06.2(2).4Quality Level Analysis

Procedures for determining the quality level and pay factors for a material are as follows:

1. Determine the arithmetic mean, (X_m), of the test results for each specified material constituent:

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

where: $\sum$ = summation of
x = individual test value
n = total number test values

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

$$S = \quad n \sum x2 - (\sum x)2] \; 1/2$$
$$n(n-1)$$

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

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

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

where: USL (upper specification limit)
= target value plus allowable tolerance

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

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

where: LSL (lower specification limit)
= target value minus allowable tolerance

5. For each constituent determine P_U (the percent within the upper specification limit which corresponds to a given Q_U) from Table 1. Note: If a USL is 100.00 percent or is not specified, P_U will be 100.

6. For each constituent determine P_L (the percent within the lower specification limit which corresponds to a given Q_L) from Table 1. Note: If a LSL is not specified, P_L will be 100.

7. For each constituent determine the quality level (the total percent within specification limits):

   Quality Level = (P_U + P_L) - 100

8. Using the quality level from step 7, determine the pay factor (PF_i) from Table 2 for each constituent tested.

9. Determine the Composite Pay Factor (CPF) for each lot.

$$CPF = \frac{f_1\left(\overline{PF_1}\right) + f_2\left(\overline{PF_2}\right) + \cdots + f_i\left(\overline{PF_i}\right)}{\sum_{i=1 \text{ to } j} f_i}$$

where: f_i = price adjustment factor listed in this RFP for the applicable material

j = number of constituents being evaluated

10. Determine an item adjustment factor:

    (item) adjustment factor = CPF - 1

    The adjustment factor will be applied to the unit price for specific materials shown in Table 5. For specific materials, the adjustment factor will be identified as "Quality Factor," "Compliance Factor," etc.

1-06.3 INTENTIONALLY OMITTED

1-06.4 INTENTIONALLY OMITTED

1-06.5 INTENTIONALLY OMITTED

1-06.6 INTENTIONALLY OMITTED

1-06.7 STATISTICAL ACCEPTANCE OF MATERIALS

1-06.7(1) General

For materials with quantities greater than two Quality Assurance sublots as defined in Table 6, statistical evaluation shall be the method of evaluation for acceptance decisions. The Design-Builder QA test results shall be statistically evaluated for quality level and price adjustment, if applicable, in accordance with this Section. The maximum allowable Composite Pay Factor (CPF) for materials accepted under this Section shall be 1.00.

Acceptance of materials shall be based on statistical evaluation for the applicable elements as defined in Table 6. The applicable "Adjustment Factor" for various materials is shown in Table 4. The Design-Builder shall use WSDOT's Statistical Analysis of Materials Software. The material shall be sampled at the point of acceptance in accordance with the applicable test procedure and specifications.

Since these specifications designate the payment of the material by other than a unit bid price basis, the unit price for calculating a "Price Adjustment" as stated in, Table 5 will be used. The credit payment for the Price Adjustment shall be made under the item "Non-specification Material Price Adjustment" and "Non-specification Material Compaction Price Adjustment".

Sections 5-04.5(1) and 6-02.3(5)L of the Standard Specifications have been deleted and replaced by these General Provisions. The Construction Quality Assurance Manager shall also evaluate the HMA fro low cyclic density of the pavement. The evaluation procedure for identifying cyclic density defects is in Appendix B6.

Low cyclic density areas are defined as spots or streaks in the pavement that are less than 89.0 percent of the reference maximum density. If four or more low cyclic density areas are identified in a lot, a cyclic density price adjustment will be assessed for that lot. The price adjustment will be calculated as 15% of the unit price included in Table 5 for the quantity of HMA represented by that lot. Only one area per delivered truck and one area per delivered trailer of HMA will be counted toward the number of low cyclic density areas. Any area tested for density under Section 5-04.3(10)B1 will be included in this analysis. No specific unit of measure will apply to the calculated item of cyclic density price adjustment. The credit for the price adjustment shall be made under the item "Credit/Debit Minor Changes".

For the purpose of acceptance sampling and testing, a lot is defined as the total quantity of material to be used that was produced from the same operation such as a designated stockpile, crushing or screening operation, concrete mix design or hot mix asphalt job mix formula. A compaction lot for HMA shall be defined as than 400 tons. All of the test results obtained from

the same material shall be evaluated collectively and shall constitute a lot. All tests done for QA purposes shall be recorded and incorporated into the lot. The quantity represented by each sample will constitute a sublot. Sampling and testing for statistical acceptance shall be performed on a random basis at the frequency of one sample per sublot. Lot size shall be not less than three uniform sized sublots with a maximum sublot size as stated in Table 6 for the material being sampled and tested.

Test Results: After the first three sublots have been tested the Design-Builder Construction QA Manager shall compute and maintain the Composite Pay Factor (CPF) of the completed sublots. The Design-Builder Construction QA Manager shall furnish WSDOT with a copy of the results of all Quality Assurance testing and the composite pay factor calculations within 24 hours of completing the testing or the next day of business.

1-06.7(2) Rejected Material

The following action shall be undertaken with regard to defective materials:

(a) Rejected by the Design-Builder: The Design-Builder may, prior to sampling, elect to remove any defective material and replace it with new material at no expense to WSDOT. Any such new material will be sampled, tested and statistically evaluated for acceptance.

(b) Partial Sublot: In addition to the preceding random acceptance sampling and testing, WSDOT or the QA tester may also isolate from a normal sublot any material that is suspected of being defective in gradation, fracture, sand equivalent, asphalt content. A minimum of three random samples of the suspect material will be obtained and tested. The material will then be evaluated for a price adjustment in accordance with the statistical acceptance section. This material will be considered a separate lot.

(c) An Entire Sublot: If an entire sublot is rejected in accordance with Section 1-06.2 of these specifications, two additional random samples from this sublot will be obtained and the sublot evaluated as an independent lot with the original test result included.

(d) A Lot In Progress: The Design-Builder shall shut down operations whenever:

1. The CPF drops below 0.90 and in such event shall not resume production or placement of the material until such time as the Design-Builder has demonstrated that specification material can be produced for the lot in progress; or
2. The CPF drops below 1.00 and unless the Design-Builder is taking no appropriate corrective action.

When the material in question is from a stockpile, which was produced without process quality control, (i.e. sampling and testing at a defined frequency by qualified technicians using verified equipment) the entire stockpile of material will be considered to be a source. Additional processing such as rescreening or other means may be necessary to provide specification material.

(e) An Entire Lot: If an entire lot has a CPF of less than 0.75, the entire lot shall be rejected.

1-06.7(3) Non-Statistical Acceptance of Materials

When materials are not statistically evaluated, the difference between the Design-Builder's Quality Assurance test results and WSDOT's verification test results shall not exceed the values shown in Table 3. If the value exceeds those in Table 3, then the placement of the material shall be halted until the Design-Builder can demonstrate that the material is within the required specifications, or the disputes resolution process for Tested Materials described in Section 2.28 shall be initiated.

1-06.7(4) Sample and Testing Frequency

Table of Sample and Testing Frequency

Table 6 is to be used in conjunction with the testing frequencies defined in the 2004 Standard Specifications and WSDOT Construction Manual. This table replaces Table 9-5.7 of the WSDOT Construction Manual. Additional testing requirements can be found in the Standard Specifications and Technical Specifications.

If the following tables do not define a material or test, the Quality Assurance team will establish the testing attributes and frequency.

If the following tables do not define a material test or material sample rate, the Quality Verification sampling and testing will occur at a frequency of one test or sample per 5 Quality Assurance tests or samples.

During operational startup or unprecedented Project testing, the Quality Verification testing and sampling will be conducted more frequent to aid in the statistical comparison.

Statistically Evaluated Materials

Additional testing may be performed for statistical modeling if the Construction QA Manager and WSDOT deem it necessary to validate statistical modeling.

Testing Tolerance for Non-Statistically Evaluated Materials

When materials are not statistically evaluated for acceptance, such as concrete slump, entrained air content and temperature for concrete, the differences between the Quality Assurance test results and Quality Verification test results shall not exceed the values shown in Table 3.

1-06.7(5) Table 1 - Quality Levels / Quality Level Analysis by Standard Deviation Method

P_U or P_L Percent Within Limits for Positive Values of Q_U or Q_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 n-11	n-12 to n-14	n-15 to n-18	n-19 to n-25	n-26 to n-37	n-38 to n-69	n-70 to n-200	n-201 to n-∞
100	1.16	1.50	1.79	2.03	2.23	2.39	2.53	2.65	2.83	3.03	3.20	3.38	3.54	3.70	3.83
99	-	1.47	1.67	1.80	1.89	1.95	2.00	2.04	2.09	2.14	2.18	2.22	2.26	2.29	2.31
98	1.15	1.44	1.60	1.70	1.76	1.81	1.84	1.86	1.91	1.93	1.96	1.99	2.01	2.03	2.05
97	-	1.41	1.54	1.62	1.67	1.70	1.72	1.74	1.77	1.79	1.81	1.83	1.85	1.86	1.87
96	1.14	1.38	1.49	1.55	1.59	1.61	1.63	1.65	1.67	1.68	1.70	1.71	1.73	1.74	1.75
95	-	1.35	1.44	1.49	1.52	1.54	1.55	1.56	1.58	1.59	1.61	1.62	1.63	1.63	1.64
94	1.13	1.32	1.39	1.43	1.46	1.47	1.48	1.49	1.50	1.51	1.52	1.53	1.54	1.55	1.55
93	-	1.29	1.35	1.38	1.40	1.41	1.42	1.43	1.44	1.44	1.45	1.46	1.46	1.47	1.47
92	1.12	1.26	1.31	1.33	1.35	1.36	1.36	1.37	1.37	1.38	1.39	1.39	1.40	1.40	1.40
91	1.11	1.23	1.27	1.29	1.30	1.30	1.31	1.31	1.32	1.32	1.33	1.33	1.33	1.34	1.34
90	1.10	1.20	1.23	1.24	1.25	1.25	1.26	1.26	1.26	1.27	1.27	1.27	1.28	1.28	1.28
89	1.09	1.17	1.19	1.20	1.20	1.21	1.21	1.21	1.21	1.22	1.22	1.22	1.22	1.22	1.23
88	1.07	1.14	1.15	1.16	1.16	1.16	1.16	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17
87	1.06	1.11	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.13	1.13
86	1.04	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.03	1.05	1.05	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04
84	1.01	1.02	1.01	1.01	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.99	0.99	0.99
83	1.00	0.99	0.98	0.97	0.97	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.95	0.95	0.95
82	0.97	0.96	0.95	0.94	0.93	0.93	0.93	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
81	0.96	0.93	0.91	0.90	0.90	0.89	0.89	0.89	0.89	0.88	0.88	0.88	0.88	0.88	0.88
80	0.93	0.90	0.88	0.87	0.86	0.86	0.86	0.85	0.85	0.85	0.85	0.84	0.84	0.84	0.84
79	0.91	0.87	0.85	0.84	0.83	0.82	0.82	0.82	0.82	0.81	0.81	0.81	0.81	0.81	0.81
78	0.89	0.84	0.82	0.80	0.80	0.79	0.79	0.79	0.78	0.78	0.78	0.78	0.77	0.77	0.77
77	0.87	0.81	0.78	0.77	0.76	0.76	0.76	0.75	0.75	0.75	0.75	0.74	0.74	0.74	0.74
76	0.84	0.78	0.75	0.74	0.73	0.73	0.72	0.72	0.72	0.71	0.71	0.71	0.71	0.71	0.71
75	0.82	0.75	0.72	0.71	0.70	0.70	0.69	0.69	0.69	0.68	0.68	0.68	0.68	0.68	0.67
74	0.79	0.72	0.69	0.68	0.67	0.66	0.66	0.66	0.66	0.65	0.65	0.65	0.65	0.64	0.64
73	0.76	0.69	0.66	0.65	0.64	0.63	0.63	0.63	0.62	0.62	0.62	0.62	0.62	0.61	0.61
72	0.74	0.66	0.63	0.62	0.61	0.60	0.60	0.60	0.59	0.59	0.59	0.59	0.59	0.58	0.58
71	0.71	0.63	0.60	0.59	0.58	0.57	0.57	0.57	0.57	0.56	0.56	0.56	0.56	0.55	0.55
70	0.68	0.60	0.57	0.56	0.55	0.55	0.54	0.54	0.54	0.53	0.53	0.53	0.53	0.53	0.52
69	0.65	0.57	0.54	0.53	0.52	0.52	0.51	0.51	0.51	0.50	0.50	0.50	0.50	0.50	0.50
68	0.62	0.54	0.51	0.50	0.49	0.49	0.48	0.48	0.48	0.48	0.47	0.47	0.47	0.47	0.47
67	0.59	0.51	0.47	0.47	0.46	0.46	0.46	0.45	0.45	0.45	0.45	0.44	0.44	0.44	0.44
66	0.56	0.48	0.45	0.44	0.44	0.43	0.43	0.43	0.42	0.42	0.42	0.42	0.41	0.41	0.41
65	0.52	0.45	0.43	0.41	0.41	0.40	0.40	0.40	0.40	0.39	0.39	0.39	0.39	0.39	0.39
64	0.49	0.42	0.40	0.39	0.38	0.38	0.37	0.37	0.37	0.37	0.36	0.36	0.36	0.36	0.36
63	0.46	0.39	0.37	0.36	0.35	0.35	0.35	0.34	0.34	0.34	0.34	0.34	0.33	0.33	0.33
62	0.43	0.36	0.34	0.33	0.32	0.32	0.32	0.32	0.31	0.31	0.31	0.31	0.31	0.31	0.31
61	0.39	0.33	0.31	0.30	0.30	0.29	0.29	0.29	0.29	0.29	0.28	0.28	0.28	0.28	0.28
60	0.36	0.30	0.28	0.27	0.27	0.27	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.25	0.25
59	0.32	0.27	0.25	0.25	0.24	0.24	0.24	0.24	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.29	0.24	0.23	0.22	0.21	0.21	0.21	0.21	0.21	0.21	0.20	0.20	0.20	0.20	0.20
57	0.25	0.21	0.20	0.19	0.19	0.19	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.22	0.18	0.17	0.16	0.16	0.16	0.16	0.16	0.16	0.15	0.15	0.15	0.15	0.15	0.15
55	0.18	0.15	0.14	0.14	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.14	0.12	0.11	0.11	0.11	0.11	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.11	0.09	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	0.07	0.06	0.06	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	0.04	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	0.02
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

Note: For negative values of Q_U or Q_L, P_U or P_L is equal to 100 minus the table P_U or P_L. If the value of Q_U or Q_L does not correspond exactly to a figure in the table, use the next higher value.

Table 2
Pay Factors

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-18	n-19 to n-25	n-26 to n-37	n-38 to n-69	n-70 to n-200	n-201 to n-∞
1.05	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
1.04	90	91	92	93	93	93	94	94	95	95	96	96	97	97	99
1.03	80	85	87	88	89	90	91	91	92	93	93	94	95	96	97
1.02	75	80	83	85	86	87	88	88	89	90	91	92	93	94	95
1.01	71	77	80	82	84	85	85	86	87	88	89	90	91	93	94
1.00	68	74	78	80	81	82	83	84	85	86	87	89	90	91	93
0.99	66	72	75	77	79	80	81	82	83	85	86	87	88	90	92
0.98	64	70	73	75	77	78	79	80	81	83	84	85	87	88	90
0.97	62	68	71	74	75	77	78	78	80	81	83	84	85	87	89
0.96	60	66	69	72	73	75	76	77	78	80	81	83	84	86	88
0.95	59	64	68	70	72	73	74	75	77	78	80	81	83	85	87
0.94	57	63	66	68	70	72	73	74	75	77	78	80	81	83	86
0.93	56	61	65	67	69	70	71	72	74	75	77	78	80	82	84
0.92	55	60	63	65	67	69	70	71	72	74	75	77	79	81	83
0.91	53	58	62	64	66	67	68	69	71	73	74	76	78	80	82
0.90	52	57	60	63	64	66	67	68	70	71	73	75	76	79	81
0.89	51	55	59	61	63	64	66	67	68	70	72	73	75	77	80
0.88	50	54	57	60	62	63	64	65	67	69	70	72	74	76	79
0.87	48	53	56	58	60	62	63	64	66	67	69	71	73	75	78
0.86	47	51	55	57	59	60	62	63	64	66	68	70	72	74	77
0.85	46	50	53	56	58	59	60	61	63	65	67	69	71	73	76
0.84	45	49	52	55	56	58	59	60	62	64	65	67	69	72	75
0.83	44	48	51	53	55	57	58	59	61	63	64	66	68	71	74
0.82	42	46	50	52	54	55	57	58	60	61	63	65	67	70	72
0.81	41	45	48	51	53	54	56	57	58	60	62	64	66	69	71
0.80	40	44	47	50	52	53	54	55	57	59	61	63	65	67	70
0.79	38	43	46	48	50	52	53	54	56	58	60	62	64	66	69
0.78	37	41	45	47	49	51	52	53	55	57	59	61	63	65	68
0.77	36	40	43	46	48	50	51	52	54	56	57	60	62	64	67
0.76	34	39	42	45	47	48	50	51	53	55	56	58	61	63	66
0.75	33	38	41	44	46	47	49	50	51	53	55	57	59	62	65

Reject Quality Levels Less Than Those Specified for a 0.75 Pay Factor

Note: If the computed Quality Level does not correspond exactly to a figure in the table, use the next lower value.

Table 3
Allowable Tolerance for Non-statistical Materials
Quality Verification Test vs. Quality Assurance Test

SOILS	
TEST	**QUALITY VERIFICATION TEST vs. QUALITY ASSURANCE TEST, +/-**
Plasticity Index (AASHTO T90)	3
No. 200 Sieve, % (AASHTO T11/T27)	1.5
Optimum Moisture, % (AASHTO T265)	1.0
Proctor Density, lb/ft^3 (AASHTO T99)	2
Compaction, % (WAQTC TM8)	2.0
Aggregate (Base, Subbase, Backfill, and Mineral Aggregates)	
TEST	**QUALITY VERIFICATION TEST vs. QUALITY ASSURANCE TEST, +/-**
Sieve Analysis (Non-statistical Item)AASHTO T11/T27	
No. 4 sieve & larger	5.0 [1]
No. 6 sieve to No. 10 sieve	4.0 [1]
No. 10 sieve to No. 80 sieve	3.0 [1]
No. 80 sieve and No. 200 sieve	2.0 [1]
Fractured Faces (WAQTC TM 1)	5
Sand Equivalent (AASHTO T 176)	5
Optimum Moisture, % (AASHTO T255)	1.0
Proctor Density, lb/ft3 (AASHTO T99)	2
Compaction, % (WAQTC TM8)	2.0
PORTLAND CEMENT CONCRETE	
TEST	**QUALITY VERIFICATION TEST vs. QUALITY ASSURANCE TEST, +/-**
Slump of Concrete, mm (AASHTO T119)	
3/4 inch Max. Aggregate and Specified Slump 3 inch or less	1/2
1 1/2 inch Max. Aggregate and Specified Slump greater than 3 inch	1
Air Content, % (AASHTO T152)	1.0
Temperature, °F (AASHTO T 309)	1

[1] When the specification stated is either a maximum or minimum value the tolerance shall be 20% of that value not to exceed 5% points. Except that the maximum specification plus the tolerance value cannot exceed 100, neither can a minimum specification minus the tolerance value be less than zero.

1-06.7(6) Table 4 – Price Adjustment Factors

l - Price Adjustment Factors

Other Specification Sieves #4 and Ledger	Specification sieves #8 to #100	#200 Sieve	Sand Equivalent	Fracture (Note 3)	Dust Ratio	Asphalt Content	Voids	Compaction	
5	5	10	15	5	-				
5	5	10	15	-	15			(Note 4)	
5	5	-	-	5	-			(Note 4)	
5	5	10	15	5	-			(Note 4)	
5	5	10	15	5	-				
5	-	6	10	-	10			(Note 4)	
5	5	6	10	5	10			(Note 4)	
5	-	6	10	-	10			(Note 4)	
5	-	6	10	-	10			(Note 4)	
5	5	6	10	-	-			(Note 4)	
5	-	6	-	-	-				
5	-	6	-	-	-				
5	3	10	-	-	-				
5	3	10	-	-	-				
5	5	6	10	-	-			(Note 4)	
5	5	6	10	-	-			(Note 4)	
3	-	-	-	-	-			(Note 4)	
3	-	-	-	-	-			(Note 4)	
5	-	6	10	-	10			(Note 4)	
2	15	20				52	30	(Note 4)	
			15	5					
2	10	20							

specifications upon which any material is permitted to be retained
aterial specification.

Table 5

Materials Unit Prices

Material	Unit Price/ton
Common Borrow	$8.00/Ton
Select Borrow	$10.00/Ton
Gravel Borrow	$12.00/Ton
Foundation Material Class A & B	$20.00/Ton
Foundation Material Class C	$20.00/Ton
Bank Run Gravel for Trench Backfill	$5.00/Ton
Ballast	$20.00/Ton
Shoulder Ballast	$25.00/Ton
Gravel Base	$12.00/Ton
Crushed Surfacing	$17.00/Ton
Maintenance Rock	$17.00/Ton
Gravel Base	$12.00/Ton
Crushed Cover Stone & Crushed Screenings	$20.00/Ton
Gravel Backfill for Walls	$15.00/Ton
HMA - Mineral Aggregate, fracture and SE	$10.00/Ton
Hot Mix Asphalt - All Mixes	$50.00/Ton
Asphalt Treated Base	$45.00/Ton
Gravel Backfill for Foundation Cl. A	$85.00/Ton
Gravel Backfill for Foundation Cl. B	$25.00/Ton
Gravel Backfill for Pipe Zone Bedding	$17.00/Ton
Gravel Backfill for Drains	$20.00/Ton
Gravel Backfill for Drywells	$20.00/Ton
Backfill for Sand Drains	$15.00/Ton
Sand Drainage Blanket	$15.00/Ton
Concrete Aggregate	$15.00/Ton
Portland Cement Concrete	$300.00/CY
Portland Cement Concrete Pavement	$150.00/CY

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
Gravel Borrow	Grading	WAQTC FOP for AASHTO T27/11	1-4,000 Ton	1-20,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-4,000 Ton	1-20,000 Ton	Yes	Yes
Select Borrow	Grading	WAQTC FOP for AASHTO T27/11	1-4,000 Ton	1-20,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-4,000 Ton	1-20,000 Ton	Yes	Yes
Sand Drainage Blanket	Grading	WAQTC FOP for AASHTO T27/11	1-4,000 Ton	1-20,000 Ton	Yes	Yes
Gravel Base	Grading	WAQTC FOP for AASHTO T27/11	1-4000 Ton	1-20,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-4,000 Ton	1-20,000 Ton	Yes	Yes
	Dust Ratio	Calculate	1-4,000 Ton	1-20,000 Ton	Yes	Yes
Crushed Surfacing Top Course (CSTC)	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for TM2	1-2,000 Ton	1-10,000 Ton	Yes	Yes
Crushed Surfacing Base Course (CSBC)	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for TM2	1-2,000 Ton	1-10,000 Ton	Yes	Yes

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
Maintenance Rock	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for TM2	1-2,000 Ton	1-10,000 Ton	Yes	Yes
Ballast	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Dust Ratio	Calculate	1-2,000 Ton	1-10,000 Ton	Yes	Yes
Shoulder Ballast	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for TM2	1-2,000 Ton	1-10,000 Ton	Yes	Yes
Backfill for Sand Drain	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes
Crushed Coverstone	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for TM2	1-1,000 Ton	1-5,000 Ton	Yes	Yes

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
Crushed Screenings ($^5/_8$ - ¼, ½ - ¼, ¼ - 0)	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for TM2	1-1,000 Ton	1-5,000 Ton	Yes	Yes
Gravel Backfill for Foundations	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for WAQTC TM 1	1-1,000 Ton	1-5,000 Ton	Yes	Yes
Gravel Backfill for Walls	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Fracture	WAQTC FOP for WAQTC TM 1	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Dust Ratio	Calculate	1-1,000 Ton	1-5,000 Ton	Yes	Yes
Gravel Backfill for Pipe Zone Bedding	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-1,000 Ton	1-5,000 Ton	Yes	Yes
Gravel Backfill for Drains, Sand Drains, Drywells and Sand Drainage Blanket	Grading	WAQTC FOP for AASHTO T27/11	1-100 Ton	1-500 Ton	Yes	Yes
PCC Paving						
Coarse Aggregate	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes
Fine Aggregate	Grading	WAQTC FOP for AASHTO T27/11	1-2,000 Ton	1-10,000 Ton	Yes	Yes

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
PCC Paving (Completed Mix)	Compressive Strength (28 day)	WSDOT FOP for AASHTO T23	1 set – 500 CY	1 set – 2,500 CY	Yes	Yes
	Air Content	WAQTC FOP for AASHTO T152	1-500 CY	1-2,500 CY	Yes	No
	Core Density and Thickness	AASHTO T148	1-500 CY	1-2,500 CY	No	No
PCC Paving Cement	Chemical and Physical		Certification			
PCC Structures						
Coarse Aggregate	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 CY	1-5,000 CY	Yes	Yes
Fine Aggregate	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 CY	1-2,500 CY	Yes	Yes

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
PCC Structures (Completed Mix)						
	Slump – Consistency	WSDOT FOP for AASHTO T119	Test until 2 successive loads are in specification, the 1 per every 5 loads (50 CY) there after until 300 Cy. For quantities greater than 301 CY, test every 10 loads (100 CY).	1 test per 5 Acceptance Tests	No	No
	Air Content	WAQTC FOP for AASHTO T152	Test until 2 successive loads are in specification, the 1 per every 5 loads (50 CY) there after until 300 Cy. For quantities greater than 301 CY, test every 10 loads (100 CY).	1 test per 5 Acceptance Tests	Yes	No
	Compressive Strength (28 day)	WSDOT FOP for AASHTO T23	Test until 2 successive loads are in specification, then 1 per every 5 loads (50 CY) there after until 300 CY. For pour quantities between 301 CY and 1000 CY, cylinders are made every 100 CY. For pour quantities between 1001 CY and 5000 CY, cylinders are made every 300 CY. For pour quantities more than 5000 CY, cylinders are made every 500 CY.	1 test per 5 Acceptance Tests	Yes	Yes

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
PCC Structures Cement	Chemical and Physical		Certification			
Structural Grouts	Grout Cube Strength	WSDOT FOP for AASHTO T106	1 set per day	1 test per 5 Acceptance Tests	Yes	Yes
Asphalt Concrete Pavement (Completed Mix)	Grading	AASHTO TP30	1-800 Ton	1-4000 Ton	Yes	Yes
	Asphalt Content	WSDOT FOP for AASHTO T308	1-800 Ton	1-4000 Ton	Yes	Yes
	Voids	WSDOT FOP for AASHTO T312 and WSDOT SOP 731	1-800 Ton	1-4000 Ton	Yes	Yes
	Maximum Density (Rice Density)	WSDOT FOP for AASHTO T209	1-800 Ton	1-4000 Ton	Yes	Yes
	Compaction	WAQTC FOP for TM8	5-400 Ton Lot	5-2,000 Ton	Yes	Yes
Asphalt Concrete Pavement						
Combined Aggregate	Sand Equivalent (Sampled at cold feed)	WSDOT FOP for AASHTO T176	1-1,600 Ton	1-8,000 Ton	Yes	Yes
	Fracture (Sampled at cold feed)	WAQTC FOP for WAQTC TM 1	1-1,600 Ton	1-8,000 Ton	Yes	Yes
Mineral Filler	Fracture	WAQTC FOP for WAQTC TM 1	1-1600 Ton	1-8,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-1,600 Ton	1-8,000 Ton	Yes	Yes

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
Asphalt Treated Base						
Aggregate	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Sand Equivalent	WSDOT FOP for AASHTO T176	1-1,000 Ton	1-5,000 Ton	Yes	Yes
Completed Mix	Grading	WAQTC FOP for AASHTO T27/11	1-1,000 Ton	1-5,000 Ton	Yes	Yes
	Asphalt Compaction	WAQTC FOP for TM8	5 per day. For daily quantity of less than 200 tons, a minimum of 2 gauge readings will be taken.	1 test per 5 Acceptance Tests	Yes	Yes
Asphalt Materials						
Paving Asphalt (AR, AC, PBA)	Sampling for DOT Verification Testing	WAQTC FOP for AASHTO T40	Certification	1 Qt. Every 5 shipments	No	N/A
Liquid Asphalt (Cutback, Emulsion)	Sampling for DOT Verification Testing	WAQTC FOP for AASHTO T40	Certification	1 Qt. Every 5 shipments	No	N/A
Compaction						
Embankment	Compaction	WSDOT FOP for AASHTO T310 and WSDOT SOP 615	1-2,500 CY	1 test per 5 Acceptance Tests	Yes	Yes
Cut Section	Compaction	WSDOT FOP for AASHTO T310 and WSDOT SOP 615	1-500 LF	1 test per 5 Acceptance Tests	Yes	Yes
Surfacing	Compaction	WSDOT FOP for AASHTO T310 and WSDOT SOP 615	1-1,000 LF per layer	1 test per 5 Acceptance Tests	Yes	Yes
Backfill	Compaction	WSDOT FOP for AASHTO T310 and WSDOT SOP 615	1-500 CY (for Qty less than 2000 CY) 1-1000 CY (for Qty greater than	1 test per 5 Acceptance Tests	Yes	Yes

Table 6

Quality Assurance and Quality Verification Sampling and Testing Frequencies

Materials or Item	Test Description	Test Method	Quality Assurance Sample	Quality Verification Sample	F and t Statistical Evaluation	Statistical Acceptance
			2001 CY)			
Compaction Standards						
Subgrade Embankment	Granular Compaction Standards	WSDOT FOP for AASHTO T180 Method D	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A
	Moisture Density Curve	WSDOT FOP for AASHTO T99, T272	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A
Granular Embankment	Granular Compaction Standards	WSDOT FOP for AASHTO T180 Method D	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A
	Moisture Density Curve	WSDOT FOP for AASHTO T99, T272	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A
Backfill	Granular Compaction Standards	WSDOT FOP for AASHTO T180 Method D	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A
	Moisture Density Curve	WSDOT FOP for AASHTO T99, T272	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A
Surfacing	Granular Compaction Standards	WSDOT FOP for AASHTO T180 Method D	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A
	Moisture Density Curve	WSDOT FOP for AASHTO T99, T272	Develop density curve for each material type used on Project.	Split sample provided to QV	N/A	N/A

1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 LAWS TO BE OBSERVED

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

The Design-Builder shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of WSDOT and its consultants, visitors to the Site and members of the public who may be affected by the Work

The Design-Builder shall be responsible for the safety of its workers and shall comply with safety and health standards such as Safety Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), General Occupational Health Standard (Chapter 296-62 WAC), and any other appropriate safety and health codes.

U.S. Mine Safety and Health Administration rules apply when the Project includes pit or quarry operations. Among other actions, these regulations require the Design-Builder to notify the nearest Mine Safety and Health subdistrict office (1) of the Project before it begins, (2) of the starting date, and (3) of the Physical Completion date.

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

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

Under certain conditions, WSDOT will adjust payment to compensate for tax changes. First, the changes shall involve federal or state taxes on materials or fuel used in or consumed for the Project. Second, the changes shall increase or decrease the Design-Builder-paid taxes by more than $500. For items in the original Contract, the tax change must occur after the Proposal opening date. For negotiated Contracts or items in a supplemental agreement, the tax change must take place after the execution date of the Contract or agreement. Within these conditions, WSDOT will adjust compensation by the actual dollar amounts of increase or decrease caused by

the tax changes. If WSDOT requests it, the Design-Builder shall certify in writing that the Contract Price does not include any extra amount to cover a possible change in taxes.

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

1-07.2 STATE TAXES

Design-Builder shall pay all applicable federal, State and local sales, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a governmental entity, whether direct or indirect, relating to, or incurred in connection with, the Project or performance of the Work, including that portion of the Contract Price relating to design services. The Design-Builder shall include all the Design-Builder paid taxes in the Contract Price unless a specific exception applies. In some cases, however, state retail sales tax will not be included. Section 1-07.2(2) describes this exception.

The Washington State Department of Revenue has issued special rules on the state sales tax. Sections 1-07.2(1) and 1-07.2(2) are meant to clarify those rules. The Design-Builder should contact the Financial System Manager, Department of Transportation, Olympia, for answers to questions in this area.

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

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

1-07.2(1) State Sales Tax: Work Performed on City, County, or Federally-Owned Land

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

The Contract Documents will identify those parts of the Project that require Work on land owned by:

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

For Work performed on such land, the Design-Builder shall include Washington State retail sales taxes in the portion of the Contract Price allocable to such Work. These retail sales taxes shall include those the Design-Builder pays on purchases of materials, equipment, and supplies used or consumed in performing such Work.

1-07.2(2) State Sales Tax: Work on State-Owned or Private Land

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

The Contract Documents will identify those parts of the Project that require Work on State-owned or private land.

For Work performed on State-owned or private land, the Design-Builder shall collect from WSDOT, retail sales tax on the portion of the Contract Price allocable to such Work. WSDOT will automatically add this sales tax to each payment to the Design-Builder. For this reason, the Design-Builder shall not include such retail sales tax on Work performed on State-owned or private land in its Contract Price, the unit Proposal prices or in any other Contract amount.

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

1-07.3 FOREST PROTECTION AND MERCHANTABLE TIMBER REQUIREMENTS

1-07.3(1) Forest Fire Prevention

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

The Design-Builder shall take all reasonable precautions to prevent and suppress forest fires. In case of forest fire, the Design-Builder shall immediately notify the nearest forest headquarters of its exact site and shall make every effort to suppress it. If needed, the Design-Builder shall require its employees and those of any Subcontractor to work under forest officials in fire-control efforts.

1-07.3(2) Merchantable Timber Requirements

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

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

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

1-07.4 SANITATION

1-07.4(1) General

The Design-Builder shall provide employees with all accommodations required by the State Department of Social and Health Services and other agencies. These accommodations shall be kept clean, neat, and sanitized, and shall not create any public nuisance. The Design-Builder

shall keep all camp sites clean, burn or properly dispose of all refuse, and leave each site in a neat and sanitary condition.

1-07.4(2) Health Hazards

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

1-07.5 INTENTIONALLY OMITTED

1-07.6 PERMITS AND LICENSES

The Design-Builder shall obtain all required permits and licenses and give any notices these permits and licenses call for.

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

1. A local rule or an agency policy prevents issuing the permit to a private firm;
2. The Design-Builder takes all action to obtain the permit;
3. The permit will serve the public interest;
4. The permit applies only to Work under the Contract;
5. The Design-Builder agrees in writing: (a) to comply with all the issuing agency requires, and (b) to hold WSDOT harmless for any Work related liability incurred under the permit; and
6. The permit costs WSDOT nothing.

1-07.7 LOAD LIMITS

1-07.7(1) General

While moving equipment or materials on any public highway, the Design-Builder shall comply with all laws that control traffic or limit loads. The Contract neither exempts the Design-Builder from such laws nor licenses overloads. At WSDOT's request, the Design-Builder shall provide any facts needed to demonstrate that the weight of equipment used on the Project meets the requirements of 1-07.7(1) and 1-07.7(2).

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

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

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

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

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

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

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

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

1-07.7(2) Load-Limit Restrictions

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

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

   When the embankment has reached 5 feet above the top of the underpass or culvert, the Design-Builder may increase per-axle loads up to 100,000 pounds if outside wheel spacing is at least 7 feet on axle centers.
3. **Pipe Culverts and Sewer Pipes.** Loads over pipe culverts and sewer pipes shall not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles spaced less than 10 feet apart. These limits are permitted only if: (a) the culvert or

pipe has been installed and backfilled to specifications and (b) the embankment has reached at least 2 feet above the top limit of pipe compaction.

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

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

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

1-07.8 HIGH VISIBILITY APPAREL

The Design-Builder shall require all personnel at the work site under its control (including Subcontractors and lower tier subcontractors) to comply with the following:

1. To wear reflective vests, except that during daylight hours, clothing of orange, yellow, strong yellow green or fluorescent versions of these colors may be worn in lieu of vests. Flaggers must wear reflective vests and hard hats at all times;
2. During hours of darkness, to wear vests, white coveralls or either high visibility reflective fluorescent lime yellow pants with fluorescent orange strip or reflective fluorescent orange pants with fluorescent lime yellow strip.
3. When rain gear is worn during hours of darkness, it shall be white or yellow;
4. The reflective vests shall always be the outermost garment.

Exceptions to these requirements are: (1) when personnel are out of view of, or not exposed to traffic, (2) when personnel are inside a vehicle, or (3) where it is obvious that such apparel is not needed for the employees safety from traffic.

Reflective vests shall be high visibility lime-yellow in base color with orange-red trim and 3M silver Scotchlite reflective material (or equivalent) or orange-red base color with lime-yellow reflective stripe. Vests shall have 230 or more square inches of reflective trim as measured on a medium vest. The 3M type 6187 (or equivalent) 2-inch wide lime-yellow reflective stripe can be used as the lime-yellow trim on a red-orange vest. All components to these garments must be visible in 360 degrees, from all angles and the reflective material visible at a minimum of 1,000 feet.

Reflective vests, hard hats, white coveralls, rain gear, and other apparel shall be furnished and maintained in a neat, clean, and presentable condition at no expense to WSDOT.

1-07.9 WAGES

1-07.9(1) General

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

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

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

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

If employing labor in a class not listed in the Contract provisions, the Design-Builder shall request a determination of the correct wage rate for that class and locality from the Industrial Statistician, Washington State Department of Labor and Industries (State L&I), and from the U.S. Secretary of Labor on Federal-aid projects. The Design-Builder shall provide a copy of these determinations to the WSDOT Engineer.

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

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

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

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

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

The Federal wage rates incorporated in this Contract have been established by the Secretary of Labor under U.S. Department of Labor General Decision No. WA980001.

1-07.9(2) Posting Notices

In a location acceptable to State L&I, the Design-Builder shall ensure the following is posted:

1. One copy of the approved "Statement of Intent to Pay Prevailing Wages" for the Design-Builder, each Subcontractor, each lower tier subcontractor, and any other firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition of "Contractor" in WAC 296-127-010;
2. One copy of the prevailing wage rates for the Project;
3. The address and telephone number of the Industrial Statistician for State L&I (along with notice that complaints or questions about wage rates may be directed there); and
4. FHWA 1495/1495A "Wage Rate Information" poster if the Project is funded with Federal-aid.

1-07.9(3) Apprentices

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

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

1-07.9(4) Disputes

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

1-07.9(5) Required Documents

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

1. A copy of an approved "Statement of Intent to Pay Prevailing Wages" State L&I's form number F700-029-000. WSDOT will make no payment under this Contract for the Work performed until this statement has been approved by State L&I and a copy of the approved form has been submitted to WSDOT.
2. A copy of an approved "Affidavit of Prevailing Wages Paid," State L&I's form number F700-007-000. WSDOT will not release to the Design-Builder any funds retained under RCW 60.28.011 until all of the "Affidavit of Prevailing Wages Paid" forms have been approved by State L&I and a copy of all the approved forms have been submitted to WSDOT.

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

Certified payrolls are required to be submitted by the Design-Builder to WSDOT, for the Design-Builder and all Subcontractors or lower tier subcontractors, on all Federal-aid projects and, when requested in writing by WSDOT, on projects funded with only WSDOT funds. If these payrolls are not supplied within 10 calendar days of the end of the preceding weekly payroll period for Federal-aid projects or within 10 calendar days from the date of the written request on projects with only WSDOT funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12). All certified payrolls shall be complete and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with the labor descriptions listed on the minimum wage schedule in the Contract unless WSDOT approves an alternate method to identify the labor used by the Design-Builder to compare with the labor listed in the Contract provisions. When an apprentice is

shown on the certified payroll at a rate less than the minimum prevailing journey wage rate, the apprenticeship registration number for that employee from the State Apprenticeship and Training Council shall be shown along with the correct employee classification code.

1-07.9(6) Audits

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

1-07.10 WORKER'S BENEFITS

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

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

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

The Public Works Contract Division of the Washington State Department of Labor and Industries will provide the Design-Builder with applicable industrial insurance and medical aid classification and premium rates. After Physical Completion of the Project, the Design-Builder shall submit a "Request for Release" to the Washington State Department of Labor and Industries on the form they provide. The "Request for Release" form is for the purpose of obtaining a release with respect to the payments of industrial insurance and medical aid premiums.

1-07.11 REQUIREMENTS FOR NONDISCRIMINATION

1-07.11(1) General Application

Discrimination in all phases of contracted employment, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964, Section 162(a) of the Federal-Aid

Highway Act of 1973, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Justice System Improvement Act of 1979, the American with Disabilities Act of 1990, the Civil Rights Restoration Act of 1987, 49 CFR Part 21, RCW 49.60 and other related laws and statutes. The referenced legal citations establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this Section 1-07.11.

1-07.11(2) Contractual Requirements

1. The Design-Builder shall not discriminate against any employee or applicant for contracted employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability.
2. The Design-Builder shall, in all solicitations or advertisements for employees, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
3. The Design-Builder shall insert the following notification in all solicitations for bids for work or material subject to federal laws and regulations and made in connection with all program and activities and, in adapted form in all proposals for negotiated agreements:

   The Design-Builder in accordance to Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S. Code 2000d to 2000d-4, and Title 49 Code of Federal Regulations, Part 21, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color national origin and sex in consideration for an award.
4. The Design-Builder shall make decisions with regard to selection and retention of Subcontractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
5. The Design-Builder shall send to each labor union, employment agency, or representative of workers with which the Design-Builder has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency or worker's representative, of the Design-Builder's commitments under this Contract with regard to nondiscrimination.
6. The Design-Builder shall permit access to its books, records and accounts by WSDOT for the purpose of investigating to ascertain compliance with these specifications. In the event that information required of the Design-Builder is in the possession of another who fails or refuses to furnish this information, the Design-Builder shall describe, in writing, what efforts were made to obtain the information.

7. The Design-Builder shall maintain records with the name and address of each minority/female worker referred to the Design-Builder and what action was taken with respect to the referred worker.
8. The Design-Builder shall notify WSDOT whenever the union with which the Design-Builder has a collective bargaining agreement has impeded the Design-Builder's efforts to effect minority/female workforce utilization. This being the case, the Design-Builder shall show what relief it has sought under such collective bargaining agreements.
9. The Design-Builder is encouraged to participate in WSDOT and Washington State Human Rights Commission approved program(s) designed to train craft-workers for the construction trades.

1-07.11(2).1 EQUAL EMPLOYMENT OPPORTUNITY (EEO) RESPONSIBILITIES

Title VI Responsibilities

During the performance of this Contract, the Design-Builder, for itself and its assignees and successors in interest (hereinafter referred to as the "Design-Builder") agrees as follows:

1. **Compliance With Regulations.** The Design-Builder shall comply with the Regulations relative to nondiscrimination in federally assisted Projects of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination.** The Design-Builder, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Design-Builder shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in RFP Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurement of Materials and - Equipment.** In all solicitations either by competitive bidding or negotiations made by the Design-Builder for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Design-Builder of the Design-Builder's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
4. **Information and Reports.** The Design-Builder shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by WSDOT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions.

Where any information required of the Design-Builder is in the exclusive possession of another who fails or refuses to furnish this information, the Design-Builder shall so certify to WSDOT or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the Design-Builder's noncompliance with the nondiscrimination provisions of this Contract, WSDOT shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the Design-Builder under the Contract until the Design-Builder complies, and/or;

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

6. **Incorporation of Provisions.** The Design-Builder shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Design-Builder shall take such action with respect to any Subcontractor or procurement as WSDOT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

   Provided, however, that in the event the Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Design-Builder may request WSDOT to enter into such litigation to protect the interests of the state and, in addition, the Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

1-07.11(3) Equal Employment Opportunity Officer

The Design-Builder shall officially designate and make known to the WSDOT Engineer during the preconstruction meetings and discussions the firm's Equal Employment Opportunity Officer (hereinafter referred to as the EEO Officer). The EEO Officer will also be responsible for making him/herself known to each of the Design-Builder's employees. The EEO Officer must possess the responsibility, authority, and capability for administering and promoting an active and effective program of equal employment opportunity.

1-07.11(4) Dissemination of Policy

1-07.11(4).1 Supervisory Personnel

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

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

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

In order to make the Design-Builder's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, e.g., schools, employment agencies, labor unions (where appropriate), college placement officers, community organizations, etc., the Design-Builder shall take the following actions:

1. **Notices and Posters.** Notices and posters setting forth the Design-Builder's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.
2. **EEO Indoctrination.** The Design-Builder's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

1-07.11(5) Sanctions

In the event that the Design-Builder is found in noncompliance with the provisions of Section 1-07.11, WSDOT may impose such sanctions as it or the Federal Highway Administration may determine necessary to gain compliance including, but not limited to:

1. Progress payment requests may not be honored until the noncompliance is remedied to the satisfaction of WSDOT.
2. The Contract may be suspended, in whole or in part, until such time as the Design-Builder is determined to be in compliance by WSDOT.
3. The Design-Builder's pre-qualification may be suspended or revoked pursuant to WAC 468-16. WSDOT may refer the matter to the Federal Highway Administration (FHWA) for possible federal sanctions.
4. The Contract may be terminated.

1-07.11(6) Incorporation of Provisions

The Design-Builder shall include the provisions of Section 1-07.11(2) Contractual Requirements (1) through (4) and the Section 1-07.11(5) Sanctions in every subcontract including procurement of materials and leases of equipment. The Design-Builder shall take such action or enforce sanctions with respect to a Subcontractor or supplier as WSDOT or the FHWA may direct as a means of enforcing such provisions. In the event the Design-Builder becomes involved in litigation with a Subcontractor or supplier as a result of such direction, the Design-Builder may request WSDOT enter into such litigation to protect their interests and WSDOT may request the federal government to enter into such litigation to protect the interests of the United States.

1-07.11(7) Subcontracting, Procurement of Materials, and Leasing of Equipment

Nondiscrimination. The Design-Builder shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment.

Solicitation and Utilization. The Design-Builder shall use their best effort to solicit bids from, and to utilize, disadvantaged, minority, and women Subcontractors, or Subcontractors with meaningful minority and women representation among their employees.

Subcontractor EEO Obligations. The Design-Builder shall notify all potential subcontractors and suppliers of the EEO obligations required by the Contract. The Design-Builder shall use diligent efforts to ensure Subcontractors' compliance with their equal employment opportunity obligations.

1-07.11(8) Records and Reports

1-07.11(8).1 General

The Design-Builder shall keep such records as are necessary to determine compliance with the Design-Builder's equal employment opportunity obligations. The records kept by the Design-Builder shall be designated to indicate:

1. **Work Force Data.** The number of minority and non-minority group members and women employed in each work classification on the Project.
2. **Good Faith Efforts - Unions.** The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to the Design-Builder who relies in whole or in part on unions as a source of their work force).
3. **Good Faith Efforts - Recruitment.** The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
4. **Subcontracting.** The progress and efforts being made in securing the services of disadvantaged, minority, and women Subcontractors or Subcontractors with meaningful minority and female representation among their employees.

1-07.11(8).2 Required Records and Retention

All records must be retained by the Design-Builder for a period of three years following Final Acceptance. All records shall be available at reasonable times and places for inspection by authorized representatives of either WSDOT or the Federal Highway Administration.

Federal-Aid Highway Construction Design-Builders Annual EEO Report

FHWA #1391. This form is required for all federally assisted projects provided the contract is equal to or greater than $10,000 and for every associated subcontract equal to or greater than $10,000. Each contract requires separate reports filed for the Design-Builder and each Subcontractor (subject to the above noted criteria). These forms are due by August 25th in every year during which work was performed in July. The payroll period to be reflected in the report is the last payroll period in July in which work was performed. This report is required of each Design-Builder and Subcontractor for each federally assisted contract on which the Design-Builder or Subcontractor performs work during the month of July.

Monthly Employment Utilization Reports

WSDOT Form #820-010. This form is required for all federally assisted projects if the contract is equal to or greater then $10,000 and for every associated subcontract equal to or greater than $10,000. These monthly reports are to be maintained in the respective Design-Builder's or Subcontractor's records.

In addition, for contracts with a value of $100,000 or more, the Design-Builder shall submit copies of the completed WSDOT form 820-010 to WSDOT by the fifth of each month throughout the term of the contract. The Design-Builder shall also collect and submit these forms monthly from every Subcontractor who holds a subcontract with a value of $100,000 or more.

Failure to submit the required reports by their due dates may result in the withholding of progress estimate payments.

1-07.12 FEDERAL AGENCY INSPECTION

Federal laws, rules, and regulations shall be observed by the Design-Builder on Federal-Aid projects. This work is subject to inspection by the appropriate Federal agency. The Design-Builder shall cooperate with the Federal agencies in these inspections. These inspections shall not make the Federal Government a party to the Contract and shall not constitute an interference with the rights of WSDOT or the Design-Builder.

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

1-07.13(1) General:

All Work and material for the Contract, including any Change Order work, shall be at the sole risk of the Design-Builder until the entire improvement has been completed as determined by WSDOT, except as provided in this Section.

The Design-Builder shall maintain, rebuild, repair, restore, or replace all Work that is injured or damaged prior to the date of acceptance of Physical Completion by WSDOT or third parties and shall bear all the expense to do so, except damage to the permanent work caused by: (a) acts of God, such as earthquake, floods, or other cataclysmic phenomenon of nature, or (b) acts of the public enemy or of governmental authorities provided, however, that these exceptions shall not apply should damages result from the Design-Builder's failure to take reasonable precautions or to exercise sound engineering and construction practices in conducting the Work.

The Design-Builder shall also have full responsibility during such period for rebuilding, repairing and restoring all other property at the Site, whether owned by the Design-Builder, WSDOT, or any other Person. Additional requirements regarding maintenance of highways during construction are set forth in the Technical Specifications.

If the performance of the Work is delayed as a result of damage for which the Design-Builder is not responsible under the Contract, an extension of time will be evaluated in accordance with Section 1-08.8. Nothing contained in this Section shall be construed as relieving the Design-Builder of responsibility for, or damage resulting from, the Design-Builder's operations or negligence, nor shall the Design-Builder be relieved from full responsibility for making good any defective Work or materials as provided for under Section 1-05.7.

1-07.13(2) Relief of Responsibility for Completed Work

Upon written request, the Design-Builder may be relieved of the duty of maintaining and protecting certain portions of the Work, as described below, which have been completed in all respects in accordance with the requirements of the Contract. If WSDOT provides written approval, the Design-Builder will be relieved of the responsibility for damage to said completed portions of the Work resulting from use by public traffic or from the action of the elements or from any other cause, but not from damage resulting from the Design-Builder's operations or negligence.

Portions of the Work for which the Design-Builder may be relieved of the duty of maintenance and protection as provided in the above paragraph include the following:

1. The completion of 1/4 mile of roadway or 1/4 mile of one roadway of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection Work, lighting, and any required traffic control and access facilities.
2. A bridge or other structure of major importance.
3. A complete unit of a traffic control signal system or of a highway lighting system.
4. A complete unit of permanent highway protection Work.
5. A building which is functionally complete and open to the public.

1-07.13(3) Relief of Responsibility for Damage by Public Traffic

When it is necessary for public traffic to utilize a highway facility during construction, the Design-Builder will be relieved of responsibility for damages to permanent improvements caused by public traffic under the following circumstances:

1. The improvements conform to applicable Contract requirements,
2. The improvements are on a section of roadway required by the Contract to be opened to public traffic, and
3. The traffic control is in accordance with the approved traffic control plans.

If traffic is relocated to another section of roadway, the Design-Builder shall resume responsibility for the Work until such time as the section of roadway is again open to public traffic or the Design-Builder submits a written request for Work that is completed to a point where relief can be granted in accordance with Section 1-07.13(2).

1-07.13(4) Repair of Damage

The Design-Builder shall promptly repair all damage to either temporary or permanent improvements as directed by WSDOT. For damage qualifying for relief under Sections 1-07.13(1), 1-07.13(2) or 1-07.13(3), payment will be made in accordance with Section 1-04.4.

In the event WSDOT pays for damage to the Design-Builder's Work or for damage to the Design-Builder's equipment caused by third parties, any claim the Design-Builder had or may have had against the third party shall be deemed assigned to WSDOT, to the extent of WSDOT's payment for such damage.

Payment will be limited to repair of damaged Work only. No payment will be made for delay or disruption of Work.

1-07.14 RESPONSIBILITY FOR DAMAGE

The State, Commission, Secretary, and all officers and employees of the State, including but not limited to those of WSDOT, will not be responsible in any manner: for any loss or damage that may happen to the Work or any part; for any loss of material or damage to any of the materials or other things used or employed in the performance of Work; for injury to or death of any persons, either Workers or the public; or for damage to the public for any cause which might have been prevented by the Design-Builder, or the Workers, or anyone employed by the Design-Builder.

The Design-Builder shall be responsible for any liability imposed by law for injuries to, or the death of, any persons or damages to property resulting from any cause whatsoever during the performance of the Work, or before Final Acceptance.

1-07.14(1) General Indemnities

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify and hold harmless the State, Commission, Secretary , and all officers and employees of the State (collectively referred to in this Section 1-07.14(1) as the "Indemnified Parties") from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from:

(a) The breach of the Contract (or any representation or warranty herein) by the Design-Builder, its employees, agents, officers or Subcontractors or any other Persons

performing any of the Work for whom the Design-Builder may be contractually or legally responsible. (The requirement to provide an indemnity for breach of contract set forth in this Section 1-07.14(1) (a) is intended to provide protection to WSDOT with respect to third party claims associated with such breach. It is not intended to provide WSDOT with an alternative cause of action for damages incurred directly by WSDOT with respect to such breach); and/or

(b) The failure or alleged failure by the Design-Builder or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible, to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Materials) or Governmental Approvals in performing the Work; and/or

(c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to WSDOT or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from WSDOT's failure to comply with specific written instructions regarding use provided to WSDOT by the Design-Builder; and/or

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

(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of the Design-Builder or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by the Design-Builder or any of its Subcontractors or any of their respective agents, officers or employees under the Contract Documents; and/or

(f) Any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys' fees incurred in discharging any stop notice or Lien, provided that WSDOT is not in default in payments owing to the Design-Builder with respect to such Work; and/or

(g) Any release or threatened release of a Hazardous Materials:

[i] Attributable to the negligence, willful misconduct, or breach of contract by the Design-Builder or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible, or

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

(h) The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by the Design-Builder (or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible) with or hindering the progress or completion of work being performed by other contractors as described in Section 1-05.14, or failure of the Design-Builder or its employees, agents, officers or Subcontractors or any other Persons for whom the Design-Builder may be contractually or legally responsible to cooperate reasonably with other contractors in accordance therewith.

1-07.14(1).1 Design Defects

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Basic Configuration, Conceptual Design or Reference Documents, except to the extent that an error, omission, inconsistency or other defect in the Design Documents is directly attributable to an error, omission, inconsistency or other defect in the Basic Configuration and the Design-Builder did not act negligently in finalizing the design of the Project. The Design-Builder agrees that, because the Basic Configuration, Conceptual Design and Reference Documents are subject to review and modification by the Design-Builder, except as provided otherwise in this Section 1-07.14.(1).1, it is appropriate for the Design-Builder to assume liability for errors, omissions, inconsistencies and other defects in the completed Project even though they may be related to errors, omissions, inconsistencies and other defects in the Basic Configuration, Contract Drawings or Reference Documents.

1-07.14(1).2 Losses Due to Negligence of Indemnified Parties

The Design-Builder will not be required to indemnify, defend, or save harmless an Indemnified Party as provided in this Section if the claim, suit, or action is caused by the sole negligence or willful misconduct of such Indemnified Party. Where such claims, suits, or actions result from the concurrent negligence of (a) an Indemnified Party or the Indemnified Party's agents or employees and (b) the Design-Builder or the Design-Builder's agent or employees, the indemnity provisions provided in this Section shall be valid and enforceable only to the extent of the Design-Builder's negligence or the negligence of its agents and employees.

1-07.14(1).3 Claims by Employees

In claims by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 1-07.14(1) shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder or a Subcontractor under the Washington State Industrial Insurance Act, Title 51 RCW, workers' compensation, disability benefit or any other employee benefits laws. In addition, for purposes of indemnification only, the Design-Builder specifically and expressly

waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. The Design-Builder's waiver of immunity by the provisions of this Section does not extend to claims by the Design-Builder's employees directly against the Design-Builder.

1-07.14(1).4 Reliance on the Design-Builder's Performance

The Design-Builder hereby acknowledges and agrees that it is the Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Design-Builder's performance of such obligation. The Design-Builder further agrees that any review and/or approval by WSDOT and/or others hereunder shall not relieve the Design-Builder of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

1-07.14(1).5 WSDOT Hazardous Materials Indemnity

Except with respect to Design-Builder responsible Hazardous Materials pursuant to Section 1-07.14(1)(g), WSDOT shall indemnify, protect, defend and hold harmless Design-Builder including Subcontractors and their respective shareholders, directors, officers, employees, agents and representatives from all third party claims (including but not limited to claims for response and remediation costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or similar actions brought by a governmental or private party, including costs incurred in connection with an independent remedial action under MTCA and including third party tort liability) arising, directly or indirectly, from any presence or release of any Hazardous Materials on the Project Right of Way, and including any claims that arise out of the transport and disposal of any Hazardous Materials for which WSDOT has been identified as the generator. Except with respect to Design-Builder responsible Hazardous Materials as designated in Section 1-07.14(1)(g)(ii), WSDOT shall be identified as the generator of any hazardous waste manifest for the transport or disposal of Hazardous Materials present at, on, in or under the Project Right of Way and transported or disposed of by Design Builder or a Subcontractor in connection with and during the course of performance of the design and construction Work

1-07.15 TEMPORARY WATER POLLUTION/EROSION CONTROL

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

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

1-07.15(1) Spill Prevention, Control and Countermeasures Plan

The Design-Builder shall prepare a Project specific spill prevention, control and countermeasures (SPCC) plan to be used for the duration of the Project. The plan shall be submitted to WSDOT

prior to the commencement of any on site construction activities. The Design-Builder shall maintain a copy of the plan at the work site, including any necessary updates as the Work progresses. If Hazardous Materials are encountered during construction, the Design-Builder shall do everything possible to control and contain the material until appropriate measures can be taken. Hazardous Material, as referred to within these General Provisions, is defined in RCW 70.105.010 under "Hazardous Substances". Occupational safety and health requirements that pertain to SPCC planning are contained in WAC 296-155 and WAC 296-62.

The SPCC plan shall address the following project-specific information:

1. SPCC Plan Elements

(a) Site Information

Identify general site information useful in construction planning, recognizing potential sources of spills, and identifying personnel responsible for managing and implementing the plan.

(b) Project Site Description

Identify staging, storage, maintenance, and refueling areas and their relationship to drainage pathways, waterways, and other sensitive areas. Specifically address:

- the Design-Builder's equipment maintenance, refueling, and cleaning activities.
- the Design-Builder's on site storage areas for Hazardous Materials.

(c) Spill Prevention and Containment

Identify spill prevention and containment methods to be used at each of the locations identified in B., above.

(d) Spill Response

Outline spill response procedures including assessment of the hazard, securing spill response and personal protective equipment, containing and eliminating the spill source, and mitigation, removal and disposal of the material.

(e) Standby, On-Site, Material and Equipment

The plan shall identify the equipment and materials the Design-Builder will maintain on site to carry out the preventive and responsive measures for the items listed.

(f) Reporting

The plan shall list all federal, state and local agency telephone numbers the Design-Builder must notify in the event of a spill.

(g) Program Management

Identify site security measures, inspection procedures and personnel training procedures as they relate to spill prevention, containment, response, management and cleanup.

(h) Pre-existing Hazardous Materials

If pre-existing Hazardous Materials in the Project area are described elsewhere in the Contract Documents, the SPCC plan shall indicate measures the Design-Builder will take to conduct work without allowing release or further spreading of the Hazardous Materials.

2. Attachments
   (a) Site plan showing the locations identified in (1. B. and 1. C.) noted previously.
   (b) Spill and Incident Report Forms, if any, that the Design-Builder will be using.

Implementation Requirements

The Design-Builder shall be prepared and shall carry out the SPCC plan in the event of a hazardous spill within the Project limits.

Payment

The Contract Price shall be deemed to include full compensation for:

1. All costs associated with creating the SPCC plan.
2. All costs associated with providing and maintaining on site standby materials and equipment described in the SPCC plan.

As to other costs associated with spills, the Design-Builder may request payment to the extent provided for in the Contract. No payment shall be made if the spill was caused by or resulted from the Design-Builder's operations, negligence or omissions.

1-07.16 PROTECTION AND RESTORATION OF PROPERTY

1-07.16(1) Private/Public Property

The Design-Builder shall protect private or public property on or in the vicinity of the Work site. The Design-Builder shall ensure that it is not removed, damaged, destroyed, or prevented from being used unless the Contract so specifies.

Property includes land, utilities, trees, landscaping, improvements legally on the right-of-way, markers, monuments, buildings, structures, pipe, conduit, sewer or water lines, signs, and other property of all description whether shown in the Contract Documents or not.

If WSDOT requests in writing, or if otherwise necessary, the Design-Builder shall install protection, acceptable to WSDOT, for property such as that listed in the previous paragraph. The Design-Builder is responsible for protecting all property that is subject to damage by the construction operation.

If the Design-Builder (or agents/employees of the Design-Builder) damage, destroy, or interfere with the use of such property, the Design-Builder shall restore it to original condition. The Design-Builder shall also halt any interference with the property's use. If the Design-Builder refuses or does not respond immediately, the WSDOT Engineer may have such property restored by other means and subtract the cost from money that will be or is due the Design-Builder.

1-07.16(2) Vegetation Protection and Restoration

Where shown in the Conceptual Plans, as indicated elsewhere in the Contract Documents, and where further designated in the Design-Builders' Proposal and Released For Construction Documents, existing vegetation shall be saved and protected through the life of the Contract. Prior to any construction, the Design-Builder shall designate the vegetation to be saved and protected by high visibility construction fencing and/or individual flagging.

Damage which may require replacement of vegetation includes bark stripping, broken branches, exposed root systems, cut root systems, poisoned root systems, compaction of surface soil and roots, puncture wounds, drastic reduction of surface roots or leaf canopy, changes in grade greater than 6-inches, or any other changes to the location that may jeopardize the survival or health of the vegetation to be preserved.

When large roots of trees designated to be saved are exposed by the Design-Builder's operation, they shall be wrapped with heavy burlap for protection and to prevent excessive drying. The burlap shall be kept moist and securely fastened until the roots are covered to finish grade. All burlap and fastening material shall be removed from the roots before covering. All roots 1-inch or smaller in diameter, which are damaged, shall be pruned with a sharp saw or pruning shear. Damaged, torn, or ripped bark shall be removed as directed by the Engineer.

If due to, or for any reason related to the Design-Builder's operations, any tree, shrub, ground cover or herbaceous vegetation designated to be saved is destroyed, disfigured, or damaged to the extent that continued life is questionable as determined by the WSDOT Engineer, it shall be removed by the Design-Builder at the direction of the WSDOT Engineer.

The Design-Builder will be assessed damages equal to triple the value of the vegetation as determined in the *Guide for Plant Appraisal*, 8th Edition, published by the International Society of Arboriculture or the estimated cost of restoration with a similar species. Shrub, ground cover, and herbaceous plant values will be determined using the Cost of Cure Method. Any damage so assessed will be deducted from the monies due or that may become due the Design-Builder.

1-07.16(3) Fences, Mailboxes, Incidentals

The Design-Builder shall maintain any temporary fencing to preserve livestock, crops, or property when working through or adjacent to private property. The Design-Builder is liable for all damages resulting from not complying with this requirement.

The usefulness of existing mail or paper boxes shall not be impaired. If the Contract anticipates removing and reinstalling the mail or paper boxes, the provisions of Section 8-18 will apply. If the mail or paper boxes are rendered useless solely by acts (or inaction) of the Design-Builder or for the convenience of the Design-Builder, the Work shall be performed as provided in Section 8-18 at the Design-Builder's expense.

1-07.16(4) Archaeological and Historical Objects

Archaeological or historical objects, such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from a historical or scientific standpoint, which may be encountered by the Design-Builder, shall not be further disturbed. The Design-Builder shall immediately notify the WSDOT Engineer of any such finds.

The WSDOT Engineer will determine if the material is to be salvaged. The Design-Builder may be required to stop Work in the vicinity of the discovery until such determination is made. The WSDOT Engineer may require the Design-Builder to suspend Work in the vicinity of the discovery until salvage is accomplished.

If the WSDOT Engineer finds that the suspension of Work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the Work under this Contract, the WSDOT Engineer will make an adjustment in payment or the time required for the performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

1-07.17 UTILITY RELOCATIONS

This Section 1-07.17 and Technical Specifications Section 2.10 address (a) the Prior Relocations (referenced in Section 1-07.17(1).2 and anticipated to be completed by the Utility Owners prior to issuance of the Notice to Proceed), (b) any other work remaining to be performed (by either the Design-Builder or the Utility Owner) with respect to existing Utilities impacted by the Project (referred to herein as the "Relocation Work"), and (c) how the risks associated with Utility Relocations are allocated between WSDOT and the Design-Builder. Utilities impacted by the Project are categorized based on whether the Utility Owner has legal responsibility for the costs of Relocation ("Category #1 Utilities") or does not have legal responsibility for the costs of Relocation ("Category #2 Utilities").

WSDOT has performed investigations in order to identify and locate existing Utilities within the Project's Right of Way or otherwise potentially impacted by the Project. The Prior Relocations are the only existing Utilities that were identified by WSDOT as requiring Relocation (other than the Incidental Utility Work described in Section 1-07.17(1).3) in order to accommodate the Project's Basic Configuration. Additional Relocation Work may become necessary, if the Design-Builder finds that any impacted Utilities were incorrectly identified and/or located (or not identified at all) by WSDOT's investigations. The circumstances under which the Design-Builder may be entitled to an increase in the Contract Price or extension of the Contract Time on account of such additional Relocation Work are described in Section 1-07.17(9). Any other Relocation Work that the Design-Builder considers necessary or elects to undertake, including any Relocation Work resulting from changes made by the Design-Builder to the RFP Conceptual Design and any Relocation Work for the Utilities described in Technical Specifications Section 2.10.7.4.1, shall not be grounds for any increase in the Contract Price or extension of the Contract Time, regardless of whether such Relocation Work is performed and/or paid for by the Design-Builder or by the Utility Owner.

As necessary for any Category #1 Utilities requiring Relocation Work, WSDOT shall assign certain rights (including the right to obtain reimbursement for Relocation Costs) and delegate certain obligations under the applicable franchises or permits to the Design-Builder. See Assignment/Delegation of Utility Permit/Franchise Rights and Obligations RFP Appendix U2. Accordingly, the Design-Builder shall seek reimbursement of its Relocation Costs, if any, for Category #1 Utilities directly from the Utility Owners. By its execution of the Contract, the Design-Builder shall be deemed to have certified that the Contract Price does not include any amounts covering Relocation Costs to be incurred or paid for by the Design-Builder for any Category #1 Utility. See Utility Certification, RFP Appendix U1.

With respect to Category #2 Utilities requiring Relocation Work, all Relocation Costs shall be the Design-Builder's responsibility except as otherwise specified in this Section 1-07.17 or in Technical Specifications Section 2.10. Accordingly, the Design-Builder shall reimburse such Utility Owners for their Relocation Costs.

The Design-Builder will be entitled to a Change Order relating to Utility Relocations only as specified in this Section 1-07.17, subject to Sections 1-04.4 and 1-08.8. In all other respects, the Design-Builder assumes all risk of, is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and/or time resulting from existing Utilities affecting or affected by the Project.

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

The Design-Builder shall be responsible for all "Utility Work" as described herein and in Technical Specifications Section 2.10.

1-07.17(1).1 GENERAL SCOPE

Subject to the exceptions set forth in this Section 1-07.17 and/or in Technical Specifications Section 2.10, the scope of the Utility Work includes (a) all investigative work necessary to confirm the exact location, size and type of each Utility (including completed Prior Relocations) existing within the Project's Right of Way or otherwise potentially impacted by the Project, as more particularly described in Section 1-07.17(5), (b) the Incidental Utility Work, (c) performance of the additional Relocation Work (if any) for which such responsibility is assigned to the Design-Builder pursuant to Section 1-07.17(3), (d) reimbursement of the Utility Owner for its Relocation Costs (if any) for Category #2 Utilities, and (d) any other efforts and costs by the Design-Builder that are necessary in order to accomplish the Work described in this Section 1-07.17 and/or in Technical Specifications Section 2.10. The Design-Builder's responsibilities for each Relocation include performing, or causing the timely performance of, all potholing and other investigative work, coordination, design, design review, permitting, construction, inspection, and maintenance of records. Without limiting the generality of the foregoing, the Utility Work includes (a) all tasks, obligations and duties, and all costs, if any, that are the responsibility of the Design-Builder pursuant to any Relocation Agreements entered into between the Design-Builder and a Utility Owner (unless otherwise specified in the Contract Documents), and (b) any Betterments added to the Utility Work pursuant to Section 1-07.17(6). The Utility Work does not include acquisition of Utility Easements; but it does include the obligation to reimburse Utility Owners for costs of acquiring Utility Easements, if necessary for the Relocation of any Category #2 Utilities hereunder.

Utility Relocations may be necessitated by: (a) a physical conflict between the Utility and the Project (including their respective construction, operation, maintenance or use), and/or (b) an incompatibility between the Project as designed and the Utility based on the applicable Utility Standards and/or applicable Governmental Rules (even though there is no physical conflict). The limits of Relocation of existing Utilities extend as far as is necessary to accommodate or permit construction of the Project in accordance with the foregoing, whether inside or outside the Project's Right of Way boundaries. The Design-Builder shall ensure that all Utility Relocations are compatible with and interface properly with the Project.

The Design-Builder shall coordinate and cooperate with WSDOT and Utility Owners to ensure that all Relocation Work, whether performed or furnished by Utility Owners or by the Design-Builder, is completed in a timely fashion in accordance with the Contract Schedule.

For all Utilities at the Site (whether or not they are being Relocated pursuant to this Section 1-07.17), the Design-Builder shall minimize disruption in services provided by Utility Owners by (a) coordinating planned outages, (b) incorporating and implementing a contingency plan for unplanned outages, (c) developing a framework for coordination between Utility Owners, the Design-Builder and any affected property owners, as well as a framework for handling of questions and claims, and (d) coordinating with Utility Owners to develop a plan so that the Utility Owners can access their facilities during Project construction.

In the event of damage to any Utility, the Utility Work includes the obligation to contact the Utility Owner and implement a plan to expeditiously repair the damage and restore any disrupted services.

1-07.17(1).2 PRIOR RELOCATIONS

If any Prior Relocation is not completed prior to issuance of the Notice to Proceed, then the Utility Work includes such coordination between the Design-Builder and the affected Utility Owner as may be necessary for orderly completion of such Prior Relocation. The circumstances under which the Design-Builder may be entitled to an extension of the Contract Time on account of any delay in completion of a Prior Relocation are described in Section 1-07.17(11).

1-07.17(1).3 INCIDENTAL UTILITY WORK

Notwithstanding any contrary provision of the Contract Documents, the Design-Builder shall be responsible for all Incidental Utility Work without regard to the allocation of responsibility for Relocation Work otherwise established in this Section 1-07.17. The Design-Builder shall make all arrangements and perform all work necessary to accomplish the Incidental Utility Work, including locating Utilities, identifying conflicts, performing any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with all required Governmental Approvals.

If a Utility Owner agrees in the applicable Relocation Agreement to perform certain Incidental Utility Work, the Design-Builder shall confirm that the Utility Owner in fact timely performs such Incidental Utility Work, or the Design-Builder shall perform such Incidental Utility Work itself in accordance with the Contract Schedule.

1-07.17(1).4 DESIGN-BUILDER'S RESPONSIBILITY TO PERFORM

All Utility Work shall be performed without regard to any of the following: (a) whether an impacted Utility was indicated in the Utility Information, or if indicated, whether the Utility was accurately indicated therein; (b) whether the Design-Builder is entitled to additional compensation or an extension of the Contract Time with respect to such Work; and (c) whether the Utility Work is the Utility Owner's Cost Responsibility.

1-07.17(2) RELOCATION AGREEMENTS

Each Relocation (other than Protections in Place) performed pursuant to this Section 1-07.17

shall be addressed in a Relocation Agreement between the Design-Builder and the Utility Owner. The Design-Builder shall prepare and negotiate the Relocation Agreements and obtain execution thereof. Although WSDOT will not be a party to the Relocation Agreements, (a) WSDOT shall have the right to participate in Relocation Agreement negotiations in its sole discretion, (b) each Relocation Agreement shall be subject to review by WSDOT as more particularly provided in Technical Specifications Section 2.10, and (c) each Relocation Agreement shall provide that WSDOT is a third-party beneficiary thereof. The Design-Builder shall keep WSDOT informed of the status of all negotiations and shall deliver to WSDOT, within ten days after its execution, a true and complete copy of each Relocation Agreement. The Design-Builder shall comply with the terms and conditions of all Relocation Agreements.

The Design-Builder shall have no right to enter into any agreement with a Utility Owner that purports to bind WSDOT to its terms. Relocation Agreements entered into by the Design-Builder shall not be considered Contract Documents. In no event shall any Relocation Agreement be deemed to amend the terms of any other agreement to which WSDOT is a party. In the event of any conflict between the terms of any Relocation Agreement and the terms of the Contract Documents, the Contract Documents shall prevail as between WSDOT and the Design-Builder.

1-07.17(3) WORK RESPONSIBILITY AND COST RESPONSIBILITY

1-07.17(3).1 WORK RESPONSIBILITY

Relocation Work may be performed by either the affected Utility Owner or the Design-Builder, as determined by the Design-Builder and the Utility Owner in the course of negotiating the applicable Relocation Agreement. Regardless of the arrangements made with the Utility Owners, the Design-Builder shall continue to be the responsible party to WSDOT for timely performance of all Relocation Work in accordance with the requirements of the Contract Documents.

1-07.17(3).2 COST RESPONSIBILITY

Unless noted otherwise in Section 2.10 of the Technical Specifications, the Design-Builder shall assume that any Utility requiring Relocation pursuant to the Section 1-07.17 is a Category #1 Utility, unless and until WSDOT notifies the Design_Builder otherwise in accordance with Section 1-07.17(10).

1-07.17(4) PAYMENTS TO AND COLLECTION FROM UTILITY OWNERS

1-07.17(4).1 COLLECTION FROM UTILITY OWNERS

In regards to a Category #1 Utility, the Design-Builder shall collect the appropriate reimbursement directly from the Utility Owner for any Relocation Work the Design-Builder performs, or any increased costs the Design-Builder may sustain as a result of actions or inactions on the part of the Utility Owner. Eligibility of costs for reimbursement shall be governed by the applicable franchise or permit and the applicable Governmental Rules. If the Design-Builder asserts that any Utility Owner has failed to comply with its obligation under a Relocation Agreement or has otherwise hindered or interfered with the progress or completion of

the Work, then except as otherwise set forth in Section 1-07.17(11) with respect to certain time extensions relating to Category #2 Utilities, the Design-Builder's sole remedy shall be to seek recourse against the Utility Owner.

1-07.17(4).2 FAILURE TO PAY

If for any reason the Design-Builder is unable to collect amounts due from a Utility Owner pursuant to Section 1-07.17(4).1, the Design-Builder shall notify WSDOT and shall resolve such dispute directly with the Utility Owner, subject to the requirements of Section 1-07.17(7).

1-07.17(4).3 REIMBURSEMENTS TO UTILITY OWNERS

The Design-Builder shall reimburse the Utility Owner' s Relocation Costs for any Category #2 Utility requiring Relocation pursuant to this Section 1-07.17. The Design-Builder also shall make any other reimbursements to Utility Owners required under any Relocation Agreement (for example, for damage to a Utility Owner's facilities caused by the Design-Builder's work). The Design-Builder shall make all payments required by this Section 1-07.17(4) in accordance with the time and other requirements of the applicable Relocation Agreement. The Relocation Agreements shall provide that eligibility of costs for reimbursement shall be determined in accordance with the requirements of 23 CFR Part 645A and the then-current version of WSDOT's Utilities Manual.

1-07.17(5) RELIANCE ON UTILITY INFORMATION

WSDOT performed a Subsurface Utility Engineering (SUE) investigation of certain types of existing Utilities located within the Project's Right of Way; the results of that investigation are provided in RFP Appendix U5. The investigation was performed based on the parameters indicated in the SUE report. Additional information with respect to Utilities existing within the Project's Right of Way (including the Prior Relocations) is primarily provided in RFP Appendices U3 and U4, although information relevant to Utilities can also be found throughout the RFP documents. The Design-Builder acknowledges that (a) the Utility Information does not identify Service Lines impacted by the Project, and (b) information contained in the Utility Information, including the descriptions of the affected Utilities and their locations, may not be accurate in all cases. The Design-Builder shall verify all Utility Information included in the RFP, and shall perform its own investigations in accordance with the Contract Documents. The Design-Builder shall not proceed with any construction Work at any location until such investigations have been completed for that location.

If the Design-Builder's investigations identify Utilities (excluding Service Lines) not described in the Utility Information, or if the Design-Builder determines that any Major Underground Utility was not described in the Utility Information with Reasonable Accuracy (as defined in Section 1-07.17(9)), the Design-Builder shall notify WSDOT immediately upon such discovery. If any such unidentified Utility is installed within the Project's Right of Way pursuant to a franchise or permit, WSDOT shall execute an assignment of rights and delegation of obligations thereunder in the same form as RFP Appendix U2, in favor of the Design-Builder. The Design-Builder shall be responsible for confirming the exact location (horizontal and vertical) of each Utility (including completed Prior Relocations) potentially affected by the Project, regardless of whether information with respect to such Utility has been provided by WSDOT or by the Utility

Owner.

The Design-Builder shall comply with RCW 19.122 *et seq*. regarding underground Utilities. The Design-Builder shall refresh and maintain the location ground markings in all areas on a daily basis where excavation is in progress.

1-07.17(6) BETTERMENTS AND UTILITY OWNER PROJECTS

1-07.17(6).1 BETTERMENTS

The Design-Builder may agree in a Relocation Agreement to design and/or construct a Betterment for a Utility at the Utility Owner's expense, subject to compliance with Section 1-07.17(6).3. Such Betterment shall be treated as an addition to the scope of the Utility Work upon WSDOT's approval of the executed Relocation Agreement; however, such addition shall not be treated as a change in the Work directed by WSDOT, and the Design-Builder shall not be entitled to any increase in the Contract Price or extension of the Contract Time on account thereof. Instead, the Design-Builder shall arrange to collect payment for such work directly from the Utility Owner.

1-07.17(6).2 UTILITY OWNER PROJECTS

The Design-Builder may enter into an agreement with a Utility Owner to design and/or construct a Utility Owner Project at the Utility Owner's expense, subject to compliance with Section 1-07.17(6).3. Any such Utility Owner Project shall be considered to be work outside of the Contract and the Work. The Design-Builder's compensation for a Utility Owner Project shall not involve WSDOT.

1-07.17(6).3 RESTRICTIONS ON BETTERMENTS AND UTILITY OWNER PROJECTS

The Design-Builder shall not proceed with any Betterment or Utility Owner Project that is incompatible with the Project or cannot be performed within the constraints of applicable Governmental Rules, the Governmental Approvals and the Contract Documents, including the contractual deadline for Substantial Completion. The Design-Builder shall not be entitled to any additional compensation from WSDOT or any extension of the Contract Time on account of any Betterment or Utility Owner Project.

The Design-Builder shall promptly notify WSDOT of any request by a Utility Owner that the Design-Builder considers to give rise to a Betterment, and shall keep WSDOT informed as to the status of negotiations with the Utility Owner concerning such request. If the Design-Builder and a Utility Owner disagree as to whether a particular Utility Owner request or requirement constitutes a Betterment, the Design-Builder shall notify WSDOT and shall resolve such dispute directly with the Utility Owner, subject to the requirements of Section 1-07.17(7). The Design-Builder shall provide WSDOT with such information, analyses and certificates as WSDOT may request in order to determine compliance with this Section 1-07.17(6).

1-07.17(7) FAILURE OF UTILITY OWNERS TO COOPERATE

1-07.17(7).1 DISPUTES

The Design-Builder shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. The Design-Builder shall notify WSDOT immediately if (a) the Design-Builder believes that any Utility Owner would not undertake or permit a Relocation in a manner consistent with the timely completion of the Project, (b) the Design-Builder becomes aware that a Utility Owner is not cooperating in providing needed work or approvals, (c) a Utility Owner fails to timely pay amounts due to the Design Builder as described in Section 1-07.17(4), or (d) any other dispute arises between the Design-Builder and any Utility Owner with respect to the Project, including any dispute as to whether or not a particular Utility Owner request or requirement constitutes a Betterment.

After giving notice in accordance with the preceding paragraph, the Design-Builder shall remain responsible for coordination with the Utility Owner, shall continue to diligently pursue the Utility Owner's cooperation, and may request WSDOT's assistance for such purpose. Subject to Section 1-07.17(7).2, WSDOT shall provide assistance as reasonably requested by the Design-Builder; provided that such assistance shall be at no cost to WSDOT other than the time of its staff, and WSDOT shall have no obligation to pursue any legal proceedings against the Utility Owner. Any notice provided to WSDOT or assistance requested from and/or provided by WSDOT shall not relieve the Design-Builder of its sole and primary responsibility for the satisfaction of its obligations and timely completion of all Relocations. WSDOT may, in its sole discretion, participate in the resolution of any dispute between the Design-Builder and a Utility Owner, whether or not requested to do so by the Design-Builder, and may, in its sole discretion, take the lead in resolving any dispute involving a Category #2 Utility.

As requested by WSDOT, the Design-Builder shall cooperate with WSDOT in any efforts to resolve disputes in accordance with the preceding paragraph, including in connection with any lawsuit or alternate proceedings undertaken by WSDOT for such purpose. Such cooperation shall include the Design-Builder's staff and consultants acting as witnesses in such lawsuits and proceedings and providing testimony, information, reports, graphs, photos, plans, renderings and similar materials to WSDOT's counsel at the Design-Builder's expense. WSDOT shall remit to the Design-Builder any amounts collected on the Design-Builder's behalf as a result of any such action or proceeding, after first deducting therefrom all costs (including attorneys', courts' and expert witness fees and costs) incurred by WSDOT in pursuing such action or proceeding.

1-07.17(7).2 CONDITIONS TO WSDOT'S ASSISTANCE

WSDOT shall not be obligated to provide assistance requested by the Design-Builder pursuant to Section 1-07.17(7).1 unless all of the following conditions are satisfied:

1. The Design-Builder has provided to WSDOT a written report explaining the nature and history of the dispute, the names and contact information for the representatives of each disputant, a description of the assistance requested by the Design-Builder, and such other information as WSDOT may reasonably request.

2. The Design-Builder has provided evidence reasonably satisfactory to WSDOT that (a) the Design-Builder has made diligent efforts to obtain the Utility Owner's cooperation or to otherwise resolve the dispute, but that such efforts have not succeeded, (b) the assistance requested by the Design-Builder from WSDOT is reasonable, (c) if applicable,

the Design-Builder has provided a reasonable Relocation plan to the Utility Owner that has been submitted to WSDOT for review and comment, (d) the Design-Builder or the Utility Owner has obtained, or is in a position to timely obtain, any Governmental Approvals required in order to implement the Relocation plan proposed by the Design-Builder, and (e) the Design-Builder's position in the dispute is otherwise reasonable.

1-07.17(8) AVOIDING RELOCATIONS AND MINIMIZING WSDOT COSTS

The Design-Builder shall consider the location of Utilities and the potential impact of Utility Relocations in finalizing the design of the Project, with the goals of minimizing Relocation Costs, related construction and disruption to the public, and avoiding schedule delay, to the extent practical and at all times conforming to requirements of the Contract Documents. Notwithstanding the foregoing, the Design-Builder shall take all reasonable steps, including revising the Design Documents to work around a newly identified Utility as reasonably applicable, to minimize costs for which the Design-Builder is entitled to additional compensation pursuant to this Section 1-07.17.

1-07.17(9) PRICE ADJUSTMENTS AND TIME EXTENSIONS FOR INACCURATE UTILITY INFORMATION

1-07.17(9).1 ELIGIBILITY FOR CHANGE ORDERS

Subject to Sections 1-07.17(9).3, 1-07.17(11) and 1-07.17(12) and to any other Contract requirements relating to entitlement to Change Orders, if any Major Underground Utility located within the limits of the Project's Right of Way or within the vicinity of the noise wall as described in Technical Specifications Section 2.10.7.4.1 is not identified in the Utility Information with Reasonable Accuracy, then the Design-Builder shall be entitled to (a) an extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to the correction of such inaccurate information, (b) delay and disruption damages that are directly attributable to the inaccuracy, (c) for Category #1 Utilities only, an increase in the Contract Price on account of any increased costs of the Work (excluding Relocation Costs) which are directly attributable to the correction of such inaccurate information, and (d) for Category #2 Utilities only, an increase in the Contract Price on account of any increased costs of the Work (including Relocation Costs) which are directly attributable to the correction of such inaccurate information. WSDOT shall be entitled to a credit if a Category #2 Utility is not described in the Utility Information with Reasonable Accuracy and the inaccuracy has the effect of reducing the Design-Builder’s costs.

1-07.17(9).2 REASONABLE ACCURACY DEFINED

"Reasonable Accuracy" shall mean that a Major Underground Utility is referenced in the Utility Information, and

1. the Utility's actual centerline location is within 10 feet of the horizontal centerline location indicated in the Utility Information (with no limitation on vertical location), and
2. one of the following applies, with regard to any difference (whether larger or smaller) between the Utility’s actual inside diameter, excluding casings and any other appurtenances (the “actual size”) and the inside diameter indicated for such Utility in the

Utility Information (the "stated size"):

Stated size	Actual size
12" or less	not more than 24"
greater than 12" but less than or equal to 36"	stated size ± 50%
greater than 36" but less than or equal to 72"	stated size ± 25%
greater than 72"	stated size ± 15%

For example, if the stated size of an underground pipeline listed in the Utility Information is 36", but the pipeline's actual size is 48" and its centerline is actually located eight feet away from the horizontal centerline location shown in the Utility Information, such pipeline shall be deemed indicated with Reasonable Accuracy and the Design-Builder shall not be entitled to a Change Order for any increased costs or delays resulting from the increased size or differing location of the pipeline. As a further example, if the stated size of a Category #2 underground pipeline listed in the Utility Information is 36", but the pipeline's actual size is 60" and its centerline is actually located eight feet away from the horizontal centerline location shown (without regard to vertical location), then such pipeline shall be deemed not indicated with Reasonable Accuracy, and the Design-Builder shall be entitled to a Change Order for any increased costs or delays resulting from the increased size (but not from the differing location) of the pipeline.

In case of any discrepancy between the information provided by one component of the Utility Information and information provided by another component of the Utility Information, only the more accurate information shall be relevant in determining Reasonable Accuracy.

1-07.17(9).3 LIMITATIONS AND EXCLUSIONS

The Design-Builder shall not be entitled to a Change Order pursuant to this Section 1-07.17(9) for any of the following:

1. Any inaccuracies in the Utility Information to the extent that the correct information (a) was known to the Design-Builder as of the Proposal Date, (b) would have been apparent during a surface inspection of the area conducted prior to the Proposal Date, or (c) could have been inferred from the presence of other facilities or surface features, such as buildings, meters, junction boxes, manholes, vaults, or identifying markers.
2. Increased costs or time attributable to inaccuracies in the Utility Information, to the extent that such costs could have been avoided by timely identifying the correct information and addressing the actual field conditions in the "Released for Construction" Design Documents for the Work in question.
3. Any inaccuracies in the Utility Information regarding Utilities other than Major Underground Utilities.

1-07.17(10) PRICE ADJUSTMENTS FOR CHANGES IN COST RESPONSIBILITY

WSDOT may, at any time, notify the Design-Builder of a change in the determination of Cost Responsibility for a particular Utility. Such change in the Work directed by WSDOT shall be treated in accordance with Section 1-04.4, resulting in either an increase or a decrease in the

Contract Price, as applicable.

1-07.17(11) UTILITY RELOCATION - RELATED DELAYS

1-07.17 (11) .1 CONTRACT TIME EXTENSION FOR DELAYED PRIOR RELOCATIONS

If the Utility Owner fails to complete a Prior Relocation on or before the date of issuance of the Notice to Proceed, then the Design-Builder shall be entitled to an extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to such failure, provided that (a) such failure is not due to any fault of the Design-Builder, and (b) the requirements of Section 1-08.8 are otherwise satisfied. Any such delay shall not be grounds for any increase in the Contract Price.

1-07.17 (11) .2 VACANT

1-07.17(11) .3 VACANT

1-07.17(11).4 VACANT

1-07.17(11).5 VACANT

1-07.17(12) ADDITIONAL PROVISIONS CONCERNING UTILITY CHANGE ORDERS

The Design-Builder's entitlement to any increase in the Contract Price or extension of the Contract Time relating to Utility Relocations shall be subject to the restrictions and limitations set forth in this Section 1-07.17(12) in addition to the other specified requirements and limitations.

1-07.17(12).1 CHANGES IN WORK ALLOCATION

The Work includes responsibility for causing all Relocation Work to occur in a timely fashion, including reimbursing the Utility Owners for their Relocation Costs for Category #2 Utilities and scheduling all Relocation Work (whether performed by the Design-Builder or by the affected Utility Owner) so as to attain Substantial Completion by the contractual deadline. Accordingly, if a Utility Owner performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Design-Builder, or if the Design-Builder performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Utility Owner, there shall be no resulting extension of the Contract Time and no resulting change in the Contract Price (either up or down).

1-07.17(12).2 CHANGES IN UTILITY STANDARDS

There shall be no increase or decrease in the Contract Price pursuant to this Section 1-07.17 on account of any change in Utility Standards, whether or not such change qualifies as a Betterment. However, any change in Utility Standards that constitutes or results from a change in Legal Requirements may be grounds for a Change Order under other Contract provisions.

1-07.17(12).3 UNAVOIDABLE COSTS AND DELAYS ONLY

The Design-Builder shall not be entitled to a Change Order for any cost or delay that could have been avoided by timely request for information under the Underground Utilities One Number

Locating Service Statute (RCW19.122), or for any amount that the Design-Builder has the right to obtain from a Utility Owner under said laws.

The Design-Builder shall provide documentation satisfactory to WSDOT evidencing compliance with Section 1-07.17(8). The Design-Builder shall be responsible for any increased costs of the Work and any time that could have been avoided by such compliance.

1-07.17(12).4 INCREMENTAL COSTS ONLY

Any increase in the Contract Price pursuant to this Section 1-07.17 shall include only the incremental costs arising from the circumstances giving rise thereto, i.e. the amount payable shall take into account the costs that would have been incurred absent such circumstance and a credit shall be allowed for any avoided costs.

1-07.17(12).5 NO ADJUSTMENT FOR INCIDENTAL AND COORDINATION WORK

All Incidental Utility Work and all costs of coordinating with Utility Owners as necessary for the Project are included in the Contract Price, regardless of whether or not (a) the Utility Information reveals the circumstances requiring such Incidental Utility Work and/or coordination, or (b) the Utility is the subject of a Prior Relocation. Accordingly, no adjustment in the Contract Price or extension of the Contract Time will be allowed on account of costs incurred, cost savings or delays associated with the performance of Incidental Utility Work by the Design-Builder or by any Utility Owner, or for any costs of coordinating with Utility Owners.

1-07.17(12).6 NO ADJUSTMENT FOR VOLUNTARY ACTION BY DESIGN-BUILDER

If the Design-Builder elects to make payments to Utility Owners or to undertake any other efforts with respect to Relocation of Utilities that are not required by the terms of the Contract Documents, then unless the Design-Builder has received direction from WSDOT in accordance with Section 1-04.4 to do so, the Design-Builder shall not be entitled to any extension of the Contract Time or increase in the Contract Price in connection therewith. The Design-Builder shall promptly notify WSDOT of the terms of any such arrangements.

1-07.17(12).7 UTILITIES LOCATED UNDER NE 116TH ST.

Without limiting the generality of any other provisions of this Section 1-07.17, if the Design-Builder determines that any existing Utilities located under NE 116th St. (or its sidewalks) requires Relocation, such determination shall not be grounds for any Contract Price increase and/or Contract Time extension unless such Relocation is eligible for a Change Order under Section 1-07.17(9).

1-07.17(12).8 Utilities Located Near Noise Wall Alignment at SW Corner of Woodland Apartments and Costco's North Parking Lot.

Without limiting the generality of any other provisions of this Section 1-07.17, any attempt to seek Relocation of any Utility located within the vicinity of the proposed noise wall addressed in Technical Specifications Section 2.10.7.4.1 shall be at the sole risk of the Design-Builder, and shall not be grounds for seeking an increase in the Contract Price and/or Contract Time, unless such relocation is eligible for a Change Order under Section 1-07.17(9).

1-07.17(12).9 72 Inch King County Wastewater Sewer.

Without limiting the generality of any other provisions of this Section 1-07.17, failure on the part of King County Wastewater to complete, within the time periods designed in Technical Specifications Section 2.10.7.4.1, the review of any submittal made by the Design-Builder relating to King County's 72 inch reinforced concrete sanitary sewer line located on the West side of the southbound On-Ramp to I-405 from NE 116th Street shall not be grounds for seeking an increase in the Contract Price and/or Contract Time.

1-07.18 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Design-Builder shall obtain insurance and keep it in force as specified in this Section 1-07.18. The insurance provided hereunder shall be available for the benefit of WSDOT and the Design-Builder with respect to covered claims, but shall not be interpreted to relieve the Design-Builder of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by WSDOT and with companies or through sources approved by the State Insurance Commissioner pursuant to Chapter 48.05, RCW. If an insurance carrier is not an admitted carrier (unauthorized insurer), the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC. Unless otherwise indicated below, the policies shall be kept in force from the execution date of the Contract until the date of acceptance by the Secretary (Section 1-05.12).

1-07.18(1) Required Insurance

1. Worker's Compensation (and Stop-Gap Liability). The Design-Builder shall provide industrial insurance and medical aid as required under Title 51 RCW (and Stop-Gap Liability insurance for bodily injury or disease) with minimum limits of $1 million per accident for bodily injury by accident, $1 million per employee for bodily injury by disease, and $1 million policy limit for bodily injury by disease. The Design-Builder shall maintain such insurance through the expiration of the Warranty period. The Design-Builder shall be the named insured on these policies. A Design-Builder who is self-insured under Title 51 RCW shall also provide an endorsement extending coverage to all State operations on an "if any" basis.
2. Commercial General Liability Insurance. The Design-Builder shall provide commercial general liability broad form coverage (for bodily injury, property damage, personal injury and advertising injury) written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 07 98. The Design-Builder shall maintain such insurance through the expiration of the Warranty period. Such insurance shall include, by its terms or appropriate endorsements, coverage for bodily injury, property damage, fire legal liability (not less than the replacement value of the portion of the premises occupied), personal injury, blanket contractual, independent contractors, premises operations, products and completed operations (for a minimum of five years following Physical Completion), broad form property damage and hazards commonly referred to as "x" (explosion), "c" (collapse) and "u" (underground) exposures. This coverage shall have a minimum limit

of $1 million per occurrence, $2 million general annual aggregate and $2 million products/completed operations aggregate. If commercial general liability insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the Project, or the Design-Builder may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the Design-Builder; any such excess insurance shall be at least as broad as the Design-Builder's primary insurance. The Design-Builder shall be the named insured and each of the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any Related Entity, whether occurring on or off of the Site. The required limits can be satisfied by a combination of a primary policy and an excess policy.

3. Automobile Liability Insurance. The Design-Builder shall provide comprehensive automobile liability insurance covering the ownership, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, both on and off the Site, including loading and unloading, with limits of not less than $1 million, combined single limit for bodily injury and property damage liability. The Design-Builder shall maintain such insurance through Physical Completion; provided, however, that such coverage shall be maintained for vehicles used in the performance of Warranty Work until the expiration of the Warranty period. Coverage shall be provided on Insurance Services Office form number CA 0001 (Ed. 7/97) or equivalent. The Design-Builder shall be the named insured and the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any Related Entity. The required limits can be satisfied by a combination of a primary policy and an excess policy.

4. Environmental Liability Insurance. The Design-Builder shall provide environmental liability coverage on a claims made basis with limits not less than $10,000,000 per claim and aggregate. The policy shall include as insureds WSDOT, the Design-Builder and any of its Subcontractors (including design subconsultants) of any tier performing Work for which such coverage is appropriate. The Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any Related Entity, whether occurring on or off of the Site:

   The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy. The policy shall have a five year extended reporting period and cover claims made on and prior to Physical Completion and claims made after Physical Completion but within the extended reporting period.

5. Excess Liability Insurance. The Design-Builder shall provide umbrella or excess liability insurance with limits not less than $30,000,000 which will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including Employer's Liability, Commercial General Liability

and Comprehensive Automobile Liability insurance, in excess of the amounts set forth in Sections 2, 3 and 4 above.

6. Professional Liability Insurance. The Design-Builder shall provide professional liability coverage with limits not less than $3 million per claim and aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering activities with respect to the Project. The policy shall have a retroactive date no later than the date on which the RFP was issued and shall have a five (5) year coverage period. The coverage shall include design subconsultants of any tier.

7. Builder's Risk. The Design-Builder shall procure and maintain builder's risk insurance for the Project as specified below. The insureds shall be the Design-Builder, all Subcontractors (excluding those solely responsible for design Work) of any tier, and WSDOT, as their interests may appear. The Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any Related Entity, whether occurring on or off of the Site. The insurance shall be maintained until the date of Physical Completion; provided that the Design-Builder shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to WSDOT, a utility owner or local agency.

   (a) Minimum Scope

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

   (b) Minimum Coverage

   Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, including earth movement and flood coverage, with a minimum limit of liability equal to the greater of (a) $50,000,000 or (b) the probable maximum loss of the Project and the components thereof, plus "soft cost expense cover" (including, but not limited to, additional construction financing interest, construction loan fees, engineering/architectural expenses/fees, insurance premiums, accounting fees, project administration expenses, attorneys' fees and fees and other costs associated with such damage or loss and with any Governmental Approvals). Coverage shall include earthquake insurance with a $50,000,000 minimum annual aggregate limit and flood insurance with a $50,000,000 minimum annual aggregate limit. The coverage shall be written without risk of liability of WSDOT for payment and without deduction for depreciation. There shall be no coinsurance penalty provision in any such policy.

Deductibles or self-insured retentions shall be no greater than 5% of the total value of each insured unit at the time of loss.

8. Railroad Protective. The Design-Builder shall provide any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Said policy shall be effective during the period any Work is being performed within 50 feet of any railroad right of way.

9. Valuable Papers. The Design-Builder shall provide valuable papers insurance with a limit of not less than $200,000 each loss. Such insurance shall assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the Work and/or the Project in the event of loss or destruction, until all such items and data are turned over to WSDOT.

10. Aircraft Liability. The Design-Builder shall provide insurance, with a limit of not less than $5,000,000 per occurrence, in all cases where any aircraft is used on the Project that is owned, leased or chartered by any Related Entity, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Site or on any property owned by WSDOT shall be subject to review and written acceptance by WSDOT prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft.

1-07.18(2) General Insurance Requirements

1. Premiums, Deductibles and Self-Insured Retentions. The Design-Builder shall be responsible for payment of premiums for all insurance required under this Section 1-07.18. The Design-Builder further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Design-Builder is responsible hereunder, the Design-Builder shall be solely responsible for all deductibles, self-insured retentions and amounts in excess of the coverage provided. Any deductibles or self-insured retentions over $10,000 in the Design-Builder provided insurance must be declared and approved by WSDOT. At the option of WSDOT, the insurer shall either reduce or eliminate such deductibles or self insured retentions with respect to WSDOT and the other Indemnified Parties; or the Design-Builder shall procure a bond acceptable to WSDOT guaranteeing payment of losses and related investigations, claims administration and defense expenses. With respect to all matters for which WSDOT is responsible hereunder, WSDOT shall remain fully responsible for all deductibles and amounts in excess of the coverage provided.

2. Verification of Coverage. Prior to Contract execution, the Design-Builder shall file with WSDOT, Contract Payment Section, P.O. Box 47420, Olympia, WA 98504-7420, ACORD Form Certificates of Insurance evidencing the minimum insurance coverages required to be provided, at least 10 days prior to the date such insurance is required to be provided hereunder. The required certificates must be personally and manually signed by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof and is authorized to bind the

named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. WSDOT shall have no duty to pay or perform under this Contract until such certificate(s), in compliance with all requirements of this Section 1-07.18, have been provided. Upon WSDOT's request, certified, true and exact copies of each of the insurance policies (including renewal policies) required under this Section 1-07.18 shall be provided to WSDOT.

The Design-Builder shall promptly deliver to WSDOT a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificate shall be delivered to WSDOT not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium therefore. If requested by WSDOT from time to time, certified duplicate copies of the renewal policy shall also be provided.

3. Subcontractor Insurance Requirements. The Design-Builder shall cause each sub-contractor to provide insurance that complies with requirements for the Design-Builder-provided insurance set forth in this Section 1-07.18 in circumstances where the Subcontractor is not covered by the Design-Builder-provided insurance; provided that the Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. The Design-Builder shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor's general liability and motorized vehicle liability insurance policies. The Design-Builder shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by WSDOT, the Design-Builder shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. WSDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

4. Endorsements and Waivers. All insurance policies required to be provided by the Design-Builder hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only the following provisions (d) and (h) shall be applicable:

   (a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that the Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents and consultants shall be excess of such insurance and shall not contribute with it.

   (b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors,

officers, employees, agents and consultants).

(c) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 45 days (10 days for non-payment of premium) prior written notice by certified mail, return receipt requested, has been given to WSDOT. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form providing additional insureds with coverage for "completed operations".

(f) The commercial general liability insurance policy shall be endorsed to state that coverage for Subcontractor employees shall not be excluded.

(g) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

(h) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and environmental liability policies).

5. Waivers of Subrogation. WSDOT and the Design-Builder waive all rights against each other, against each of their agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any claims to the extent covered by insurance obtained pursuant to this Section 1-07.18, except such rights as they may have to the proceeds of such insurance. The Design-Builder shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

6. Changes in Requirements. WSDOT shall notify the Design-Builder in writing of any changes in the requirements applicable to insurance required to be provided by the Design-Builder. Except as set forth in Section 1-07.18(2), any additional cost from such change shall be paid by WSDOT and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

7. No Recourse. All costs for insurance shall be considered incidental to and included in the Contract Price and no additional payment will be made, except for any deductibles payable by WSDOT as specified herein and except as specified in Section 1-07.18(2).

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

9. Commercial Unavailability of Required Coverages. If, through no fault of the Design-Builder, any of the coverages required in this Section 1-07.18 (or any of the required

terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, WSDOT will consider in good faith alternative insurance packages and programs proposed by the Design-Builder, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. The Design-Builder must demonstrate to WSDOT's reasonable satisfaction that it has used diligent efforts in the global insurance markets to place the required insurance coverages, and shall advise WSDOT of the specific results of those efforts. The Design-Builder shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. WSDOT shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents (or based on other evidence of insurance premiums as of the Proposal Date if the EPDs do not provide adequate information).

1-07.18(3) WSDOT's Right to Remedy Breach by the Design-Builder

Failure on the part of the Design-Builder to maintain the insurance as required shall constitute a material breach of Contract upon which WSDOT may, after giving 5 business days notice to the Design-Builder to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to WSDOT on demand, or at the sole discretion of WSDOT, offset against funds due the Design-Builder from WSDOT.

1-07.18(4) Insurance Proceeds and Prosecution of Claims

Under certain circumstances, insurance policies required to be provided by WSDOT hereunder are intended to provide compensation to the Design-Builder for costs incurred by the Design-Builder. The Design-Builder shall be responsible for processing all such claims and shall not be entitled to receive a Change Order for any costs which it could have recovered from the insurer. The Design-Builder agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of WSDOT, whether for defense or indemnity or both. WSDOT agrees to promptly notify the Design-Builder of WSDOT's incidents, potential claims, and matters which may give rise to an insurance claim by WSDOT, to tender its defense or the claim to the Design-Builder, and to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

1-07.18(5) Commencement of Work

The Design-Builder shall not commence work under this Contract until it has obtained the insurance required under this Section 1-07.18, has furnished original certificates of insurance evidencing the required coverage as required hereunder and such insurance has been approved by WSDOT, nor shall the Design-Builder allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by the Design-Builder.

1-07.18(6) Disclaimer

The Design-Builder and each Subcontractor shall have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

1-07.19 GRATUITIES

The Design-Builder shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of WSDOT; nor will the Design-Builder rent or purchase any equipment or materials from any employee or officer of WSDOT. Before payment of the final estimate will be made, the Design-Builder shall execute and furnish WSDOT an affidavit certifying compliance with these provisions of the Contract.

The Design-Builder shall comply with all applicable sections of the State Ethics law, RCW 42.52, which regulates gifts to State officers and employees. Under that statute, any WSDOT officer or employee who has or will participate with the Design-Builder regarding any aspect of this Contract is prohibited from seeking or accepting any gift, gratuity, favor or anything of economic value from the Design-Builder. Accordingly, neither the Design-Builder nor any agent or representative of the Design-Builder shall offer anything of economic value as a gift, gratuity, or favor directly or indirectly to any such officer or employee.

1-07.20 PATENTED DEVICES, MATERIALS, AND PROCESSES

The Design-Builder shall assume all costs arising from the use of patented devices, materials, or processes used on or incorporated in the Work, and agrees to indemnify, defend, and save harmless the State, Commission, Secretary, and their duly authorized agents and employees from all actions of any nature for, or on account of the use of any patented devices, materials, or processes.

1-07.21 ROCK DRILLING SAFETY REQUIREMENTS

It shall be the Design-Builder's responsibility to maintain safe working conditions during rock drilling, by keeping dust concentration below the threshold limit value or by providing those protective devices that may be required by the State Department of Labor and Industries.

1-07.22 USE OF EXPLOSIVES

When using explosives, the Design-Builder shall use the utmost care to protect life and property, to prevent slides, and to leave undisturbed all materials, outside the neat lines of the cross-section.

Explosives shall be handled, marked, stored, and used in compliance with WAC 296-52 and such local laws, rules, and regulations that may apply. The stricter provisions shall apply.

All explosives shall be stored securely as required by all laws and ordinances that apply. Each storage place shall be clearly marked: "Dangerous-Explosives." No explosives shall be left unprotected.

If public utilities or railroads own equipment near the blast site, the Design-Builder shall notify the owners of the location, date, time, and approximate duration of the blasting. This notice shall be given sufficiently in advance to enable all owners to take any steps as they deem necessary to protect their property from injury.

Blasting near proposed structures shall be completed before work on them begins. When the use of explosives is necessary for the prosecution of the work, the Design-Builder's insurance shall contain a special clause permitting the blasting.

1-07.23 PUBLIC CONVENIENCE AND SAFETY

1-07.23(1) Construction Under Traffic

The Design-Builder shall conduct all operations with the least possible obstruction and inconvenience to the public. The Design-Builder shall have under construction no greater length or amount of work than can be prosecuted properly with due regards to the rights of the public.

To the extent possible, the Design-Builder shall finish each section before beginning work on the next.

To disrupt public traffic as little as possible, the Design-Builder shall permit traffic to pass through the work with the least possible inconvenience or delay. The Design-Builder shall maintain existing roads and streets within the Project limits, keeping them open, and in good, clean, safe condition at all times. Deficiencies caused by the Design-Builder's operations shall be repaired at the Design-Builder's expense. Deficiencies not caused by the Design-Builder's operations shall be repaired by the Design-Builder when directed by the WSDOT Engineer, at WSDOT's expense. The Design-Builder shall also maintain roads and streets adjacent to the project limits when affected by the Design-Builder's operations. Snow and ice control will be performed by WSDOT on all projects. Cleanup of snow and ice control debris will be at WSDOT's expense. The Design-Builder shall perform the following:

1. Remove or repair any condition resulting from the work that might impede traffic or create a hazard.
2. Keep existing traffic signal and highway lighting systems in operation as the work proceeds. Routine maintenance of these systems shall be in accordance with Section 2.29.5.3.
3. Maintain the striping on the roadway in accordance with Section 2.29.3.5.
4. Maintain existing permanent signing. Repair of signs will be at WSDOT's expense, except those damaged due to the Design-Builder's operations.
5. Keep drainage structures clean to allow for free flow of water.

To protect the rights of abutting property owners, the Design-Builder shall:

1. Conduct the construction so that the least inconvenience as possible is caused to abutting property owners;
2. Maintain ready access to driveways, houses, and buildings along the line of work;

3. Provide temporary approaches to crossing or intersecting roads and keep these approaches in good condition; and
4. Provide another access before closing an existing one whenever the Contract calls for removing and replacing an abutting owner's access.

When traffic must pass through grading areas, the Design-Builder shall:

1. Make cuts and fills that provide a reasonably smooth, even roadbed;
2. Place in advance of other grading work, enough fill at all culverts and bridges to permit traffic to cross;
3. After rough grading or placing any subsequent layers, prepare the final roadbed to a smooth, even surface (free of humps and dips) suitable for use by public traffic; and
4. Settle dust with water, or other dust palliative.

If grading work is on or next to a roadway in use, the Design-Builder shall finish the grade immediately after rough grading and place surfacing materials as the work proceeds.

The Design-Builder shall conduct all operations to minimize any drop-offs (abrupt changes in roadway elevation) left exposed to traffic during nonworking hours. Unless otherwise specified in the Traffic Control Plan, drop-offs left exposed to traffic during nonworking hours shall be protected as follows:

1. Drop-offs up to 0.20 foot may remain exposed with appropriate warning signs alerting motorists of the condition.
2. Drop-offs more than 0.20 foot that are in the traveled way or auxiliary lane will not be allowed unless protected with appropriate warning signs and further protected as indicated in 3b or 3c below.
3. Drop-offs more than 0.20 foot, but no more than 0.50 foot, that are not within the traveled way shall be protected with appropriate warning signs and further protected by having one of the following:
   (a) A wedge of compacted stable material placed at a slope of 4:1 or flatter.
   (b) Channelizing devices (Type I barricades, plastic safety drums, or other devices 36 inches or more in height) placed along the traffic side of the drop-off and a new edge of pavement stripes placed a minimum of 3 feet from the drop-off. The maximum spacing between the devices in feet shall be the posted speed in miles per hour. Pavement drop-off warning signs shall be placed in advance and throughout the drop-off treatment.
   (c) Temporary concrete barrier or other approved barrier installed on the traffic side of the drop-off with 1 foot between the drop-off and the back of the barrier and a new edge of pavement stripe a minimum of 2 feet from the face of the barrier. An approved terminal, flare, or impact attenuator will be required at the beginning of the section. For night use, the barrier shall have standard delineation such as paint, reflective tape, lane markers, or warning lights.

4. Drop-offs more than 0.50 foot not within the traveled way or auxiliary lane shall be protected with appropriate warning signs and further protected as indicated in 3a, 3b, or 3c if all of the following conditions are met:
   (a) The drop-off is less than 2 feet.
   (b) The total length throughout the project is less than 1 mile.
   (c) The drop-off does not remain for more than three calendar days.
   (d) The drop-off is not present on any of the holiday or holiday weekend; and
   (e) The drop-off is only on one side of the roadway.
5. Drop-offs more than 0.50 foot that are not within the traveled way or auxiliary lane and are not otherwise covered by No. 4 above shall be protected with appropriate warning signs and further protected as indicated in 3a or 3c.
6. Open trenches within the traveled way or auxiliary lane shall have a steel-plate cover placed and anchored over them. A wedge of suitable material shall be placed for a smooth transition between the pavement and the steel plate. Warning signs shall be used to alert motorists of the presence of the steel plates.

The Design-Builder shall be responsible for providing adequate safeguards, safety devices, protective equipment, and any other needed actions to protect the life, health, and safety of the public, and to protect property in connection with the performance of the Work covered by the Contract. The Design-Builder shall perform any measures or actions necessary to protect the public and property. The responsibility and expense to provide this protection shall be the Design-Builder's except that, if any, which is to be furnished by WSDOT as specified in other sections of these Specifications. Nothing contained in this Contract is intended to create any third-party beneficiary rights in favor of the public or any individual utilizing the highway facilities being constructed or improved under this Contract.

1-07.23(2) Construction and Maintenance of Detours

Unless otherwise approved, the Design-Builder shall maintain two-way traffic during construction. The Design-Builder shall build, maintain in a safe condition, keep open to traffic, and remove when no longer needed:

1. Detours and detour bridges that will accommodate traffic diverted from the roadway or bridge during construction,
2. Detour crossings of intersecting highways, and
3. Temporary approaches.

The Design-Builder shall pay all costs to build, maintain, and remove any other detours, whether built for the Design-Builder's convenience or to facilitate construction operations. Any detour proposed by the Design-Builder shall conform with the requirements of the Contract. Surfacing and paving shall be consistent with traffic requirements.

Upon failure of the Design-Builder to immediately provide, maintain, or remove detours or detour bridges, WSDOT may, without further notice to the Design-Builder or the Surety,

provide, maintain, or remove the detours or detour bridges and deduct the costs from any payments due or coming due the Design-Builder.

1-07.24 RIGHTS-OF-WAY

WSDOT has supplied sufficient ROW to construct the Project. In the event the Design-Builder requests additional ROW, WSDOT shall cooperate with the Design-Builder, however, all responsibilities for all costs and delays are the responsibility of the Design-Builder.

1-07.25 OPENING OF SECTIONS TO TRAFFIC

WSDOT reserves the right to use and open to traffic any portion of the Work before the Physical Completion date of the entire Project without constituting acceptance of any of the Work. This action will not cause WSDOT to incur any liability to the Design-Builder except as may otherwise be provided in the Contract.

If WSDOT opens any portion of the Project prior to the Physical Completion Date of the entire facility because early opening is specified in the Contract or when the Design-Builder has failed to prosecute the Work continuously and efficiently, any Work remaining shall be performed by the Design-Builder without any right to an increase in the Contract Price. No additional payment will be made for costs incurred by the Design-Builder because of: (1) inconvenience, additional length of travel to conform to established traffic patterns and planned access features; (2) compliance with statutes governing traffic regulations and limitations of loads; or (3) additional flagging costs necessary to protect the operations and the traveling public. The Design-Builder acknowledges and agrees that it took all costs due to traffic using portions of the Work into account when submitting the Proposal, and that the Contract Price includes all such costs.

1-07.26 PERSONAL LIABILITY OF PUBLIC OFFICERS

Neither the Commission, the Secretary, nor any other officer or employee of the State shall be personally liable for any acts or failure to act in connection with the Contract, it being understood that in such matters, they are acting solely as agents of the State.

1-07.27 NO WAIVER OF STATE'S LEGAL RIGHTS

The Design-Builder and the State recognize that the impact of overcharges to the State by the Design-Builder resulting from antitrust law violations by the Design-Builder's suppliers or Subcontractors adversely affects the State rather than the Design-Builder. Therefore, the Design-Builder agrees to assign to the State any and all claims for such overcharges.

1-07.27(1) No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such

interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

1-07.27(2) Custom Does Not Constitute Waiver

No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

1-07.27(3) Waivers Must Be in Writing

No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

1-08 PROSECUTION AND PROGRESS

1-08.1 SUBCONTRACTING

The Design-Builder shall not subcontract work unless WSDOT approves in writing. The Design-Builder shall submit all requests to subcontract on the form WSDOT provides. If WSDOT requests, the Design-Builder shall provide proof that the Subcontractor has the experience, ability, and /or equipment the Work requires. Along with the request to sublet, the Design-Builder shall submit the names of any contracting firms that the Subcontractor proposes to subcontract Work to.

The Design-Builder shall require each Subcontractor to comply with Section 1-07.9 and to furnish all certificates and statements required by the Contract.

Subcontracting shall not:

1. Relieve the Design-Builder of any responsibility to carry out the Contract,
2. Relieve the Design-Builder of any obligations or liability under the Contract and the Contract Bond,
3. Create any Contract between WSDOT and the Subcontractor, or
4. Convey to the Subcontractor any rights against WSDOT.

WSDOT will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the Work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies. However, the Washington State Department of Labor and Industries may determine that RCW 39.12 applies to the employees of such firms identified in 1 and 2 above in accordance with WAC 296-127. If this should occur, the provisions of Section 1-07.9, as modified or supplemented shall apply.

On all projects funded with WSDOT funds, only, the Design-Builder shall certify to the actual amounts paid to any Disadvantaged, Minority, or Women's Business Enterprise firms that were used as Subcontractors, lower tier Subcontractors, manufacturers, regular dealers, or service providers on the Contract. This certification shall be submitted to the WSDOT Engineer annually for the State fiscal year, July 1 through June 30, or through Physical Completion, whichever occurs earliest. The report is due July 20th following the fiscal year end or 20 calendar days after Physical Completion.

On all projects funded with both WSDOT funds and Federal assistance, the Design-Builder shall submit a "Quarterly Report of Amounts Credited as DBE Participation" on a quarterly basis for every quarter in which the Contract is active (work is accomplished) or upon completion of the Project, as appropriate. The quarterly reports are due on the 20th of April, July, October, and January for the four respective quarters. When required, this "Quarterly Report of Amounts Credited as DBE Participation" is in lieu of WSDOT form 421-023, "Annual Report of Amounts Paid as MBE/WBE Participants".

If dissatisfied with any part of the subcontracted work, WSDOT may request in writing that the Subcontractor be removed. The Design-Builder shall comply with this request at once and shall not employ the Subcontractor for any further work under the Contract.

1-08.1(1) Subcontract Completion and Return of Retainage Withheld

On projects receiving Federal assistance, the following procedure shall apply to all subcontracts entered into as a part of this Contract

Requirements

1. The Subcontractor shall make a written request to the Design-Builder for the release of the Subcontractor's retainage or bond.
2. Within 10 business days of the request, the Design-Builder shall determine if the subcontract has been satisfactorily completed and shall inform the Subcontractor, in writing, of the Design-Builder's determination.
3. If the Design-Builder determines that the subcontract has been satisfactorily completed, the Subcontractor's retainage or retainage bond shall be released by the Design-Builder within 10 business days from the date of the written notice.
4. If the Design-Builder determines that the Subcontractor has not achieved satisfactory completion of the subcontract, the Design-Builder must provide the Subcontractor with written notice, stating specifically why the subcontract Work is not satisfactorily completed and what has to be done to achieve completion. The Design-Builder shall release the Subcontractor's retainage or retainage bond within 8 business days after the Subcontractor has satisfactorily completed the Work identified in the notice.
5. In determining whether satisfactory completion has been achieved, the Design-Builder may require the Subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered subcontractors, suppliers of material and equipment, and others involved in the Subcontractor's Work have been paid in full. The Design-Builder may also require any documentation from the Subcontractor that is required by the subcontract or by the Contract between the Design-Builder and WSDOT or by law such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the Subcontractor's Work.
6. If the Design-Builder fails to comply with the requirements of the specification and the Subcontractor's retainage or retainage bond is wrongfully withheld, the Subcontractor may seek recovery against the Design-Builder under applicable prompt pay statutes in addition to any other remedies provided for by the subcontract or by law.

Conditions

1. This clause does not create a contractual relationship between WSDOT and any Subcontractor as stated in Section 1-08.1. Also, it is not intended to bestow upon any Subcontractor, the status of a third-party beneficiary to the Contract between WSDOT and the Design-Builder.

2. This Section of the Contract does not apply to retainage withheld by WSDOT from monies earned by the Design-Builder. WSDOT shall continue to process the release of that retainage in accordance with the requirements and procedures set forth in Chapter 60.28 RCW.

Payment

The Design-Builder will be solely responsible for any additional costs involved in paying retainage to the Subcontractors prior to Completion. Those costs shall be deemed included in the Contract Price.

1-08.2 ASSIGNMENT

The Design-Builder shall not assign all or any part of the Work unless WSDOT approves in writing. WSDOT will not approve any proposed assignment that would relieve the original Design-Builder or Surety of responsibility under the Contract.

Money due (or that will become due) to the Design-Builder may be assigned. If given written notice, WSDOT will honor such an assignment to the extent the law permits. Any such assignment shall be subject to all setoffs, withholdings, and deductions required by law and the Contract.

1-08.3 CONTRACT SCHEDULE

1-08.3(1) General:

The Design-Builder shall create and maintain design and construction schedules for its own use as well as for use by WSDOT. WSDOT will use these schedules to evaluate the Design-Builder's progress in performing the Work. In addition, WSDOT will use the price-loaded schedules to calculate progress payments. (See Section 1-09.9 Payments).

The Design-Builder shall have the right to modify the schedule, as it deems necessary to properly represent the progress of the Work and the remaining Work to Project completion. Notwithstanding the foregoing, WSDOT will retain final authority to accept or reject every schedule described herein. In addition, the Design-Builder will be required to submit the following documents when making changes to any schedule(s) previously accepted by WSDOT:

1. For the Design-Builder initiated changes that result in changes to the sequence and/or duration of its Work, the Design-Builder shall submit a narrative description of the proposed change(s), the justification for implementing the change(s) and a fragment illustrating the change(s).
2. For the Design-Builder initiated changes that impact duration(s), float, or due date(s) of activities for which WSDOT is responsible (i.e. submittal reviews), the Design-Builder must additionally provide advanced written notice of the proposed change(s) to WSDOT at least 30 calendar days in advance of any revised WSDOT delivery date.

WSDOT will allocate its resources for the Project based on the Contract Time. Although the baseline Contract Schedule will use all of the Contract Time, WSDOT will accept a subsequent

schedule update indicating an early Substantial Completion but cannot guarantee that WSDOT's resources will be available to meet said early Substantial Completion. Except as specifically provided in the Contract, no additional compensation will be allowed if the Design-Builder is not able to meet the early Substantial Completion indicated in a schedule update whether due to the unavailability of WSDOT's resources or for any other reasons.

During the course of the project the Design-Builder shall provide a variety of schedules and schedule reports to satisfy specific Contract needs. The Design-Builder shall maintain a Working Schedule and shall submit a baseline Contract Schedule, Preliminary 90-day Look Ahead Schedules, Monthly Update Schedules, and an As-Built Project Schedule each as provided herein.

Within 14 days of the effective date of the Notice to Proceed, the Design-Builder shall submit a Preliminary 90 Day Look-Ahead Schedule as specified in Section 1-08.3(4).

Within 30 days after the effective date of the Notice to Proceed, the Design-Builder shall prepare and submit for WSDOT's acceptance a comprehensive critical path method baseline Contract Schedule for the performance of the work. At least monthly, the Design-Builder shall submit Monthly Update Schedules as specified in Section 1-08.3(6).

Upon completion of the Project, the Design/Builder will submit an As-Built Project Schedule as further described in 1-08.3(7) below.

WSDOT's acceptance of any schedule shall not relieve the Design-Builder from its responsibilities for adjusting work forces, equipment, and work schedules to ensure completion of the Project within the time(s) specified in the Contract.

If WSDOT deems that any schedule fails to provide the information required in this Section 1-08.3, WSDOT may withhold progress payments until the schedule containing the required information has been submitted by the Design-Builder and accepted by WSDOT.

1-08.3(2) Scheduling Requirements:

Except as noted elsewhere in this Section 1-08.3, all schedules shall:

1. Be sufficiently detailed to evaluate the progress of individual activities on a weekly basis;
2. Not have any activity duration greater than 30 calendar days unless approved by WSDOT;
3. Incorporate the following specific restrictions, constraints, activities and milestones:
    a. Start time, completion time, and duration for the entire scope of the Project.
    b. Milestones including design milestones and completion of major Project phases.
    c. Definition of project calendars as they apply to scheduled activities.
    d. Procurement of any materials critical for the performance of specific activities.
    e. Submittal dates and durations for review and approval of Design Documents by WSDOT.

f. Dates for delivery of access to Rights-of-Way by WSDOT and for delivery of WSDOT furnished materials, if any.

g. Schedules for identification and Relocation of Utilities and for the Design-Builder's acquisition of temporary easements and other real property interests necessary in connection with Relocations.

h. Allocations of the Contract Price among the scheduled activities as described in this Section and Section 1-09.9. And

i. Dates for obtaining Governmental Approvals for which the Design-Builder is responsible.

Except as noted elsewhere in this Section 1-08.3, all schedules shall:

4. Show the manner in which the Design-Builder intends to perform the Work from Notice to Proceed through Completion; and

5. Be prepared using precedence diagram methodology, which clearly delineates the relationship between Contract activities. Each activity must include the following calculated or assigned attributes:

   a. The activity ID and Description.

   b. The activity early start, early finish dates, late start, late finish dates and actual start and actual finish dates for completed and in-progress activities.

   c. The activity duration, remaining duration and duration percent complete for in-progress activities.

   d. The activity calendar that identifies work days and non work days.

   e. All activities will have both predecessor(s) and successor(s) assigned except Project start/finish and Project interim milestones may only have one as appropriate.

   f. Total float.

   g. Cost account, periodic and total to date contract value as required in Section 1-08.3(8).

   h. Role(s) - the name(s) of reviewing department(s) / agencies to be furnished by WSDOT.

No schedule shall conflict with any time and sequencing requirement in the Contract. All schedules shall be submitted on suitable, industry standard hard copy media. Except for the Preliminary 90 Day Look-Ahead Schedule, all schedules shall also be submitted in electronic format as described below.

1-08.3(3) Software Requirements:

The scheduling software that will be utilized by WSDOT on this Project is Primavera Project Manger (P3e/c) by Primavera Systems, Inc. Notwithstanding any other provision in the Contract, schedules submitted electronically for this project must be submitted using Primavera Project Manager (P3e/c) version 4.0-compatable *.xer file format.

The Design-Builder shall maintain and provide a computer generated log report listing all changes made between the previous schedule and any updated schedule using schedule comparison software, such as Claim Digger or an approved equal. The report shall identify the name of the previous schedule and name of the updated schedule being compared.

This report will show changes for:

- Added and Deleted Activities, Original Durations, Remaining Durations
- Activity Percent Complete, Total Float, Actual Starts/Finishes
- Calendars, Descriptions, Constraints (added, deleted or changed)
- Budgeted and total to date contract earnings
- Added/Deleted Relations, Changed Driving Relations
- Changed Relation Lags, Changed Critical Status.

If the Design-Builder wishes to use schedule comparison software other than Claim Digger, it will first submit for approval, the details of its preference, together with independent verification of the accuracy of the comparison information generated.

1-08.3(3).1 Schedule Software Settings and Restrictions

1. Activity Constraints: Date constraint(s), other than those required by the Contract, will not be allowed unless approved by WSDOT. The Design-Builder shall identify any constraints proposed and provide an explanation for the purpose of the constraint in the Narrative Report. With the exception of the Notice to Proceed, Contract milestone activities, if any, and Physical Completion, no activities may be open-ended; each activity shall have predecessor and successor ties.
2. Lags: Lags shall not be used when the creation of an activity will perform the same function (e.g., concrete cure time). Lag durations contained in the Contract Schedule shall not have a negative value. The Design-Builder shall identify any lag proposed and provide an explanation for the purpose of the lag in the Narrative Report.
3. Default Progress Data Disallowed: Actual Start and Actual Finish dates shall not be automatically updated by default mechanisms that may be included in the scheduling software system. Actual Start and Actual Finish dates on the schedule shall match the dates contained in the Design-Builder's QA/QC documentation. Work activities will be updated by actual work progression rather than being cash flow driven. Actual labor and equipment hours used on activities shall be derived from the Design-Builder's contemporaneous Project diaries and daily reports.
4. Software Settings:
   (a) The updating of "percent of payment" and "actual progress to date" of any activity shall be independent functions; program features that calculate one of these parameters from the other shall be disabled.
   (b) Schedule calculations and out-of-sequence progress (if applicable) shall be handled through retained logic, not progress override.

(c) All activity durations and float values will be shown in days; time will not be shown in the duration display. Date format will be dd-mm-yy (i.e., 11-DEC-02).

(d) Duration type shall be "Fixed Duration and Units".

(e) Percent complete type shall be "Duration".

(f) Activity type will be set to "Task Dependent".

5. Calendars: The Design-Builder shall not change, add or delete calendars used in the Baseline Contract Schedule, or any Working or Monthly Contract Schedule Update, without prior agreement from WSDOT.
6. Resource curves (if used) will be liner unless otherwise agreed to by WSDOT.

1-08.3(4) Preliminary 90 Day Look-Ahead Schedule:

The Design-Builder shall submit a Preliminary 90 Day Look-Ahead Schedule within 14 calendar days of Notice to Proceed. The purpose of this schedule is to facilitate early project planning and coordination and to provide a vehicle for progress payments prior to acceptance of the Design-Builder's baseline Contract Schedule. Accordingly, this schedule shall be price-loaded and must be sufficiently detailed to facilitate an understanding of the Design-Builder's mobilization plans and early work and the consistency of those plans with the overall Project schedule goals.

This schedule may be developed and submitted in manual, bar-chart format and the price loading may be accomplished by spreadsheet software compatible with Microsoft Excel version 2002. This schedule must show Mobilization activities which shall be price loaded consistent with Section 1-09.7. Other activities must be price loaded consistent with Section 1-08.3(8). Notwithstanding the foregoing, the maximum aggregate price loading (excluding Mobilization) that will be applied to the 90 Day Look-Ahead Schedule is $5,000,000.00.

Upon acceptance of the Preliminary 90 Day Look-Ahead Schedule, said schedule will be used for monthly progress updating and progress payments until the Design-Builder's baseline Contract Schedule is accepted. In this regard, monthly updates and progress payments using the Preliminary 90 Day Look-Ahead Schedule will conform as closely as practical to the detail requirements in the update and payment provisions of this Section 1-08.3 and of Section 1-09.9.

1-08.3(5) Baseline Contract Schedule:

The baseline Contract Schedule shall be price loaded, and shall include, in addition to construction activities, activities for design work (including all aspects of design review), submittal review, Utility Relocations, and other activities required to be performed by the Design-Builder or others in order to achieve Completion.

The initial schedule submittal will be known as "Baseline Candidate 0." Subsequent re-submittals will be called Candidate Rev 1, 2, 3, 4 as required.

The baseline Contract Schedule shall reflect use of all Contract Time, shall not provide for early Substantial Completion, and must conform to any milestone schedule included in the proposal unless WSDOT directs otherwise. Schedule activity float is the number of days the activity can be delayed without delaying the Project Substantial Completion and/or any Contract milestone dates. All float contained in the baseline Contract Schedule shall be considered a project

resource available to either party or both parties as needed. The baseline Contract Schedule and successor Monthly Contract Schedule Updates, when accepted by WSDOT, will form the basis of payment for the Project as described below.

Upon submission of the baseline Contract Schedule, WSDOT will have 30 calendar days to review and accept/reject the submittal. If rejected, the Design-Builder will have 14 calendar days to re-submit the baseline Contract Schedule. WSDOT will then have 14 calendar days to review and accept/reject the re-submittal. Each subsequent re-submittal will follow the 14 calendar day time requirement.

If the baseline Contract Schedule is not accepted within 4 months of the Notice to Proceed date, the monthly progress payment may be withheld until said schedule has been accepted by WSDOT.

Once accepted, the baseline Contract Schedule shall not be modified in any way. It will be archived and a copy known as the "Working Schedule" will be used on the Project. Working Schedules will be used to report progress, logic and/or activity changes, earnings, and will be thebasis from which to measure delay as further described below.

1-08.3(6) Monthly Update Schedules:

At least monthly, the Design-Builder shall update the current Working Schedule based on progress to date, changes to work sequence and/or activity durations and earnings for Work completed and in place. These updates will be known as Monthly Update Schedules. Upon acceptance of a Monthly Update Schedule, said schedule will be archived with the designation "Monthly Update Schedule (#)" and a copy will then become the new current Working Schedule for the Project from that period forward to the next update.

The Design-Builder may update a current Working Schedule at any time that it deems appropriate. The Design-Builder shall update the current Working Schedule within 14 calendar days of receipt of a written request from WSDOT. At a minimum, on the first day of every month following the Notice to Proceed, the Design-Builder shall submit to WSDOT a Monthly Update Schedule.

The monthly schedule update shall include:

- Determine and highlight critical path Work from initial plans as Work progresses
- Identify progress against schedule for each identified Work item
- Forecast completion dates from current progress
- Highlight rescheduled Work in any area, which is out of the required sequence
- Determine any physical area that requires more resources than originally allocated
- Forecast future conflicts in any area
- Provide estimates of time and dollars required at the lowest Work element tracked, based upon current expenditures versus schedule
- Provide the capability of random inquiry concerning the status of any Work element in terms of schedule and dollars.

The Design-Builder shall submit Monthly Update Schedules in hard copy and electronic format as described below:

(a) One (1) electronic *.xer format file of the entire schedule as submitted on CD-Rom disk.

(b) One (1) Gantt Chart of the complete as-submitted schedule on Architectural E-size media (36-inch x 44-inch).

(c) One (1) Tabular report of all activities start and finish dates compared to

1. The previous month's Approved Monthly Update
2. The accepted Baseline Schedule

(d) One (1) Computer-generated Schedule Comparison Log Report based on

1. The previous month's Approved Monthly Update
2. The accepted Baseline Schedule

The Design-Builder shall also include with each Monthly Update Schedule a narrative progress summary describing:

(a) Plans for the forthcoming report period, including Design Document submittals,

(b) All potential delays and problems, their estimated price and schedule impacts (if any), and an explanation of corrective action taken or proposed and its expected effect,

(c) Percentage of total schedule period consumed,

(d) Tabular reports listing all activities with 10 days or less float, whether on, ahead of or behind schedule,

(e) Cumulative schedule productivity this period and to date by each major design and construction activity,

(f) Goals for the next reporting period (such as progress on activities, problems or mediation),

(g) Changes to activity logic and durations

(h) Discussion of activities with more than 20 days variance from Baseline Finish Dates

(i) Discussion of schedule recovery plan (if appropriate)

(j) 60 day look ahead narrative report on all Governmental Approvals required.

The Design-Builder shall document and make appropriate changes to the Monthly Update Schedules to allow said schedules to more accurately reflect progress to date and the remaining work of the Contract. At a minimum, the Design-Builder will examine any activity, or chain of activities, whose finish date differs more than 20 calendar days from the previously accepted schedule dates. The narrative progress summary submitted with the Monthly Update Schedule shall describe in detail the reason fro all changes in logic and/or duration. In addition, the

Design-Builder shall explain reasons for not updating/changing any activity with a 20 day variance in finsh date that is not updated or changed.

The Design-Builder is expected to do all things necessary in order to achieve Substantial Completion by the agreed upon date. Accordingly, it is anticipated the Design-Builder will take special measures as necessary to meet the Substantial Completion date. These measures may include such things as applying additional resources, working longer or additional shifts or other measures chosen by the Design-Builder. If the Monthly Update Schedule includes such special measures needed to meet the Substantial Completion date, the accompanying narrative shall describe those measures and their anticipated impact. Should the Design-builder at any time fail to comply with the Monthly Update Schedule requirements of this Section, WSDOT reserves the right to withhold further progress payments starting the pay period following the Design-Builder's failure to comply with the requirement(s) until such time that a Monthly Update Schedule is submitted and accepted by WSDOT. All costs incurred by the Design-Builder in preparing and achieving the Monthly Update Schedules shall be borne by the Design-Builder and shall not result in a change to the Contract Price.

1-08.3(7) Final As-Built Schedule:

An as-built contract schedule shall be submitted within 30 calendar days following the Substantial Completion date. All activities shall have accurate start and completion dates and all associated contract values paid completely. All dates shall be consistent with dates contained in the Design-Builder's QA/QC documentation. In addition, the total of all prices in the schedule must be reconciled to the total amount paid to the Design-Builder.

This Final As-Built Schedule submittal shall include:

1. One (1) electronic .xer (in the format noted above) file of the As-Built schedule (Media CD +/- R).
2. One (1) paper copy of the schedule on Architectural E size media (36-inch x 44-inch).
3. One (1) Final schedule comparison using the above mentioned comparison software which will include all categories submitted with the monthly narrative. This comparison will be between the As-Built Schedule and the Baseline Schedule.

1-08.3(8) Price Loading:

The periodic compensation due the Design-Builder throughout the performance of the Contract shall be calculated using the price loaded baseline Contract Schedule or Monthly Update Schedule, as applicable, in effect during each respective payment period. In developing the baseline Contract Schedule, the Design-Builder will apportion its estimated (bid) revenue across multiple activities that, in aggregate, represent all of the Contract deliverables and the approved Contract Price.

The Design-Builder shall devise an account structure representing the major categories of the Work in consultation with WSDOT. The Design-Builder shall allocate the total Contract Price among the cost accounts as further described below. Each account will include one or more price-loaded activities scheduled on the baseline Contract Schedule. The price for each activity shall accurately represent the value of its Work identified in the activity. The price-loaded

activities are not to be front-end loaded and no single activity may be assigned a value greater than $500,000. The sum of the prices of all activities in the baseline Contract Schedule shall equal the total Contract Price. Prices assigned to activities in the baseline Contract Schedule shall include, and reconcile with, prices included with the 90 Day Look-Ahead Schedule. Once the baseline Contract Schedule has been accepted, no changes to any allocated amount may be made without WSDOT approval.

The Design-Builder shall select a price loading method and scheme compatible with Primavera Project Manager P3e/c version 4.0. The price-loading structure will be reviewed by WSDOT for concurrence. . The Design-Builder's method must have the ability to, at the schedule activity level, track each price-loaded activity value as a "budget" against periodic, total to date, and final contract earnings for that activity.

The Contract includes provisions for payment of Mobilization that is expected to defray the Design-Builder front-end costs. Payment for Mobilization will be calculated as provided in Section 1-09.7. The Design-Builder shall price load one or more mobilization activities such that the budget allocation for these items in compliance with Section 1-09.7 Section 1-09.7

Activities for Force Account Work and Materials on Hand will not be cost loaded. Mobilization, Materials on Hand and Force Account Work will be paid as provided elsewhere in the contract. Although they will not be price loaded, activities representing Force Account Work will be added to the Monthly Contract Schedule Updates. Agreed price Change Order work will be represented by price loaded schedule activities and added to each applicable Monthly Contract Schedule Update. The activities and their assigned price (including Overhead and Profit) will be included in the Change Order agreement.

1-08.4 PROSECUTION OF WORK

1-08.4(1) General

The Design-Builder shall begin work within 14 calendar days from the date of Notice to Proceed, unless otherwise approved in writing. The Design-Builder shall diligently pursue the Work to Completion within the time specified in the Contract. Voluntary shutdown or slowing of operations by the Design-Builder shall not relieve the Design-Builder of the responsibility to complete the Work within the time(s) specified in the Contract.

The Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve completion within the specified time and in accordance with the Contract Schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts, overtime operations, Sundays and Holidays) as may be necessary to achieve such goal, all at the Design-Builder's own expense, except as otherwise specifically provided in the Contract.

1-08.4(2) Prerequisites for Start of Construction

The Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed.

1. All preconstruction requirements of the Quality Management Plan have been completed.
2 All Governmental Approvals (including environmental permits) necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals which are a prerequisite to commencement of such construction shall have been performed.
3 All identified environmental requirements and commitments have been met, including but not limited to, installation of construction fencing at all sensitive areas and installation of all applicable TESC measures.
4. All required insurance and bonds are in full force and effect.
5. WSDOT or the Design-Builder shall have obtained all necessary rights of access for such portion of the Project.
6. The Design-Builder shall have completed all required review in accordance with Section 1-05.3.
7. All applicable Traffic Control Plans have been approved by WSDOT.

1-08.5 TIME FOR COMPLETION

The Design-Builder shall complete all Work necessary to achieve Substantial Completion within the Contract Time, and all work necessary to achieve Physical Completion and Completion of the Project within the times specified in the Contract. The grounds upon which the Design-Builder may obtain a Change Order granting a time extension are set forth in Section 1-08.8.

1-08.5(1) Substantial Completion

1-08.5(1).1 Notice by Design-Builder

As a pre-requisite to Substantial Completion, Design-Builder shall provide notice to WSDOT when all of the following have occurred:

(a) Design-Builder has completed all Site Work such that WSDOT and the traveling public have full and unrestricted use and benefit of the facilities from both the operational and safety standpoint, and only minor incidental Work, replacement of temporary substitute facilities, or correction or repair remains for the Physical Completion of the total Contract;

(b) Design-Builder has ensured that all Work has been performed in accordance with the requirements of the Contract Documents;

(c) Design-Builder has ensured that the facilities may be operated without damage to the Project or any other property on or off the Project Site, and without injury to any Person;

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

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

1-08.5(1).2 Response by WSDOT

Promptly after receipt of the above referenced notice, and in no event later than 30 calendar days thereafter, WSDOT shall advise the Design-Builder in writing of any of the following of which WSDOT has knowledge: (a) defects in the Work, and/or (b) deficiencies in the Project relating to the items described in clauses (a) through (e) of Section 1-08.5(1).1, and/or (c) deviations of any installed equipment, materials and workmanship from the requirements of the Contract Documents. The Design-Builder shall, at it own cost and expense, promptly correct such defects, deficiencies and deviations.

1-08.5(1).3 Requirements for Substantial Completion

Substantial Completion shall be deemed to have occurred when:

(a) The Design-Builder has corrected, pursuant to the provisions of Section 1-08.5(1).2 all defects, deficiencies and deviations with respect to the Project and WSDOT has notified the Design-Builder in writing of its acceptance (or waiver pending Physical Completion) of such corrections; provided that Final Cleanup, initial planting and the items described in Section 1-08.5(2) shall not be required to be performed as a condition to Substantial Completion;

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

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

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

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

Upon compliance with all requirements, the WSDOT Engineer will give the Design-Builder written notice of the Substantial Completion Date.

1-08.5(2) Physical Completion

The Design-Builder shall achieve Physical Completion within 90 calendar days of Substantial Completion. Physical Completion shall be deemed to have occurred when:

(a) Design-Builder has completed all construction Work, including initial planting, correction of any defects, deficiencies and deviations with respect to the Project which were waived pending Physical Completion, and completion of all Punch List items.

(b) Design-Builder has satisfied all conditions to acceptance by Utility Owners;

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

(d) Design-Builder has furnished the Project Design Documentation in compliance with Section 2.12.5.4

The Design Builder shall provide notice to WSDOT when all of the above referenced conditions have been met. Upon receipt of the notice, WSDOT will perform Final Inspection pursuant to Section 1-05.11. Should WSDOT identify any defects or deficiencies in the Work, the Design-Builder shall immediately remedy such defects or deficiencies at no additional cost. Upon full compliance with items (a) through (d) listed above in this Section, the WSDOT Engineer will give the Design-Builder written notice of the Physical Completion Date for the Project.

1-08.5(3) Completion

WSDOT will give the Design-Builder written notice of the Completion Date of the Contract after all of the Design-Builder's obligations under the Contract (with the exception of warranty work) have been performed by the Design-Builder. Completion of the Contract shall occur within 60 calendar days of Physical Completion. The following events must occur before the Completion Date can be established:

(a) The Work on the Project must be complete pursuant to the Contract Documents;

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

1-08.6 SUSPENSION OF WORK

WSDOT may, at any time and for any reason, order the Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that WSDOT deems appropriate for the convenience of WSDOT. Such a suspension shall be deemed a suspension for convenience.

WSDOT may order suspension of all or any part of the Work under the Contract Documents if the Design-Builder does not comply with the Contract or WSDOT orders. Such a suspension shall be deemed a suspension for cause.

When ordered by WSDOT to suspend or resume work, the Design-Builder shall do so immediately.

If the performance of all or any part of the Work is suspended, delayed, or interrupted for an unreasonable period of time by an act of WSDOT in the administration of the Contract, or by failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), WSDOT will make an adjustment for any increase in the cost and time for the performance of the Contract (excluding profit) necessarily caused by the suspension, delay, or interruption. However, no adjustment will be made for any suspension, delay, or interruption if (1) the performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Design-Builder, or (2) an equitable adjustment is provided for or excluded under any other provision of the Contract.

If the Design-Builder believes that the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time and such suspension, delay, or interruption is the responsibility of WSDOT, the Design-Builder shall immediately submit a written notice of protest to WSDOT as provided in Section 1-04.5. No adjustment shall be allowed for any costs incurred more than 10 calendar days before the date WSDOT receives the Design-Builder's written notice of protest. If the Design-Builder contends damages have been suffered as a result of such suspension, delay, or interruption, the protest shall not be allowed unless the protest (stating the amount of damages) is asserted in writing as soon as practicable, but no later than the date of the Design-Builder's signature on the Final Contract Voucher Certification. The Design-Builder shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit WSDOT to have access to those records and any other records as may be deemed necessary by WSDOT to assist in evaluating the protest.

WSDOT will determine if an equitable adjustment in cost and/or time is due as provided in this Section. The equitable adjustment for increase in costs, if due, shall be subject to the limitations provided in Section 1-09.4, provided that no profit of any kind will be allowed on any increase in cost necessarily caused by the suspension, delay, or interruption.

Request for extensions of time will be evaluated in accordance with Section 1-08.8.

WSDOT's determination as to whether an adjustment should be made will be final as provided in Section 1-05.1.

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

1-08.7 MAINTENANCE DURING SUSPENSION

Before and during any suspension (as described in Section 1-08.6) the Design-Builder shall protect the Work from damage or deterioration. Suspension shall not relieve the Design-Builder from anything the Contract requires unless this Section states otherwise.

At no expense to WSDOT, the Design-Builder shall provide through the construction area a safe, smooth, and unobstructed roadway for public use during suspension (as required in Section 1-07.23 or the Technical Specifications). This may include a temporary road or detour.

If WSDOT determines that the Design-Builder failed to pursue the Work diligently before the suspension, or failed to comply with the Contract or WSDOT's orders, then the Design-Builder shall maintain the temporary roadway in use during suspension. In this case, the Design-Builder shall bear the maintenance costs. If the Design-Builder fails to maintain the temporary roadway, WSDOT will perform the maintenance and deduct all resulting costs from payments due to the Design-Builder.

If WSDOT determines that the Design-Builder has pursued the Work diligently before the suspension, then WSDOT will do the routine maintenance work (and bear its cost). This WSDOT-provided maintenance work will include only routine maintenance of:

1. The traveled way, auxiliary lanes, shoulders, and detour surface
2. Roadway drainage along and under the traveled roadway or detour, and

3. All barricades, signs, and lights needed for directing traffic through the temporary roadway or detour in the construction area.

The Design-Builder shall protect and maintain (and bear the costs of doing so) all other Work in areas not used by traffic.

After any suspension during which WSDOT has done the routine maintenance, the Design-Builder shall accept the traveled roadway or detour as is when work resumes. The Design-Builder shall make no claim against WSDOT for the condition of the roadway or detour.

After any suspension, the Design-Builder shall retain all responsibilities the Contract assigns for repairing or restoring the roadway, its slopes, and its drainage system to conform to the approved Design Documents.

1-08.8 EXTENSIONS OF TIME

The Design-Builder shall submit any requests for time extensions to WSDOT in writing no later than 14 calendar days after the delay occurs. The request shall be limited to demonstrable delays in the Critical Path attributable to the change or event giving rise to the request. To be considered by WSDOT, the request shall be in sufficient detail (as determined by WSDOT) to enable WSDOT to ascertain the basis and amount of the time requested. The Design-Builder shall be responsible for preparing a Contract Schedule update demonstrating to WSDOT's reasonable satisfaction that the event or circumstance: (1) had a specific impact on the Project Critical Path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the Work or other reasonable alternatives. If a request for time extension, combined with previous extension requests, equals 20 percent or more of the original Contract Time, the Design-Builder shall provide with the request a written consent of the Surety or Sureties if WSDOT requests such consent. In evaluating any request, WSDOT will consider how well the Design-Builder used the time from Notice to Proceed up to the point of the delay and the effect the delay has on any completion times included in the Contract Documents.

Extensions of Contract Time will be allowed only for that period equal to the time WSDOT determines the Critical Path was delayed because of:

1. Any action, neglect, or default of WSDOT, its officers, or employees, or of any other contractor or design-builder employed by WSDOT
2. Fire or other casualty for which the Design-Builder is not responsible
3. Strikes
4. Any other conditions for which these Specifications permit time extensions such as:
   (a) In Section 1-04.4 if a change directed by WSDOT increases the time necessary to achieve Substantial Completion;
   (b) In Section 1-04.5 if increased time is part of a protest that is found to be a valid protest
   (c) In Section 1-04.7 if a changed condition is determined to exist which caused a delay in achieving Substantial Completion

(d) In Section 1-07.13 if the performance of the Work is delayed as a result of damage for which the Design-Builder is not responsible under the Contract

(e) In Section 1-07.17 with respect to Utility Delays (applicable to Category #2 Utilities only) and Major Underground Utilities not identified with Reasonable Accuracy

(f) In Section 1-07.24 if a delay results because of WSDOT's failure to provide access to Right-of-Way necessary for the construction by the date specified in the Contract

(g) In Section 1-08.6 if the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of WSDOT; or

(h) In Section 1-09.11 if a dispute or claim also involves a delay in completing the Contract and the dispute or claim proves to be valid.

5. Exceptional causes not specifically identified in items 1 through 4, provided the request letter proves the Design-Builder had no control over the cause of the delay and could have done nothing to avoid or mitigate the delay, and that the delay did not result from a risk allocated to the Design-Builder under the Contract.

The Design-Builder shall not be entitled to an extension of the Contract Time for Project delays unless such delays impact the ability of the Design-Builder to achieve Substantial Completion by the specified deadline. Except as specifically provided in Section 1-08.11(4), delays that impact the Design-Builder's ability to achieve planned early achievement of a Substantial Completion Date shall not be the subject of a time extension.

WSDOT will not allow a time extension for any cause listed above if it resulted from the Design-Builder's default, collusion, action or inaction, or failure to comply with the Contract.

WSDOT considers the Contract Time to be sufficient to do all the Work. For this reason, WSDOT will not grant a time extension for:

- Unsuitable Weather
- Failure to obtain all materials and workers
- Changes, protest, or changed conditions (Section 1-04) that do not delay the completion of the Work or prove to be an invalid or inappropriate time extension request
- Delays caused by WSDOT's disapproval of Design or Released For Construction Documents as provided in Section 1-05.3 or the Technical Specifications
- Rejection of faulty or inappropriate equipment as provided in Section 1-05.9
- The Design-Builder's failure to meet the requirements of the Contract Documents
- Delays related to Relocations, except as provided in Section 1-07.17
- Delays that do not affect the Design-Builder's ability to meet the Substantial Completion deadline

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

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

1-08.9 LIQUIDATED DAMAGES

1-08.9(1) Liquidated Damages for Delay

Time is of the essence of the Contract. Delays inconvenience the traveling public, obstruct traffic, interfere with and delay commerce, and increase risk to highway users. Delays also cost tax payers undue sums of money, adding time needed for administration, engineering, inspection, and supervision.

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

Accordingly, the Design-Builder agrees:

1. To pay (according to the following formula) liquidated damages for each day of delay in achieving Substantial Completion beyond the deadline established therefore, and
2. To authorize WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder.

LIQUIDATED DAMAGES FORMULA

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

where:	LD	=	liquidated damages per calendar day (rounded to the nearest dollar)
	C	=	original Contract Price
	T	=	original time for Substantial Completion

The Design-Builder shall achieve Physical Completion within 90 calendar days of Substantial Completion and Completion within 60 calendar day after Physical Completion. For delays by the Design-Builder in meeting the deadlines for Physical Completion and Completion following achievement of Substantial Completion, WSDOT shall be entitled to recover from the Design-Builder WSDOT's actual direct costs incurred as the result of such delay, including personnel costs, administrative costs, consulting fees and overtime expenses.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Design-Builder from further obligations and liabilities pursuant to the Contract.

1-08.9(2) Liquidated Damages for Failure to Open Lanes

Lane closures at times and in locations not consistent with the requirements of the Contract result in traffic obstructions, inconvenience to the public, and delay of vital commerce, and increase risk to highway users. All of these consequences result in direct and indirect financial impacts to WSDOT and taxpayers. These impacts are not readily calculable and therefore, the parties agree that, in addition to any liquidated damages that may be payable by the Design-Builder under Section 1-08.9(1), the following liquidated damages shall apply for failure to open lanes:

1. To pay $5000.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that mainline I-405 lanes are closed beyond the scheduled opening time specified in the Section 2.22.4.2.1.9.
2. To pay $2000.00 liquidated damages per lane per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that a lane is closed on mainline I-405 beyond the scheduled opening time specified in the Section 2.22.4.1.3.
3. To pay $250.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that a ramp is closed beyond the scheduled opening time specified in the Section 2.22.4.1.3.
4. To pay $5500.00 liquidated damages per night for additional ramp closures beyond the number of ramp closures allowed in Section 2.22.4.2.2.7 or in the Proposal, whichever is fewer.
5. To pay $10,000.00 liquidated damages per weekend for additional weekend ramp closures beyond the number of weekend ramp closures allowed in Section 2.22.4.2.2.7 or in the Proposal, whichever is fewer.
6. To pay $1000.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that NE 116th Street roadway is closed beyond the scheduled opening time specified in the Section 2.22.4.2.3.3.
7. To pay $25,000.00 liquidated damages per weekend for additional weekend closures of NE 116th Street beyond the number of closures allowed in Section 2.22.4.2.3.3 or in the Proposal, whichever is fewer.
8. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

1-08.9(3) Liquidated Damages for ITS Disruptions

Unplanned disruptions to the Intelligent Transportation System (ITS) will result in impacts to the traveling public, increase fuel consumption, vehicle operating costs, pollution, and other inconveniences and harm far in excess of those resulting from delay of most projects.

Accordingly, the Design-Builder agrees:

1. To pay $250.00 liquidated damages per 15 minutes for each 15 minute period that fails to restore the proper operation of an existing ITS element following an unplanned disruption as specified in the Intelligent Transportation System (ITS) Special Provisions in Appendix B1.

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

1-08.9(4) Liquidated Damages for Failure to Implement TESC/SPCC Measures

Temporary erosion and sediment control and spill prevention control and countermeasures plans and narratives shall be prepared and implemented in accordance with the WSDOT Highway Runoff Manual, Chapter 6, the WSDOT Standard Specifications, Section 1-07.15 and Division 8, and the project Permits. The TESC plans and narrative shall be prepared under the direction of, and signed and sealed by the Drainage Design Lead Engineer, a Professional Engineer licensed in the State of Washington.

Failure of the Design-Builder to comply with the Referenced Standards and Permits for TESC and SPCC can result in extensive damage to the natural resources of the State, with long term negative effects on water resources, wildlife, habitat and public use. Non-compliance will also cost taxpayers undue sums of money, adding costs needed for administration, analysis, engineering, inspection, and supervision.

Because WSDOT finds it impractical to calculate the actual cost of non-compliance with the Referenced Standards and Permits, it has adopted the following formulas to calculate liquidated damages for failure to comply with the temporary erosion and sediment control and spill prevention control and countermeasures requirements:

- Failure by the Design-Builder to implement or correct damaged and/or inadequate TESC/SPCC measures timely shall result in liquidated damages for each day that the Design-Builder fails to take the appropriate action, as follows:

$$LD1 = \frac{0.10C}{T}$$

where: LD1 = liquidated damages per calendar day (rounded to the nearest dollar)

C = original Contract Price

T = original time for Substantial Completion

- The number of days liquidated damages assessed will be measured by the number of calendar days between 24 hours after the Design-Builder is notified by WSDOT of the non-existent, inadequate, or damaged TESC/SPCC measures, or on the day the Design-Builder begins Construction on a particular stage of work without implementing the approved plan, to the day the issue is resolved to the satisfaction of WSDOT.

- In some cases, the Design-Builder may need to correct inadequate or failing TESC/SPCC measures immediately to avoid damages to natural resources, non-compliance events, or permit violations. If WSDOT notifies the Design-Builder to take such immediate corrective actions, the Design-Builder shall repair the inadequate or failing TESC/SPCC measures within one hour of such notice.

- Upon failure of the Design Builder to immediately correct the damaged or inadequate

TESC/SPCC measures, WSDOT may, without further notice to the Design-Builder or the Surety, make necessary corrections, in order to resolve the issue in a timely manner and may deduct the cost of making such corrections from any payment due or to become due the Design-Builder and/or obtain reimbursement from the Design-Builder for such cost.

Accordingly, the Design-Builder agrees:

1. To pay liquidated damages for each day of non-compliance with TESC/SPCC requirements as described above, and
2. To authorize WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder.

1-08.10 TERMINATION OF CONTRACT

1-08.10(1) Termination for Default

WSDOT may terminate the Contract upon the occurrence of any one or more or the following events:

1. If the Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment
2. If the Design-Builder refuses or fails to prosecute the Work with such diligence as will ensure its Substantial Completion within the original Contract Time and any extensions of time which may have been granted to the Design-Builder by Change Order or otherwise
3. If the Design-Builder is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Design-Builder or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Design-Builder, or if a trustee or receiver is appointed for the Design-Builder or for any of the Design-Builder's property on account of the Design-Builder's insolvency, and the Design-Builder or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within 15 calendar days of receipt of a request for assurance from WSDOT
4. If the Design-Builder disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction
5. If the Design-Builder disregards the authority of WSDOT
6. If the Design-Builder performs Work which deviates from the Contract, and neglects or refuses to correct rejected Work; or
7. If the Design-Builder otherwise violates in any material way any provisions or requirements of the Contract.

Once WSDOT determines that sufficient cause exists to terminate the Contract, written notice shall be given to the Design-Builder and its Surety indicating that the Design-Builder is in breach of the Contract and that the Design-Builder is to remedy the breach within 15 calendar days after

the notice is sent. In case of an emergency such as potential damage to life or property, the response time to remedy the breach after the notice may be shortened. If the remedy does not take place to the satisfaction of WSDOT, WSDOT may, by serving written notice to the Design-Builder and Surety either:

1. Transfer the performance of the Work from the Design-Builder to the Surety; or
2. Terminate the Contract and at WSDOT's option prosecute it to Completion by contract or otherwise. Any extra costs or damages to WSDOT shall be deducted from any money due or coming due to the Design-Builder under the Contract.

Should WSDOT elect to terminate the Contract, the Design-Builder shall immediately deliver to WSDOT possession of any or all Design Documents of whatsoever nature and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files and other documents and facilities related to the Project that WSDOT deems necessary for completion of the Work. WSDOT shall have the unequivocal right to use said documents to complete the Work. Irrespective of the termination, the Design-Builder shall remain fully responsible and liable for all errors or omissions of any nature in the Design Documents as said errors or omissions exist at the time of termination.

If WSDOT elects to pursue one remedy, it will not bar WSDOT from pursuing other remedies on the same or subsequent breaches.

Upon receipt of a notice that the Work is being transferred to the Surety, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons satisfactory to WSDOT to finish the Work and provide the materials without termination of the Contract. Such employment shall not relieve the Surety of its obligations under the Contract and the bond. If there is a transfer to the Surety, payments on estimates covering Work subsequent to the transfer shall be made to the extent permitted under law to the Surety or its agent without any right of the Design-Builder to make any claim.

If WSDOT terminates the Contract or provides such sufficiency of labor or materials as required to complete the Work, the Design-Builder shall not be entitled to receive any further payments on the Contract until all the Work contemplated by the Contract has been fully performed. The Design-Builder shall bear any extra expenses incurred by WSDOT in completing the Work, including all increased costs for completing the Work, and all damages sustained, or which may be sustained, by WSDOT by reason of such refusal, neglect, failure, or discontinuance of Work by the Design-Builder. If liquidated damages are provided in the Contract, the Design-Builder shall be liable for such liquidated damages until such reasonable time as may be required for Physical Completion of the Work. After all the Work contemplated by the Contract has been completed, WSDOT will calculate the total expenses and damages for the completed Work. If the total expenses and damages are less than any unpaid balance due the Design-Builder, the excess will be paid by WSDOT to the Design-Builder. If the total expenses and damages exceed the unpaid balance, the Design-Builder and the Surety shall be jointly and severally liable to WSDOT and shall pay the difference to WSDOT on demand.

In exercising WSDOT's right to prosecute the Physical Completion of the Work, WSDOT shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. In the event that WSDOT or the Surety takes bids for remedial Work or Physical Completion of the Project, the Design-Builder shall not be eligible for the award of such contracts.

In the event the Contract is terminated, the termination shall not affect any rights of WSDOT against the Design-Builder. The rights and remedies of WSDOT under the Termination Clause are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Design-Builder by WSDOT will not release the Design-Builder from liability.

If a notice of termination for default has been issued and it is later determined for any reason that the Design-Builder was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 1-08.10(2). The foregoing shall include a termination for default predicated upon a failure to prosecute the Work where the underlying delay was found to be excusable under the provisions of Section 1-08.8.

1-08.10(2) Termination for Public Convenience

WSDOT may terminate the Contract in whole, or from time to time in part, whenever:

1. The Design-Builder is prevented from proceeding with the Work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
2. The Design-Builder is prevented from proceeding with the Work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of persons or agencies other than the Design-Builder; or
3. WSDOT determines that such termination is in the best interests of WSDOT.

1-08.10(3) Termination for Public Convenience Payment Request

After receipt of a notice of Termination under Section 1-08.10(2), the Design-Builder shall submit to WSDOT a request for costs associated with the termination. The request shall be prepared in accordance with the claim procedures outlined in Sections 1-09.11 and 1-09.12. The request shall be submitted promptly but in no event later than 90 calendar days from the effective date of termination.

The Design-Builder agrees to make all records available to the extent deemed necessary by WSDOT to verify the costs in the Design-Builder's payment request.

1-08.10(4) Payment for Termination for Public Convenience

Whenever the Contract is terminated in accordance with Section 1-08.10(2), payment will be made in accordance with Section 1-09.5 for the actual Work performed.

If WSDOT and the Design-Builder cannot agree as to the proper amount of payment, then the matter will be resolved as outlined in Section 1-09.13 except that, if the termination occurs because of the issuance of a restraining order as provided in Section 1-08.10(2), the matter will be resolved through mandatory and binding arbitration as described in Sections 1 -09.13(3) A and B, regardless of the amount of the claim.

1-08.10(5) Responsibility of the Design-Builder and Surety

Termination of the Contract shall not relieve the Design-Builder of any responsibilities under the Contract for Work performed. Nor shall termination of the Contract relieve the Surety or Sureties of obligations under the Contract Bond or retainage bond for Work performed.

1-08.11 INCENTIVES AND DISINCENTIVES

1-08.11(1) Incentives

1-08.11(1).1 Purpose and Amount of Incentive Award

General. An incentive award program has been established to provide the Design-Builder the opportunity to earn awards commensurate with superior performance in certain components of the Project. The program is designed to encourage and reward consistent excellent achievement of both technical specification and administrative program requirements. An incentive award will be earned only by clear and constant superior performance over the term of the Contract. It is WSDOT's desire that the Design-Builder perform in such a superior manner as to ultimately earn the maximum possible incentive award.

Total Incentive Award. The maximum incentive award pool under the Incentive / Disincentive Program is $600,000.00 as tabulated in Table 7. This amount will not be increased if Work is added to the Project, but may be reduced if Work is deleted.

Periodic Award Earnings. With regard to incentive categories designated as Periodic Incentives in Table 7 below, an incentive award may be earned by the Design-Builder in whole or in part, based upon WSDOT's monthly evaluations of the Design-Builder's performance. This program allows incremental portions of the incentive award to be earned and paid quarterly. The amount potentially available for each quarter for any given Periodic Incentive category will be determined by dividing the Maximum Possible Award for a category by the total number of quarters (1 quarter = 3 months) of Project duration (Notice to Proceed to Substantial Completion). For planning purposes, the first planned incentive period will be the first full quarter following Notice to Proceed with all further incentive periods running quarterly thereafter.

Project Incentive Award Earnings. With regards to categories designated as Project Incentives in Table 7 below, the designated incentive criteria will be evaluated by WSDOT pursuant to the Contract and payment, if any, will be made upon the Project reaching Substantial Completion.

Incentive Criteria. The incentive criteria established herein are objective, definable, and quantifiable, and will measure the actual achievements of the Design-Builder. The various incentive criteria are predefined and weighted appropriately to encourage Design-Builder

achievements in the Project elements that are the most critical to WSDOT.

Determination and Payment of Periodic Incentive Award

General. The Periodic Incentive evaluation process shall have a two-tiered organization: the Award Determination Official (ADO) and the Performance Evaluation Team.

Award Determination Official: WSDOT will designate the Award Determination Official (ADO). The ADO reviews the findings and recommendations of the Performance Evaluation Team and determines the amount of earned award for each period of Project activities. No changes to the evaluation criteria or incentive award assignments can be made without the approval of the ADO.

Performance Evaluation Team: The Performance Evaluation Team (PET) will consist of WSDOT employees and representatives and stakeholders designated by the WSDOT Engineer. The Design-Builder staff or employees shall not be official members of any Performance Evaluation Team. The PET will prepare Monthly Evaluation Reports for all periodic award program criteria. The Design-Builder's performance and activities will be observed and continuously evaluated. The PET will prepare Quarterly Incentive Award Performance Reports and provide the Design-Builder with a copy for comment and corrective actions, if any.

The Design-Builder shall prepare a self-assessment regarding performance relative to the incentive award criteria and submit a written summary with each monthly invoice. The Design-Builder's self-assessment may be considered by WSDOT in deciding incentive payment amounts, but determination of actual periodic incentive payments rests in the sole discretion of the ADO.

Quarterly Incentive Award Performance Reports and Review Schedule

The Quarterly Incentive Award Performance Report, prepared by the PET shall include a recommendation for the incentive award amount, the rationale supporting the evaluation and assessment of each incentive award criteria, and identification of areas of performance that need improvement.

Within 5 business days of receiving the Quarterly Incentive Award Performance Report, the ADO will review the recommendations and other pertinent information and determine the amount of the earned periodic incentive award, if any. Within 7 business days after the ADO receives the recommendations from the PET, the Design-Builder will be notified in writing of the determination of incentive award earned for the quarter.

1-08.11(2) Project Measures

Key Measures. All incentive award payments will be based on the key measures and maximum possible award shown in Table 7 (Allocation of Incentive Award Among Key Measures).

TABLE 7
ALLOCATION OF INCENTIVE AWARD AMONG KEY MEASURES

Key Measure	Maximum Possible Award
Periodic Incentives	
Quality / Workmanship	$100,000
Environmental Compliance	$300,000
Maintenance of Traffic / Work Zone Traffic Control	$100,000
Subtotal	$500,000
Project Incentives	
Pavement Smoothness	$100,000
Subtotal	$100,000
TOTAL	$600,000

1-08.11(2).1 Quality / Workmanship

General. The portion of the Incentive Award allocated to Quality / Workmanship is up to $100,000. This is the maximum amount that can be earned from all Quality / Workmanship criteria combined. The amount is divided among the six quality criteria, as shown in Table 8.

TABLE 8

INCENTIVE AWARDS AND CRITERIA FOR QUALITY / WORKMANSHIP

	Criteria	Test Criteria	Maximum Possible Award
A.	Inspectors are qualified and inspecting per QMP	Pass / Fail	$20,000
B.	Provide adequate time for inspection and testing of Work.	Pass / Fail	$20,000
C.	Cooperation to resolve issues/non-specification Work.	Pass / Fail	$20,000
D.	Issues resolved prior to succeeding Work performed.	Pass / Fail	$20,000
E.	Materials installed or placed in accordance with specification or manufacturer's requirements	Pass / Fail	$20,000
	Total Maximum Award:		$100,000

Evaluation of Quality / Workmanship Criteria

General. The Quality / Workmanship criteria will be measured monthly as Work progresses. Each criteria will be rated pass or fail. Should the Design-Builder fail two (2) or more criteria, no award will be earned for that month in the category of Quality / Workmanship.

Period Incentive Award Earned. In determining the periodic incentive award earned, the evaluation team will consider the Monthly Evaluation Reports for that quarter.

1-08.11(2).2 Environmental Compliance

General. The portion of the incentive award allocated to Environmental Compliance is up to $300,000. This is the maximum amount that can be earned from all environmental compliance criteria combined. The amount is divided among the six environmental compliance criteria, as shown in Table 9.

TABLE 9

INCENTIVE AWARDS AND CRITERIA FOR ENVIRONMENTAL COMPLIANCE

	Criteria	Test Criteria	Maximum Possible Award
A.	Environmental Awareness		$50,000
B.	Environmental Inspections and Compliance Monitoring		$150,000
C.	Reacting to Non-Compliance Events		$100,000
	Total Maximum Award:		**$300,000**

Evaluation of Environmental Compliance Criteria

General. Adhering to the environmental commitments made by WSDOT, relative to all phases of project development, will prevent environmental degradation, reduce work delays and cost increases, minimize negative publicity, and reduce the number of upset citizens/landowners.

Therefore, WSDOT shall reward the Design-Builder for excellence in the following three areas:

A) Environmental Awareness (Maximum $50,000)

Purpose:

To ensure the Design-Builder's project staff and sub-contractors understand the environmental commitments and are able to recognize when a non-compliance event is occurring and react accordingly.

Activity:

Develop an environmental notebook as a resource for project inspectors containing environmental commitments and permit conditions. This field guide is a tool that, when combined with "Just in Time" training, will raise environmental awareness, and reduce the likelihood of a violation.

Evaluation Criteria:

WSDOT will evaluate the Design-Builder's project environmental notebook on a monthly basis in accordance with the procedures identified in Section 1-08.11(1). This incentive will be awarded quarterly. The environmental notebook will be reviewed for the following information:

- List of project staff contact numbers, including emergency contacts.
- A copy of the WSDOT Environmental Compliance Assurance Procedure for Construction Projects and Activities (Instruction Letter 4055.02) is included.
- Punch Lists and/or Check Lists of commitments applicable to specific work activities, specific locations, and/or specific daily or seasonal work schedules are included.
- Construction schedule and list of dates and conditions for advance notification to WSDOT for construction activity, so WSDOT can contact the appropriate regulatory agencies within the timeframes required in the permits.
- Water quality monitoring calibration and data sheet.
- Procedures for unanticipated discovery of archaeological and historical objects during construction.
- SPCC Plan Periodic Inspection Form
- Inspector's Daily Report (IDR) to record inspection activities, findings, and recommendations relative to environmental commitments.
- TESC inspection checklist(s) included.

The Design-Builder will receive a greater portion of this incentive if their environmental protection training program includes a component to continually teach inspectors and field staff how to use the project environmental notebook. One example of this would include training staff, prior to construction, to recognize "notification triggers" identified in the Environmental Compliance Assurance Procedure for Construction Projects and Activities (Instruction Letter 4055.02). Another example could include familiarizing staff, sub-consultants and subcontractors with the locations of environmentally sensitive areas and identifying work activities that present the greatest risk for non-compliance.

B) Environmental Inspections and Compliance Monitoring (Maximum $150,000)

Purpose:

WSDOT will oversee the Design-Builder to ensure environmental commitments are met throughout the life of the contract. As the permit holder, WSDOT assumes ultimate responsibility for assuring environmental compliance. Therefore, this incentive encourages the Design-Builder to carry out well planned and rigorous environmental inspections and compliance monitoring to avoid permit violations and negative impacts to the environment.

Activity:

Perform the inspection and monitoring activities and complete the requirements as identified in Table 1.

Evaluation Criteria:

This periodic incentive will be awarded on a quarterly basis to encourage the Design-Builder to maintain a rigorous monitoring and inspection program over the life of the contract. The award amount available for each quarter will be determined according to the formula described in Section 1-08.11(1).1.

WSDOT's Environmental Compliance Assurance Inspector (ECAI) will perform random, unannounced inspections during the life of the project. The inspection will be conducted using a checklist containing evaluation criteria based on the requirements identified in Table 1 (on the following page). The frequency of inspections will vary as the nature of work changes during the life of the project. Criteria are included that will evaluate all anticipated types of work activities, so that some criteria will not be applicable during a given inspection.

The Performance Evaluation Team (PET) will be provided with notes from the random site inspections to assist in their preparation of Monthly Evaluation Reports and award recommendations in the Quarterly Incentive Award Performance Reports.

Table 1
Environmental Compliance Inspection Criteria

Work Activity	Project Stage
TESC Plan. BMPs identified in the TESC Plan have all been installed/implemented prior to the start of construction activities.	Pre-Construction
SPCC Plan. BMPs identified in the SPCC Plan have all been installed/implemented prior to the start of construction activities.	Pre-Construction
Fugitive Dust Control Plan. BMPs identified in the Fugitive Dust Control Plan have all been installed/implemented prior to the start of construction.	Pre-Construction
Delineation and Fencing. Clearing limits, travel corridors, stockpile sites and environmentally sensitive areas have been delineated and clearly marked with high-visibility construction fencing prior to construction.	Pre-Construction
Collection of Rain Data. Rain gauge(s) is functioning properly; rainfall amounts were documented on a daily basis.	Construction
Inspection of Erosion Control BMPs. All on-site erosion and sediment control measures were inspected at least once every five working days, each working day during a runoff-producing rain event (greater than 0.5 inch of rain within a 24 hour period) and within 24-hours after a runoff producing rain event. TESC Inspection Report was prepared for each inspection in accordance with WSDOT Standard Specs and was provided to WSDOTs ECAI the same day as completion.	Construction
BMP Repair and Maintenance. Site visit confirmed that damaged or inadequate BMPs were repaired or corrected immediately. Recommendations from the TESC inspection report were implemented and the TESC Plan was updated to address deficiencies.	Construction
Inspection and Maintenance of Spill Plan BMPs. SPCC Plan Periodic Inspection Forms are completed and provided to WSDOT's ECAI on a regular basis. Spill kits and equipment are on-site and are well stocked in accordance with the SPCC Plan requirements.	Construction
Concrete Equipment Wash Stations. Equipment involved in concrete work was washed out at locations where wash water is contained.	Construction
Concrete Containment. Containment methods were employed to control and contain all saw-cut water and concrete slurry dewatered from cofferdams, drilled piles, etc. Proof was provided that slurry water was disposed of at an approved off-site facility.	Construction
Fugitive Dust Control. Tire wash stations and stabilized construction entrances are working properly. Streets adjacent to construction site entrances were cleaned on a regular basis. Exposed soil is sprayed during periods of dry weather and high wind.	Construction
Water Quality Sampling. Sampling of water quality is carried out in accordance with the frequencies identified within the water quality monitoring plan and permit conditions.	Construction
Water Quality Reporting. Water quality sampling results were reported to WSDOT's ECAI the same day they were taken.	Construction

C) Reacting to Non-Compliance Events (Maximum $100,000)

Activity:

WSDOT wants to encourage and reward the Design-Builder for self-identifying non-compliance events and for quickly reacting to report and correct such problems.

Evaluation Criteria:

Award amounts will be based on the Design-Builder's ability to identify when they are in non-compliance and their degree of responsiveness to unplanned events. This will require effective compliance planning and a commitment to rigorous monitoring, reacting, and reporting. This incentive will be awarded in two increments, $50,000 maximum each, at the end of each construction season (December 2006 and December 2007). For each construction season, the Design-Builder will be classified under one of following three performance levels to determine the range of award amounts earned.

<u>Performance Level 1: Self-Identified or WDSOT-Identified Non-Compliance Event(s) (eligible to receive 51%-100% of incentive)</u>

When evaluating this incentive, a higher percentage will be awarded to the Design-Builder for self-identifying non-compliance events and for having very few non-compliance events brought to their attention by WSDOT. A lower percentage of this incentive will be awarded if there is a high ratio of WSDOT identified non-compliance events compared to the number of non-compliance events the Design-Builder self-identified. Some examples of award scenarios are listed below:

(Upper Range)

The Design-Builder's staff, through rigorous monitoring and inspections identified that they were in non-compliance with a permit condition(s). WSDOT was immediately notified of non-compliance event(s) in accordance with the Environmental Compliance Assurance Procedures (ECAP) and the Design-Builder coordinated with WSDOT to ensure the appropriate corrective actions were taken to resolve the problem to the satisfaction of WSDOT and the regulatory agencies. WSDOT identified very few non-compliance events that slipped by the Design-Builder's staff.

(Middle Range)

The Design-Builder self-identified non-compliance events and WSDOT's staff, on several occasions, identified that the Design-Builder was in non-compliance with a given permit condition, environmental commitment, or regulation. However, the Design-Builder always took immediate corrective action to resolve the non-compliance event(s) to the satisfaction of WSDOT and the regulatory agencies.

(Lower Range)

WSDOT had to tell the Design-Builder on numerous occasions that they were in non-compliance with environmental regulations. The Design-Builder did a fair job of self-identifying non-compliance events. The Design-Builder responded to non-compliance events, but was typically slow to react.

Performance Level 2: External Agency-Identified Non-Compliance Event(s) (eligible to receive 26%-50% of the incentive)

(Upper Range)

An external source such as a regulatory agency environmental staff member or a local jurisdiction staff member identifies that the Design-Builder is in non-compliance with a given permit condition, performance standard, environmental commitment, or regulation. The Design-Builder took immediate corrective action to resolve the non-compliance event to the satisfaction of the external party who identified the problem.

(Lower Range)

On more than one occasion, an external source such as a regulatory agency environmental staff member or a local jurisdiction staff member identifies that the Design-Builder is in non-compliance with a given permit condition, performance standard, environmental commitment, or regulation. The Design-Builder responded to non-compliance events, but was typically slow to react.

Performance Level 3: Regulatory Agency Issues a Violation and/or Failure to react to Non-Compliance Events (eligible to receive 0%-25% of the incentive)

(Upper range)

The Design-Builder may be eligible to receive up to 25% of this incentive if the compensation board recognizes unique circumstances that indicate the Design-Builder acted in the best interest of the environment during the event and/or to remedy a non-compliance event.

(Lower Range)

If a regulatory agency issues WSDOT a notice of violation for a permit that was obtained for the I-405, SR520 to SR522 Stage 1 Project the Design-Builder shall not receive any portion of this incentive. In addition, no portion of this incentive shall be awarded if the Design-Builder fails to take corrective action to remedy a non-compliance event after being directed by WSDOT.

1-08.11(2).3 Maintenance of Traffic / Work Zone Traffic Control

General. WSDOT will evaluate the Design-Builder's Maintenance of Traffic (MOT) / Work Zone Traffic Control (WZ) and pay a performance-based award up to $100,000 to the Design-Builder as an incentive to optimize its MOT / WZ program. The payment of incentive awards is contingent upon compliance with contractual requirements and performance that exceeds the minimum standards specified in this Section.

Criteria for Maintenance of Traffic / Work Zone Traffic Control Evaluations. The portion of the incentive award allocated to the MOT / WZ traffic control is up to $100,000. This is the maximum that can be earned from all MOT / WZ traffic control criteria combined. The criteria are listed below in Table 10.

TABLE 10
INCENTIVE AWARDS AND CRITERIA FOR MAINTENANCE OF TRAFFIC / WORK ZONE TRAFFIC CONTROL PROGRAM

Criteria	Maximum Possible Award
A. Maintain and implement traffic control plans in compliance to WSDOT standards in all areas of traffic control operations; problems promptly identified and immediately corrected.	$25,000
B. Traffic control devices kept clean and removed when not needed.	$25,000
C. Temporary lane delineation clear and without confusing pavement scaring from previous stripe removals.	$50,000
Total Maximum Award	**$100,000**

Evaluation of Maintenance of Traffic / Work Zone Traffic Control Criteria

General. The Maintenance of Traffic / Work Zone Traffic Control criteria will be measured monthly as Work progresses. Each criteria will be rated pass or fail. Should the Design-Builder fail two (2) or more criteria, no award will be earned for that month in the category of Maintenance of Traffic and Work Zone Traffic Control.

Period Incentive Award Earned. In determining the periodic incentive award earned, the evaluation team will consider the Monthly Evaluation Reports for that quarter.

1-08.11(2).4 Changes to Evaluation Criteria

General. The WSDOT Engineer may unilaterally change the incentive fee evaluation criteria. Changes to the criteria may be made without executing Change order(s) or any other formal modification of the Contract. The WSDOT Engineer will notify the Design-Builder of any changes in the evaluation criteria at least 10 business days before implementation. If the WSDOT Engineer does not so notify the Design-Builder, the existing evaluation criteria will continue in effect until the end of the quarter.

1-08.11(3) Appeal Process and Payment Procedures

1-08.11(3).1 Appeal Process

General. The Design-Builder shall have five business days from the receipt of notification of determination of an incentive award earned pursuant to 1-08.11(1).1 in which to submit a written appeal to the ADO. Such an appeal shall include a full explanation of the reasons, facts, and circumstances upon which the appeal is based. The Design-Builder may also request, at the time of submitting the written appeal, a meeting with the ADO to discuss the appeal. The ADO shall schedule a requested meeting to take place within 14 business days of the date of receipt of the appeal. The ADO will consider the appeal and make a Final Incentive Award Determination for the period within five business days of the date the written appeal was received by the ADO or within 5 business days of the date of any meeting requested by the Design-Builder with the ADO

to discuss the appeal, whichever date is later. If no appeal is filed, the ADO's initial determination shall be considered the Final Incentive Award Determination for that period. Failure to file a written appeal within the applicable period shall constitute an unconditional waiver of the Design-Builder's right to contest an incentive award determination by the ADO. The determination of the amount of any periodic incentive award is at the sole discretion of the ADO. A decision by the ADO regarding the amount of a periodic incentive award shall be conclusive subject only to judicial review for abuse of discretion in Thurston County Superior Court. Disputes regarding the amount of a periodic incentive award are not subject to the typical disputes process set forth in Sections 1-04.5, 1-09.11, 1-09.12 and/or 1-09.13.

1-08.11(3).2 Payment

General. Each installment of the incentive award will be approved by WSDOT for payment upon the ADO issuing a Final Incentive Award Determination for that period. No payment of an incentive award will be made prior to the issuance of a Final Incentive Award Determination. All payments, if any, will be made under the item "Incentives/Disincentives".

Quarterly Incentive Award Amounts. No unearned Incentive Award from a previous quarter will be carried over into subsequent quarters.

1-08.11(4) VACANT

1-08.11(5) Incentive/Disincentive for Pavement Smoothness

Criteria for Pavement Smoothness Evaluation: The portion of the incentive award allocated to the Pavement Smoothness is up to $100,000.00. This is the maximum that can be earned from all Pavement Smoothness program criteria.

The Design-Builder will receive IRI data from WSDOT quantifying the pavement surface smoothness following completion of the final overlay. The Design-Builder shall calculate the debit/credit assessment for the pavement smoothness based on the following procedure and submit the payment value and supporting calculations to WSDOT for review and payment.

Price Adjustment for Pavement Smoothness

The IRI will be determined after the Design-Builder indicates that the roadway pavement is complete and the WSDOT Engineer determines the roadway is safe to evaluate at highway speeds (completion of the final overlay).

Incentive/disincentive payments for pavement smoothness will be made on an IRI value per 0.1 lane-mile in accordance with the following Table 12:

1-08.12 TABLE 12 PAVEMENT SMOOTHNESS PAY ADJUSTMENT SCHEDULE

IRI for each 0.10 mi.	Pay Adjustment Schedule 1	Pay Adjustment Schedule 2	Pay Adjustment Schedule 3

section			
in. / mi.	**$ / 0.10 mi.**	**$ / 0.10 mi.**	**$ / 0.10 mi.**
< 30	600	600	600
30	600	600	600
31	580	580	580
32	560	560	560
33	540	540	540
34	520	520	520
35	500	500	500
36	480	480	480
37	460	460	460
38	440	440	440
39	420	420	420
40	400	400	400
41	380	380	380
42	360	360	360
43	340	340	340
44	320	320	320
45	300	300	300
46	280	280	280
47	260	260	260
48	240	240	240
49	220	220	220
50	200	200	200
51	180	180	180
52	160	160	160
53	140	140	140
54	120	120	120
55	100	100	100
56	80	80	80
57	60	60	60
58	40	40	40
59	20	20	20
60	0	0	0
61	0	0	0
62	0	0	0
63	0	0	0
64	0	0	0
65	0	0	0
66	-20	0	0
67	-40	0	0
68	-60	0	0
69	-80	0	0

70	-100	0	0
71	-120	0	0
72	-140	0	0
73	-160	0	0
74	-180	0	0
75	-200	0	0
76	-220	-20	0
77	-240	-40	0
78	-260	-60	0
79	-280	-80	0
80	-300	-100	0
81	-320	-120	0
82	-340	-140	0
83	-360	-160	0
84	-380	-180	0
85	-400	-200	0
86	-420	-220	0
87	-440	-240	0
88	-460	-260	0
89	-480	-280	0
90	-500	-300	0
91	-520	-320	0
92	-540	-340	0
93	-560	-360	0
94	-580	-380	0
95	-600	-400	0
> 95	* Corrective Action	* Corrective Action	Not Applicable

Pay Adjustment Schedule 2 shall be used for this Contract. For sections greater than 50 feet and less than 0.1 lane-mile, the pay adjustment will be prorated.

Incentives apply and disincentives are waived for bridge structures, approach slabs or both including 100 feet on either side of the bridge structure, approach slabs or both. Incentives apply and disincentives are waived for beginning joints and end joints of a project paving section, including 50 feet on the newly paved side of said joints. If the Project has skip paving sections or high-speed ramps, each beginning and end joint will be eligible for incentives but exempt from disincentives with respect to price adjustment for pavement smoothness.

No specific unit of measure will apply to the calculated item of pavement smoothness price adjustment. Payment/credit, if any, will be made for the measurements taken prior to Substantial

Completion. There is no incentive/disincentive for the measurements taken at the end of the warranty period.

1-09 MEASUREMENT AND PAYMENT

1-09.1 MEASUREMENT OF QUANTITIES

In measuring all acceptably completed Work, WSDOT will:

1. Use United States standard measure,
2. Make all measurements as described in this Section, unless individual specifications require otherwise,
3. Follow methods generally recognized as conforming to good engineering practice,
4. Conform to the usual practice of WSDOT by carrying measurements and computations to the proper significant figure or fraction of units for each item, and
5. Measure horizontally or vertically (unless otherwise specified).

The terms listed below shall be defined as follows in all measurements under this Section:

"Lump Sum" (when used as an item of payment): complete payment for the work described for that item in the Contract.

"Gage" (in measurement of plates): the U.S. Standard Gage.

"Gage" (in measurement of galvanized sheets used to manufacture corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing): that specified in AASHTO M 36, M 167, M 196, M 197, or M 219.

"Gage" (in measurement of wire): that specified in AASHTO M 32.

"Ton": 2,000 pounds of avoirdupois weight.

For each basis of measurement listed below, WSDOT will use the method of measurement described. For Work measured on the basis of:

Square Yard or Square Foot - the measurement shall be a calculation from the neat dimensions shown in the Design Documents or as altered pursuant to the Contract. If there is an exception within the measured area where the item of Work is not performed (such as a drainage vault within a measured sidewalk) and if the exception area is greater than 9 square feet, then the area of the exception will be subtracted from the payment area calculated from the neat dimensions.

Linear Foot (pipe culverts, guard rail, underdrains, etc.) - measured parallel to the structure's base or foundation, unless the plans require otherwise.

Weight - weighed as required in Section 1-09.2.

Volume (of excavation and embankment) - measured by the average-end-area method or by the finite element analysis method utilizing digital terrain modeling techniques. All or some computations may be based on ground elevations and other data derived photogrammetrically. WSDOT may correct for curvature.

Volume (in the hauling vehicle) - measured at the point of delivery. Hauling vehicles may be of any size or type WSDOT approves provided that the body is of such shape that the actual

contents may be readily and accurately determined. If WSDOT requires, the Design-Builder shall level loads at the delivery point to facilitate measurement.

For each item listed below, the Engineer will use the method of measurement described.

Structures - measured on the neat lines shown in the Design Documents or as altered by the Contract. When a complete structure or structural unit is specified as the unit of measurement, the unit shall include all fittings and accessories.

Timber - measured by the thousand board feet (MBM) actually used in the structure. Measurements will be based on nominal widths and thicknesses and the extreme length of each piece.

Standard Manufactured Items (fence, wire, plates, rolled shapes, pipe conduit, etc., when specified) - measured by the manufacturer's identification of gage, unit weight, section dimension, etc. The Engineer will accept manufacturing tolerances set by each industry unless cited specifications require more stringent tolerances.

Cement - measured by the pound, ton, or sack. A sack shall be 94 pounds.

Asphalt - measured by the gallon or ton. If measured by gallon, measurement will be made at 60 F (or will be corrected to the volume at 60 F in keeping with ASTM D 1250). If shipped by rail, truck, or transport, measurement will be by net certified scale masses or certified volumes (corrected for material lost enroute or not actually incorporated into the work). WSDOT will use the following volume-weight conversion table to compute asphalt measurements:

	Conversion Factors Average Weights and Volume of Asphalt	
Grade	**Gallons per Ton @ 60 F**	**Pounds per Gallon @ 60 F**
Liquid Asphalts		
70	253	7.90
250	249	8.03
800	245	8.16
3000	241	8.30
Paving Asphalts		
AR 2000W	237	8.44
AR 4000W	235	8.51
Emulsified Asphalts		
All Grades	240	8.33

No measurement will be made for:

1. Work performed or materials placed outside lines shown in the Design Documents;
2. Materials wasted, used, or disposed of in a manner contrary to the Contract;

3. Rejected materials (including those rejected after placement if the rejection resulted from the Design-Builder's failure to comply with the Contract);
4. Hauling and disposing of rejected materials;
5. Material remaining on hand after the work is completed, except as provided in Sections 1-09.5 and 1-09.10; or
6. Any other work or material contrary to any Contract provision

1-09.2 WEIGHING EQUIPMENT

1-09.2(1) General Requirements for Weighing Equipment

Any highway or bridge construction materials to be proportioned or measured and paid for by weight shall be weighed on a scale. These materials include natural, manufactured or processed materials obtained from natural deposits, stockpiles, or bunkers.

Scales

Scales shall:

1. Be accurate to within 1/2 of 1% throughout the range of use;
2. Not include spring balances;
3. Include beams, dials, or other reliable readout equipment;
4. Be arranged so that operators and inspectors can safely and easily see the dials, beams, rods, and operating scale mechanisms;
5. Be built to prevent scale parts from binding, vibrating, or being displaced and to protect all working parts from falling material, wind, and weather; and
6. Be carefully maintained, with bunkers and platforms kept clear of accumulated materials that could cause errors and with knife edges given extra care and protection.

Weighers

The Design-Builder shall provide, set up, and maintain the scales necessary to perform this work. "Design-Builder's provided scale operations" are defined as operations where a scale is set up specifically for the Project and most, if not all, material weighed on the scale is utilized for Contract Work. In this situation, WSDOT will provide a person to operate the scale, write tickets, perform scale checks and prepare reports.

The Design-Builder may also utilize permanently installed, certified, commercial scales. "Commercial scale operations" include the use of established scales used to sell materials to the public on a regular basis. In addition, for the purposes of this specification, all batch, hopper, and belt scales are considered to be commercial scales. Commercial scales shall meet the same requirements as the Design-Builder provided scales. When a commercial scale is used, the Design-Builder may utilize a commercial scale operator provided it is at no additional cost to WSDOT. In addition, the Design-Builder shall ensure that:

1. WSDOT is allowed to observe the weighing operation and check the daily scale weight record;
2. scale verification checks are performed at the direction of WSDOT (see "1-09.2(5) Measurement");
3. several times each day, the commercial scale operator records and makes certain the platform scale balances and returns to zero when the load is removed; and
4. test results and scale weight records for each day's hauling operations are provided to WSDOT daily. Unless otherwise approved, reporting shall utilize form 422-027, Scaleman's Daily Report.

Trucks and Tickets

Each truck to be weighed shall bear a unique identification number. This number shall be legible and in plain view of the scale operator. Each vehicle operator shall obtain a weigh or load ticket from the scale operator. The Design-Builder shall provide tickets for self printing scales. All tickets shall, at a minimum, contain the following information:

1. Date of haul
2. Contract number
3. Contract Work item
4. Unit of measure
5. Identification of hauling vehicle; and
6. Weight delivered.
   (a) net weight in the case of batch and hopper scales
   (b) gross weight, tare and net weight in the case of platform scales (tare may be omitted if a tare beam is used)
   (c) approximate load out weight in the case of belt conveyor scales

The vehicle operator shall deliver the ticket in legible condition to the material receiver at the material delivery point.

1-09.2(2) Specific Requirements for Batching Scales

Each batching scale shall be designed to support a weighing container. The arrangement shall make it convenient for the operator to remove material from the weighing container while watching readout devices. Any weighing container mounted on a platform scale shall have its center of gravity directly over the platform center line. Batching scales used for Portland or asphalt cement shall not be used for batching other materials.

Readout devices used for batching or hopper scales shall be marked at intervals evenly spaced throughout and shall be based on the scale's nominal rated capacity. These intervals shall not exceed one-tenth of 1% of the nominal rated capacity. Before use at a new site and then at 6 month intervals, all batching and hopper scales shall be: approved under rules of the Weights and Measures Section of the Washington State Department of Agriculture, or serviced and tested

with at least 10,000 pounds by an agent of its manufacturer. In either case, the Design-Builder shall provide WSDOT with a copy of the final test results.

1-09.2(3) Specific Requirements for Platform Scales

Each platform scale shall be able to weigh the entire hauling vehicle or combination of connected vehicles at one time. No part of the vehicle or vehicle combination will be permitted off the platform as it is weighed. A tare weight shall be taken of each hauling vehicle at least twice daily.

Any platform scale shall be installed and maintained with the platform level and with rigid bulkheads at either end to prevent binding or shifting. The readout device shall be marked at intervals of no more than 40 pounds. Test records shall show results to the nearest 20 pounds. During weighing operations, weights shall be read and recorded to the nearest 100 pounds. Before use at a new site and then at 6 month intervals, any platform scale shall be: approved under rules of the Washington State Department of Agriculture's Weights and Measures Section, or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In either case, the Design-Builder shall provide WSDOT with a copy of the final test results.

Any Design-Builder-supplied scale shall include a scale house with a floor space of at least 6 feet x 10 feet. The scale house shall be wind and weather tight, shall have windows for light and ventilation, shall include a door, and shall be lockable. It shall include a table, a chair, electrical power, and a space heater. The Design-Builder shall provide a rest room near the scale house.

1-09.2(4) Specific Requirements for Belt Conveyor Scales

WDOT may approve conveyor-belt weighing of untreated materials if the method and device meet all general requirements for weighing equipment. The recording tape, odometer, totalizer, calibration adjustment, and clock-time imprinter shall be kept locked and the Engineer shall retain all keys. All belt-conveyor scales shall comply with the requirements for Belt-Conveyor Scales in the National Institute of Standards and Technology (NIST) Handbook No. 44, except where these specifications modify those requirements.

A static load test shall be made: each day after the belt-conveyor has run continuously for about 30 minutes, and again, immediately after the air temperature changes significantly. If the static load test reveals a need for adjustment, the Design-Builder shall perform a chain test. The Design-Builder shall make the computation of the test chain calibration, the calibration procedures and results, and related records available for the engineer's review. The test chain shall be clearly marked with its calibration, carried in a suitable container, and kept immediately available for testing.

1-09.2(5) Measurement

Scale Verification Checks

Regardless of the type of scale used, a scale verification test shall be performed daily. The Design-Builder shall designate a separate, certified, platform scale or a separate commercial platform scale, independent of the scale used for weighing construction materials, to be used for scale verification checks. Each batch, hopper or platform scale will be tested by routing a loaded truck onto a separate certified platform scale or a separate commercial platform scale and

comparing the weights. If such a separate scale is not reasonably available, WSDOT may approve a Design-Builder request to use an alternate method of scale verification checks as described on Form 422-027, "Scaleman's Daily Report" and as appropriate for the type of scale.

To test the accuracy of a belt-conveyor scale, the Design-Builder shall weigh 5 or more payloads from sequential hauling units and compare these weights with weights of the same payloads taken on a separate certified platform scale. If the test results fluctuate, the engineer may require more than 5 check loads. Conveyor weights will be based on tonnage values taken from the sealed odometer at the beginning and end of each check period.

If scale verification checks shows the scale has been under-weighing, it shall be adjusted immediately. The Design-Builder shall not be compensated for any loss from under-weighing.

If scale verification checks show the scale has been over-weighing, its operation will cease immediately until adjusted. WSDOT will calculate the combined weight of all materials weighed after the last verification check showing accurate results. This combined weight will then be reduced for payment by the percentage of scale error that exceeds one-half of 1%.

Minor Construction Items

If the Contract requires weight measurement for minor construction items, the Design-Builder may request permission to convert volume to weight. If WSDOT approves, an agreed factor may be used to make this conversion and volume may be used to calculate the corresponding weight for payment.

1-09.2(6) Payment

WSDOT will pay for no materials received by weight unless they have been weighed as required in this Section or as required by another method WSDOT has approved in writing.

Unit contract prices for the various pay items of the Project cover all costs related to weighing and proportioning materials for payment. These costs include but are not limited to:

- Furnishing, installing, certifying, and maintaining scales
- Furnishing a scale house
- Providing a weigher with a commercial scale, if necessary
- Providing self printing tickets, if necessary
- Rerouting a truck for verification weighing
- Assisting the engineer with scale verification checks
- Any other related costs associated with meeting the requirements of this section.

1-09.3 SCOPE OF PAYMENT

The payment provided for in the Contract shall be full payment to the Design-Builder for:

1. Performing all design services, furnishing all materials and performing all construction and other Work under the Contract (including changes in the Work) in a complete and acceptable manner;

2. All risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the Work; and
3. All expense incurred resulting from a suspension or discontinuance of the Work as specified under the Contract.

Payment hereunder shall not relieve the Design-Builder of the obligation to make good any defective Work or materials.

1-09.3(1) Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 1-09.1. Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, WSDOT will issue a modified Change Order setting forth the final adjustment to the Contract Price.

1-09.4 EQUITABLE ADJUSTMENT

The equitable adjustment provided for elsewhere in the Contract shall be determined in one or more of the following ways:

1. If the parties are able to agree, the price will be determined by using:
   (a) Unit prices, or
   (b) Other agreed upon prices
2. If the parties cannot agree, the price will be determined by WSDOT using:
   (a) Unit Prices, or
   (b) Other means to establish costs.

The following limitations shall apply in determining the amount of the equitable adjustment:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement in effect at the time the Work is performed, as referred to in Section 1-09.6, and
2. To the extent any delay of performance was concurrently caused by WSDOT and the Design-Builder, the Design-Builder shall be entitled to a time extension to the extent of such concurrent delay, provided that the Design-Builder complies with the provisions of Section 1-08.8. The Design-Builder shall not be entitled to an adjustment in the Contract Price for any concurrent delay.
3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be allowed.
4. No claim for consequential damages of any kind will be allowed.

1-09.5 DELETED OR TERMINATED WORK

WSDOT may delete portions of the Work by Change Order as provided in Section 1-04.4 or may terminate the Contract in whole or part as provided in Section 1-08.10(2). When the Contract is terminated in part, the partial termination shall be treated as a deletion Change Order for payment purposes under this Section.

When any item is deleted in whole or in part by Change Order or when the Contract is terminated in whole or in part, payment for deleted or terminated Work will be made as follows:

1. Payment for partially completed lump sum items will be as mutually agreed. If the parties cannot agree, the WSDOT Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4;
2. To the extent not paid for by the portion of the Contract Price allocated to completed Work, WSDOT will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Design-Builder in anticipation of performing the Work that has been deleted or terminated;
3. The total payment for any one item in the case of a deletion or partial termination shall not exceed the Contract Price as modified by approved Change Orders less the estimated cost (including overhead and profit) to complete the Work and less any amount paid to the Design-Builder for the item;
4. The total payment where the Contract is terminated in its entirety shall not exceed the total Contract Price as modified by approved Change Orders less those amounts paid to the Design-Builder before the effective date of the termination; and
5. No claim for damages of any kind or for loss of anticipated profits on deleted or terminated Work will be allowed because of the termination or Change Order.

Contract Time shall be adjusted as the parties agree. If the parties cannot agree, WSDOT will determine the equitable adjustment for Contract Time.

Acceptable materials ordered by the Design-Builder prior to the date the Work was terminated as provided in Section 1-08.10(2) or deleted as provided in Section 1-04.4 by WSDOT, will either be purchased from the Design-Builder by WSDOT at the actual cost and shall become the property of WSDOT, or WSDOT will reimburse the Design-Builder for the actual costs connected with returning these materials to the suppliers.

1-09.6 FORCE ACCOUNT

The terms of the Contract or of a Change Order may call for Work or material to be paid for by force account. If so, then the objective of this specification is to reimburse the Design-Builder for all costs associated with the Work, including costs of design, engineering, labor, small tools, supplies, equipment, specialized services, materials, applicable taxes and overhead and to include a profit commensurate with those costs. The amount to be paid shall be determined as shown below for Construction forces:

1. **For Labor:** Labor reimbursement calculations shall be based on a "Project Labor List" (List) prepared and submitted by the Design-Builder and by any Subcontractor before that firm commences force account Work. Once a List is approved by WSDOT, it shall be used to calculate force account labor payment until a new List is submitted and approved. WSDOT may compare the List to payrolls and other documents and may, at any time, require the Design-Builder to submit a new List. The Design-Builder may submit a new List at any time without such a requirement. Prior payment calculations shall not be adjusted as a result of a new List.

   To be approved, the List must be accurate and meet the requirements of this Section. It shall include regular time and overtime rates for all employees (or work classifications) expected to participate in force account work. The rates shall include the basic wage and fringe benefits, the current rates for Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA), the company's present rates for Medical Aid and Industrial Insurance premiums and the planned payments for travel and per diem compensation.

   In the event that an acceptable initial List or requested revised List is not received by the time that force account calculations are begun, the WSDOT Engineer will develop a List unilaterally, utilizing the best data available, that will be used until the Design-Builder's List is received and approved. Again, prior calculations, prepared using the WSDOT List, will not be revised as a result of differences with the Design-Builder's List.

   In addition to compensation for direct labor costs defined above, WSDOT will pay the Design-Builder 29% of the sum of the costs calculated for labor reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance, Business and Occupation tax, and any other costs incurred. This amount will include any costs of safety training and health tests, but will not include such costs for unique force account Work that is different from typical Work and which could not have been anticipated at time of Proposal.

2. **For Materials:** WSDOT will reimburse invoice cost for Design-Builder-supplied materials. For the purpose of this provision, "Materials" shall include those items incorporated into the Work, supplies used during the work and items consumed. This cost shall include freight and handling charges and applicable taxes. Before work is started, the WSDOT Engineer may require the Design-Builder to obtain multiple quotations for the materials to be utilized and select the vendor with prices and terms most advantageous to WSDOT.

   WSDOT will provide a list of the types and quantities of Design-Builder-supplied materials witnessed by WSDOT as being utilized in force account work. The list will be furnished promptly after the material is incorporated, on a daily basis unless agreed otherwise. The Design-Builder may propose corrections to the list and will supply prices for the materials and other costs and return the list to WSDOT. To support the prices, the Design-Builder shall attach valid copies of vendor invoices. If invoices are not available for materials from the Design-Builder's stocks, the Design-

Builder shall certify actual costs (at a reasonable level) by affidavit. WSDOT will review the prices and any Design-Builder-proposed corrections and, if reasonable, approve the completed list. Once approved, the prices will be utilized in the calculation of force account reimbursement for materials.

If, in the case of non-invoiced materials supported by the Design-Builder's affidavit, the price appears to be unreasonable, WSDOT will determine the cost for all or part of those materials, utilizing the best data available.

WSDOT reserves the right to provide materials. In this case, the Design-Builder will receive no payment for any costs, overhead, or profit arising from the value of the materials themselves. Additional costs to handle and place the Agency-furnished material shall be compensated as described in this specification.

In addition to compensation for direct materials cost, WSDOT will pay the Design-Builder 21 percent of the sum of the costs calculated for materials reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance, Business and Occupation tax, and any other costs incurred.

3. **For Equipment:** WSDOT will reimburse the Design-Builder for the cost of equipment utilized in the Work. The equipment provided by the Design-Builder shall be of modern design and in good Working condition. For the purpose of this provision, "provided" shall mean that the equipment is owned (either through outright ownership or through a long-term lease) and operated by the Design-Builder or Subcontractor or that the equipment is rented and operated by the Design-Builder or Subcontractor. Equipment that is rented with operator shall not be included here, but shall be considered a service and addressed according to Section 1-09.6.4 below.

   The amount of payment for any Design-Builder-owned equipment that is utilized shall be determined according to the version of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized. The rates listed in the Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental Agreement) shall be full compensation for all fuel, oil, lubrication, ordinary repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

   Payment for rented equipment will be made on the basis of a valid invoice, covering the time period of the Work. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the rental of equipment to be utilized and select the vendor with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the vendor is not a firm independent from the Design-Builder or Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of submitted invoice.

   In addition to the payments for Design-Builder-owned and rented equipment, one or more lump-sum payments may be made for small tools. The amount to be paid shall be determined as outlined in the AGC/WSDOT Equipment Rental Agreement.

WSDOT will add 21% to equipment costs to cover Project overhead, general company overhead, profit, bonding, insurance, Business and Occupation tax, and any other costs incurred. This markup will be over and above those equipment costs and will not be adjusted for any equipment overhead amounts included in the Blue Book rates.

Current copies of the Rental Rate Blue Book and the AGC/WSDOT Equipment Rental Agreement will be maintained at each Region office of WSDOT (Compact Disk Version) and at each of the offices of the Associated General Design-Builders of America (in Seattle, Spokane, Tacoma, and Wilsonville, Oregon) where they are available for inspection.

4. **For Services:** Compensation under force account for specialized services shall be made on the basis of an invoice from the providing entity. A "specialized service" shall be one which is typically billed through invoice in standard industry practice. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the service to be utilized and select the provider with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the service invoice is submitted by a Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of the submitted invoice.

   Except as noted below, WSDOT will pay the Design-Builder an additional 21% of the sum of the costs included on invoices for specialized services to cover Project overhead, general company overhead, profit, bonding, insurance, Business & Occupation tax, and any other costs incurred.

   When a supplier of services is compensated through invoice, but acts in the manner of a Subcontractor, as described in Section 6 of this provision, then markup for that invoice shall be according to Section 6. "Design-Builder Markup on Subcontractor's Work".

   The cost of labor for non-construction-related Work (including design, surveying, utility coordination, permits, professional environmental services and similar aspects of the Work), whether provided by the Design-Builder or a Subcontractor, will equal the sum of (1) actual wages (i.e. the base wage paid to the employee exclusive of fringe benefits), plus (2) a labor surcharge of 150% on such amount, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, workers' compensation, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for overhead. This amount shall be considered full compensation and no further markups will be allowed.

5. **For Mobilization:** force account mobilization is defined as the preparatory Work performed by the Design-Builder including procurement, loading and transportation of tools and equipment, and personal travel time (when such travel time is a Contractual obligation of the Design-Builder or a customary payment for the Design-Builder to all employees). Mobilization also includes the costs incurred during demobilization. Pro-rata adjustments may be made when the mobilization applies to

both force account and other Contract Work. WSDOT will pay for mobilization for off-site preparatory Work for force account items provided that notice has been provided sufficiently in advance to allow WSDOT to witness the activity, if desired.

Any costs experienced during mobilization activities for labor, equipment, materials or services shall be listed in those sections of the force account summary and paid accordingly. Note that no additional mobilization expense will be paid for any Equipment presently on site.

6. **For The Design-Builder Markup on Subcontractor's Work:** When Work is performed on a force account basis by one or more approved Subcontractors, by lower-tier subcontractors or suppliers, or through invoice by firm(s) acting in the manner of a subcontractor, the Design-Builder will be allowed an additional markup, from the table below, applied to the costs computed for Work done by each Subcontractor through Sections 1, 2, 3, 4 and 5, to compensate for all administrative costs, including Project overhead, general company overhead, profit, bonding, insurance, Business & Occupation tax, and any other costs incurred.

   A firm may be considered to be acting as a Subcontractor when WSDOT observes one or more of the following characteristics:

   (a) The person in charge of the firm's activities takes an active role in managing the overall Project, including extensive coordination, interpretation of plans, interaction with WSDOT or management of a complex and interrelated operation.

   (b) Rented equipment is provided fueled, operated and maintained by the firm. Operators of rented equipment are supervised directly by the firm's representative. There is little interaction between the Design-Builder and the employees of the firm.

   (c) The firm appears to be holding the risk of performance and quality of the Work.

   (d) The firm appears to be responsible for liability arising from the Work.

Markups on Work Performed by Subcontractor(s):

1. On amounts paid for work performed by each Subcontractor on each force account and calculated through Sections 1-05 up to $25,000 12%
2. On amounts greater than $25,000 up to $100,000 10%
3. On amounts greater than $100,000 7%

The amounts and markup rates shall be calculated separately for each Subcontractor on each force account item established.

The payments provided above shall be full payment for all work done on a force account basis. The calculated payment shall cover all expenses of every nature, kind, and description, including those listed above and any others incurred on the work being paid through force account.

Nothing in this provision shall preclude the Design-Builder from seeking an extension of time or time-related damages to unchanged Work arising as a result of the force account work. The

amount and costs of any Work to be paid by force account shall be computed by WSDOT, and the result shall be final as provided in Section 1-05.1.

An item which was included in the original scope of the Work will not be paid as force account unless a change as defined in Section 1-04.4 has occurred and the provisions require a payment adjustment. Force Account Work may, at any time and by agreement of the parties, be converted to agreed unit prices or lump sums applicable to the remaining Work.

1-09.6(1) Daily Reports

The Design-Builder shall furnish daily, on forms approved by WSDOT, reports of Force Account Change Order Work. The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs to date for the Force Account Change Order Work. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation. All such records and reports shall be made immediately available to WSDOT upon its request. The cost of furnishing such reports shall be included in the Design-Builder's overhead and fee percentages.

1-09.6(2) Reports As Basis for Payment

All Force Account Change Order reports shall be signed by the Design-Builder or its authorized representative. WSDOT will compare its records with the Design-Builder's reports, make the necessary adjustments and compile the costs of Force Account Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment.

1-09.7 MOBILIZATION

The mobilization payment is intended to compensate the Design-Builder for certain start-up expenses associated with performance of design and construction Work hereunder. Items which are not to be included in mobilization include, but are not limited to, profit, interest on borrowed money, overhead, or management costs.

The Design-Builder shall identify, in the Contract Schedule, a dollar amount for mobilization. Payment for mobilization shall be made based on the requirements set forth below:

1. WSDOT will pay 10% of the total mobilization amount in the Contract Schedule or 1% of the lump sum Contract Price, whichever is least, to the Design-Builder on the first progress payment after establishment of co-location office space and co-located designers are in place and performing design Work. This is to pay for start up costs associated with establishing the co-located offices. The Design-Builder shall show this as a schedule activity in the cost-loaded schedule.
2. When 5% of the total original Contract Price is earned, excluding amounts designated in the Contract Schedule as payment for materials on hand, the Design-Builder shall be paid for 50% of the amount identified in the Contract Schedule for mobilization.
3. When 10% of the total original Contract Price is earned, excluding amounts designated in the Contract Schedule as payment for materials on hand, the Design-Builder shall be paid

either 100% of the amount identified in the Contract Schedule for mobilization, or 10% of the total original Contract Price, whichever is the least.

4. When Physical Completion has been achieved, payment of any amount specified in the Contract Schedule for mobilization in excess of 10% of the total original Contract Price will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.

1-09.8 PAYMENT FOR MATERIAL ON HAND

WSDOT may reimburse the Design-Builder for materials purchased before their incorporation into the Project if they:

1. Are identified on the Contract Schedule
2. Meet the requirements of the Contract Documents
3. Consist of: reinforcing steel, bronze plates, structural steel, machinery, piling, timber and lumber (not including forms or falsework), large signs unique to the Project, prestressed concrete beams or girders, or other materials WSDOT may approve.

WSDOT may reimburse the Design-Builder for traffic signal controllers as follows:

1. 50% when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory.
2. 100% when the traffic signal controller is approved for shipment to the Project by the State Materials Laboratory.

The Design-Builder shall provide sufficient written evidence of production costs to enable WSDOT to compute the cost of Design-Builder produced materials (such as sand, gravel, surfacing material, or aggregates). For other materials, the Design-Builder shall provide invoices from material suppliers, detailed sufficiently to enable WSDOT to determine the actual costs. Payment for materials on hand shall not exceed the amount allocated thereto in the CPM and Payment Schedule.

If payment is based upon an unpaid invoice, the Design-Builder shall provide WSDOT with a paid invoice within 60 calendar days after WSDOT's initial payment for materials on hand. If the paid invoice is not furnished in this time, any payment WSDOT had made will be deducted from the next progress estimate and withheld until the paid invoice is supplied.

WSDOT will not pay for material on hand when the invoice cost is less than $2,000. As materials are used in the Work, credits equaling the partial payments for them will be taken on future estimates. Partial payment for materials on hand shall not constitute acceptance. Any material will be rejected if found to be faulty even if partial payment for it has been made.

1-09.9 PAYMENTS

1-09.9(1) Invoicing Requirements

The Design-Builder shall submit monthly invoices to the WSDOT by the first day of each month, unless otherwise agreed in writing with WSDOT.

Partial Payments. No payment item shall be included on an invoice for Work that has been documented as deficient by the QA staff, or Work that is not being performed in accordance with the Contract.

Reimbursement. If requested by WSDOT, the Design-Builder shall provide separate invoices for Work subject to reimbursement by the Federal government or third parties. Such invoices shall be organized to meet all applicable reimbursement requirements and to facilitate the reimbursement process.

1-09.9(1).1 Maximum Rate of Payment

NOT USED

1-09.9(1).2 Invoicing Documents

No invoice will be processed until WSDOT has received the documents listed in this Contract.

The invoice value will be based on the agreed-upon progress for the Contract Schedule activities as outlined in Section 1-08.3.

Submit the following documents with each invoice:

- Invoice cover sheet
- Progress report
- Contract Schedule updates and supporting documentation pursuant to Section 1-08.3
- Certification by Design and Construction Quality Assurance Managers
- Invoice data sheet(s) and supporting documents based on the cost loaded Contract Schedule
- Monthly design exception report.

The invoice data sheets shall show line entries for each active price loaded activity on the Contract Schedule indicating for each such activity the agreed Contract Price allocation value for that activity, the incremental percent complete and payment requested for the period, and the total percent complete and amount paid.. Activities shall be listed in start sequence.

Make all invoices and progress reports consistent with the accepted Baseline Contract Schedule or the applicable accepted Monthly Contract Schedule Update.

Obtain the signatures of the Design-Builder's Project Manager, the Design Quality Assurance Manager and the Construction Quality Assurance Manager on the progress report.

1-09.9(1).3 Invoice Cover Sheet

Indicate the following on the invoice cover sheet:

- Project number and title
- Invoice number (numbered consecutively, starting with "1")
- Period covered by the invoice (specific beginning and ending calendar days)
- Total amount earned to date for the Project as a whole.
- Authorized signature, title of signer, and date of signature
- Signature of the Design and Construction Quality Assurance Managers.

1-09.9(1).4 Progress Report

Include in the progress reports the following sections:

- Brief narrative description of activity and progress for each Work element and the Project as a whole, including design and construction.
- Update of progress with respect to utilities.
- Identification of any significant milestones achieved during the period.
- Summary of QMP activities, including result of design reviews.
- Identification of problems and issues that arose during the period and remaining issues to be resolved.
- Summary of resolution of problems and issues raised in the previous progress report or resolved since.
- Summary of Project accidents involving the Design-Builder's equipment and personnel (frequency and severity) and corrective actions taken.
- Identification of critical schedule issues and proposed resolution.
- Identification of requested and/or required department actions for the next period, including oversight reviews and oversight visits.
- Self-assessment of performance relative to the criterion to be evaluated for incentives during the current incentive determination period.
- Sign-off sheet from the Design QA Manager and Construction QA Manager verifying documentation control, as indicated in the Technical Specifications.
- Monthly Schedule update (may be as a separate package) as required in Section 1-08.

1-09.9(1).5 Certification by Design and Construction QA Managers

Each invoice shall include a certificate signed by the Design and Construction QA Managers that certifies:

- All work (including that of designers, Subcontractors, suppliers, fabricators, and builders) has been tested and/or inspected by the Design-Builder's Design QA staff and

Construction QA Staff

- All Work, except as specifically noted in the certification, conforms to the requirements of the Contract; and
- The design and construction QMPs and all of the measures and procedures provided therein are functioning properly and are being followed
- Invoice Data Sheets and Supporting Documents.

1-09.9(1).6 Invoice Data Sheets and Supporting Documents

General. With the exception of force account or unit-price Change Order Work, WSDOT will base payments on an estimate of the percentage of Work completed as mutually agreed with the Design-Builder, and not on measured quantities. The Design-Builder shall correlate the Contract Schedule and invoice data sheets so that the invoice data sheets have an individual line entry for each price-loaded activity in the Contract Schedule. For each activity, show the total percent compete, the percent completed this period, and the total dollar billing for the activity.

Format. The Design-Builder shall present the format of the invoice data sheets for WSDOT approval at least 14 calendar days before the submittal of the first invoice. Once WSDOT has approved the invoice format, the format shall not be changed unless the change is approved in writing by WSDOT.

1-09.9(2) Payment

General. WSDOT will simultaneously review each invoice and progress report in detail and process the invoice for payment. Partial Payments will be made once each month. If WSDOT questions or disputes any item, it will redline the item and refer the item back to the Design-Builder for resolution before payment. WSDOT will deduct from the payment the value of the items not resolved to its satisfaction before the payment date.

Incorrect Invoices. If problems persist in obtaining correct invoices and the required accompanying documents from the Design-Builder, WSDOT reserves the right to withhold payment until correct and complete invoices and documents have been submitted.

Failure to perform any of the obligations under the Contract by the Design-Builder may be decreed by WSDOT to be adequate reason for withholding any payments until compliance is achieved.

Upon Completion and after Final Inspection (Section 1-05.11), the amount due the Design-Builder under the Contract will be paid based upon the final estimate made by WSDOT and presentation of a Final Contract Voucher Certification signed by the Design-Builder. Such voucher shall be deemed a release of all claims of the Design-Builder unless a claim is filed in accordance with the requirements of Section 1-09.11 and is expressly accepted from the Design-Builder's certification on the Final Contract Voucher Certification. The date the Secretary signs the Final Contract Voucher Certification constitutes the Final Acceptance Date (Section 1-05.12).

If the Design-Builder fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for Completion and Final Acceptance of the

Contract, WSDOT reserves the right to establish a Completion date (for the purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract. Unilateral Final Acceptance will occur only after the Design-Builder has been provided the opportunity, by written request from the WSDOT Engineer, to voluntarily submit such documents. If voluntary compliance is not achieved, formal notification of the impending establishment of a Completion Date and unilateral Final Acceptance will be provided by certified letter from the Secretary to the Design-Builder, which will provide 30 calendar days for the Design-Builder to submit the necessary documents. The 30 calendar day period will begin on the date the certified letter is received by the Design-Builder. The date the Secretary unilaterally signs the Final Contract Voucher Certification shall constitute the Completion Date and the Final Acceptance date (Section 1-05.12). The reservation by WSDOT to unilaterally accept the Contract will apply to contracts that are physically completed in accordance with Section 1-08.5, or for contracts that are terminated in accordance with Section 1-08.10. Unilateral Final Acceptance of the Contract by WSDOT does not in any way relieve the Design-Builder of its responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

Payment to the Design-Builder of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

1-09.9(3) Retainage

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

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

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

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

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

1. On contracts totaling more than $20,000, a release has been obtained from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Design-Builder and all Subcontractors are on file with WSDOT (RCW 39.12.040).
3. A release has been obtained from the Washington State Department of Labor & Industries (per Section 1-07.10) and the Washington State Employment Security WSDOT.
4. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, and 3 are met, the Design-Builder will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by WSDOT sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

1-09.10 PARTNERING

WSDOT encourages partnering among WSDOT, the Design-Builder and its Subcontractors. The partnering process is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals, including achieving completion of the Work on time, within budget and in accordance with its intended purpose. A primary consideration of partnering is the prompt and equitable resolution of issues affecting the conduct of the Work under the Contract and the rights and responsibilities of the respective parties.

Participation in partnering shall be bilateral and completely voluntary. Any cost associated with this partnering will be agreed to by both parties and will be shared equally between WSDOT and the Design-Builder, except for travel expenses, which will be borne by each party.

Within 30 calendar days of the Notice to Proceed, WSDOT and the Design-Builder will mutually select a third-party facilitator to conduct a team building workshop for the attendees. The initial workshop should be held within 60 calendar days of the Notice to Proceed. The workshop is expected to last approximately one day. The Design-Builder's and the major Subcontractor's key staff as well as WSDOT's key staff responsible for the management and administration of the Contract should attend the workshop. During the initial workshop, a program for the continuation and maintenance of the partnering initiative will be developed for use through the duration of the Project.

Follow-up sessions may be held periodically throughout the duration of the Contract, as agreed to by WSDOT and the Design-Builder.

Each party may withdraw from partnering upon written notice to the other. However, no claim or dispute settled or change approved through partnering may be revived. The establishment of partnering and any charter will not change the legal relationship of the parties to the Contract, nor relieve either party from any terms of the Contract. Neither the language of this Section 1-09.10 nor any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

1-09.11 DISPUTES AND CLAIMS

1-09.11(1) Disputes

When disputes occur during a Contract, the Design-Builder shall pursue resolution through the WSDOT Engineer. The Design-Builder shall follow the procedures outlined in Section 1-04.5. If the negotiation using the procedures outlined in Section 1-04.5 fails to provide satisfactory resolution, the Design-Builder shall pursue the more formalized method outlined in Section 1-09.11(2) for submitting a claim.

1-09.11(2) Claims

If the Design-Builder claims that additional payment is due and the Design-Builder has pursued and exhausted all the means provided in Section 1-09.11(1) to resolve a dispute, the Design-Builder may file a claim as provided in this section. The Design-Builder agrees to waive any claim for additional payment if the written notifications provided in Section 1-04.5 are not given, or if WSDOT is not afforded reasonable access by the Design-Builder to complete records of actual cost and additional time incurred as required by Section 1-04.5, or if a claim is not filed as provided in this section. The fact that the Design-Builder has provided a proper notification, provided a properly filed claim, or provided WSDOT access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by WSDOT, is found to have merit, WSDOT will make an equitable adjustment either in the amount of costs to be paid or in the time required for the Work, or both. If WSDOT finds the claim to be without merit, no adjustment will be made.

All claims filed by the Design-Builder shall be in writing and in sufficient detail to enable WSDOT to ascertain the basis and amount of the claim. All claims shall be submitted to the WSDOT Engineer as provided in Section 1-05.15. At a minimum, the following information must accompany each claim submitted:

1. A detailed factual statement of the claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the claim.
2. The date on which facts arose which gave rise to the claim.
3. The name of each WSDOT individual, official, or employee involved in or knowledgeable about the claim.
4. The specific provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim.
5. If the claim relates to a decision of WSDOT which the Contract leaves to WSDOT's discretion or as to which the Contract provides that WSDOT's decision is final, the Design-Builder shall set out in detail all facts supporting its position relating to the decision of WSDOT.
6. The identification of any documents and the substance of any oral communications that support the claim.
7. Copies of any identified documents, other than WSDOT documents and documents previously furnished to WSDOT by the Design-Builder, that support the claim

(manuals which are standard to the industry, used by the Design-Builder, may be included by reference).

8. If an extension of time is sought:
   (a) The specific days and dates for which it is sought
   (b) The specific reasons the Design-Builder believes a time extension should be granted,
   (c) The specific provisions of Section 1-08.8 under which it is sought, and
   (d) The Design-Builder's analysis of its progress schedule to demonstrate entitlement to a time extension.
9. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
   (a) Labor
   (b) Materials
   (c) Direct equipment. The actual cost for each piece of equipment for which a claim is made or in the absence of actual cost, the rates established by the AGC/WSDOT Equipment Rental Agreement which was in effect when the Work was performed. In no case shall the amounts claimed for each piece of equipment exceed the rates established by that Equipment Rental Agreement even if the actual cost for such equipment is higher. WSDOT may audit the Design-Builder's cost records as provided in Section 1-09.12 to determine actual equipment cost. The following information shall be provided for each piece of equipment:
      (1) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12 "G," Tractor Crawler ROPS & Dozer Included Diesel, etc.);
      (2) The hours of use or standby; and
      (3) The specific day and dates of use or standby;
   (d) Job overhead
   (e) Overhead (general and administrative)
   (f) Subcontractor's claims; and
   (g) Other categories as specified by the Design-Builder or WSDOT.
10. A notarized statement shall be submitted to the WSDOT Engineer containing the following language:

_____, _____

(name) (title)

of _____

(company)

Under the penalty of law for perjury or falsification, the undersigned hereby certifies that the claim for extra compensation and time, if any, made herein for Work on this Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between the parties.

Dated _____/s/_____

Subscribed and sworn before me this _____ day of _____

_____

Notary Public

My Commission Expires: _____

It will be the responsibility of the Design-Builder to keep full and complete records of the costs and additional time incurred for any alleged claim. The Design-Builder shall permit WSDOT to have access to those records and any other records as may be required by WSDOT to determine the facts or contentions involved in the claim. The Design-Builder shall retain those records for a period of not less than three years after Final Acceptance.

The Design-Builder shall pursue administrative resolution of any claim with WSDOT or the designee of WSDOT.

Failure to submit with the Final Contract Voucher Certification such information and details as described in this section for any claim shall operate as a waiver of the claims by the Design-Builder as provided in Section 1-09.9.

Provided that the Design-Builder is in full compliance with all the provisions of this section and after the formal claim document has been submitted, WSDOT will respond, in writing, to the Design-Builder as follows:

1. Within 45 calendar days from the date the claim is received by WSDOT if the claim amount is less than $100,000
2. Within 90 calendar days from the date the claim is received by WSDOT if the claim amount is equal to or greater than $100,000; or
3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Design-Builder will be notified within 15 calendar days from the date the claim is received by WSDOT as to the amount of time which will be necessary for WSDOT to prepare its response.

Full compliance by the Design-Builder with the provisions of this section is a contractual condition precedent to the Design-Builder's right to commence arbitration or litigation proceedings.

1-09.11(3) Time Limitation and Jurisdiction

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Design-Builder has against the State of Washington arising from the Contract shall be brought within 180 calendar days from the date of Final Acceptance (Section 1-05.12) by WSDOT; and it is further agreed that any such claims or causes of action shall be brought, unless otherwise noted, only in the Superior Court of Thurston County. The parties understand and agree that the Design-Builder's failure to bring an action in the proper forum within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Design-Builder asserts against the State of Washington arising from the Contract are filed with the State, initiated in arbitration, or initiated in court, the Design-Builder shall permit the State to have timely access to any records deemed necessary by the State to assist in evaluating the claims or action.

1-09.12 AUDITS

1-09.12(1) General

The Design-Builder's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than three years after the date of Final Acceptance. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that the wage, payroll, and cost records of all Subcontractors and all lower tier subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of WSDOT or by an auditor under contract with WSDOT. The Design-Builder, Subcontractors, or lower tier subcontractors shall provide adequate facilities, acceptable to the WSDOT Engineer, for the audit during normal business hours. The Design-Builder's Subcontractors, or lower tier subcontractors shall make a good faith effort to cooperate with the auditors. If an audit is to be commenced more than 60 calendar days after the Final Acceptance, the Design-Builder will be given 20 calendar days notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is completed.

1-09.12(2) Claims

All claims filed against WSDOT shall be subject to audit at any time following the filing of the claim. Failure of the Design-Builder, Subcontractors, or lower tier subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of the Design-Builder, Subcontractors, or lower tier subcontractors shall constitute a waiver of a claim and shall bar any recovery there under.

1-09.12(3) Required Documents for Audits

At a minimum, the auditors shall have available to them the following documents in both electronic and paper format:

1. Daily time sheets and supervisor's daily reports
2. Collective Bargaining Agreements
3. Insurance, welfare, and benefits records
4. Payroll registers
5. Earnings records
6. Payroll tax forms
7. Material invoices and requisitions
8. Material cost distribution worksheet
9. Equipment records (list of company equipment, rates, etc.)
10. Vendors', rental agencies', Subcontractors', and lower tier subcontractors' invoices
11. True and complete copies or originals of all contracts (including leases and purchase orders), between the Design-Builder and each of its Subcontractors and suppliers, and all lower-tier subcontractor contracts and all supplier contracts
12. Subcontractors' and lower tier subcontractors' payment certificates
13. Canceled checks (payroll and vendors)
14. Job cost reports, including monthly totals
15. Job payroll ledger
16. General ledger
17. Cash disbursements journal
18. Financial statements for all years reflecting the operations on this Contract. In addition, WSDOT may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and three years following Final Acceptance
19. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others
20. If a source other than depreciation records is used to develop costs for the Design-Builder's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents
21. All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim
22. Worksheets or software used to prepare the claim establishing the cost components for items of the claim including but not limited to labor, benefits and insurance,

materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

23. Worksheets, software, and all other documents used by the Design-Builder to prepare its Proposal.

An audit may be performed by employees of WSDOT or a representative of WSDOT. The Design-Builder and its Subcontractors shall provide adequate facilities acceptable to WSDOT for the audit during normal business hours. The Design-Builder and all Subcontractors shall cooperate with WSDOT's auditors.

1-09.13 CLAIMS RESOLUTION

1-09.13(1) General

Prior to seeking claim resolution through nonbinding alternative dispute resolution processes, binding arbitration, or litigation, pursuant to this Section, the Design-Builder shall proceed under the administrative procedures in Sections 1-04.5, 1-09.11 and any Special Provision provided in the Contract for resolution of disputes. The provisions of these Sections must be complied with in full, as a **CONDITION PRECEDENT**, to the Design-Builder's right to seek claim resolution through any nonbinding alternative dispute resolution process, binding arbitration or litigation, as provided in this Section.

1-09.13(2) Nonbinding Alternative Disputes Resolution (ADR)

Nonbinding ADR processes are encouraged and available upon mutual agreement of the Design-Builder and WSDOT for all claims submitted in accordance with Section 1-09.11, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. WSDOT has been given the time and opportunity to respond to the Design-Builder as provided in Section 1-09.11(2); and
3. WSDOT has determined that it has sufficient information concerning the Design-Builder's claims to participate in a nonbinding ADR process.

WSDOT and the Design-Builder mutually agree that the cost of the nonbinding ADR process shall be shared equally by both parties with each party bearing its own preparation costs.

The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Washington at a location mutually acceptable to the parties.

The Design-Builder agrees that the participation in a nonbinding ADR process does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180 calendar days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

1-09.13(3) Claims $250,000 or Less

The Design-Builder and WSDOT mutually agree that those claims which total $250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through mandatory and binding arbitration as described herein.

1-09.13(3).1 Administration of Arbitration

Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. The current version of the Northwest Region Expedited Commercial Arbitration Rules shall be used for claims with an amount less than $25,000.
2. The current version of the Expedited Procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $25,000 and less than $50,000.
3. The current version of the standard procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $50,000 and not greater than $250,000.

WSDOT and the Design-Builder mutually agree the venue of any arbitration hearing shall be within the State of Washington and any such hearing shall be conducted within the State of Washington.

WSDOT and the Design-Builder mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of Thurston County. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

1-09.13(3).2 Procedures to Pursue Arbitration

If the dispute cannot be resolved through administrative procedures provided in Sections 1-04.5, 1-09.11, and any special provision provided in the Contract for resolution of disputes or through a mutually agreed upon nonbinding ADR process, the Design-Builder shall advise WSDOT, in writing, that mandatory and binding arbitration is desired. The parties may agree on an arbitration process, or, if the parties cannot agree a demand for arbitration shall be filed by the Design-Builder, in accordance with the AAA rules, with WSDOT, and with the AAA. Selection of the arbitrator and the administration of the arbitration shall proceed in accordance with AAA rules using arbitrators from the list developed by the AAA, except that: for claims under $25,000 using the Northwest Region Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited Procedure of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim as provided in Section 1-09.13(3).1.

Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to binding arbitration prior to Physical Completion of the Project, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted
2. The dispute has been pursued to the claim status as provided in Section 1-09.11(2); and

3. The Design-Builder certifies in writing that claims for delays or impacts to the Work will not result from the dispute.

Unless WSDOT and the Design-Builder agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from the Contract must be brought in a single arbitration hearing and only after Physical Completion has occurred. The total of those unresolved claims cannot be greater than $250,000 to be eligible for arbitration.

In addition, the Design-Builder agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, within 180 calendar days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

The scope and extent of discovery shall be determined by the arbitrator in accordance with AAA rules. In addition, each party for claims greater than $25,000 shall serve upon the other party a "statement of proof." The statement of proof shall be served, with a copy to the AAA, no less than 20 calendar days prior to the arbitration hearing and shall include:

1. The identity, current business address, and residential address of each witness who will testify at the hearing,
2. The identity of any expert witness to be called, a statement as to the subject matter and the substance of the facts and opinions on which the expert is expected to testify, a summary of the grounds for each opinion, and a resume of the expert's qualifications, and
3. A list of each document that the party intends to offer in evidence at the arbitration hearing. Either party may request from the other party a copy of any document listed. If such a request is made, a copy of the document shall be provided within five calendar days from the date the request is received.

The arbitrator may permit a party to call a witness or offer a document not shown or included in the statement of proof only upon a showing of good cause.

1-09.13(4) Claims in Excess of $250,000

The Design-Builder and WSDOT mutually agree that those claims in excess of $250,000, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.

1-010 INTENTIONALLY OMITTED

1-011 CONTRACT ADMINISTRATION

The Work shall be administered in accordance with this Section.

1-011.1 WSDOT

WSDOT's Engineer shall:

(a) Conduct ongoing reviews of the Design-Builder's progress in performing the Work and ensure timely comments from the technical units

(b) Review the Design-Builder's billings

(c) Review and evaluate the Design-Builder's requests for extension of time and supplemental agreements

(d) Review all correspondence with public agencies prior to the Design-Builder's mailing of any correspondence

(e) Coordinate/monitor the distribution of public information

(f) Provide a focal-point contact for all questions, requests, and submittals

(g) Coordinate Project scheduling between the Design-Builder and WSDOT, coordinate WSDOT oversight of QA/QC activities, and coordinate documentation reviews by WSDOT

(h) Review and process progress payments

(i) Administer the incentive program

(j) Perform audits of the Design-Builder's performance of design and construction QC/QA and provide the audit findings to the Design-Builder

(k) Other duties as agreed upon by the Design-Builder and WSDOT.

1-011.2 DESIGN-BUILDER

The Design-Builder shall:

(a) Establish, furnish and maintain suitable design and construction office facilities in accordance with the requirements of the Technical Specifications Section 2.1.5.7

(b) Maintain an adequate staff of qualified support personnel to perform the Work necessary to complete the Project

(c) Establish internal accounting methods and procedures for documenting and monitoring Project costs

(d) Provide evidence of Project costs as required to WSDOT or to WSDOT's agent, for purposes of monitoring Design-Build Projects

(e) Establish and maintain Contract administration procedures, which shall include preparation of supplemental agreements and requests for time extensions as well as administration of subcontracts

(f) Include the complete Project name and number on all correspondence related to this Contract

(g) Participate in design consensus, status and team building meetings with all appropriate participants at the start, on a monthly basis during the Project development period and as needed to maintain the timely progress of design activities on the Contract Schedule. If requested by the WSDOT Engineer, the Design-Builder shall act as the lead

(h) Assume complete responsibility for the accuracy and completeness of Released For Construction Documents and related design prepared under this Project

(i) Implement the Project Quality Management Plan as approved by WSDOT

(j) Submit requests for progress payments along with the supporting documentation

(k) Respond in writing to all WSDOT audit findings

(l) Other duties as agreed upon by the Design-Builder and WSDOT.

1-011.3 PROJECT CONTROL

The submittal dates for Design Documents and Release For Construction Documents shall be included in the Contract Schedule. Dates of required and/or expected WSDOT reviews for said documentation and the required review times in accordance with the Contract Documents shall also be included. . Furthermore, the Design-Builder shall identify in the Contract Schedule review days specified in the QMP for all design reviews including design review of 100 percent designs. The 100 percent design is defined as completion of all design products listed in the design scope of Work pursuant to the Technical Specifications. Schedule changes in the design elements that impact the review times of WSDOT shall be specifically highlighted in all Contract Schedule updates.

In addition, for each design item, segment, or phase of construction designated by the Design-Builder, the Design-Builder shall through day-to-day communications, keep WSDOT up to date on exact timing of reviews

The Design-Builder shall provide data upon request to monitor costs and manpower and to report progress.

The Project control system shall include features to:

A. Determine and highlight critical path Work from initial plans as Work progresses

B. Identify progress against schedule for each identified Work item

C. Forecast completion dates from current progress

D. Highlight rescheduled Work in any area, which is out of the required sequence

E. Determine any physical area that requires more resources than originally allocated

F. Forecast future conflicts in any area

G. Provide estimates of time, manpower, and dollars required at the lowest Work element tracked, based upon current expenditures versus schedule

H. Provide the capability of random inquiry concerning the status of any Work element in terms of schedule, manpower, and dollars

1-011.4 PROJECT RELATED CORRESPONDENCE

The Design-Builder shall furnish written documentation of project related correspondence to the WSDOT Engineer for their records within one week of the communication. The Design-Builder is responsible for recording and distributing to the participants the minutes of all meetings pertaining to this Project within two days of the meeting.

Project related correspondence shall include communications with private citizens, groups, political bodies and businesses affected by the project, all governmental bodies, and other communications required elsewhere in the RFP.

1-011.5 QUALITY MANAGEMENT PLAN REQUIREMENTS

The Design-Builder is responsible for the accuracy and completeness of the plans and related design prepared under this Contract and shall provide and implement the Project specific Quality Management Plan (QMP) referenced in Technical Specifications Section 2.28.

1-011.6 DESIGN-BUILDER PERSONNEL

The Work shall be performed and/or directed by the key persons identified in the Design-Builder's Technical Proposal. Any changes in the indicated key persons shall be subject to review and approval by WSDOT pursuant to the Contract Documents.

1-011.7 PRE-CONTRACT MEETING AND SITE VISIT

1-011.7(1) Pre-Contract Meeting

As soon as practicable and not more than 30 days after the award of the Contract, the Design-Builder shall hold a meeting with WSDOT to discuss the Project and exchange information as outlined in Section 1-2.1C of the WSDOT Construction Manual and additional topics relevant to the design phase.

1-011.7(2) Pre-Contract Site Visit

The Design-Builder shall schedule and coordinate the Pre-Contract Site Visit. The purpose of the Pre-Contract Site Visit is to acquaint key personnel with the details and features of the Project to facilitate the design process. The date of the site visit shall be as agreed with the WSDOT Engineer and not more than 30 calendar days after receipt of written Notice to Proceed. Participants shall include, at a minimum, the Design-Builder's Design Manager and Environmental Compliance Manager. The Design-Builder shall accommodate a minimum of three WSDOT personnel on the site visit. Additional agency representatives (WSDOT, FHWA, and other interested persons) may attend as determined appropriate by WSDOT and the Design-Builder.

Within 7 calendar days after the site visit, the Design-Builder shall issue to WSDOT a brief written report including observations, discussions, and any questions pertaining to the scope or level of effort of the Project.

1-011.8 DOCUMENT OWNERSHIP

All documents, exhibits, and related files including photographic negatives used in the Project, shall become and remain the property of WSDOT as appropriate and may be used by WSDOT without restriction. Such unrestricted use, unrelated to the design basis and intent of this Project, will be without liability or legal exposure to the Design-Builder.

1-011.9 DESIGN REVIEWS AND OVERSIGHT VISITS

The plans will be reviewed by WSDOT for conformity with WSDOT procedures and the terms of the Contract. Review by WSDOT does not include detailed review or checking of design of major components and related details or the accuracy with which such designs are depicted on the plans.

WSDOT may also make periodic visits to the office(s) of the designer(s) to discuss and verify design progress and the designers' QMP. WSDOT will give the Design-Builder 2 business days' advance notice of intent to make an oversight visit.

Throughout the design process, the Design-Builder may, and is encouraged to, request additional oversight visits by WSDOT to discuss and verify design progress and to assist the Design-Builder and/or its designer(s) in resolving design questions and issues. The Design-Builder shall give WSDOT 2 business days notice of any requested oversight visit.

1-011.9(1) Other Interim Design Reviews

Design reviews by WSDOT shall be held in accordance with the approved QMP. The Design/Builder may request at any time additional interim design reviews. WSDOT may or may not conduct such reviews at its discretion.

Prior to WSDOT's participation in any design review, the Design-Builder's Design QA Manager shall certify that the item or segment of Work 1) has been designed in accordance with Contract requirements, and 2) has been checked in accordance with the Design-Builder's approved QMP.

1-011.9(2) Design Changes

Either the Design-Builder or WSDOT may initiate design changes. Design changes may occur on items or segments undergoing early construction or may occur after final design. All design changes shall undergo the same QA/QC checks as the original design. See Changes, Section 1-04.4 and Technical Specifications Section 2.28.3.

Design changes during early construction, before final designs are complete, or design changes to final designs, shall be approved in writing by the Engineer of Record in responsible charge of the original design. All design change plans, specifications, calculations, and reports shall be stamped, signed and dated by a State of Washington licensed professional engineer. In both cases, the Design-Builder's Design QA Manager shall certify in writing that the design change

1) conforms to all applicable Contract requirements, 2) has been checked in accordance with the Design-Builder's Approved QMP and 3) is consistent with all other elements of the design. The Design-Builder shall request and schedule reviews by WSDOT for all design changes in accordance with the QMP.

The Technical Proposal was based on design standards, specifications and WSDOT policy in effect as of the dates stipulated in the Contract. The Design-Builder acknowledges and agrees that it bears full responsibility for reviewing published revisions to the design standards, specifications and WSDOT policy made during the development of the Project and ascertaining how the Final Design Documents will be affected. The Design-Builder shall work with the WSDOT Engineer, who will make final decisions regarding the need to modify the design to accommodate the revised standards, specifications, and WSDOT policy. The Design-Builder will be compensated in accordance with Section 1-04.4 for any significant redesign and additional construction costs resulting from this requirement.

For changes initiated by the Design-Builder, the Design-Builder shall bear all costs associated with making the design change and obtaining concurrence of the original designer. For changes initiated by WSDOT, WSDOT will bear all such costs.

1-011.10 EARLY CONSTRUCTION

The Contract Schedule shall identify the items, segments, or phases that the Design-Builder plans to release for early construction (i.e., construction that is to start prior to completion of design for the entire Project). Design reviews will be conducted for items or segments of permanent construction Work identified by the Design-Builder for early construction. The Design-Builder may start construction of any element of the Project only after meeting the requirements of Section 1-08.4(2) and after all the following items have occurred:

(a) The Project 30% Design Review is complete.

(b) The designer has completed its design QC checks and certifies in writing that the design is ready to be released for early construction.

(c) The Design-Builder's Design Quality Assurance Manager has also certified that the design of the item, segment, or phase of Work has been designed in accordance with Contract requirements.

(d) The design has been subjected to a constructability review as defined in the QMP to determine that construction can proceed safely (from the aspects of public and worker safety).

(e) Design-Builder has afforded WSDOT at least 5 business days to review and comment on the Design Documents and has addressed all WSDOT comments and concerns, prior to designating them as "Released for Construction Documents."

(f) The Engineer of Record, licensed in the State of Washington, has stamped, signed and dated the Design Documents for early construction.

(g) Adequate stakes, lines and grades shall have been established in the field to control the Work.

(h) The Design-Builder has submitted plans that clearly describe which Project elements can be constructed early.

(i) The Design-Builder has met all public information and notice requirements.

If WSDOT, in its review, observes that the Design-Builder is not complying with Contract requirements and/or that the QC/QA checks are not complete, it will notify the Design-Builder in writing. WSDOT's design review and comments will not constitute approval or acceptance of the design or subsequent construction.

If there is evidence that the Design-Builder's QC/QA procedures are not adequate, for example, if a problem is spotted during the design reviews or becomes evident during construction, WSDOT may, at its sole discretion, suspend future early construction until sufficient QC/QA procedures are in place. Such a suspension shall be considered a suspension for cause. If the deficiency affects construction in progress, WSDOT has the right to require correction of the design and/or construction defects before construction can proceed further.

The Design-Builder maintains sole responsibility for final design and construction. Any unanticipated issues arising from Early Construction shall be the Design-Builder's responsibility to solve.

1-011.11 PRE-CONSTRUCTION MEETING AND DOCUMENTATION DURING CONSTRUCTION

The Design-Builder is responsible for obtaining, maintaining, and monitoring for compliance all documents and records required in the Contract. Prior to start of construction Work, an orientation meeting will be held between the Design-Builder and WSDOT to address documentation requirements.

1-011.11(1) Documentation Reviews

In addition to the formal reviews, WSDOT on-site personnel may perform daily documentation reviews. Examples of these daily reviews include, but are not limited to, reviewing Construction Project Diaries, Inspector's Daily Reports, materials documentation, payrolls, DBE documentation, etc.

1-011.11(2) Underground Facilities

All underground facilities (culverts, drains, catch basins, grate inlets, conduit, water lines, irrigation lines, etc.) shall be documented to show the location and elevation. The Design-Builder shall use DOT Form 422-637, Field Note Record for Drainage or a similar format to document the items. An example of how the form is completed is shown on Figures 10-6 and 10-7 of the WSDOT Construction Manual.

1-011.11(3) Project Diaries and Daily Reports

The Design-Builder shall maintain daily records of construction activities in the form of Construction Project Diaries and Daily Reports. Sections 10-3.6A and 10-3.6B of the WSDOT Construction Manual describe what these reports shall consist of. Construction Project Diaries shall also contain the information required in WSDOT Form 422-004 and Form 422-004A and shall be in a similar format. Together the Construction Project Diaries and the Daily Reports

shall provide a complete word picture of the Project, covering both the normal Work process and anything unusual that occurs on the Project. The Design-Builder shall submit to WSDOT for approval copies of the Construction Project Diary form and the Daily Report form proposed by the Design-Builder for use on the Project. The Design-Builder shall submit such forms to WSDOT no later than 30 calendar days prior to the start of any construction.

1-011.11(4) The Design-Builder's Record of Accidents and Traffic Control Surveillance

The Design-Builder shall maintain a record of all traffic accidents and a daily record of all traffic control signing that is within the limits of construction as outlined in Section 1-2.3 E of the WSDOT Construction Manual. DOT Forms 421-040A, Contractor's Daily Report of Traffic Control - Summary and 421-040B, Contractor's Daily Report of Traffic Control - Traffic Control Log shall be used to document the traffic control activity and signing.

1-011.11(5) Final Records

The Design-Builder shall submit the final records to the WSDOT Engineer prior to establishment of Completion. The final records shall include without limitation:

1. Final Record Book No. 1
2. Project diary/daily reports records
3. The Design-Builder's Daily Reports of Traffic Control
4. Materials Certification
5. As-Built Plans
6. Pile driving records (if applicable)
7. Post tensioning records (if applicable).

1-011.11(6) Final Record Book No. 1

This book consists of documents bound in a semi-rigid, water resistant cover. Each page shall be numbered consecutively. The following documents shall be included, and the order in which it is to be arranged is given below. No other material is to be included in this book.

1. Index sheet - containing the detailed index for Final Record Book No.1 and also the listing of the other final records contained in each book.
2. The Design-Builder personnel list - containing the name and classification of managers, supervisors, foremen, testers, engineers and any other Design-Builder personnel who were responsible for signing documents or forms or were responsible for decision-making on the Project. Each person shall sign his or her identifying initials after his or her name on this list in the same manner as it appears in other Project documents.
3. Comparison of Quantities - to be provided by WSDOT
4. Final Contract Voucher Certification, Form 134-146 - including the Design-Builder's authorized signature and the WSDOT Regional authorized signature.
5. Contract Estimate Payment Totals report - to be provided by WSDOT

6. Affidavit of Wages Paid, State L & I Form F700-007-000 - the original or copy of the approved affidavits.
7. List of Change Orders - showing the Change Order numbers, a brief description of each and the change order cost.
8. Record of construction materials - tabulating the source of the construction materials.
9. A list of all Field Design Changes
10. A list of all Category B changes.

1-011.11(7) Project Diaries, Daily Reports and the Design-Builder's Daily Reports of Traffic Control

The Construction Project Diaries and the Daily Reports shall be organized in chronological order and bound in books similar to Final Record Book No. 1. The pages of these books do not require numbering, however, the books themselves shall be numbered consecutively starting with Final Record Book No. 2. The Design-Builder's Daily Reports of Traffic Control shall be bound in the same manner and the books numbered consecutively after the diaries/daily reports books.

1-011.11(8) Materials Certification

The Design-Builder shall submit a materials certification package to WSDOT, which contains a checklist and supporting documentation. The Design-Builder may use WSDOT Form 350-115, Contract Materials Checklist, or develop one of its own with the same information. The supporting documentation shall consist of a summary of all documentation practices utilized for material acceptance and explanations of any deficiencies noted on the checklist. The summary should be organized in the order similar to Division 9 of the Standard Specifications.

1-011.11(9) As-Built Plans

As Built Plans shall be full size, 22-inch x 34-inch, blackline prints. Each plan sheet shall have lettering or a stamp identifying it as As-Built Plans.

As-Built Plans are a record of how the Project was actually constructed and shall reflect the same degree of detail as the Released For Construction Documents. Underground features need to be documented showing the location and elevation.

1-011.11(10) Pile Driving Records

The Design-Builder shall complete the Pile Driving Record Book, WSDOT Form 450-004, and Test Pile record, WSDOT Form 410-027, as outlined in Section 6-5.7C of the WSDOT Construction Manual. This record shall be available to the WSDOT Engineer, when requested.

1-011.11(11) Post-Tensioning Records

The Design-Builder shall complete the Post-Tensioning Record, WSDOT Form 450-005, as outlined in Section 6-2.8 of the WSDOT Construction Manual. This record shall be available to the WSDOT Engineer, when requested.

1-011.11(12) Temporary Final Records

Temporary final records are comprised of all relevant records not included in the final records. Copies of these records must be submitted to the WSDOT Engineer to be retained for a 3-year period following acceptance of the Project as required by RCW 40.14. The Design-Builder shall submit these to the WSDOT Engineer with the Final Records. Examples of these records include but are not limited to the following:

1. Material acceptance test reports
2. Concrete pour records
3. Source of materials documentation
4. Prints of shop drawings
5. Copies of certified payrolls
6. Horizontal and vertical alignment data
7. Falsework and formwork plans.