SR 520 Eastside Transit and HOV Project

Request for Proposal

May 28, 2010

Chapter 1: General Provisions

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1-01 DEFINITIONS AND TERMS

1-01.1 GENERAL

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

1-01.2 ABBREVIATIONS

1-01.2(1) ASSOCIATIONS AND MISCELLANEOUS

AAA	American Arbitration Association
AAN	American Association of Nurserymen
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
BMP	Best Management Practice
CFR	Code of Federal Regulations
CLI	Chain Link Institute
CRAB	County Road Administration Board
CRSI	Concrete Reinforcing Steel Institute
DBE	Disadvantaged Business Enterprise
DIPRA	Ductile Iron Pipe Research Association

EEI	Edison Electric Institute
EIA	Electronic Industries Alliance
EPA	Environmental Protection Agency
EPD	Escrow Proposal Documents
ESAL	Equivalent Single Axle Loads
FHWA	Federal Highway Administration
FOP	Field Operating Procedure
FSS	Federal Specifications and Standards, General Services Administration
GBR	Geotechnical Baseline Report
GDR	Geotechnical Data Report
HAC	High Accident Corridor
HAL	High Accident Location
HUD	United States Department of Housing and Urban Development
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IES	Illumination Engineering Society
IGA	Intergovernmental Agreement
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
LID	Local Improvement District
LPI	Lighting Protection Institute
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
NPDES	National Pollution Discharge Elimination System
NRMCA	National Ready Mix Concrete Association
NTP	Notice to Proceed
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
SGDR	Supplemental Geotechnical Data Report
SOP	Standard Operating Procedure
SPUI	Single Point Urban Interchange
SSPC	Steel Structures Painting Council
TIA	Telecommunications Industry Association

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

1-01.2(2) ITEMS OF WORK

Agg.	Aggregate
Al.	Aluminum
ATB	Asphalt Treated Base
BST	Bituminous Surface Treatment
CCTV	Closed Circuit Television
Cl.	Class
Cfm	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Comb.	Combination
Conc.	Concrete
CPF	Composite Pay Factor
Crib.	Cribbing
Culv.	Culvert
cy or cu yd.	Cubic Yard
Diam.	Diameter
DBH	Diameter at Breast Height
ESAL	Equivalent Single Axle Loads
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
Gph	Gallon per Hour
Gpm	Gallon per Minute
Hund.	Hundred
HMA	Hot Mix Asphalt
In.	Inch
Incl.	Including
ITS	Intelligent Transportation System
JMCIF	Job Mix Compliance Incentive Factor
JMF	Job Mix Formula
Lb	Pound(s)
LED	Light Emitting Diode
LF or Lin. Ft.	Linear Foot (Feet)
LS	Lump Sum
M	Thousand

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

1-01.3 DEFINITIONS

1-01.3(1) DEFINED TERMS

The following capitalized terms shall have the following meanings:

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

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

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

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

- Horizontal and Vertical Alignments
- Number/Type/Location of Ramps/Overpasses/Underpasses/Lids/Interchanges.
- Number of Highway Lanes.
- Number/Type of Signalized Intersections.
- Number/Location/Length and Top Elevation of Noise Walls.

- Approximate Project Limits.
- Lane and shoulder widths.
- Right of Way Limits.
- Number and location of transit stations
- Widths and termination points of paths and trails
- Location and diameter of round-abouts
- The 4 foot buffer

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

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

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

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

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

(d) Any upgrading required by applicable Governmental Rules.

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

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

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

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

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

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

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

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

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

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.

Conceptual Design - Preliminary design concept, including the Basic Configuration, presented in the RFP Appendix M1 and M2.

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

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

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

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

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

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

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

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

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

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

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

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

Delayed Prior Relocation - a Prior Relocation that is not completed prior to issuance of the Notice to Proceed.

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

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

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

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

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

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

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

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

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

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

Environmental Laws - All Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material into the environment including into the air, surface water, or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous waste, pollutant, contaminant, substance, or material, or otherwise relating to the protection of public health, public welfare, public safety or the environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"), as amended by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Hazardous Materials Transportation Uniform Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. §1531 et seq.; the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §703 et seq.; Fish and Game Code §1600 et seq.; the Washington Model Toxics Control Act, 70.105D RCW; and the Washington Hazardous Waste Management Act, 70.105 RCW; the Washington Water Pollution Control Act; the Clean Air Washington Act; the Washington Solid Waste Management laws; the Washington Underground Petroleum Storage Tanks Act, the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, all as amended and supplemented previously or in the future.

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

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

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

Final Cleanup – The Work described in TR Section 2.33.

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

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

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

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

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

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

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

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

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

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

mineral asbestos naturally occurring in the ground). The term "Hazardous Materials" includes Hazardous Waste.

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

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

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

(a) Service Line Relocations.

(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.

(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 meaning set forth in Section 1-07.14(1).

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

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

Intelligent Transportation Systems – All components and equipment referenced as such in the Technical Requirements.

Intergovernmental Agreement (IGA) - a (binding) agreement between WSDOT and another Governmental Body that is included in the RFP, addressing Utility Work, roadway design, engineering studies, construction, maintenance, or other services, as the same may be amended.

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

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

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

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

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

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

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

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

Physical Completion Date, Physical Completion - The 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 in the Technical Requirements as being required to accomplish the Basic Configuration that differ from WSDOT established standards required in the Contract Documents.

Prior Relocation - Utility Relocations identified as such in TR Section 2.10.

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

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

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

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

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

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

Public Utility Owner means a Utility Owner that is a Governmental Body.

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

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

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

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

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

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

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

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

Reasonable Accuracy - The meaning set forth in Section 1-07.17(9).3.

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

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

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

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

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

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

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

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

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

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

Service Line - A line, also referred to as a service lateral or lateral, the function of which is to connect directly the improvement(s) on an individual property, either public or private, to a Utility that is part of a larger line, facility or system. Unless noted otherwise in the Technical Requirements, the term Service Line excludes any cable, conduit or other line that connects a Traffic Control/Illumination System to a Utility that is part of a larger line, facility or system. Such a cable, conduit or other line shall be considered to be part of the applicable Traffic Control/Illumination System.

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

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

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

State - The State of Washington acting through its representatives.

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

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

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

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

Substantial Completion Date, Substantial Completion - The 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.

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

Supplemental Geotechnical Data Report – The Contract Document developed pursuant to ITP Section 2.8.2, that contains factual subsurface data collected prior to the Proposal Date, and which is included in Appendix G9

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

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

Technical Requirements – Chapter 2 of the Request for Proposal document package.

Technical Specifications - All specifications developed and used by the Engineer of Record.

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

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

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

Utility Delay - The meaning set forth in Section 1-07.17 (12) .1 or in Section 1-07.17 (12) .2, as the context may require**.**

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

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

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

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

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

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

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

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

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

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

1-01.3(2) OTHER DEFINITIONS

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

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

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

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

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

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

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

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

Punch List - The list of Work that remains to be completed after achievement of Substantial Completion as a condition precedent to achievement of Physical Completion, limited to minor

incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use or operability of the Project.

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

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

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

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

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

Substructure - The part of the structure below:

1. The bottom of the grout pad for the simple and continuous span bearing; or
2. The bottom of the 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.

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

1-02 CERTIFICATIONS AND REPRESENTATIONS

1-02.1 RESPONSIBILITY FOR DESIGN

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

Design-Builder specifically acknowledges and agrees that:

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

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

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

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

1-02.2 DISCLAIMER REGARDING DOCUMENTATION

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

The Design-Builder understands and agrees that WSDOT shall not be responsible or liable in any respect for any loss, damage, cost or expense whatsoever suffered by the Design-Builder or any

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

1-02.3 DESIGN PROFESSIONAL LICENSING REQUIREMENT

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

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

1-02.4 EXAMINATION OF SITE OF WORK

1-02.4(1) GENERAL

The Design-Builder has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed all attached and referenced documents provided by WSDOT, including the GDR, GBR and hydrology reports, if any, inspected and examined the Site and surrounding locations and undertaken other appropriate activities sufficient to familiarize itself with surface and subsurface conditions discernible from the surface affecting the Project, to the extent necessary for submittal of a Proposal. As a result of such review, inspection, examination and other activities, the Design-Builder is familiar with and accepts the physical requirements of the Work, including:

1. The nature and location of the Work.
2. The general and local conditions which can affect the Work or its cost, including:
   - (a) Conditions bearing upon acquisition, transportation, disposal, handling, and storage of materials;
   - (b) The availability of labor, materials, water, electric power, and roads;
   - (c) Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
   - (d) The conformation and condition of the ground;

(e) The character of equipment and facilities needed preliminary to and during Work performance; and,

(f) The site biological hazards and associated physical hazards.

3. The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work site (including material sites), the GDR, GBR, as well as from the RFP and information made a part of the Contract; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1-02.4(2) SUBSURFACE INFORMATION

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

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

The GBR describes the baseline geotechnical and hazardous materials conditions that Design-Builder should expect to encounter during subsurface construction Work. In the event the GBR is silent with respect to a particular geotechnical condition, Design-Builder may rely upon the GDR and/or SGDR as describing such condition. Whenever there is an inconsistency between conditions described in the GBR and the conditions described in the GDR or SGDR, then the conditions described in the GBR shall take precedence, and shall be the conditions against which actual conditions encountered are compared for the purpose of determining if a Differing Site Condition exists. Design-Builder acknowledges that the Contract Price and the Contract Schedule were developed with full consideration given to the contents of the GBR, GDR, and SGDR, and that it shall not be entitled to an adjustment in the Contract Price or Contract Time as the result of encountering conditions consistent with those described.

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

The geotechnical information in the RFP does not represent site conditions for an ATC. As noted in the ITP, the Design-Builder is responsible for conducting its own geotechnical investigation, prior to the Proposal due date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of any ATC included in the Proposal. Should the Design-Builder's pre-Proposal ATC geotechnical investigation fail to meet the WSDOT Geotechnical Design Manual standards, the Design-Builder shall not be entitled to an adjustment in the Contract Price or Contract t resulting from a claimed differing site condition pursuant to Section 1-04.7 associated with the Work addressed in the respective ATC.

1-02.5 FURTHER ASSURANCES

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

1-02.6 INTENTIONALLY OMITTED

1-02.7 INTENTIONALLY OMITTED

1-02.8 NONCOLLUSION DECLARATION AND LOBBYING CERTIFICATION

1-02.8(1) NONCOLLUSION DECLARATION

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

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

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

1-02.8(2) LOBBYING CERTIFICATION

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

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

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

Section 319 of Public Law 101-121 also provides that, if any funds other than 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.

1-03 INTERPRETATION OF CONTRACT DOCUMENTS

1-03.1 CONTRACT DOCUMENTS

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

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

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

1-03.2 ORDER OF PRECEDENCE

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

1. Change Orders and Supplemental Agreements.
2. The Design Build Contract (Contract Form), not including Exhibit B - WSDOT Identified Betterments.
3. WSDOT Identified Betterments (Exhibit B), from the Design-Builder's Proposal
4. General Provisions – RFP Chapter 1.
5. Technical Requirements – RFP Chapter 2.
6. All other Documents listed as Contract Documents in RFP Appendix A1.
7. Design-Builder's Proposal.

Notwithstanding the order of precedence listed above:

1. Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document.
2. In the event of a conflict among any Mandatory Standards, the order of precedence designated in the Technical Requirements regarding said standards shall prevail. 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 the WSDOT furnished form provided in Appendix F2.
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 of an ambiguity in or dispute regarding the interpretation of the Contract Documents, said documents shall not be interpreted or construed against the Person which prepared them and instead other rules of interpretation and construction shall be used.

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

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

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

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

1-03.6 INTERPRETATIONS

In the Contract Documents, where appropriate:

1. The singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to;
2. The words "including," "included," "includes," and "include" are deemed to be followed by the words "without limitation';

3. Unless otherwise indicated, references to sections, appendices and exhibits are to the document which contains such references; words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are contained and not to any particular provision or section;

4. Words not otherwise defined which have well-known technical or construction industry meanings are used in accordance with such recognized meanings;

5. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Bodies, Persons succeeding to their respective functions and capacities;

6. Words of any gender used herein include each other gender where appropriate.

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

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

1-03.7 APPROVALS AND ACCEPTANCES

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

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

WSDOT shall not be precluded by any measurement, estimate or certificate made or given by WSDOT under any provisions of the Contract, either before or after Final Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is untrue,

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

1-03.8 COMPUTATION OF PERIODS

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

1-03.9 WAIVER

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

1-03.10 LIMITATION ON THIRD PARTY BENEFICIARIES

Unless specifically noted otherwise in this Section, the parties to this Contract do not intend by any of the provisions of this Contract to cause the public or any member thereof or any other Person to be a third party beneficiary of the Contract Documents. Nothing in this Contract authorizes anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. It is the further intent of WSDOT and the Design-Builder in executing the 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 headings of the sections of this Contract are for convenience of reference only and shall not be deemed part of this Contract or considered in interpreting this Contract.

1-03.13 AMENDMENTS

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

1-03.14 GOVERNING LAW

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

1-03.15 ESCROWED PROPOSAL DOCUMENTS (EPD)

Documents used by Design-Builder in developing its Proposal shall be preserved for use by WSDOT in connection with this Contract, as provided below.

1-03.15(1) DATA TO BE ESCROWED

The EPDs shall include 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 Design-Builder to develop the Proposal for the Project. Design-Builder shall submit its EPD in hard copy and whenever possible shall also provide electronic copies. The EPD shall include equipment rates, overhead rates, labor rates, efficiency and/or productivity factors, and arithmetic extensions. The EPD shall also include detailed information provided to Design-Builder by Subcontractors identified in the Proposal and any other potential Subcontractors that provided data upon which the Proposal was based. The EPD shall identify any standard industry manuals used by Design-Builder in developing its Proposal. The EPD shall not include documents provided by WSDOT for use by Design-Builder in developing the Proposal.

1-03.15(2) SUBMITTAL OF EPD

The EPD documentation shall be submitted to the designated escrow company within seven 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.

Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the Contract and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order shall be added to the EPD.

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1-03.15(3) 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. This duty shall flow down to all subcontractors, suppliers, and design professionals.

1-03.15(4) VERIFICATION

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

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 five 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 five 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(5) SUBCONTRACTOR/SUPPLIER INFORMATION

Design-Builder shall require each Subcontractor / Supplier performing Work or supplying materials with a projected value greater than $5 million to submit to escrow a copy of all documentary information used in determining its price (or the price included in any Contract Modification), immediately prior to executing the Subcontract or purchase agreement and each Contract Modification and Subcontract or purchase agreement amendment, to be held in the same manner as Design-Builder’s EPD and which shall be accessible by WSDOT in accordance with this Section 1-03.15(5). Each such Subcontract or purchase agreement shall include a representation and warranty from the Subcontractor / Supplier, for the benefit of Design-Builder and WSDOT, stating that its EPD constitutes all the documentary information used in establishing its price, and agreeing to provide a sworn certification in favor of Design-Builder and WSDOT together with each supplemental EPD, stating that the information contained therein is complete, accurate and current. Each Subcontract or purchase agreement that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor / Supplier to preserve all documentary information used in establishing its Subcontract or purchase agreement price and to provide such documentation to WSDOT in connection with any claim made by such Subcontractor / Supplier.

1-03.15(6) REVIEW OF EPD

The EPD shall be available for review by WSDOT (a) in connection with (i) negotiation of any Change Orders, (ii) resolution of disputes and claims, and (iii) audit under Section 1-09.12 (if the EPD are relevant to the subject of the audit), and (b) as described in Section 1-03.15(4). Subject to Section 1-03.15(9), WSDOT shall be entitled to review all or any part of the EPD in order to satisfy itself regarding the applicability of the individual documents to the matter at issue and shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters. The foregoing shall in no way be deemed a limitation on WSDOT's discovery rights with respect to such documents. Design-Builder may have representatives physically present at all times during WSDOT's review of EPD.

1-03.15(7) DURATION OF ESCROW AND RELEASE OF EPD

The EPD shall remain in escrow during the life of the Contract and will be returned to Design-Builder by the escrow company once all of the following have occurred: (a) 180 days have elapsed after expiration or earlier termination of the Warranties, (b) all disputes regarding the Contract have been settled, and (c) 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 shall remain in escrow. If efforts to resolve claims are unsuccessful, WSDOT may serve a request upon Design-Builder to authorize the escrow company, in writing, to release the EPD to WSDOT. Design-Builder shall respond to the request within 20 days after service of the request. If Design-Builder objects or does not respond to the request within 20 days after service of the request, WSDOT may file a motion requesting the court to enter an order directing the escrow company to deliver the EPD to WSDOT. The escrow company shall release the EPD for review as follows:

(a) To WSDOT upon receipt of a letter from Design-Builder authorizing the release;

(b) To WSDOT upon receipt of a certified copy of a court order directing the release of the documents;

(c) To the court for an in camera examination pursuant to a certified copy of a court order; and

(d) The EPD and affidavit shall be returned to Design-Builder if litigation is not commenced within the time period prescribed by Law.

1-03.15(8) REPRESENTATION AND WARRANTY

Design-Builder represents and warrants that the EPD and any supplement thereto constitute all of the information used in the preparation of its Proposal and agrees that no other Proposal preparation information will be considered in resolving disputes or claims. Design-Builder also agrees that the EPD are not part of the Contract Documents and that nothing in the EPD shall change or modify the Contract Documents.

1-03.15(9) CONFIDENTIALITY OF EPD

The EPD are and will remain the property of Design-Builder. WSDOT has no interest in or right to the EPD other than the rights specified herein. In the event litigation ensues between WSDOT and

Design-Builder with respect to the Contract, the EPD 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 as provided in Section 1-03.15(7)(c).

1-03.15(10) REMEDIES FOR REFUSAL OR FAILURE TO PROVIDE EPD

Failure or refusal to provide the EPD shall be deemed a material breach of the Contract. WSDOT may at its option refuse to make payments otherwise owing under Article 10 until Design-Builder has submitted the EPD in accordance with the Contract. This remedy is not exclusive and WSDOT may take such other action as is available to it under the Contract or by Law.

1-03.15(11) COST AND ESCROW INSTRUCTIONS

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

1-04 SCOPE OF THE WORK

1-04.1 INTENT OF CONTRACT

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

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

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

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

1-04.1(1) WORK INCLUDED IN THE CONTRACT

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

1-04.1(2) GENERAL OBLIGATIONS OF THE DESIGN-BUILDER

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Compliance with all Environmental Laws and Requirements;

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

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

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

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

(i) Cooperate with WSDOT in its oversight of the design of the Project, its oversight and quality verification, testing, sampling and inspection during construction, and other matters relating to the Work;

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

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

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

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

(n) Obtain and pay the cost of obtaining any third party approvals required to implement any Approved ATC(s) incorporated into the Contract Documents; and

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

1-04.2 INTENTIONALLY OMITTED

1-04.3 INTENTIONALLY OMITTED

1-04.4 CHANGES

1-04.4(1) WSDOT-INITIATED CHANGES

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

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

If WSDOT determines that a change in the Work directed by WSDOT increased or decreased the Design-Builder's costs or time required for performance of the Work, WSDOT will make an equitable adjustment, excluding the loss of anticipated profits, to the Contract. The equitable adjustment will be by agreement with the Design-Builder. However, if the parties are unable to agree, WSDOT will determine the amount of the equitable adjustment in accordance with Section

1-09.4 and adjust the time as WSDOT deems appropriate. Extensions of time will be evaluated in accordance with Section 1-08.8. WSDOT's decision concerning equitable adjustment and extension of time shall be final as provided in Section 1-05.1.

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

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

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

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

1-04.4(2) DESIGN-BUILDER INITIATED CHANGES

It is the desire of WSDOT to allow the Design-Builder to have significant flexibility in determining how best to design and construct the Project, within the parameters established by the Contract Documents. The Design-Builder is encouraged to propose changes whenever it identifies potential savings. This Section 1-04.4(2) sets forth the requirements applicable for addressing Design-Builder Initiated Changes. Approval of a Design-Builder Initiated Change is at WSDOT's sole discretion. Design-Builder Initiated Changes fall into one of the following three categories:

1. Changes that require either a Design Deviation and/or are based on an idea(s) derived from a proposal submitted by an unsuccessful Proposer. All cost savings realized shall be shared between the Parties in accordance with Section 1-04.4(2).3.
2. Changes that do not meet the requirements of category 1 above, and are deemed by WSDOT in its sole discretion to be equal or better than the Contract requirement proposed to be changed. All cost savings realized shall be kept by the Design-Builder. These changes if approved will be implemented into the Contract as a no cost change order. Section 1-04.4(2).3 Contract Price Adjustments Split Between Parties does not apply to this category of change.
3. Changes that do not meet the requirements of either category 1 or 2 above. Any cost savings derived from this change shall be shared as the parties mutually agree. Section 1-04.4(2).3 Contract Price Adjustments Split Between Parties does not apply to this category of change.

1-04.4(2).1 Required Information

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

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

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

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

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

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

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

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

(h) A complete cost analysis including (i) a cost estimate for the existing Contract requirements compared to the Design-Builder's cost estimate of the proposed changes 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(2).2 WSDOT Review and Approval or Rejection

Review of Design-Builder Initiated Changes

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

Approval of Design-Builder Initiated Changes

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

Rejection of Design-Builder Initiated Changes

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

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

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

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

Estimated Net Savings

The term "estimated net savings" as used in this Section shall mean the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform it according to the proposed change, not including the costs of studying and preparing the Design-Builder Initiated Change as proven by the Design-Builder and approved by WSDOT in accordance with the Change Order procedures set forth herein, or any additional costs incurred by WSDOT (including costs relating to any Relocations and Right-of-Way) resulting from the Design-Builder Initiated Change. The Design-Builder's profit shall not be considered part of the cost.

Collateral and Future Savings

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

Price Adjustment Factor

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

Design-Builder Initiated Changes Affecting ROW Plans

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

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

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

(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 Design-Builder Initiated Change, the Design-Builder shall provide a separate notification to WSDOT describing the proposed impact concurrently with delivery of the Design-Builder Initiated Change to WSDOT.

Payment Due Date

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

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

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

1-04.4(3) BASIC CONFIGURATION CHANGES

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

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

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

The highway horizontal and vertical alignment shown in the Conceptual Plans of mainline SR-520 from station MR1259+19.5 and ML 1260+08.21 to the eastern project limits may be changed horizontally by up to 10.0 feet left or right and/or up to plus or minus 2.0 feet vertically without a change being deemed to have occurred in the Basic Configuration, provided that such changes do not require changes to the Right of Way limits and/or Impact Area Lines; do not further impact Environmentally Sensitive Areas; do not require additional utility relocations or protection; and provided that the revised design complies with all contract requirements and does not result in additional costs to WSDOT unless approved by WSDOT. The allowable adjustment tolerances noted previously relating to horizontal and vertical alignment do not apply to SR-520 mainline and ramps from station MR 1259+19.5 and ML 1260+08.21 to the western project limits.

1-04.4(4) MINOR CHANGES

Payments or credits for any change amounting to $15,000 or less may be authorized as a "Minor Change." At the discretion of WSDOT, this procedure for Minor Changes may be used in lieu of the more formal procedures as outlined in Section 1-04.4, Changes.

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

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

1-04.4(5) MATTERS NOT ELIGIBLE FOR CHANGE ORDERS

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

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

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

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

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

(e) Vacant

(f) Vacant

(g) Untimely delivery of equipment or material, or unavailability, defectiveness, or increases in costs of material, equipment or products specified by the Contract Documents

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

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

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

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

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

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

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

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

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

1-04.5 PROCEDURE AND PROTEST BY THE DESIGN-BUILDER

1-04.5(1) GENERAL

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

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

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

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

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

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

WSDOT will evaluate all protests provided the procedures in this Section are followed. If WSDOT determines that a protest is valid, WSDOT will adjust payment for Work or time by an equitable

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

If WSDOT determines that the protest is invalid, that determination, with an explanation, shall be provided in writing to the Design-Builder. 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 precedent 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.

1-04.5(2) 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.

1-04.5(2).1 Selection of Disputes Review Board Members

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

WSDOT and the Design-Builder shall each select their member and negotiate an agreement, separate and apart from this Contract, with their respective Board member within the first 60 Calendar Days after Notice to Proceed. The agreements with these two Board members shall contain language imposing the "Scope of Work" and "Suggested Administrative Procedures" attached as an Appendix to the Contract. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first two by furnishing a needed expertise, which will facilitate the Board's operations. WSDOT has entered into "standby" agreements with a number of potential third members. The qualifications of these potential members have been reviewed and deemed acceptable by both WSDOT and the Associated General Contractors of Washington. The names of these potential members will be provided to the first two members for consideration. If a selection can be made from the standby list, then the Board may

be immediately seated with the execution of a task order under the corresponding standby agreement. Should the first two members decide to select a third member not on the list of standby candidates, then the selected person will be accepted to the Board after he or she executes a standby agreement (Third Party Member Disputes Review Board Consultant Agreement). Information about the acceptable format for this agreement and all accompanying exhibits as well as the processing and approval procedure is available from WSDOT. The fee for the third member shall be negotiated with the first two members and shall be included in a task order, issued by WSDOT after the third member standby agreement is fully executed.

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

1-04.5(2).2 Termination of DRB Members

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

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

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

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

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

1-04.5(2).3Compensation of Board Members

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

1. WSDOT will compensate directly the wages and travel expense for its selected member;
2. The Design-Builder shall compensate directly the wages and travel expense for its selected member;
3. WSDOT and the Design-Builder shall share equally in the third member's wages and travel expense, and all of the operating expenses of the Board. These equally shared expenses shall be billed to and paid by WSDOT. The Design-Builder's share will be deducted from monies due or coming due the Design-Builder; and

4. WSDOT will provide administrative services, such as conference facilities and secretarial services, to the Board and WSDOT will bear the costs for this service.

1-04.5(2).4 Disputes Review Board Procedures

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

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

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

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

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

1-04.5(2).5 Procedure for Consideration of Disputes

The procedure for consideration of disputes shall be as follows:

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

4. Within 30 Calendar Daysof receiving the Board recommendations, both WSDOT and the Design-Builder shall respond to the other in writing signifying that the dispute is either resolved or remains unresolved. Although both parties should place weight upon the Board recommendations, the recommendations are not binding.

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

1-04.5(2).6 Advisory Recommendation

Upon mutual agreement by the Parties, the DRB may be called upon to act in an advisory capacity to assist in resolution of issues or disputes prior to a formal DRB presentation. In the case of an advisory recommendation, an informal submission no longer than two written pages shall be submitted to the DRB by each Party. To the extent possible, the Parties will submit agreed-to questions for the DRB to answer as part of the informal process.

Once written submissions have been made, either Party may request an opportunity to give an oral presentation to the DRB, and the DRB may also request an oral presentation by the Parties. Oral presentations shall take place during a regularly scheduled meeting of the DRB. Unless a time limit is specifically agreed to by the Parties, the DRB will establish a time limit for oral presentations. To the extent possible, the DRB should attempt to facilitate a resolution without making a formal determination at the conclusion of the DRB meeting. Neither of the Parties nor the DRB is bound in any way by an advisory recommendation. Any issue or dispute addressed in an advisory recommendation, to the extent it is not resolved, may be addressed through a formal DRB submission. Advisory recommendations shall not be admissible in any subsequent disputes procedures, including any other administrative or judicial proceedings.

1-04.5(2).7 DRB Process as a Condition Precedent to Arbitration or Litigation

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

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

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

1-04.5(2).8 Matters Ineligible for DRB Procedures

The dispute resolution procedures set forth in Section 1-04.5(2) shall not apply to the following (collectively, "Ineligible Matters"):

(a) Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution;

(b) Any matters relating to the scope or applicability of indemnities provided under the Contract Documents;

(c) Any claim for injunctive relief;

(d) Any claim against an insurance company, including any Subcontractor dispute that is covered by insurance;

(e) Any claim arising solely in tort;

(f) Any claim between Design-Builder or WSDOT and a third party in which the third party is a necessary or appropriate party to such dispute, including any related claims between the Parties arising therefrom;

(g) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in this 1-04.5(2) do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in this Section 1-04.5(2) applicable;

(h) Any claim for, or dispute based on, remedies expressly created by statute; and

(i) Any dispute that is actionable only against a Surety.

1-04.6 INTENTIONALLY OMITTED

1-04.7 DIFFERING SITE CONDITIONS (CHANGED CONDITIONS)

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

For Work related to an ATC, Differing Site Conditions shall mean (a) actual subsurface conditions or latent physical conditions encountered at the Site that are substantially or materially different from the conditions indicated in the Design-Builder's geotechnical investigation conducted for purposes of the ATC prior to the Proposal Due Date (to the extent said investigation complies with the WSDOT Geotechnical Design Manual), and which are not discoverable from a reasonable investigation and analysis of the site, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract and the Work site characteristics, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Date.

Abandoned infrastructure above or below ground, such as storm drainage pipes, drainage structures, bridge foundations, utilities, pavement, and construction debris, encountered within excavation areas shall not be considered a Differing Site Condition.

The party discovering such conditions shall promptly notify the other party in writing of the specific Differing Site Conditions before they are disturbed and before the affected Work is

performed. Such notification shall identify the conditions represented in the Contract Documents, the conditions encountered at the site, and an explanation of the difference.

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

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

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

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

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

1-04.7(1) BURDEN OF PROOF

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

1-04.7(2) INSURANCE CLAIMS

Prior to filing any request for a Change Order relating to a Differing Site Condition, 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 Calendar 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.

1-05 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 scheduling and coordinating all portions of the Work under the Contract Documents, including the Work of Subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work under direct or indirect contracts with the Design-Builder , subject, however, to all requirements contained in the Contract Documents.

1-05.1 AUTHORITY OF WSDOT

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

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

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

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

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

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

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

1. Guarantee that following the method or manner will result in compliance with the Contract.

2. Relieve the Design-Builder of any risks or obligations under the Contract; or
3. Create any WSDOT liability.

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

1-05.2 AUTHORITY OF ASSISTANTS AND INSPECTORS

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

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

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

1-05.3 PLANS AND WORKING DRAWINGS

1-05.3(1) OBLIGATION TO REVIEW THE BASIC CONFIGURATION

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

1-05.3(2) REQUIRED APPROVALS

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

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

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

1-05.3(3) RAILROAD APPROVALS

The Project does not require Work in the proximity of railroad.

1-05.3(4) DESIGN DOCUMENTS

The Design-Builder shall furnish the Design Documents to WSDOT and shall address WSDOT's comments prior to designating them as the Released For Construction Documents. 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(5) WORKING DRAWINGS

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

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

1-05.4 PERFORMANCE

1-05.4(1) PERFORMANCE STANDARDS

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

1-05.5 INTENTIONALLY OMITTED

1-05.6 INSPECTION OF WORK AND MATERIALS

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

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

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

The Design-Builder shall inform WSDOT of any part of the Work which is about to be covered and offer a full and adequate opportunity to WSDOT to inspect and test such part of the Work before it is covered. If WSDOT requests, the Design-Builder shall remove or uncover any area of the completed Work. After WSDOT inspects it, the Design-Builder shall restore the area to the

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

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

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

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

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

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

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

1-05.7 REMOVAL OF DEFECTIVE WORK

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

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

so from any payment due or to become due the Design-Builder and/or obtain reimbursement from the Design-Builder for such cost.

1-05.8 INTENTIONALLY OMITTED

1-05.9 INTENTIONALLY OMITTED

1-05.10 GUARANTEES

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

1-05.11 FINAL INSPECTION

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

1-05.12 FINAL ACCEPTANCE

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

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

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

1-05.12(1) OVERPAYMENTS; NO RELIEF FROM CONTINUING OBLIGATIONS

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

1-05.12(2) INTENTIONALLY OMITTED

1-05.12(3) ASSIGNMENT OF CAUSES OF ACTION

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

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

At all times, the Design-Builder shall keep at the Work site a set of the 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.

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

1-05.13(1) EMERGENCY CONTACT LIST

The Design-Builder shall submit an Emergency Contact List to WSDOT no later than five Calendar Days after the date the Contract is executed. The list shall include, at a minimum, the Design-Builder's Project Manager, or equivalent, the 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. Refer to TR Sections 2.1 and 2.18 for known projects that are on or near the Project Limits.

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

1-05.15 METHOD OF SERVING NOTICES

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

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

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

1-05.16 GENERAL WARRANTIES

1-05.16(1) GENERAL WARRANTY

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

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

1-05.16(2) GENERAL WARRANTY– TIME OF GENERAL WARRANTY

The general Warranty shall commence on the day of Project Physical Completion. The general Warranty shall remain in effect until 1 year after Project Physical Completion. At any time during the general Warranty period, if WSDOT determines that any of the Work has not met the standards set forth in the Contract, then the Design-Builder shall correct the Work in accordance with this Section, even if the performance of such correction extends beyond the stated general Warranty period.

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

1-05.16(3) GENERAL WARRANTY – SUBCONTRACTOR WARRANTIES

Without in any way derogating the Design-Builder's own representations, warranties, and other obligations with respect to the work, the Design-Builder shall obtain from all Subcontractors and

cause to be extended to WSDOT, appropriate representations, Warranties, guarantees, and obligations with respect to design, material, plants, workmanship, equipment, tools, and supplies furnished by all Subcontractors. All representations, Warranties, guarantees, and obligations of Subcontractors shall be in writing, and shall run directly to and be enforceable by the Design-Builder and/or WSDOT and their respective successors and assigns.

1-05.16(4) GENERAL WARRANTY – PERFORMANCE RESPONSIBILITY

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

1-05.16(5) GENERAL WARRANTY – EXTENSION OF GENERAL WARRANTY

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

1-05.16(6) GENERAL WARRANTY – NO LIMITATIONS OF LIABILITY

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

1-05.16(7) DAMAGES FOR BREACH OF WARRANTY

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

1-05.16(8) EXCLUSIONS

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

- Normal wear and tear, provided that damage and/or deterioration outside allowable limits specified in the Contract shall not be considered normal wear and tear.

- Failure to perform routine maintenance consistent with polices and/or procedures established by WSDOT or other maintenance agencies, including Utility Owners, or in the absence of such policies and/or procedures in accordance with industry standards of maintenance for similar Projects in the United States.

- Rebellion, war, riot, act of sabotage, civil commotion, or acts of vandalism.
- Wind, flood, and/or earthquakes, and other acts of God.
- Spill or release of hazardous or contaminated substances not caused by the Design-Builder.

1-05.16(9) LANDSCAPING WARRANTY

The Design-Builder shall provide a Landscaping Warranty covering all on-site stream and wetland mitigation, roadside restoration, and lid landscaping requirements described in Sections 2.8 and 2.15, and the Commitments List. The Landscaping Warranty period shall be for three years, as described below.

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

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

1-05.16(9).2 Standards of Performance During the Landscaping Warranty Period

In addition to meeting all other Contract requirements, during the warranty period each planting area shall:

1. Be weed free.
2. Have a plant survival rate that does not fall below 100% of the number of plants required by the Specifications;
3. Have fully functioning irrigation.

At any time during the Landscaping Warranty period, if WSDOT determines that any of the on-site stream or wetland mitigation, roadside restoration, or lid landscaping Work has not met the standards set forth in the Contract, the Design-Builder shall correct the Work in accordance with this Section, even if the performance of such correction extends beyond the stated Landscaping Warranty period.

1-05.16(9).3 Landscaping Warranty Inspection

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

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

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

1-05.16(11) WARRANTY INSPECTIONS

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

1-05.16(12) WARRANTY PERFORMANCE REQUIREMENTS

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

1-05.16(13) COSTS OF CORRECTION WORK

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

1-05.16(14) DAMAGES FOR BREACH OF WARRANTY

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

1-05.16(15) DISPUTES

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

1-06 CONTROL OF MATERIALS

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

1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 LAWS TO BE OBSERVED

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

The Design Builder shall be responsible for the safety of all workers and shall comply with all appropriate state safety and health standards, codes, rules, and regulations, including, but not limited to, those promulgated under the Washington Industry Safety and Health Act RCW Chapter 49.17 (WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). The Design Builder shall likewise be obligated to comply with all federal safety and health standards, codes, rules, and regulations that may be applicable to the contract Work.

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

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

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

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

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

1-07.2 STATE TAXES

Design-Builder shall pay all applicable federal, State and local sales, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a governmental entity,

whether direct or indirect, relating to, or incurred in connection with, the Project or performance of the Work, including that portion of the Contract Price relating to design services. The Design-Builder shall include all the Design-Builder paid taxes in the Contract Price unless a specific exception applies. In some cases, however, state retail sales tax will not be included. Section 1-07.2(1) and 1-07.2(2) describes this exception.

The Design-Builder should contact the 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.

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

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

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

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

Generally for Work performed on state-owned or private land, the Design-Builder would collect from WSDOT retail sales tax on the portion of the Contract Price allocable to such Work. WSDOT would then automatically add such sales tax to each payment to the Design-Builder. However, pursuant to RCW 47.01.412, WSDOT has requested and obtained a tax deferral certificate for the Contract Price related to all Work on property addressed under Revenue Rule 170 (WAC 458-20-170(4)a). Therefore, WSDOT will not add retail sales tax to payments to the Design-Builder for Work done on state owned or private land, nor shall the Design-Builder include such retail sales tax in its Contract Price, the unit Proposal prices or in any other Contract amount for such Work.

However, the tax deferral referenced above does not apply to 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 INTENTIONALLY OMITTED

1-07.4 SANITATION

1-07.4(1) GENERAL

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

1-07.4(2) HEALTH HAZARDS

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

1-07.5 INTENTIONALLY OMITTED

1-07.6 PERMITS AND LICENSES

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

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

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

1-07.7 LOAD LIMITS

1-07.7(1) GENERAL

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

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

Except for the load limit restrictions specified in Section 1-07.7(2), the Design-Builder may operate vehicles which exceed the legal gross weight limitations without special permits or payment of

additional fees provided such vehicles are employed in the construction and within the limits of this Project.

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

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

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

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

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

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

1-07.7(2) LOAD-LIMIT RESTRICTIONS

1. **Structures Designed for Direct Bearing of Live Loads** - The gross or maximum load on each vehicle axle shall not exceed the legal load limit by more than 35%. No more than one vehicle shall operate over any structure at one time. The Design-Builder shall immediately remove any dirt, rock, or debris that may gather on the structure's roadway surface.
2. **Underpasses and Reinforced Concrete Box Culverts Under Embankments** - Loads shall not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles spaced less than 10 feet apart. These limits are permitted only if the embankment has: (a) been built to specifications, and (b) reached at least 3 feet above the top of the underpass or culvert.

   When the embankment has reached 5 feet above the top of the underpass or culvert, the Design-Builder may increase per-axle loads up to 100,000 pounds if outside wheel spacing is at least 7 feet on axle centers.
3. **Pipe Culverts and Sewer Pipes** - Loads over pipe culverts and sewer pipes shall not exceed 24,000 pounds on a single axle and 16,000 pounds each on tandem axles spaced less than 10 feet apart. These limits are permitted only if: (a) the culvert or pipe has been installed and backfilled to specifications and (b) the embankment has reached at least 2 feet above the top limit of pipe compaction.

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

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

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

1-07.8 HIGH VISIBILITY APPAREL

The Design-Builder shall require all personnel 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, RCW 49.28 (as amended or supplemented), and Federal wage laws and rules. The hourly minimum rates for wages and fringe benefits are listed in Appendix K1 and K2.

The Federal wage rates for Heavy Highway Construction incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA100001 Modification 2. These rates are applicable to highway construction.

The Federal wage rates for Building Construction incorporated in this Contract have been established by the Secretary of Labor under United States Department of Labor General Decision No. WA100051. These rates are applicable to building construction.

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

The 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, 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 Documents on state funded projects only, the Design-Builder shall request a determination of the correct wage and benefits rate for that class and locality from the Industrial Statistician, Washington State Department of Labor and Industries (State L&I), and provide a copy of those determinations to WSDOT.

If employing labor in a class not listed in the Contract Documents on federally funded projects, the Design-Builder shall request a determination of the correct wage and benefits for that class and locality from the U.S. Secretary of Labor through WSDOT. Generally, the Design-Builder initiates the request by preparing standard form 1444 and submitting it to WSDOT for further action.

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.

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.

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.

1-07.9(7) APPLICATION OF WAGE RATES FOR THE OCCUPATION OF LANDSCAPE CONSTRUCTION

State prevailing wage rates for public works contracts are included in this Contract and show a separate listing for the occupation Landscape Construction, which includes several different occupation descriptions such as: Irrigation and Landscape Plumbers, Irrigation and Landscape Power Equipment Operators, and Landscaping or Planting Laborers.

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

1. Laborers with the occupation description, Landscaping or Planting, or

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

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

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

1-07.10 WORKER'S BENEFITS

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

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

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

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

1-07.11 REQUIREMENTS FOR NONDISCRIMINATION

1-07.11(1) GENERAL APPLICATION

Federal and/or State laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability are applicable to all activities related to this Contract (i.e., employment, contracting training, et al.).

1-07.11(2) CONTRACTUAL REQUIREMENTS

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. The Design-Builder shall comply with all applicable nondiscrimination laws and regulations, including but not limited to Title VI of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act; and 49 Code of Federal Regulations, Part 21;
2. The Design-Builder shall state, in all solicitations or advertisements for employees, that all qualified applicants will be considered for employment, without regard to race, color, national origin, sex, age, or disability;
3. The Design-Builder shall insert the following notification in all solicitations for bids for work or material and 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, Disadvantaged 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 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 discrimination prohibited by law;
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 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 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;
7. The Design-Builder shall ensure that the following assurance is inserted in all contracts/subcontracts:

"The contractor/subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor/subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor/subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as deemed appropriate."

1-07.11(2).1 Disadvantaged Business Enterprise Participation Requirements for Design-Build Contracts

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to this Contract. The DBE goal established for this Contract is 11%.

DBE Eligibility

Selection of DBEs:
DBEs utilized by the Design-Builder shall be listed as DBEs on the current list of firms certified by the Office of Minority and Women's Business Enterprises (OMWBE.) In absence of being listed, the Design-Builder may accept written proof from OMWBE documenting that their DBEs are currently certified. A list of firms certified by OMWBE is available from that office and on line through their website (www.omwbe.wa.gov/directory/directory.htm) or by telephone at (360) 704-1181. It shall be the responsibility of the Design-Builder to confirm with OMWBE that the certification of any utilized DBE firm is current and that the firm is certified in the North American Industry Classification System (NAICS) code for the work being done.

Counting DBE Participation Toward Meeting the Overall Design-Build contract Goal
When a DBE firm participates in the Design-Build contract, only the value of the work actually performed by the DBE will be counted towards the DBE goal.

1. Count the entire amount of the portion of the contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, materials and equipment the DBE Subcontractor purchases or leases from the Design-Builder or its affiliates, unless the Design-Builder is also a DBE). Work performed by a DBE, utilizing resources of the Design-Builder or its affiliates will not be counted toward DBE goals. In very rare situations, a DBE firm may utilize equipment and/or personnel from a non-DBE firm other than the Design-Builder or its affiliates. Should this situation arise, the arrangement must be short-term and must have prior written approval from WSDOT. The arrangement must not erode a DBE firm's ability to perform a Commercially Useful Function (CUF)

2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance.

3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBE's lower tier Subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal.

4. When a non-DBE subcontractor further subcontracts to a lower-tier subcontractor or supplier who is a certified DBE, then that portion of the work further subcontracted may be counted toward the DBE goal, so long as it is a distinct clearly defined

portion of the work of the subcontract and that the DBE is performing a commercially useful function with its own forces.

5. Continue to count the work subcontracted to a decertified DBE after decertification, provided the Design-Builder had a subcontract in force before the decertification and the Design-Builder's actions did not influence the DBE's decertification.

DBE Design-Builder

A DBE Design-Builder may only count the work performed with its own forces and the work performed by DBE Subcontractors, lower tier DBE subcontractors and DBE suppliers. In the event that the DBE Design-Builder becomes decertified during the Contract, for reasons other than graduation from the program, the portion of the work performed after the decertification will not count toward the goal. If this work is part of the Condition of Award the Design-Builder will be required to meet the Condition of award and may do so by increasing the dollars and work to another DBE firm in an amount equal to that which can not be counted, utilize the dollars committed/paid to a non-COA DBE who is already on the project, or make a good faith effort to do so. If the reason for decertification is for graduation, the work of the decertified DBE Design-Builder may continue to be counted toward the goal.

Joint Venture

When a DBE performs as a participant in a joint venture, only that portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces will count toward COA DBE goal In the event that the DBE Joint Venture contractor becomes decertified during the Contract, for reasons other than graduation from the program, the portion of the work performed after the decertification will not count toward the DBE goal. If this work is part of the Condition of Award the Joint Venture will be required to meet the Condition of award and may do so by increasing the dollars and work to another DBE firm in an amount equal to that which can not be counted, utilize the dollars committed/paid to a non-COA DBE who is already on the project, or make a good faith effort to do so. If the reason for decertification is for graduation the work of the decertified DBE Joint Venture contractor may continue to be counted toward the goal.

Commercially Useful Function

Payments to a DBE firm will count toward DBE goals only if the DBE is performing a commercially useful function on the contract. WSDOT will conduct on-site reviews to ascertain CUF performance.

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself. Two party checks are not allowed.

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Trucking

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

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is listed on a particular contract.

2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the contract.

3. The DBE receives credit only for the total value of the transportation services it provides on the contract using trucks it owns or leases, insures, and operates with drivers it employs.

4. For purposes of this paragraph a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

5. The DBE may lease trucks from another DBE firm and may enter an agreement with an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE or employs a DBE owner-operator receives credit for the total value of the transportation services the lessee DBE provides on the contract.

6. The DBE may also lease trucks from a non-DBE firm and may enter an agreement with an owner-operator who is a non-DBE. The DBE who leases trucks from a non-DBE or employs a non-DBE owner-operator is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

7. The DBE can not lease trucks from the Design-Builder or its affiliates.

8. In any lease or owner-operator situation, as described in paragraphs 5 & 6 above, the following rules shall apply:

   - A written lease/rental agreement on all trucks leased or rented, showing the true ownership and the terms of the rental must be submitted and approved by the Contracting Agency prior to the beginning of the work. The agreement must show the lessor's name, trucks to be leased, and agreed upon amount or method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. Does not apply to owner-operator arrangements.

   - Only the vehicle, (not the operator) is leased or rented. Does not apply to owner-operator arrangements.

9. In order for DBE project goals to be credited, DBE trucking firms must be covered by a subcontract or a written agreement approved by the Contracting Agency prior to performing their portion of the work.

Expenditures paid to other DBEs

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

Manufacturer

1. Counting

   If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

2. Definition

   To be a manufacturer, the firm operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

3. In order to receive credit as a DBE manufacturer, the firm must have received an "on-site" review and been approved by WSDOT-OEO to operate as a DBE Manufacturing firm 30 Calendar Days prior to obtaining materials or supplies. Use of a DBE manufacturer that has not received an on-site review and approval by WSDOT-OEO prior to obtaining materials or supplies will not be counted toward the overall contract goal. To schedule a review, the manufacturing firm must submit a written request to WSDOT/OEO and may not receive credit towards DBE participation until the completion of the review. Once a firm's manufacturing process has been approved in writing, it is not necessary to resubmit the firm for approval unless the manufacturing process has substantially changed. Information on approved manufacturers (per contract) may be obtained from WSDOT-OEO.

Regular Dealer

1. Counting

   If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward DBE goals.

2. Definition

   a) To be a regular dealer, the firm must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. It must also be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

   b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided elsewhere in this specification, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

   c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

3. Regular dealer status is granted on a contract-by-contract basis. To obtain regular dealer status, a formal written request must be made by the interested supplier (potential regular dealer) to WSDOT/OEO. OEO must be in receipt of this request at least 30 Calendar Days prior to obtaining materials or supplies. Included in the request shall be a full description of the project, type of business operated by the DBE, and the manner the DBE will operate as a regular dealer on the specific contract. Rules applicable to regular dealer status are contained in 49 CFR Part 26.55.e.2. Once the request is reviewed by WSDOT-OEO, the DBE supplier requesting it will be notified in writing whether regular dealer status was approved. DBE firms that are approved as regular dealers for a contract (whenever possible) will be listed on the WSDOT Internet Homepage at: www.wsdot.wa.gov/biz/contaa/. Confirmation of the DBE supplier's approval to operate as a regular dealer on a specific contract may be obtained by writing the Office of Equal Opportunity, Washington State Department of Transportation, P.O. Box 47314, Olympia, WA 98504-7314 or by phone at (360) 705-7085. Use of a supplier that has not received approval as a regular dealer prior to obtaining materials or supplies will not be counted toward the overall Contract goal.

Materials or Supplies Purchased from a DBE

With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site may be counted toward the goal. No part of the cost of the materials and supplies themselves may be applied toward DBE goals.

Procedures after Execution

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

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

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

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

   The firms identified by the Design-Builder may be contacted by WSDOT to solicit general information as follows:
   - Age of the firm
   - Average of its gross annual receipts over the past three years

Substitutions

De-Certification of Existing DBE Firm

In the event that a DBE firm was certified at the time of utilization, but is subsequently determined by action of the Office of Minority and Women's Business Enterprises to be ineligible, then the Design-Builder will be required to substitute a certified DBE firm for the remaining amount assigned to the disqualified firm or to make a good faith effort to do so.

Miscellaneous

If a DBE firm graduates from the DBE program during its performance of work on a contract, the DBE is allowed to complete its contract work and all work performed by the DBE is counted toward the goal.

Damages for Noncompliance

When a Design-Builder violates the DBE provisions of the Contract, WSDOT may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a Design Builder's violations of the DBE provisions may be deducted from progress payments due to the Design-Builder or from retainage withheld by WSDOT as allowed by RCW 60.28.021. Before any money is withheld, the Design-Builder will be provided with a notice of the basis of the violations and an opportunity to respond.

WSDOT's decision to recover damages for a DBE violation does not limit its ability to suspend or revoke the Design-Builder's pre-qualification status or seek other remedies as allowed by federal or state law. In appropriate circumstances, WSDOT may also refer the Design-Builder to state or federal authorities for additional sanctions.

Required Disadvantaged Business Enterprise Provisions

The Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts, which contain funding assistance from the United States Department of Transportation. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as WSDOT deems appropriate.

If the Design-Builder does not comply with any part of its contract as required under 49 CFR part 26, and/or any other applicable law or regulation regarding DBE, WSDOT may withhold payment, suspend, or terminate the Contract, and subject the Design-Builder to civil penalties of up to ten percent of the amount of the Contract for each violation. In the case of WSDOT contracts, repeated violations, exceeding a single violation, may disqualify the Design-Builder from further participation in WSDOT contracts for a period of up to three years. A selected proposer must be in compliance with these General Provisions as a condition precedent to the granting of a notice of award by WSDOT. The Design-Builder is entitled to request an adjudicative proceeding with respect to WSDOT's determination of contract violation and assessed penalties by filing a written application within 30 Calendar Days of receipt of notification. The adjudicative proceeding, if requested, will be conducted by an administrative law judge pursuant to the procedures set forth in RCW 34.05 and Chapter 10.08 of the Washington Administrative Code.

Reporting

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

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

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

1-07.11(3) EQUAL EMPLOYMENT OPPORTUNITY (EEO)

- The Design-Builder shall accept as operating policy the following statement:

  "It is the policy of this company to assure that applicants are employed, and that employees are treated during employment without regard to their race, color, national origin, sex, or disability. Such action shall include employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship or on-the-job training."

- 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.

- 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;

- 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.

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 Calendar Days following their reporting for duty with the Design-Builder; and
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; and
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; and/or
4. The Contract may be terminated.

1-07.11(6) INCORPORATION OF PROVISIONS

The Design-Builder shall notify all potential contractors/subcontractors and suppliers of the EEO obligations required by the Contract. The Design-Builder shall use diligent efforts to ensure contractor/subcontractor compliance with their equal employment opportunity obligations.

The Design-Builder shall include the provisions of Section 1-07.11 in every contract/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) RECORDS AND REPORTS

1-07.11(7).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; and
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(7).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 (or substitute form as approved by WSDOT) is required for

all federally assisted programs if the contract is equal to or greater than $10,000 and for every associated subcontract equal to or greater than $10,000. These monthly reports are to be maintained in the respective Design-Builder's or subcontractor's records.

1-07.11(8) ON THE JOB TRAINING – TRAINING SPECIAL PROVISIONS (OJT-TSP)

General Requirements

The Design-Builder's equal employment opportunity, affirmative action program shall include the requirements set forth below. The Design-Builder shall provide on-the-job training aimed at developing trainees to journeyman status in the trades involved. The number of training hours shall be **71,000** The Design-Builder may elect to accomplish training as part of the work of a subcontractor, however, the Design-Builder shall retain the responsibility for complying with these General Provisions. The Design-Builder shall also ensure that this training provision is made applicable to any subcontract that includes training.

Trainee Approval

The Federal government requires WSDOT to include these training provisions as a condition attached to the receipt of Federal highway funding. The Federal government has determined that the training and promotion of members of certain minority groups and women is a primary objective of this training provision. The Design-Builder shall make every effort to enroll minority groups and women trainees to the extent such persons are available within a reasonable recruitment area. This training provision is not intended and shall not be used to discriminate against any applicant for training, whether that person is a minority, woman or otherwise. A non-minority male trainee or apprentice may be approved provided the following requirements are met:

1. The Design-Builder is otherwise in compliance with the Contract's Equal Employment Opportunity and On-the-Job Training requirements and provides documentation of the efforts taken to fill the specific training position with either minorities or females
2. or, if not otherwise in compliance, furnishes evidence of his/her systematic and direct recruitment efforts in regard to the position in question and in promoting the enrollment and/or employment of minorities and females in the craft which the proposed trainee is to be trained
3. and the Design-Builder has made a good faith effort towards recruiting of minorities and women. Good faith effort shall include but is not limited to the following:
    a) Distribution of written notices of available employment opportunities with the Design-Builder and enrollment opportunities with its unions. Distribution should include but not be limited to; minority and female recruitment sources and minority and female community organizations;
    b) Records documenting the Design-Builder's efforts and the outcome of those efforts, to employ minority and female applicants and/or refer them to unions;
    c) Records reflecting the Design-Builder's efforts in participating in developing minority and female on-the-job training opportunities, including upgrading programs and apprenticeship opportunities;
    d) Distribution of written notices to unions and training programs disseminating the Design-Builder's EEO policy and requesting cooperation in achieving EEO and OJT obligations.
    e) Efforts shall reflect two-way communications

No employee shall be employed as a trainee in any classification in which the employee has successfully completed training leading to journeyman status or in which the employee has been

employed as a journeyman. The Design-Builder's records shall document the methods for determining the trainee's status and findings in each case. When feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

For the purpose of this specification, acceptable training programs are those employing trainees/apprentices registered with the following:

1. Washington State Department of Labor & Industries — State Apprenticeship Training Council (SATC) approved apprenticeship agreement:

   a) Pursuant to RCW 49.04.060, an apprenticeship agreement shall be;

      i. an individual written agreement between an employer and apprentice

      ii. a written agreement between (an employer or an association of employers) and an organization of employees describing conditions of employment for apprentices

      iii. a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

   All such agreements shall conform to the basic standards and other provisions of RCW Chapter 49.

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

   Or

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

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

Obligation to Provide Information

Upon starting a new trainee, the Design-Builder shall furnish the trainee a copy of the approved program the Design-Builder will follow in providing the training. Upon completion of the training, the Design-Builder or shall provide WSDOT with a certification showing the type and length of training satisfactorily completed by each trainee.

Training Program Approval

The Training Program shall meet the following requirements:

1. The Training Program (DOT Form 272-049) must be submitted to the WSDOT Engineer for approval prior to commencing contract Work and shall be resubmitted when modifications to the program occur.

2. The minimum length and type of training for each classification will be as established in the training program as approved by WSDOT.

3. The Training Program shall contain the trades proposed for training, the number of trainees, the hours assigned to the trade and the estimated beginning work date for each trainee.

4. Unless otherwise specified, Training Programs will be approved if the proposed number of training hours equals the training hours required by Contract.

5. After approval of the training program, information concerning each individual trainee and good faith effort documentation shall be submitted on (DOT Form 272-050).

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

7. Flagging programs will not be approved. Other programs that include flagging training will only be approved if the flagging portion is limited to an orientation of not more than 20 hours.

8. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some off-site training is permissible as long as the training is an integral part of an approved training program.

9. It is normally expected that a trainee will begin training on the project as soon as feasible after start of work, utilizing the skill involved and remain on the project as long as training opportunities exist in the work classification or upon completion of the training program. It is not required that all trainees be on board for the entire length of the Contract. The number trained shall be determined on the basis of the total number enrolled on the Contract for a significant period.

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

> Apprentice workmen employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the State Apprenticeship Council pursuant to RCW 49.04, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any workman for whom an apprenticeship agreement has not been registered and approved by the State Apprenticeship Council shall be considered to be a fully qualified journeyman, and, therefore, shall be paid at the prevailing hourly rate for journeymen.

Compliance

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

Requirements for Non BAT/SATC Approved Training Programs

Design-Builders who are not affiliated with a program approved by BAT or SATC may have their training program approved provided that the program is submitted for approval on DOT Form 272-049, and the following standards are addressed and incorporated in the Design-Builder's program:

1. The program establishes minimum qualifications for persons entering the training program.

2. The program shall outline the work processes in which the trainee will receive supervised work experience and training on-the-job and the allocation of the approximate time to be spent in each major process. The program shall include the method for recording and reporting the training completed shall be stated.

3. The program shall include a numeric ratio of trainees to journeymen consistent with proper supervision, training, safety, and continuity of employment. The ratio language shall be specific and clear as to application in terms of job site and workforce during normal operations (normally considered to fall between 1:10 and 1:4).

4. The terms of training shall be stated in hours. The number of hours required for completion to journeyman status shall be comparable to the apprenticeship hours established for that craft by the SATC. The following are examples of programs that are currently approved:

CRAFT	HOURS
Laborer	4,000
Ironworker	6,000
Carpenter	5,200-8,000
Construction Electrician	8,000
Operating Engineer	6,000-8,000
Cement Mason	5,400
Teamster	2,100

5. The method to be used for recording and reporting the training completed shall be stated.

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.

1-07.12(1) REQUIRED FEDERAL AID PROVISIONS

The "Required Contract Provisions Federal Aid Construction Contracts" (FHWA 1273) and the amendments thereto supersede any conflicting provisions of the General Provisions and are made a part of this Contract; provided, however, that if any of the provisions of FHWA 1273, as amended, are less restrictive than Washington State Law, then the Washington State Law shall prevail.

The provisions of FHWA 1273, as amended, included in this Contract require that the Design-Builder insert the FHWA 1273 and amendments thereto in each subcontract, together with the wage rates which are part of the FHWA 1273, as amended. FHWA 1273 and amendments thereto are included in Appendix B3. Also, a clause shall be included in each subcontract requiring the subcontractors to insert the FHWA 1273 and amendments thereto in any lower tier subcontracts, together with the wage rates. The Design-Builder shall also ensure that this General Provision, "Required Federal Aid Provisions", is inserted in each subcontract for subcontractors and lower tier subcontractors. For this purpose, upon request to the WSDOT Engineer, the Design-Builder will be provided with extra copies of the FHWA 1273, the amendments thereto, the applicable wage rates, and this General Provision.

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

1-07.13(1) GENERAL

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

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

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

WSDOT will review the Design-Builder's submittals and issue comments. The Design-Builder shall resolve the comments in accordance with the Quality Management Plan approved by WSDOT

If WSDOT does not issue comments or propose changes within the time periods set forth in the RFP, the Design-Builder may proceed with the use and application of such Released for Construction document, design reports, and other submittals as applicable. However, WSDOT's lack of comment shall in no event constitute a concurrence or approval of the Design-Builder's submittal or prevent WSDOT from subsequent comment and/ or disapproval at a later time. The Design-Builder inherently retains the risk for contractual compliance until project acceptance.

1-07.13(2) RELIEF OF RESPONSIBILITY FOR COMPLETED WORK

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

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

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

1-07.13(3) RELIEF OF RESPONSIBILITY FOR DAMAGE BY PUBLIC TRAFFIC

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

1. The improvements conform to applicable Contract requirements,

2. The improvements are on a section of roadway required by the Contract to be opened to public traffic, and

3. The traffic control is in accordance with the approved traffic control plans.

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

1-07.13(4) REPAIR OF DAMAGE

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

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

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

1-07.14 RESPONSIBILITY FOR DAMAGE

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

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

1-07.14(1) GENERAL INDEMNITIES

Subject to Section 1-07.14(1).2, the Design-Builder shall release, defend, indemnify and hold harmless the State, Governor, Commission, Secretary , and all officers and employees of the State, the State's agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees, (collectively referred to in this Section 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.

1-07.16 PROTECTION AND RESTORATION OF PROPERTY

1-07.16(1) PRIVATE/PUBLIC PROPERTY

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

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

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

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

The Design-Builder may access the worksite from adjacent properties. The Design-Builder shall not use or allow others to use this access to merge with public traffic. During non-working hours, the Design-Builder shall provide a physical barrier that is either locked or physically unable to be moved without equipment. The access shall not go through any existing structures. The access may go through fencing. The Design-Builder shall control or prevent animals from entering the worksite to the same degree that they were controlled before the fence was removed. The Design-Builder shall prevent persons not involved in the contract Work from entering the worksite through the access or through trails and pathways intersected by the access. If the Contract Documents require that existing trails or pathways be maintained during construction, the Design-Builder will insure the safe passage of trail or pathway users. The Design-Builder shall effectively control airborne

particulates that are generated by use of the access. The location and use of the access shall not adversely affect wetlands or sensitive areas in any manner. The Design-Builder shall be responsible for obtaining all haul road agreements, permits and/or easements associated with the access. The Design-Builder shall replace any fence, repair any damage and restore the site to its original state when the access is no longer needed. The Design-Builder shall bear all costs associated with this worksite access.

1-07.16(2) VEGETATION PROTECTION AND RESTORATION

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

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

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

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

The Design-Builder will be assessed damages equal to triple the value of the vegetation as determined in the *Guide for Plant Appraisal*, 9th Edition, published by the International Society of Arboriculture or the estimated cost of restoration with a similar species. Shrub, ground cover, and herbaceous plant values will be determined using the Cost of Cure Method. Any damage so assessed will be deducted from the monies due or that may become due the Design-Builder.

1-07.16(3) FENCES, MAILBOXES, INCIDENTALS

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

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

1-07.16(4) ARCHAEOLOGICAL AND HISTORICAL OBJECTS

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

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

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

If human skeletal remains are encountered by the Design-Builder, they shall not be further disturbed. The Design-Builder shall immediately notify the WSDOT Engineer of any such finds, and shall cease all Work adjacent to the discovery, in an area adequate to provide for the total security and protection of the integrity of the skeletal remains. The WSDOT Engineer may require the Design-Builder to suspend Work in the vicinity of the discovery until final determinations and removal of the skeletal remains is completed.

1-07.17 UTILITY RELOCATIONS

This Section 1-07.17 will be provided by Addendum.

1-07.18 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Design-Builder shall procure and maintain insurance as specified in this Section 1-07.18. The insurance provided hereunder shall be available for the benefit of the Indemnified Parties and Design-Builder with respect to covered claims, but shall not be interpreted to relieve Design-Builder of any obligations hereunder. Unless otherwise specified in the Contract, all insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by WSDOT and with companies or through sources approved by the State Insurance Commissioner pursuant to Chapter 48.05 RCW. If an insurer is not an admitted carrier (unauthorized insurer), the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC. Unless otherwise indicated below, the policies shall be kept in force from the Effective Date until the date of Final Acceptance, as determined pursuant to Section 1-05.12.

1-07.18(1) MINIMUM INSURANCE REQUIREMENTS

1-07.18(1).1 Workers' Compensation

Design-Builder shall provide industrial insurance and medical aid as required under Title 51 RCW. Design Builder shall also provide coverage for claims asserted under the Longshore and Harbor Workers Compensation Act (LHWCA) and the Jones Act, as required. Design-Builder shall maintain such insurance through the expiration of the Warranty periods described in Section 1-05.16. Design-Builder shall be the named insured on these policies. A Design-Builder who is self-insured under Title 51 RCW shall also provide an endorsement extending coverage to all State operations on an "if any" basis.

1-07.18(1).2 Commercial General Liability

Design-Builder shall provide commercial general liability coverage, on a primary basis, for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 12 04. Design-Builder shall maintain such insurance through the expiration of the Warranty periods described in Section 1-05.16, unless otherwise specified herein.

The commercial general liability insurance shall include, but not be limited to, coverage for liability arising out of: (i) fire legal liability (not less than the replacement value of the portion of the premises occupied); (ii) blanket contractual; (iii) independent contractors; (iv) premises operations; (v) products and completed operations for a minimum of six years following Final Completion; and (vi) the acts, errors and omissions in the rendering or failure to render professional services under the Contract Documents or in the performance of the Work. This coverage shall have an annual minimum limit of $2,000,000 per occurrence, $4,000,000 general annual aggregate and $4,000,000 products/completed operations aggregate. If commercial general liability insurance with a general aggregate limit and products and completed operations aggregate limit is used, then both the general liability and products/completed operations aggregate limits shall apply separately and exclusively to the Project, or Design-Builder may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of Design-Builder.

Design Builder shall also provide “stop-gap” liability insurance under its commercial general liability (for bodily injury or disease) with minimum limits of $1,000,000 per accident for bodily injury by accident, $1,000,000 per employee for bodily injury by disease, and $1,000,000 aggregate limit for bodily injury by disease.

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 Project or any acts, errors or omissions of any Related Entity, whether occurring on or off of the Site.

1-07.18(1).3 Automobile Liability

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 $1,000,000 per accident, combined single limit for bodily injury and property damage liability. Design-Builder shall maintain such insurance through Final Completion; provided, however, that such coverage shall be maintained for vehicles used in the performance of Warranty Work until the expiration of the Warranty periods described in Section 1-05.16. Coverage shall be provided on Insurance Services Office form number CA 0001 or an equivalent and shall include endorsement CA9948 (in transit pollution risks coverage). Design-Builder shall be the named insured and the Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity. The required limits can be satisfied by a combination of a primary policy and an excess policy.

1-07.18(1).4 Intentionally Vacant

1-07.18(1).5 Excess Liability

Design-Builder shall provide excess liability insurance with limits not less than $50,000,000 which will provide coverage at least as broad as the primary coverages set forth herein, including Workers’ Compensation, Commercial General Liability, Automobile Liability, and Aircraft Liability, in excess of the amounts set forth in Sections 1-07.18(1).1 (for Jones Act and LHWCA liability), 1-07.18(1).2, 1-07.18(1).3, and 1-07.18(1).9, respectively. The Indemnified Parties shall be additional insureds with

respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site.

1-07.18(1).6 Intentionally Vacant

1-07.18(1).7 Intentionally Vacant

1-07.18(1).8 Intentionally Vacant

1-07.18(1).9 Intentionally Vacant

1-07.18(1).10 Intentionally Vacant

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

Design-Builder shall provide owners and contractors protective (OCP) liability insurance, with a limit of not less than $10,000,000 per occurrence and in the aggregate on an annual basis, providing bodily injury and property damage liability coverage until the Final Acceptance date, as determined pursuant to Section 1-05.12, under Insurance Services Office form CG 0009, together with WSDOT Amendatory Endorsement No. CG 29 08, specifying the State of Washington as named insured.

1-07.18(2) GENERAL INSURANCE REQUIREMENTS

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

Design-Builder shall be responsible for payment of premiums for all insurance required under this Section 1-07.18. Design-Builder further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Design-Builder is responsible hereunder, Design-Builder shall be solely responsible for all deductibles, self-insured retentions and amounts in excess of the coverage provided. Any deductibles or self-insured retentions shall not exceed $100,000, unless otherwise provided in this Section 1-07.18. Any deductibles or self insured retentions shall not apply to WSDOT or the Indemnified Parties. Design-Builder shall procure a bond acceptable to WSDOT guaranteeing payment of losses and related investigations, claims administration and defense expenses.

1-07.18(2).2 Verification of Coverage

Design-Builder shall file with WSDOT, Contract Payment Section, P.O. Box 47420, Olympia, WA 98504-7420, certified copies of all policies required hereunder evidencing the minimum insurance coverages required to be provided, at least 30 days prior to the date such insurance is required to be provided hereunder. WSDOT shall have no duty to pay or perform under the Contract Documents until such policies, in compliance with all requirements of this Section 1-07.18, have been provided. By accepting the policies as required hereunder, WSDOT does not acknowledge or represent that the insurance requirements of Section 1-07.18 have been satisfied. WSDOT expressly reserves all rights against the Design-Builder to assert claims for breach of the terms and conditions of this Section 1-07.18 at any time in the future. Design-Builder shall promptly deliver to WSDOT a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificates shall be delivered to WSDOT not less than 45 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium therefore. If requested by WSDOT from time to time, certified duplicate copies of any renewal policy shall also be provided.

1-07.18(2).3 Subcontractor Insurance Requirements

Design-Builder shall cause each Subcontractor to provide and maintain insurance that complies with the requirements for Design-Builder-provided insurance set forth in this Section 1-07.18 in circumstances where the Subcontractor is not covered by Design-Builder-provided insurance; provided that Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors (if any), which determination shall be made in accordance with reasonable and prudent business practices. Design-Builder shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractors' insurance policies obtained pursuant to Sections 1-07.18(1).2, 1-07.18(1).3, 1-07.18(1).4, 1-07.18(1).5, 1-07.18(1).8, 1-07.18(1).9, and 1-07.18(1).10 above. Design-Builder shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by WSDOT, Design-Builder shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. WSDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

1-07.18(2).4 Endorsements and Waivers

All insurance policies required to be provided by Design-Builder hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only subsections (d) and (h) shall be applicable:

(a) For claims covered by the insurance specified herein, all insurance coverage shall be primary insurance and non-contributory with respect to the named insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an Indemnified Party, additional insured, or their members, directors, officers, employees, agents and consultants shall be in excess of, and shall not contribute with, the insurance required herein.

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents and consultants).

(c) All liability insurance to be provided herein shall include a "separation of insureds" clause and shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. No policy shall contain any provision or exclusion (including but not limited to a "cross-liability" or similar exclusion) that in effect would prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim that would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy. The requirements of this subsection do not apply to claims by Design-Builder against any of its Subcontractors or suppliers or to claims between Subcontractors and/or suppliers.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 45 days (10 days for non-payment of premium) prior written notice by certified mail, return receipt requested, has been given to WSDOT. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form and shall contain no limitations or exclusions with respect to ”products/completed operations” coverage. The coverage shall be primary and non contributory with respect to any other insurance maintained by the additional insured. Any insurance or self-insurance that is maintained by an additional insured, or their members, directors, officers, employees, agents and consultants shall be in excess of, and shall not contribute with, the insurance required herein.

(f) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) or its equivalent.

(g) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of earth movement policies).

1-07.18(2).5 Waivers of Subrogation

The Design-Builder waives all rights against the Indemnified Parties, against each of their agents and employees and against Subcontractors and suppliers and their respective members, directors, officers, employees, agents and consultants for any claims arising out of the performance of work under this Contract. Design-Builder shall require all Subcontractors and any Related Entity to provide similar waivers in writing each in favor of the Indemnified Parties. The waivers required in this subsection do not apply to claims between Subcontractors and/or subconsultants of Design-Builder or those claims asserted by Design-Builder against any Subcontractors and/or suppliers. Each policy, including, but not limited to, workers’ compensation coverage, but excluding owners and contractors protective liability insurance, shall include a waiver of any right of subrogation against the Indemnified Parties and any other additional insureds (and their respective members, directors, officers, employees, agents and consultants).

1-07.18(2).6 Changes in Requirements

WSDOT shall notify Design-Builder in writing of any changes in the requirements applicable to insurance required to be provided by Design-Builder. Except as set forth in this Section 1-07.18(2), any additional cost from such change shall be paid by WSDOT and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

1-07.18(2).7 No Recourse

All costs for insurance shall be considered incidental to and included in the Contract Price and no additional payment will be made by WSDOT unless expressly specified in this Section 1-07.18(2).

1-07.18(2).8 Support of Indemnifications

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

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

If, through no fault of Design-Builder, any of the coverages required in this Section 1-07.18 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, WSDOT will consider in good faith alternative insurance packages and programs proposed by Design-Builder, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. Design-Builder must demonstrate to WSDOT’s reasonable satisfaction that it has used diligent efforts in the global insurance markets to obtain the required insurance coverages, and shall advise WSDOT of the specific results of those efforts. Design-Builder shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. WSDOT shall be

entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents escrowed pursuant to Section 1-03.15 (or based on other evidence of insurance premiums as of the Proposal Date if the Escrowed Proposal Documents do not provide adequate information).

1-07.18(3) WSDOT'S RIGHT TO REMEDY BREACH BY DESIGN-BUILDER

Failure on the part of Design-Builder to maintain the insurance as required hereunder shall constitute a material breach of the Contract, upon which WSDOT may, after giving five business days notice to Design-Builder to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to WSDOT on demand, or at the sole discretion of WSDOT, offset against funds due Design-Builder from WSDOT.

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

Under certain circumstances, insurance policies required to be provided by WSDOT hereunder are intended to provide compensation to Design-Builder for costs incurred by Design-Builder. 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. 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 Design-Builder of WSDOT's incidents, potential claims, and matters which may give rise to an insurance claim by WSDOT, to tender its defense or the claim to Design-Builder, and to cooperate with Design-Builder as necessary for Design-Builder to fulfill its duties hereunder.

1-07.18(5) COMMENCEMENT OF WORK

Design-Builder shall not commence Work under this Contract until it has obtained the insurance required under this Section 1-07.18, has furnished original policies of insurance evidencing the required coverage as required hereunder, nor shall Design-Builder allow any Subcontractor to commence Work under any Subcontract until the insurance required of the Subcontractor has been obtained and approved by Design-Builder.

1-07.18(6) DISCLAIMER

Design-Builder and each Subcontractor shall have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. Nothing in this Contract shall be construed as limiting in any way the extent to which Design builder may be held responsible for any claims resulting from its performance of the work hereunder. Design-Builder's obligations to procure insurance are separate and independent of its contractual defense and indemnity obligations. The coverage limits set forth in the Section 1-07.18 are minimum requirements and WSDOT does not represent that the minimum coverages and limits required hereunder will necessarily be adequate to protect Design-Builder.

1-07.19 GRATUITIES

The Design-Builder shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of WSDOT: Nor will the Design-Builder rent or purchase any equipment or materials from any employee or officer of WSDOT. Before payment of the final estimate will be made, the Design-Builder shall execute and furnish WSDOT an affidavit certifying compliance with these provisions of the Contract.

The Design-Builder shall comply with all applicable sections of the State Ethics law, RCW 42.52, which regulates gifts to State officers and employees. Under that statute, any WSDOT officer or employee who has or will participate with the Design-Builder regarding any aspect of this Contract is prohibited from seeking or accepting any gift, gratuity, favor or anything of economic value from the Design-Builder. Accordingly, neither the Design-Builder nor any agent or representative of the Design-Builder shall offer anything of economic value as a gift, gratuity, or favor directly or indirectly to any such officer or employee.

1-07.20 PATENTED DEVICES, MATERIALS, AND PROCESSES

The Design-Builder shall assume all costs arising from the use of patented devices, materials, or processes used on or incorporated in the Work, and agrees to indemnify, defend, and save harmless the State, Commission, Secretary, and their duly authorized agents and employees from all actions of any nature for, or on account of the use of any patented devices, materials, or processes.

1-07.21 ROCK DRILLING SAFETY REQUIREMENTS

It shall be the Design-Builder's responsibility to maintain safe working conditions during rock drilling, by keeping dust concentration below the threshold limit value or by providing those protective devices that may be required by the State Department of Labor and Industries.

1-07.22 USE OF EXPLOSIVES

When using explosives, the Design-Builder shall use the utmost care to protect life and property, to prevent slides, and to leave undisturbed all materials, outside the neat lines of the cross-section.

Explosives shall be handled, marked, stored, and used in compliance with WAC 296-52 and such local laws, rules, and regulations that may apply. The stricter provisions shall apply.

All explosives shall be stored securely as required by all laws and ordinances that apply. Each storage place shall be clearly marked: "Dangerous-Explosives." No explosives shall be left unprotected.

If public utilities or railroads own equipment near the blast site, the Design-Builder shall notify the owners of the location, date, time, and approximate duration of the blasting. This notice shall be given sufficiently in advance to enable all owners to take any steps as they deem necessary to protect their property from injury.

Blasting near proposed structures shall be completed before work on them begins. When the use of explosives is necessary for the prosecution of the work, the Design-Builder's insurance shall contain a special clause permitting the blasting.

1-07.23 PUBLIC CONVENIENCE AND SAFETY

The Design-Builder shall be responsible for providing adequate safeguards, safety devices, protective equipment, and any other needed actions to protect the life, health, and safety of the public, and to protect property in connection with the performance of the Work covered by the Contract. The Design-Builder shall perform any measures or actions necessary to protect the public and property. The responsibility and expense to provide this protection shall be the Design-Builder's except that, if any, which is to be furnished by WSDOT as specified in other sections of these Specifications. Nothing contained in this Contract is intended to create any third-party beneficiary rights in favor of the public or any individual utilizing the highway facilities being constructed or improved under this Contract. See TR Section 2.22.

1-07.24 RIGHTS-OF-WAY

WSDOT has supplied sufficient ROW to construct the Project. In the event the Design-Builder requests additional ROW, WSDOT shall cooperate with the Design-Builder; however, all responsibilities for all costs and delays are the responsibility of the Design-Builder. (See TR Section 2.24.)

1-07.25 OPENING OF SECTIONS TO TRAFFIC

WSDOT reserves the right to use and open to traffic any portion of the Work before the Physical Completion date of the entire Project without constituting acceptance of any of the Work. This action will not cause WSDOT to incur any liability to the Design-Builder except as may otherwise be provided in the Contract.

If WSDOT opens any portion of the Project prior to the Physical Completion Date of the entire facility because early opening is specified in the Contract or when the Design-Builder has failed to prosecute the Work continuously and efficiently, any Work remaining shall be performed by the Design-Builder without any right to an increase in the Contract Price. No additional payment will be made for costs incurred by the Design-Builder because of:

(1) inconvenience, additional length of travel to conform to established traffic patterns and planned access features;

(2) compliance with statutes governing traffic regulations and limitations of loads; or

(3) additional flagging costs necessary to protect the operations and the traveling public. The Design-Builder acknowledges and agrees that it took all costs due to traffic using portions of the Work into account when submitting the Proposal, and that the Contract Price includes all such costs.

1-07.26 PERSONAL LIABILITY OF PUBLIC OFFICERS

Neither the Commission, the Secretary, nor any other officer or employee of the State shall be personally liable for any acts or failure to act in connection with the Contract, it being under-stood that in such matters, they are acting solely as agents of the State.

1-07.27 NO WAIVER OF STATE'S LEGAL RIGHTS

The Design-Builder and the State recognize that the impact of overcharges to the State by the Design-Builder resulting from antitrust law violations by the Design-Builder's suppliers or Subcontractors adversely affects the State rather than the Design-Builder. Therefore, the Design-Builder agrees to assign to the State any and all claims for such overcharges.

1-07.27(1) NO WAIVER OF SUBSEQUENT RIGHTS

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

1-07.27(2) CUSTOM DOES NOT CONSTITUTE WAIVER

No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

1-07.27(3) WAIVERS MUST BE IN WRITING

No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

1-07.28 APPRENTICE UTILIZATION

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

1-07.28(1) DEFINITIONS

The following definitions apply to Apprentice Utilization:

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

1-07.28(2) PLAN

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

1-07.28(3) REPORTING

The Design-Builder shall submit a "Statement of Apprentice /Journeyman Participation" (DOT form 422-110 EF) on a monthly basis. The report shall be submitted to WSDOT by the last working day of the subsequent month, until the Physical Completion Date. The data reported shall be cumulative to date and consolidated to include the Design-Builder and all Subcontractors. At the Design-Builder's request, WSDOT may suspend this reporting requirement during periods of minimal or no applicable

work activities on the project. The Design-Builder shall submit documentation of their Good Faith Effort if; (1) they are unable to provide a plan demonstrating how they intend to meet the Apprentice Utilization Requirement; or, (2) the project has been completed without meeting the Apprentice Utilization Requirement.

1-07.28(4) CONTACTS

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

1-07.28(5) COMPLIANCE

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

1-07.28(6) GOOD FAITH EFFORTS

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

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

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

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

1-07.28(7) APPRENTICE WAGES

See 1-07.9(3)

1-08 PROSECUTION AND PROGRESS

1-08.1 SUBCONTRACTING

The Design-Builder shall not subcontract work unless WSDOT approves in writing. The Design-Builder shall submit all requests to subcontract on the form WSDOT provides. If WSDOT requests, the Design-Builder shall provide proof that the Subcontractor has the experience, ability, and /or equipment the Work requires. Along with the request to sublet, the Design-Builder shall submit the names of any contracting firms that the Subcontractor proposes to subcontract Work to.

Prior to subcontracting any work, the Design-Builder shall verify that every first tier Subcontractor meets the responsibility criteria stated below at the time of subcontract execution. The Design-Builder shall include these responsibility criteria in every subcontract, and require every Subcontractor to:

1. Possess any electrical contractor license required by 19.28 RCW or elevator contractor license required by 70.87 RCW, if applicable;
2. Have a certificate of registration in compliance with chapter 18.27 RCW;
3. Have a current state unified business identifier number;
4. If applicable, have:
    a. Industrial insurance coverage for the bidder's employees working in Washington (Title 51 RCW);
    b. An employment security department number (Title 50 RCW);
    c. A state excise tax registration number (Title 82 RCW);
5. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
6. Verify these responsibility criteria for every lower tier Subcontractor at the time of subcontract execution; and,
7. Include these responsibility criteria in every lower tier subcontract.

The Design-Builder shall require each Subcontractor to comply with Section 1-07.9 and to furnish all certificates and statements required by the Contract.

Subcontracting shall not:

1. Relieve the Design-Builder of any responsibility to carry out the Contract,
2. Relieve the Design-Builder of any obligations or liability under the Contract and the Contract Bond,
3. Create any Contract between WSDOT and the Subcontractor, or
4. Convey to the Subcontractor any rights against WSDOT.

WSDOT will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the Work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies hired by those commercial plants. However, 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 both WSDOT funds and Federal assistance (i.e., this contract), the Design-Builder shall submit a "Quarterly Report of Amounts Credited as DBE Participation" on a quarterly basis for every quarter in which the Contract is active (work is accomplished) or upon completion of the Project, as appropriate. The quarterly reports are due on the 20th of April, July, October, and January for the four respective quarters. When required, this "Quarterly Report of Amounts Credited as DBE Participation" is in lieu of WSDOT form 421-023, "Annual Report of Amounts Paid as MBE/WBE Participants."

If dissatisfied with any part of the subcontracted work, WSDOT may request in writing that the Subcontractor be removed. The Design-Builder shall comply with this request at once and shall not employ the Subcontractor for any further work under the Contract.

Prior to any subcontractor or lower tier subcontractor beginning work, the Design-Builder shall submit to the WSDOT Engineer a certification (WSDOT Form 420-004) that a written agreement between the Design-Builder and the subcontractor or between the subcontractor and any lower tier subcontractor has been executed. This certification shall also guarantee that these subcontract agreements include all the documents required by the General Provision "Federal Agency Inspection".

A subcontractor or lower tier subcontractor will not be permitted to perform any work under the Contract until the following documents have been completed and submitted to the WSDOT Engineer:

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

The Design-Builder's records pertaining to the requirements of this General Provision shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than three years after the date of acceptance of the Contract. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that these records of all subcontractors and lower tier subcontractors shall be available and open to similar inspection or audit for the same time period.

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

The Design Builder shall require any Subcontractor or lower tier subcontractor whose contract exceeds $100,000 to submit Standard Form LLL, "Disclosure of Lobbying Activities", in accordance with the instructions on the form, except that, Standard Form LLL shall be submitted to the Design-Builder for submittal to WSDOT.

1-08.1(1) SUBCONTRACT COMPLETION AND RETURN OF RETAINAGE WITHHELD

The following procedure shall apply to all subcontracts entered into as a part of this Contract.

Requirements

The requirements and procedure for subcontract release and return of retainage withheld is a follows:

1. The Subcontractor shall make a written request to the Design-Builder for the release of the Subcontractor's retainage or bond;
2. Within 14 Calendar 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 Calendar 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 Calendar 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; and
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

The following conditions shall apply:

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; and
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 a price loaded design and construction schedule for its own use as well as for use by WSDOT. WSDOT will use this schedule and periodic updates thereof to evaluate the Design-Builder's progress in performing the Work. In addition, WSDOT will use the price-loaded features on the Baseline Schedule and the monthly update schedules to calculate progress payments. (See Section 1-09.9 - Payments.)

During the course of the Project, the Design-Builder shall provide a variety of schedules and schedule reports to satisfy specific Contract needs. The Design-Builder shall submit a Preliminary 90-day Look Ahead Schedule, a Baseline Contract Schedule, Monthly Contract Schedule Updates, and an As-Built Contract Schedule each as provided herein.

The Design-Builder shall have the right to modify the schedule, as it deems necessary to properly represent the progress of the Work and the remaining Work to Project completion. Notwithstanding the foregoing, WSDOT will retain final authority to accept or reject every schedule described herein.

WSDOT's acceptance of any schedule shall not relieve the Design-Builder from its responsibilities for adjusting work forces, equipment, and work schedules to ensure completion of the Project within the time(s) specified in the Contract. Similarly, WSDOT acceptance of any schedule does not in any way relieve the Design-Builder from its responsibility to produce and utilize a complete, accurate and appropriate schedule for managing its work.

If WSDOT deems that any schedule fails to provide the information required in this Section 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. Not have any activity duration greater than 30 Calendar Days unless approved by WSDOT;
2. Identify self-imposed and/or regulatory non-work periods arising out of climatological and/or environmental or other concerns. The Design-Builder may constrain work scheduling in these periods by means of special calendars, milestones or other suitable means;
3. Incorporate the following specific restrictions, constraints, activities and milestones:
   (a) Milestones including those reported on Form D of the Design-Builders Proposal,
   (b) Definition of project calendars as they apply to scheduled activities,
   (c) Procurement of any materials critical for the performance of specific activities,
   (d) Submittal dates and durations for review of Design Documents by WSDOT,
   (e) Dates for delivery of access to Rights-of-Way by WSDOT and for delivery of WSDOT furnished materials, if any,
   (f) Schedules for identification and Relocation of Utilities and for the Design-Builder's acquisition of temporary easements and other real property interests necessary for

construction of the Work,

(g) Allocations of the Contract Price among the scheduled activities as described in this Section and Section 1-09.9, and

(h) Dates for obtaining Governmental Approvals for which the Design-Builder is responsible;

4. Show the sequence in which the Design-Builder intends to perform the Work from Notice to Proceed through Completion;

5. Be prepared using precedence diagram methodology, which clearly delineates the relationship between Contract activities; and

6. Activities shall contain all attributes normally associated with contemporary critical path schedules, such as ID number, description, early and late dates, original and remaining durations, float and percent complete. In addition, each activity must include the following calculated or assigned attributes:

(a) The activity calendar that identifies work days and non work days.

(b) All activities will have both predecessor(s) and successor(s) assigned except Project start/finish and Project interim milestones may only have one as appropriate,

(c) Resources, cost accounts, periodic and total to date contract value as required in Section 1-08.3(9), and

(d) Role(s) - the name(s) of reviewing department(s) / agencies, said codes to be furnished by WSDOT.

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

1-08.3(3) SOFTWARE REQUIREMENTS

The scheduling software that will be utilized by WSDOT on this Project is Primavera 6.1 by Primavera Systems, Inc. In order to insure 100% compatibility with WSDOT, the Design-Builder shall use the same program, revision number and service pack. If the Design-Builder wishes to use an alternative schedule program it must demonstrate 100% compatibility to WSDOT's satisfaction and obtain written acceptance by WSDOT pre-bid.

The Design-Builder shall maintain and provide a computer generated log report listing all changes made between every submitted schedule and its last submitted predecessor schedule using the Claim Digger schedule comparison module provided in the Primavera Project Management software bundle.

As a minimum this report will show changes for:

1. Added and Deleted Activities, Original Durations, Remaining Durations,
2. Activity Percent Complete, Total Float, Actual Starts/Finishes,
3. Calendars, Descriptions, Constraints (added, deleted or changed),
4. Budgeted and total to date contract earnings,
5. Added/Deleted Relations, Changed Driving Relations, and
6. Changed Relation Lags, Changed Critical Status.

The Design-Builder will submit these schedules and reports in accordance with Section 1-08.3(4).

1-08.3(3).1 Schedule Software Settings and Restrictions

The Design-Builder shall comply with the following software settings and restrictions:

1. **Activity Constraints** - Date constraint(s), other than those required by the Contract, will not be allowed unless approved by WSDOT. The Design-Builder shall identify any constraints proposed and provide an explanation for the purpose of the constraint;
2. **Lags** - Lags shall not be used when the creation of an activity will perform the same function (e.g., concrete cure time). The Design-Builder shall identify any lag proposed and provide an explanation for the purpose of the lag;
3. **Default Progress Data Disallowed** - Actual Start and Actual Finish dates shall not be automatically updated by default mechanisms that may be included in the scheduling software system. Actual Start and Actual Finish dates on the schedule shall match the dates contained in the Design-Builder's QA/QC documentation. Work activities will be updated by actual work progression rather than being cash flow driven. If used, labor and equipment hours associated with activities shall be derived from the Design-Builder's contemporaneous Project diaries and daily reports;
4. **Software Settings shall include:**
   (a) The updating of "cost % complete" and "activity % complete" of any activity shall be independent functions; program features that calculate one of these parameters from the other shall be disabled;
   (b) 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 "Physical;"
   (f) Activity type will be set to "Task Dependent;" and
   (g) Prices allocated to schedule activities shall be assigned to the Nonlabor cost category.
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; and
6. Resource curves (if used) will be linear unless otherwise agreed to by WSDOT.

1-08.3(4) SUBMITTAL REQUIREMENTS

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

1. All required or voluntary schedule submittals will include a Primavera 5.0 Export *.xer format file;
2. For each update schedule submit one (1) Gantt Chart of the entire schedule in the following format and printed on large-format media suitable for display in the project conference room:

(a) Formatting:

- Activities in early start sequence within logical grouping such as WBS or activity code, and
- Red Bars for Critical path, Blue for Completed and Green for Remaining (non-critical) Work;

(b) Contents:

- Activity ID Number and Description,
- Activity Calendar, and
- Original and Remaining or Actual Duration;
- Total Float, and
- Early Start, Early Finish or Actual Dates;

3. For each update schedule submit one (1) Gantt Chart of the entire schedule in the above format and printed on 11”X17” or 8½”X11” hard copy media and electronic text searchable PDF file;
4. For each Claim Digger report described at 1-08.3(3) submit one electronic HTML file;
5. For each required narrative report submit one hard copy on 11”X17” or 8½”X11” media and one electronic text searchable PDF file;
6. For each tabular report submit one hard copy on 11”X17” or 8½”X11” media and one electronic text searchable PDF file; and
7. For monthly Invoice Data Sheets one Primavera-generated tabular report as required at Section 1-09.9(1).6 in letter-size hard copy, text searchable PDF electronic file format and in Comma-delimited ASCII electronic file format.

1-08.3(5) PRELIMINARY 90 DAY LOOK-AHEAD SCHEDULE

The Design-Builder shall submit a Preliminary Schedule within 14 Calendar Days of effective Notice to Proceed. This may be a 90 Day Look-Ahead Schedule meeting the following requirements or a full-featured critical path schedule meeting the requirements of 1-08.3(6) below. The purpose of this schedule is to facilitate early project planning and coordination and to provide a vehicle for progress payments prior to acceptance of the Design-Builder’s Baseline Contract Schedule. Accordingly, this schedule shall be price-loaded and must be sufficiently detailed to facilitate an understanding of the Design-Builder’s mobilization plans and early work and the consistency of those plans with the overall Project schedule goals.

This schedule may be developed and submitted in manual, bar-chart format and the price loading may be accomplished by spreadsheet software compatible with Microsoft Excel version 2003. This schedule must show Mobilization activities which shall be price loaded consistent with Section 1-09.7. Other activities must be price loaded consistent with Section 1-08.3(9). 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.

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

Upon acceptance of the Preliminary 90 Day Look-Ahead Schedule, said schedule will be used for monthly progress updating and progress payments until the Design-Builder's Baseline Contract Schedule is accepted. In this regard, monthly updates and progress payments using the Preliminary 90 Day Look-Ahead Schedule will conform as closely as practical to the detail requirements in the update and payment provisions of this Section 1-08.3 and of Section 1-09.9.

Schedule Updates and Payment requests based on the Preliminary 90-day Schedule shall include one hard-copy, statused Gantt Chart together with a hard copy and text searchable PDF-electronic format tabular report showing the period and total to date amount requested for each activity together with the total accepted value of the activity.

1-08.3(6) BASELINE CONTRACT SCHEDULE

Within 30 Calendar Days after the effective date of the Notice to Proceed, the Design-Builder shall prepare and submit for WSDOT's acceptance a comprehensive critical path method Baseline Contract Schedule for the performance of the Work. The Baseline Contract Schedule shall be a logic-driven activity network developed as an outgrowth of the Preliminary Baseline Contract Schedule included in the Design-Builder's Proposal as required by the ITP at 3.3.6 Preliminary Baseline Contract Schedule (Section D). It shall be price-loaded, and shall include, in addition to construction activities, activities for design work (including all aspects of design review), submittal review, Traffic Control, environmental compliance, and other activities required to be performed by the Design-Builder or others in order to achieve Substantial Completion.

The Baseline Contract Schedule shall reflect use of all Contract Time, shall not provide for early Substantial Completion, and must conform to any milestone schedule included in the Proposal unless WSDOT directs otherwise. Schedule activity float is the number of days the activity can be delayed without delaying the Project Substantial Completion and/or any Contract milestone dates. All float contained in the Baseline Contract Schedule shall be considered a project resource available to either party or both parties as needed. Contingency activities shall not be used in the Baseline Contract Schedule or any Monthly Contract Schedule Updates. The Baseline Contract Schedule and successor Monthly Contract Schedule Updates, when accepted by WSDOT, will form the basis of payment and the basis from which to measure delay for the Project.

Upon submission of the Baseline Contract Schedule, WSDOT will have 30 Calendar Days to review and accept/reject the submittal. If rejected, the Design-Builder will have 14 Calendar Days to re-submit the Baseline Contract Schedule. WSDOT will then have 14 Calendar Days to review and accept/reject the re-submittal. Each subsequent re-submittal will follow the 14 Calendar Day time requirement.

If the Baseline Contract Schedule is not accepted within 4 months of the Notice to Proceed date, the monthly progress payment may be withheld until said schedule has been accepted by WSDOT.

The initial schedule submittal will be known as "Baseline Candidate 0." Subsequent re-submittals will be called Candidate 1, 2, 3, 4 as required. The form and content of these submittals shall be as follows:

1. For the initial Baseline Candidate (Candidate 0):

   (a) A summary narrative report generally describing the similarities and differences from the Preliminary Baseline Contract Schedule submitted with the Design-Builder's original Proposal. This narrative shall specifically address any change in philosophy and/or work sequence from that shown in the Preliminary schedule;

   (b) The Baseline Candidate shall show and meet the milestone dates included in the Design-Builder's Proposal. Nonetheless, the narrative shall also describe the basis for

any changes in the start, duration or completion of major elements of the work that vary more than three months from that shown in the Preliminary schedule;

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

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

(e) Description of any variance(s) and/or deviations from the requirements of Section 1-08.3(2), (3) and (4) with justification therefore together with a detailed list of activities affected;

(f) A tabular Primavera-generated report that details all price loaded activities and subtotals by cost account together with a supporting comma-delimited ASCII text file; and

(g) A letter or ledger size Gantt Chart of the proposed schedule in the format described at 1.08.3(4) above in both hard copy and electronic text searchable PDF format; and

2. For subsequent Baseline Candidate submittals:

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

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

(c) An updated tabular, Primavera-generated report that details all price loaded activities and subtotals by cost account together with its comma-delimited ASCII text file; and

(d) A letter or ledger size Gantt Chart of the proposed schedule in the format described at 1.08.3(4) above in both hard copy and electronic text searchable PDF format.

Once accepted, the Baseline Contract Schedule shall not be modified in any way. It will be archived and a copy known as the "Working Schedule" will be used on the Project. Updated Working Schedules will be used to report progress, logic and/or activity changes, earnings as further described below.

1-08.3(7) MONTHLY CONTRACT SCHEDULE UPDATES

WSDOT will establish the cutoff date for Progress Payments. Based on this cut-off date, the Design-Builder shall update the then current Working Schedule based on its progress to date, changes to work sequence and/or activity durations and earnings for Work completed and in place. The Design-Builder and WSDOT will agree upon the updated Work and price completed. The agreed updates will be submitted with the Design-Builder's monthly invoices as provided in Section 1-09.9. Upon acceptance of a Monthly Contract Schedule Update, said schedule will be archived by the Design-Builder before making any further changes and before storing period performance, by exporting to an XER format file. The exported file will be uniquely identified with the schedule period that it represents. A copy of the XER file will be submitted to WSDOT with the monthly update.

In addition, the Design-Builder may update a current Working Schedule at any time that it deems appropriate. Should the Design-Builder initiate an interim update separate and apart from the Monthly Contract Schedule Updates, the Design-Builder shall submit said update to WSDOT for review and acceptance. WSDOT may also request an interim Contract Schedule Update, in which case, the Design-Builder shall update the then current Working Schedule and submit said update to WSDOT within 14 Calendar Days of receipt of a written request from WSDOT. All requirements of this Section 1-08.3 applicable to Monthly Contract Schedule Updates shall apply to any interim update.

The Design-Builder shall document and make appropriate changes to the Monthly Contract Schedule Updates to allow said schedules to accurately reflect progress to date and the remaining work of the Contract. At a minimum, the Design-Builder will examine any activity, or chain of activities, whose finish date contributes to the apparent completion of Contract Milestones later than the accepted schedule dates. The narrative progress summary submitted with each update shall describe in detail the reason for all changes in logic and/or duration. In addition, the Design-Builder shall explain reasons for not updating/changing any activity that appears to be driving the late completion of any contract milestone.

The Design-Builder is expected to do all things necessary in order to achieve Substantial Completion within the Contract Time. Accordingly, it is anticipated the Design-Builder will take special measures as necessary to meet the Substantial Completion date. These measures may include such things as applying additional resources, working longer or additional shifts or other measures chosen by the Design-Builder. If a Monthly Contract Schedule Update includes such special measures, the accompanying narrative shall describe those measures and their anticipated impact

All Monthly Contract Schedule Update Submittals shall include:

1. Calculations, Reports and Narratives listed in 1-08.3(4) Submittal Requirements;
2. Description of any changes from last month's variance(s) and/or deviations from the requirements of Section 1-08.3(2), (3) and (4) with justification therefore together with a detailed list of activities affected; and
3. A Schedule-specific Narrative generally describing changes in this period's schedule from the previous period including:
   (a) A statistical comparison of the current schedule to the previous and expected final schedule,
   (b) Work in any area which is different from the previous report sequence,
   (c) Changes to activity logic and durations and expected impact of the changes,
   (d) Discussion of milestones that are being calculated to finish later than the Contract Milestone completion dates and how they might be improved, and
   (e) Discussion of schedule recovery techniques (if any) incorporated into current schedule.

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

1-08.3(8) AS-BUILT CONTRACT SCHEDULE

An As-Built Contract Schedule shall be submitted within 30 Calendar Days following Physical Completion of the Project. All activities shall have accurate start and completion dates and all associated contract values paid completely. All dates shall be consistent with dates contained in the Design-Builder's QA/QC documentation. In addition, the total of all prices in the schedule must be reconciled to the total amount paid to the Design-Builder.

This As-Built Contract Schedule submittal shall include:

1. One (1) electronic *.xer (in the format noted above) file of the As-Built Contract Schedule (Media CD +/- R).
2. One (1) letter or ledger size hard copy and electronic text searchable PDF file of a Gantt Chart showing the as-built schedule for the entire project, in the format set at Section 1.08.3(4).

1-08.3(9) PRICE LOADING

The periodic compensation due the Design-Builder throughout the performance of the Contract shall be calculated using the price-loaded Baseline Contract Schedule or Monthly Contract Schedule Updates, as applicable, in effect during each respective payment period. In developing the Baseline Contract Schedule, the Design-Builder will apportion its Contract Price across multiple activities that, in aggregate, represent all of the Contract Work.

The Design-Builder shall devise an account structure representing the major categories of the Work in consultation with WSDOT. The Design-Builder shall allocate the total Contract Price among the accounts as further described below. Each account will include one or more price-loaded activities scheduled on the Baseline Contract Schedule. The price for each activity shall accurately represent the value of the Work identified in the activity. The price-loaded activities are not to be front-end loaded. No single schedule activity may be assigned a value greater than $500,000. 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 6.1 for Engineering and Construction. 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. The Design-Builder shall price load one or more mobilization activities such that the budget allocation for these items is in compliance with Section 1-09.7. Similarly, the Contract includes provisions for separate payment of materials to be incorporated into the Work. If the Design-Builder so desires and consistent with Section 1-09.8, it shall identify separate and distinct procurement activities to be price-loaded with the value of materials to be incorporated into the Work.

Activities for Force Account Work and other "exception" items will not be price loaded. Force Account Work will be paid as provided in Section 1-09. Although Force Account Work activities will not be price loaded, said "as-built" activities will be added to the Monthly Contract Schedule Updates to show their relationship (if any) to other schedule Work activities.. Agreed price Change Order work will be represented by price loaded schedule activities and are to be progressed in each applicable Monthly Contract Schedule Update. The activities and their assigned price (including Overhead and Profit) will be as provided in the Change Order agreement. Other "exception" items, such as Incentives and Material Price Adjustments, will not be price-loaded. To the extent that they do not represent Work not already shown in the Schedule, they will not be represented by separate schedule activities. These items will be paid in accordance with Section 1-09.9(1).6.

1-08.4 PROSECUTION OF WORK

1-08.4(1) GENERAL

The Design-Builder shall begin Work within 14 Calendar Days from the date of Notice to Proceed, unless otherwise approved in writing. The Design-Builder shall diligently pursue the Work to Completion within the time specified in the Contract. Voluntary shutdown or slowing of operations by the Design-Builder shall not relieve the Design-Builder of the responsibility to complete the Work within the time(s) specified in the Contract.

The Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve completion within the specified time and in accordance with the Contract Schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts, overtime operations, Sundays and Holidays) as may be necessary to achieve such goal, all at the Design-Builder's own expense, except as otherwise specifically provided in the Contract.

1-08.4(2) PREREQUISITES FOR START OF CONSTRUCTION

The Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed:

1. The Quality Management Plan has been approved and all preconstruction requirements have been completed,
2. All Governmental Approvals (including environmental permits) necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals which are a prerequisite to commencement of such construction shall have been performed,
3. All identified environmental requirements and commitments have been met, including but not limited to, installation of construction fencing at all sensitive areas and installation of all applicable TESC measures,
4. All required insurance and bonds are in full force and effect,
5. WSDOT or the Design-Builder shall have obtained all necessary rights of access for such portion of the Project,
6. The Design-Builder shall have completed all required review(s) in accordance with Section 1-05.3, and
7. All applicable Traffic Control Plans have been released for construction.

1-08.5 TIME FOR COMPLETION

The Design-Builder shall complete all Work necessary to achieve Substantial Completion within the Contract Time, and all work necessary to achieve Physical Completion and Completion of the Project within the times specified in the Contract. The grounds upon which the Design-Builder may obtain a Change Order granting a time extension are set forth in Section 1-08.8.

1-08.5(1) SUBSTANTIAL COMPLETION

1-08.5(1).1 Notice by Design-Builder

As a 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 completed to achieve Substantial Completion has been performed in accordance with the requirements of the Contract Documents;

(c) Design-Builder has ensured that the facilities may be operated without damage to the Project or any other property on or off the Project Site, and without injury to any Person;

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

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

1-08.5(1).2 Response by WSDOT

Promptly after receipt of the above referenced notice, and in no event later than 30 Calendar Days thereafter, WSDOT shall advise the Design-Builder in writing of any of the following of which WSDOT has knowledge:

(a) defects in the Work, and/or

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

(c) deviations of any installed equipment, materials and workmanship from the requirements of the Contract Documents. The Design-Builder shall, at 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 TR Section 2.22.

Upon compliance with all requirements, the WSDOT Engineer will give the Design-Builder written notice of the Substantial Completion Date.

1-08.5(2) PHYSICAL COMPLETION

The Design-Builder shall achieve Physical Completion within 90 Calendar Days of Substantial Completion. Physical Completion shall be deemed to have occurred when:

(a) Design-Builder has completed all construction Work, including initial planting, correction of any defects, deficiencies and deviations with respect to the Project which were waived pending Physical Completion, and completion of all Punch List items;

(b) Design-Builder has satisfied all conditions to acceptance by Utility Owners;

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

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

The Design Builder shall provide notice to WSDOT when all of the above referenced conditions have been met. Upon receipt of the notice, WSDOT will perform Final Inspection pursuant to Section 1-05.11. Should WSDOT identify any defects or deficiencies in the Work, the Design-Builder shall immediately remedy such defects or deficiencies at no additional cost. Upon full compliance with items (a) through (d) listed above in this Section, the WSDOT Engineer will give the Design-Builder written notice of the Physical Completion Date for the Project.

1-08.5(3) COMPLETION

WSDOT will give the Design-Builder written notice of the Completion Date of the Contract after all of the Design-Builder's obligations under the Contract (with the exception of warranty work) have been performed by the Design-Builder. Completion of the Contract shall occur within 90 Calendar Days of Physical Completion. The following events must occur before the Completion Date can be established:

(a) The Work on the Project must be complete pursuant to the Contract Documents; and

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

1-08.6 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 Requirements). 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 maintain the temporary Roadway (and bear its cost). This WSDOT-provided maintenance work will include only routine maintenance of:

1. The traveled way, auxiliary lanes, shoulders, and detour surface,
2. Roadway drainage along and under the traveled roadway or detour, and
3. All barricades, signs, and lights needed for directing traffic through the temporary roadway or detour in the construction area.

The Design-Builder shall protect and maintain (and bear the costs of doing so) all other Work in areas not used by traffic.

After any suspension during which WSDOT has done the routine maintenance, the Design-Builder shall accept the traveled roadway or detour as is when work resumes. The Design-Builder shall make no claim against WSDOT for the condition of the roadway or detour.

After any suspension, the Design-Builder shall retain all responsibilities the Contract assigns for repairing or restoring the roadway, its slopes, and its drainage system to conform to the approved Design Documents.

1-08.8 EXTENSIONS OF TIME

The Design-Builder shall submit any requests for time extensions to WSDOT in writing no later than 14 Calendar Days after the delay occurs. The request shall be limited to demonstrable delays in the Critical Path attributable to the change or event giving rise to the request. To be considered by WSDOT, the request shall be in sufficient detail (as determined by WSDOT) to enable WSDOT to ascertain the basis and amount of the time requested. The Design-Builder shall be responsible for preparing a Contract Schedule update demonstrating to WSDOT's reasonable satisfaction that the event or circumstance: (1) had a specific impact on the Project Critical Path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by resequencing of the Work or other reasonable alternatives. If a request for time extension, combined with previous extension requests, equals 20 percent or more of the original Contract Time, the Design-Builder shall provide with the request a written consent of the Surety or Sureties if WSDOT requests such consent. In evaluating any request, WSDOT will consider how well the Design-Builder used the time from Notice to Proceed up to the point of the delay and the effect the delay has on any completion times included in the Contract Documents.

Extensions of Contract Time will be allowed only for that period equal to the time WSDOT determines the Critical Path was delayed because of:

1. Any action, neglect, or default of WSDOT, its officers, or employees, or of any other contractor or design-builder employed by WSDOT;
2. Fire or other casualty for which the Design-Builder is not responsible;
3. Strikes;
4. Any other conditions for which these Specifications permit time extensions such as:
   (a) In Section 1-04.4 if a change directed by WSDOT increases the time necessary to achieve Substantial Completion;
   (b) In Section 1-04.5 if increased time is part of a protest that is found to be a valid protest;
   (c) In Section 1-04.7 if a changed condition is determined to exist which caused a delay in achieving Substantial Completion;
   (d) In Section 1-07.13 if the performance of the Work is delayed as a result of damage for which the Design-Builder is not responsible under the Contract;
   (e) In Section 1-07.17 with respect to Utility Delays and Major Underground Utilities not identified with Reasonable Accuracy;
   (f) In Section 1-07.24 if a delay results because of WSDOT's failure to provide access to Right-of-Way necessary for the construction by the date specified in the Contract;
   (g) In Section 1-08.6 if the performance of the Work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of WSDOT; or
   (h) In Section 1-09.11 if a dispute or claim also involves a delay in completing the Contract and the dispute or claim proves to be valid; and
5. Exceptional causes not specifically identified in items 1 through 4, provided the request letter proves the Design-Builder had no control over the cause of the delay and could have done nothing to avoid or mitigate the delay, and that the delay did not result from a risk allocated to the Design-Builder under the Contract.

The Design-Builder shall not be entitled to an extension of the Contract Time for Project delays unless such delays impact the ability of the Design-Builder to achieve Substantial Completion by

the specified deadline. Delays that impact the Design-Builder's ability to achieve planned early achievement of a Substantial Completion Date shall not be the subject of a time extension.

WSDOT will not allow a time extension for any cause listed above if it resulted from the Design-Builder's default, collusion, action or inaction, or failure to comply with the Contract.

The Design-Builder stipulates the Contract Time to be sufficient to do all the Work. For this reason, WSDOT will not grant a time extension for:

1. Unsuitable Weather;
2. Failure to obtain all materials and workers unless the failure was the result of exceptional causes as provided above in subsection 5;
3. Changes, protest, or changed conditions (Section 1-04) that do not delay the completion of the Work or prove to be an invalid or inappropriate time extension request;
4. Delays caused by WSDOT's disapproval of Design or Released For Construction Documents as provided in Section 1-05.3 or the Technical Requirements;
5. Rejection of faulty or inappropriate Design-Builder equipment;
6. The Design-Builder's failure to meet the requirements of the Contract Documents;
7. Delays related to Relocations, except as provided in Section 1-07.17;
8. Delays that do not affect the Design-Builder's ability to meet the Substantial Completion deadline; or
9. Delays in obtaining Governmental Approvals that are required to be obtained by the Design-Builder.

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

1-08.9 LIQUIDATED DAMAGES

Time is of the essence of the Contract. Delays in completion of the Work and lane closures at times and in locations not consistent with the requirements of the Contract Documents result in inconvenience to the traveling public, obstruct traffic, interfere with and delay commerce, impeded toll collections, and increase risk to highway users. Delays also cost tax payers undue sums of money, adding time needed for administration, engineering, inspection, and supervision. Accordingly, the parties agree to liquidate damages for such delays as specified herein.

1-08.9(1) LIQUIDATED DAMAGES FOR LATE COMPLETION

In the event the Design-Builder fails to meet the Completion Deadlines specified herein, the Design-Builder agrees to pay WSDOT liquidated damages in the following amounts:

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

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

c) For failure to achieve Final Completion by the Final Completion Date: $5,000 per day until the date Final Completion is achieved.

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

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Design-Builder from further obligations and liabilities pursuant to the Contract.

1-08.9(2) LIQUIDATED DAMAGES FOR FAILURE TO OPEN LANES

In addition to any Liquidated Damages that may be payable by Design-Builder under Section 1-08.9(1), the Design-Builder agrees to pay WSDOT Liquidated Damages in the following amounts in the event of any failure by the Design-Builder to open any lane, ramp or street by the scheduled opening times specified in TR Section 2.22. Payment in accordance with this Section 1-08.9(2) shall liquidate all damages for failure to open lanes as specified, except for lost tolling revenue, which is addressed separately in 1-08.9(3):

Mainline 520, Eastbound

1. $2,000.00 per 15 minutes for each 15 minute period prorated to the nearest five minutes that a single lane is closed on mainline eastbound SR 520 beyond the scheduled opening time specified in TR Section 2.22; and
2. $5000.00 per 15 minutes for each 15 minute period prorated to the nearest five minutes that two or more lanes of eastbound SR 520 are closed beyond the scheduled opening time specified in TR Section 2.22; and

Mainline 520, Westbound

3. $2,000.00 per 15 minutes for each 15 minute period prorated to the nearest five minutes that a single lane is closed on mainline westbound SR 520 beyond the scheduled opening time specified in TR Section 2.22; and
4. $4,000.00 per 15 minutes for each 15 minute period prorated to the nearest five minutes that two lanes are closed on mainline westbound SR 520 beyond the scheduled opening time specified in TR Section 2.22; and
5. $5000.00 per 15 minutes for each 15 minute period prorated to the nearest five minutes that all three lanes of westbound SR 520 are closed beyond the scheduled opening time specified in TR Section 2.22; and

Other Roadways

6. $300.00 per 15 minutes for each 15 minute period prorated to the nearest five minutes that a SR 520 ramp is closed beyond the scheduled opening time specified in TR Section 2.22;
7. $500.00 per 15 minutes for each 15 minute period prorated to the nearest five minutes that all lanes of Bellevue Way NE are closed beyond the scheduled opening time specified in TR Section 2.22.
8. $500.00 per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that all lanes of 108th Ave NE are closed beyond the scheduled opening time specified in TR Section 2.22.

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

1-08.9(3) LIQUIDATED DAMAGES FOR LOSS OF TOLLING REVENUE

During the design and construction of this Contract, WSDOT expects to implement, by separate contract, toll collection on both directions of SR520 through the Project Limits. After toll

collection is implemented by WSDOT under that separate contract, roadway and lane closures on SR520 by the Design-Builder, outside of the hours approved for lane closures as described in TR Section 2.22, will result in a loss of tolling revenue.

Accordingly, in addition to liquidated damages for failure to open lanes as described in 1-08.9(2) and liquidated damages for late completion as described in 1-08.9(1), the Design-Builder agrees to pay the following liquidated damages for lost toll revenue as follows:

1. Liquidated damages for lost toll revenue shall accrue for the duration of time any lane (or lanes) on SR520 is closed outside of the allowable hours of lane closures in TR Section 2.22.
2. Damages for lost toll revenue will be calculated using the following formula:

$$T_L = T_{avg} - T_{act}$$

Where

T_L = Damages for lost toll revenue. When T_L is a negative number it shall be rounded to Zero.

T_{avg} = The toll revenue that WSDOT would have collected, but for the lane closures outside of allowable hours. This value shall be determined by averaging actual tolls collected on 5 tolling periods which (1) occur on the same day of the week and times of day as the event which generated the lost toll revenue, and (2) had no lane closures, and (3) were the first 5 such tolling periods to occur subsequent to the event that generated the lost tolling revenue.

T_{act} = The toll revenue actually collected for the direction of SR520 that had lane closures beyond the allowable hours, for the duration of those lane closures that extended beyond the allowable hours.

3. Damages for lost toll revenue shall not accrue prior to WSDOT implementing toll collection on SR520.
4. Damages for lost toll revenue shall not accrue during those times when lane(s) are closed in accordance with the allowable hours of lane closures as described in TR Section 2.22.
5. Liquidated damages for loss of tolling revenue in any one minute period for eastbound 520 shall not exceed $250 per minute.
6. Liquidated damages for loss of tolling revenue in any one minute period for westbound 520 shall not exceed $250 per minute.

The Design-Builder authorizes WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder. Liquidated Damages for lost toll revenue is in addition to all other Liquidated Damages referenced above relating to lane closures.

1-08.9(4) LIQUIDATED DAMAGES FOR DISRUPTIONS TO FLOATING BRIDGE POWER

The 12.47 kv power line providing power to the existing SR 520 floating bridge is crucial for operating the existing electrical systems on the floating bridge including, but not limited to, pumps, water alarms, navigation lights, and roadway illumination. Disruptions to the power line to the existing SR 520 floating bridge will result in impacts to the traveling public and expose the floating bridge to increased risks for catastrophic failure.

Accordingly, if and when the Design-Builder causes disruption to the electrical power to the SR520 floating bridge which is either unplanned or not given prior approval by WSDOT, the

Design-Builder agrees to pay WSDOT for all costs spent in dealing with the power outage, including but not limited to the following:

1. WSDOT costs expended in restoring the electrical power.
2. WSDOT costs for monitoring water levels and monitoring the function of the existing electrical system during the outage.
3. WSDOT costs in providing and removing temporary power and temporary ITS.
4. WSDOT costs for inspection and repair of any existing electrical, communication, or ITS equipment damaged by the outage.
5. WSDOT costs for temporary traffic control that is implemented as a result of the outage.
6. All labor, supervision, materials, tools, equipment, and subcontracts related to the above.

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

1-08.9(5) 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 to pay:

1. $100 liquidated damages per element (including, but not limited to, a ramp meter, a CCTV camera/cabinet, a VMS, a data station, a HAR, a maintenance radio, and fiber backbone cable) per hour for each hour that the Design-Builder 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 and in TR Section 2.18.5; and

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

1-08.9(6) LIQUIDATED DAMAGES FOR DISRUPTIONS TO EXISTING CITY OF BELLEVUE TRAFFIC SIGNAL SYSTEMS AND CCTV CAMERAS

Unplanned disruptions to the existing City of Bellevue Traffic Signal Systems and City of Bellevue CCTV cameras 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 to pay:

1. $100 liquidated damages per hour for each hour that the Design-Builder fails to restore the proper operation of the existing City of Bellevue traffic signal system or City of Bellevue CCTV cameras following an unplanned disruption as specified in the Traffic Signals Special Provisions and in TR Section 2.17; and

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

1-08.9(7) LIQUIDATED DAMAGES FOR FAILURE TO VACATE EAST APPROACH & MAINTENANCE FACILITY AREA (BY OTHERS)

The area depicted in Appendix M7 as the "East Approach & Maintenance Facility Area", is available for use by the Design-Builder from the date of NTP until the number of Calendar Days after NTP designated by the Design-Builder on Form D of the Proposal, at which time it must be vacated by the Design-Builder and made available for work by WSDOT's Contractor on an adjacent contract. Failure by the Design-Builder on the 520 Eastside Transit and HOV contract to vacate the "East Approach & Maintenance Facility Area (by others)" by the number of Calendar Days after NTP designated on Form D of the Proposal will expose WSDOT to liability for delay, impact, and other damages to WSDOT's Contractor on that adjacent contract.

Accordingly, the Design-Builder agrees:

1. To pay $1,000 liquidated damages per Calendar Day for failure to vacate the area depicted as the "East Approach & Maintenance Facility Area" in Appendix M7, and provide unrestricted ingress and egress to WSDOT's Contractor on the adjacent project, by the number of Calendar Days after NTP designated in Form D of the Proposal.
2. To authorize WSDOT to deduct these liquidated damages from any money due or coming due to the Design-Builder

1-08.9(8) LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE WORK IN EVERGREEN POINT AREA

The area designated in Appendix M7 as the "Evergreen Point Area", is available for use by the Design-Builder from the date of NTP until the number of Calendar days after NTP designated by the Design-Builder in Form D of the Proposal, at which time it must be vacated by the Design-Builder and made available for work by WSDOT's Contractor on an adjacent contract. Failure by the Design-Builder on the 520 Eastside Transit and HOV contract to vacate the "Evergreen Point Area" by the time designated in Form D of the Proposal will expose WSDOT to liability for delay, impact, and other damages to WSDOT's Contractor on that adjacent contract.

Accordingly, the Design-Builder agrees:

1. To pay $5,000 liquidated damages per Calendar Day for failure to achieve Substantial Completion of the area depicted as the "Evergreen Point Area" in Appendix M7, acceptance of initial planting of all landscaping and irrigation work on the Evergreen Point Road lid, and provide unrestricted ingress and egress to WSDOT's Contractor on the adjacent project, by the number of Calendar days after NTP as designated in Form D of the Proposal.
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, except as provided below, the excess will be paid in cash by WSDOT to the Design-Builder.

In exercising WSDOT's right to prosecute the Physical Completion of the Work, WSDOT shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. In the event that WSDOT or the Surety takes bids for remedial Work or Physical Completion of the Project, the Design-Builder shall not be eligible for the award of such contracts.

In the event the Contract is terminated, the termination shall not affect any rights of WSDOT against the Design-Builder. The rights and remedies of WSDOT under the Termination Clause are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Design-Builder by WSDOT will not release the Design-Builder from liability.

If a notice of termination for default has been issued and it is later determined for any reason that the Design-Builder was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 1-08.10(2). The foregoing shall include a termination for default predicated upon a failure to prosecute the Work where the underlying delay was found to be excusable under the provisions of Section 1-08.8.

1-08.10(2) TERMINATION FOR PUBLIC CONVENIENCE

WSDOT may terminate the Contract in whole, or from time to time in part, whenever:

1. The Design-Builder is prevented from proceeding with the Work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
2. The Design-Builder is prevented from proceeding with the Work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such restraining order is primarily caused by acts or omissions of persons or agencies other than the Design-Builder; or
3. WSDOT determines that such termination is in the best interests of WSDOT.

1-08.10(3) TERMINATION FOR PUBLIC CONVENIENCE PAYMENT REQUEST

After receipt of a notice of Termination under Section 1-08.10(2), the Design-Builder shall submit to WSDOT a request for costs associated with the termination. The request shall be prepared in accordance with the claim procedures outlined in Sections 1-09.11 and 1-09.12. The request shall

be submitted promptly but in no event later than 90 Calendar Days from the effective date of termination.

The Design-Builder agrees to make all records available to the extent deemed necessary by WSDOT to verify the costs in the Design-Builder's payment request.

1-08.10(4) PAYMENT FOR TERMINATION FOR PUBLIC CONVENIENCE

Whenever the Contract is terminated in accordance with Section 1-08.10(2), payment will be made in accordance with Section 1-09.5 for the actual Work performed. If WSDOT and the Design-Builder cannot agree as to the proper amount of payment, then the matter will be resolved as outlined in Section 1-09.13 except that, if the termination occurs because of the issuance of a restraining order as provided in Section 1-08.10(2), the matter will be resolved through mandatory and binding arbitration as described in Sections 1-09.13(3) A and B, regardless of the amount of the claim.

1-08.10(5) RESPONSIBILITY OF THE DESIGN-BUILDER AND SURETY

Termination of the Contract shall not relieve the Design-Builder of any responsibilities under the Contract for Work performed. Nor shall termination of the Contract relieve the Surety or Sureties of obligations under the Contract Bond or retainage bond for Work performed.

1-08.11 INCENTIVES AND DISINCENTIVES

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

The incentive as described here in 1-08.11(1) applies to the final lift of HMA pavement on SR-520 mainline. It applies to no other pavement on this project.

Criteria for Pavement Smoothness Evaluation

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

Price Adjustment for Pavement Smoothness

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

1. Pay Adjustment Schedule 1 as shown in Table 12 below shall be used.

4. Incentive/disincentive payments for pavement smoothness will be made on an IRI value per 0.1 lane-mile in accordance with Table 12. The 0.1 lane-mile values are calculated from the 0.01 lane mile IRI measurements. When any 0.1 lane-mile includes pavement to be evaluated by more than one Pay Adjustment Schedule the pavement in the section will be broke into smaller sections by Pay Adjustment Schedule. For sections greater than 50 feet and less than 0.1 lane-mile, the pay adjustment will be prorated.

5. Incentives and disincentives apply 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.

7. In addition to the IRI evaluation of the pavement for smoothness; any deviation from a 10-foot straight edge in excess of 1/8 inch shall be corrected. The Design Builder shall submit for approval the proposed corrective actions. Corrective actions shall not reduce corrected pavement thickness by more than 1/4 inch. Existing bridge structures and existing approach slabs are not required to meet the 10-foot straight edge requirement.

8. No specific unit of measure will apply to the calculated item of pavement smoothness price adjustment. Incentive/disincentive, if any, will be made for the measurements taken prior to Substantial Completion.

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

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
30	600
31	580
32	560
33	540
34	520
35	500
36	480
37	460
38	440
39	420
40	400
41	380
42	360
43	340
44	320
45	300
46	280
47	260
48	240
49	220
50	200
51	180
52	160
53	140
54	120
55	100
56	80
57	60
58	40
59	20
60	0
61	0
62	0
63	0
64	0
65	0
66	-100
67	-200
68	-300
69	-400
70	-500
71	-600
72	-700

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
73	-800
74	-900
75	-1000
76	-1100
77	-1200
78	-1300
79	-1400
80	-1500
81	-1600
82	-1700
83	-1800
84	-1900
85	-2000
86	-2100
87	-2200
88	-2300
89	-2400
90	-2500
91	-2600
92	-2700
93	-2800
94	-2900
95	-3000
96	-3162
97	-3324
98	-3486
99	-3649
100	-3811
101	-3973
102	-4135
103	-4297
104	-4459
105	-4622
106	-4784
107	-4946
108	-5108
109	-5270
110	-5432
111	-5595
112	-5757
113	-5919
114	-6081
115	-6243

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
116	-6405
117	-6568
118	-6730
119	-6892
120	-7054
121	-7216
122	-7378
123	-7541
124	-7703
125	-7865
126	-8027
127	-8189
128	-8351
129	-8514
130	-8676
131	-8838
132	-9000
133	-9162
134	-9324
135	-9486
136	-9649
137	-9811
138	-9973
139	-10135
140	-10297
141	-10459
142	-10622
143	-10784
144	-10946
145	-11108
146	-11270
147	-11432
148	-11595
149	-11757
150	-11919
151	-12081
152	-12243
153	-12405
154	-12568
155	-12730
156	-12892
157	-13054
158	-13216

IRI for each 0.1 mile section	Pay Adjustment Schedule 1
Inches / mile	$ / 0.1 mile
159	-13378
160	-13541
161	-13703
162	-13865
163	-14027
164	-14189
165	-14351
166	-14514
167	-14676
168	-14838
169	-15000
170	-15162
>170	-15162

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

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

1-09 MEASUREMENT 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 in route or not actually incorporated into the Work). No measurement will be made for:

1. Work performed or materials placed outside lines shown in the Design Documents;
2. Materials wasted, used, or disposed of in a manner contrary to the Contract;
3. Rejected materials (including those rejected after placement if the rejection resulted from the Design-Builder's failure to comply with the Contract);
4. Hauling and disposing of rejected materials;
5. Material remaining on hand after the Work is completed, except as provided in 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), and
   - (c) Approximate load out weight in the case of belt conveyor scales.

The vehicle operator shall deliver the ticket in legible condition to the material receiver at the material delivery point. The material delivery point is defined as the location where the material is incorporated into the permanent work.

1-09.2(2) SPECIFIC REQUIREMENTS FOR BATCHING SCALES

Each batching scale shall be designed to support a weighing container. The arrangement shall make it convenient for the operator to remove material from the weighing container while watching readout devices. Any weighing container mounted on a platform scale shall have its center of gravity directly over the platform center line. Batching scales used for Portland 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

WSDOT may approve conveyor-belt weighing of untreated materials if the method and device meet all general requirements for weighing equipment. The recording tape, odometer, totalizer, calibration adjustment, and clock-time imprinter shall be kept locked and the Engineer shall retain all keys. All belt-conveyor scales shall comply with the requirements for Belt-Conveyor Scales in the National Institute of Standards and Technology (NIST) Handbook No. 44, except where these specifications modify those requirements.

A static load test shall be made: each day after the belt-conveyor has run continuously for about 30 minutes, and again, immediately after the air temperature changes significantly. If the static load test reveals a need for adjustment, the Design-Builder shall perform a chain test. The Design-Builder shall make the computation of the test chain calibration, the calibration procedures and results, and related records available for the engineer's review. The test chain shall be clearly marked with its calibration, carried in a suitable container, and kept immediately available for testing.

1-09.2(5) MEASUREMENT

Scale Verification Checks

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:

1. Furnishing, installing, certifying, and maintaining scales,
2. Furnishing a scale house,
3. Providing a weigher with a commercial scale, if necessary,
4. Providing self printing tickets, if necessary,
5. Rerouting a truck for verification weighing,
6. Assisting the WSDOT Engineer with scale verification checks, and
7. Any other related costs associated with meeting the requirements of this Section.

1-09.3 SCOPE OF PAYMENT

The payment provided for in the Contract shall be full payment to the Design-Builder for:

1. Performing all design services, furnishing all materials and performing all construction and other Work under the Contract (including changes in the Work) in a complete and acceptable manner;
2. All risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the Work; and
3. All expense incurred resulting from a suspension or discontinuance of the Work as specified under the Contract.

Payment hereunder shall not relieve the Design-Builder of the obligation to make good any defective Work or materials.

1-09.3(1) UNIT PRICED CHANGE ORDERS

Measurement of unit-priced quantities will be in accordance with Section 1-09.1. Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, WSDOT will issue a modified Change Order setting forth the final adjustment to the Contract Price.

1-09.4 EQUITABLE ADJUSTMENT

The equitable adjustment provided for elsewhere in the Contract shall be determined in one or more of the following ways:

1. If the parties are able to agree, the price will be determined by using:
   (a) Unit prices; or
   (b) Other agreed upon prices.
2. If the parties cannot agree, the price will be determined by WSDOT using:
   (a) Unit Prices; or
   (b) Other means to establish costs.

The following limitations shall apply in determining the amount of the equitable adjustment:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement in effect at the time the Work is performed, as referred to in Section 1-09.6;
2. To the extent any delay of performance was concurrently caused by WSDOT and the Design-Builder, the Design-Builder shall be entitled to a time extension to the extent of such concurrent delay, provided that the Design-Builder complies with the provisions of Section 1-08.8. The Design-Builder shall not be entitled to an adjustment in the Contract Price for any concurrent delay;
3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be allowed; and
4. No claim for consequential damages of any kind will be allowed.

1-09.5 DELETED OR TERMINATED WORK

WSDOT may delete portions of the Work by Change Order as provided in Section 1-04.4 or may terminate the Contract in whole or part as provided in Section 1-08.10(2). When the Contract is

terminated in part, the partial termination shall be treated as a deletion Change Order for payment purposes under this Section.

When any item is deleted in whole or in part by Change Order or when the Contract is terminated in whole or in part, payment for deleted or terminated Work will be made as follows:

1. Payment for partially completed lump sum items will be as mutually agreed. If the parties cannot agree, the WSDOT Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4;
2. To the extent not paid for by the portion of the Contract Price allocated to completed Work, WSDOT will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Design-Builder in anticipation of performing the Work that has been deleted or terminated;
3. The total payment for any one item in the case of a deletion or partial termination shall not exceed the Contract Price as modified by approved Change Orders less the estimated cost (including overhead and profit) to complete the Work and less any amount paid to the Design-Builder for the item;
4. The total payment where the Contract is terminated in its entirety shall not exceed the total Contract Price as modified by approved Change Orders less those amounts paid to the Design-Builder before the effective date of the termination; and
5. No claim for damages of any kind or for loss of anticipated profits on deleted or terminated Work will be allowed because of the termination or Change Order.

Contract Time shall be adjusted as the parties agree. If the parties cannot agree, WSDOT will determine the equitable adjustment for Contract Time.

Acceptable materials ordered by the Design-Builder prior to the date the Work was terminated as provided in Section 1-08.10(2) or deleted as provided in Section 1-04.4 by WSDOT, will either be purchased from the Design-Builder by WSDOT at the actual cost and shall become the property of WSDOT, or WSDOT will reimburse the Design-Builder for the actual costs connected with returning these materials to the suppliers.

1-09.6 FORCE ACCOUNT

The terms of the Contract or of a Change Order may call for Work or material to be paid for by force account. If so, then the objective of this specification is to reimburse the Design-Builder for all costs associated with the Work, including costs of design, engineering, labor, small tools, supplies, equipment, specialized services, materials, applicable taxes and overhead and to include a profit commensurate with those costs. The amount to be paid shall be determined as shown below for Construction forces:

1. **For Labor -** Labor reimbursement calculations shall be based on a "Project Labor List" (List) prepared and submitted by the Design-Builder and by any Subcontractor before that firm commences force account Work. Once a List is approved by WSDOT, it shall be used to calculate force account labor payment until a new List is submitted and approved. WSDOT may compare the List to payrolls and other documents and may, at any time, require the Design-Builder to submit a new List. The Design-Builder may submit a new List at any time without such a requirement. Prior payment calculations shall not be adjusted as a result of a new List.

   To be approved, the List must be accurate and meet the requirements of this Section. It shall include regular time and overtime rates for all employees (or work classifications) expected to participate in force account work. The rates shall include the basic wage and fringe

benefits, the current rates for Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA), the company's present rates for Medical Aid and Industrial Insurance premiums and the planned payments for travel and per diem compensation.

In the event that an acceptable initial List or requested revised List is not received by the time that force account calculations are begun, the WSDOT Engineer will develop a List unilaterally, utilizing the best data available, that will be used until the Design-Builder's List is received and approved. Again, prior calculations, prepared using the WSDOT List, will not be revised as a result of differences with the Design-Builder's List.

In addition to compensation for direct labor costs defined above, WSDOT will pay the Design-Builder 29% of the sum of the costs calculated for labor reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred. This amount will include any costs of safety training and health tests, but will not include such costs for unique force account Work that is different from typical Work and which could not have been anticipated at time of Proposal.

2. **For Materials** - WSDOT will reimburse invoice cost for Design-Builder-supplied materials. For the purpose of this provision, "Materials" shall include those items incorporated into the Work, supplies used during the work and items consumed. This cost shall include freight and handling charges and applicable taxes. Before work is started, the WSDOT Engineer may require the Design-Builder to obtain multiple quotations for the materials to be utilized and select the vendor with prices and terms most advantageous to WSDOT.

WSDOT will provide a list of the types and quantities of Design-Builder-supplied materials witnessed by WSDOT as being utilized in force account work. The list will be furnished promptly after the material is incorporated, on a daily basis unless agreed otherwise. The Design-Builder may propose corrections to the list and will supply prices for the materials and other costs and return the list to WSDOT. To support the prices, the Design-Builder shall attach valid copies of vendor invoices. If invoices are not available for materials from the Design-Builder's stocks, the Design-Builder shall certify actual costs (at a reasonable level) by affidavit. WSDOT will review the prices and any Design-Builder-proposed corrections and, if reasonable, approve the completed list. Once approved, the prices will be utilized in the calculation of force account reimbursement for materials.

If, in the case of non-invoiced materials supported by the Design-Builder's affidavit, the price appears to be unreasonable, WSDOT will determine the cost for all or part of those materials, utilizing the best data available.

WSDOT reserves the right to provide materials. In this case, the Design-Builder will receive no payment for any costs, overhead, or profit arising from the value of the materials themselves. Additional costs to handle and place the Agency-furnished material shall be compensated as described in this specification.

In addition to compensation for direct materials cost, WSDOT will pay the Design-Builder 21 percent of the sum of the costs calculated for materials reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred.

3. **For Equipment** - WSDOT will reimburse the Design-Builder for the cost of equipment utilized in the Work. The equipment provided by the Design-Builder shall be of modern design and in good Working condition. For the purpose of this provision, "provided" shall mean that the equipment is owned (either through outright ownership or through a long-term

lease) and operated by the Design-Builder or Subcontractor or that the equipment is rented and operated by the Design-Builder or Subcontractor. Equipment that is rented with operator shall not be included here, but shall be considered a service and addressed according to Section 1-09.6.4 below.

The amount of payment for any Design-Builder-owned equipment that is utilized shall be determined according to the version of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized. The rates listed in the Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental Agreement) shall be full compensation for all fuel, oil, lubrication, ordinary repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

Payment for rented equipment will be made on the basis of a valid invoice, covering the time period of the Work. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the rental of equipment to be utilized and select the vendor with prices and terms most advantageous to WSDOT. In the 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 required by Section 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred. This markup will be over and above those equipment costs and will not be adjusted for any equipment overhead amounts included in the Blue Book rates.

Current copies of the Rental Rate Blue Book and the AGC/WSDOT Equipment Rental Agreement will be maintained on the Contracting Agency's website at www.wsdot.wa.gov.

4. **For Services -** Compensation under force account for specialized services shall be made on the basis of an invoice from the providing entity. A "specialized service" shall be one which is typically billed through invoice in standard industry practice. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the service to be utilized and select the provider with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the service invoice is submitted by a Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of the submitted invoice.

Except as noted below, WSDOT will pay the Design-Builder an additional 21% of the sum of the costs included on invoices for specialized services to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

When a supplier of services is compensated through invoice, but acts in the manner of a Subcontractor, as described in Section 6 of this provision, then markup for that invoice shall be according to Section 6. "Design-Builder Markup on Subcontractor's Work."

The cost of labor for non-construction-related Work (including design, surveying, utility coordination, permits, professional environmental services and similar aspects of the Work),

whether provided by the Design-Builder or a Subcontractor, will equal the sum of (1) actual wages (i.e. the base wage paid to the employee exclusive of fringe benefits), plus (2) a labor surcharge of 150% on such amount, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, workers' compensation, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for overhead. This amount shall be considered full compensation and no further markups will be allowed.

5. **For Mobilization** - Force account mobilization is defined as the preparatory Work performed by the Design-Builder including procurement, loading and transportation of tools and equipment, and personal travel time (when such travel time is a Contractual obligation of the Design-Builder or a customary payment for the Design-Builder to all employees). Mobilization also includes the costs incurred during demobilization. Pro-rata adjustments may be made when the mobilization applies to both force account and other Contract Work. WSDOT will pay for mobilization for off-site preparatory Work for force account items provided that notice has been provided sufficiently in advance to allow WSDOT to witness the activity, if desired.

   Any costs experienced during mobilization activities for labor, equipment, materials or services shall be listed in those sections of the force account summary and paid accordingly. Note that no additional mobilization expense will be paid for any Equipment presently on site.

6. **For The Design-Builder Markup on Subcontractor's Work** - When Work is performed on a force account basis by one or more approved Subcontractors, by lower-tier subcontractors or suppliers, or through invoice by firm(s) acting in the manner of a subcontractor, the Design-Builder will be allowed an additional markup, from the table below, applied to the costs computed for Work done by each Subcontractor through Sections 1, 2, 3, 4 and 5, to compensate for all administrative costs, including Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

   A firm may be considered to be acting as a Subcontractor when WSDOT observes one or more of the following characteristics:

   (a) The person in charge of the firm's activities takes an active role in managing the overall Project, including extensive coordination, interpretation of plans, interaction with WSDOT or management of a complex and interrelated operation;

   (b) Rented equipment is provided fueled, operated and maintained by the firm. Operators of rented equipment are supervised directly by the firm's representative. There is little interaction between the Design-Builder and the employees of the firm;

   (c) The firm appears to be holding the risk of performance and quality of the Work; and/or

   (d) The firm appears to be responsible for liability arising from the Work.

Markups on Work Performed by Subcontractor(s):

1.	On amounts paid for work performed by each Subcontractor on each force account and calculated through Sections 1 - 5 up to $25,000		12%
2.	On amounts greater than	$25,000 up to $100,000	10%
3.	On amounts greater than	$100,000	7%

The amounts and markup rates shall be calculated separately for each Subcontractor on each force account item established.

The payments provided above shall be full payment for all work done on a force account basis. The calculated payment shall cover all expenses of every nature, kind, and description, including those listed above and any others incurred on the work being paid through force account.

Nothing in this provision shall preclude the Design-Builder from seeking an extension of time or time-related damages to unchanged Work arising as a result of the force account work. The amount and costs of any Work to be paid by force account shall be computed by WSDOT, and the result shall be final as provided in Section 1-05.1.

An item which was included in the original scope of the Work will not be paid as force account unless a change as defined in Section 1-04.4 has occurred and the provisions require a payment adjustment. Force Account Work may, at any time and by agreement of the parties, be converted to agreed unit prices or lump sums applicable to the remaining Work.

1-09.6(1) DAILY REPORTS

The Design-Builder shall furnish daily, on forms approved by WSDOT, reports of Force Account Change Order Work. The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs to date for the Force Account Change Order Work. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation. All such records and reports shall be made immediately available to WSDOT upon its request. The cost of furnishing such reports shall be included in the Design-Builder's overhead and fee percentages.

1-09.6(2) REPORTS AS BASIS FOR PAYMENT

All Force Account Change Order reports shall be signed by the Design-Builder or its authorized representative. WSDOT will compare its records with the Design-Builder's reports, make the necessary adjustments and compile the costs of Force Account Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment.

1-09.7 MOBILIZATION

The mobilization payment is intended to compensate the Design-Builder for certain start-up expenses associated with performance of design and construction Work hereunder. Items which are not to be included in mobilization include, but are not limited to, profit, interest on borrowed money, overhead, or management costs.

The Design-Builder shall identify, in the price loaded Contract Schedule, a dollar amount for mobilization. This amount shall be represented by price loaded schedule activities in the Design-Builder's 90-Day Look-Ahead Schedule and/or its Baseline Contract Schedule (See Section 1-08.3).

Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.

1-09.8 PAYMENT FOR MATERIAL ON HAND

WSDOT may reimburse the Design-Builder for materials purchased before their incorporation into the Project if they:

1. Are identified as separate and distinct activities in the accepted price loaded Baseline Contract Schedule;

2. Have substantiated prices assigned to the schedule activities as set forth in section 1-08.3(9);
3. Are invoiced as described in Section 1-09.9; and
4. Consist of: reinforcing steel, bronze plates, structural steel, machinery, piling, timber and lumber (not including forms or falsework), large signs unique to the Project, prestressed concrete beams or girders, or other materials WSDOT may approve.

WSDOT may reimburse the Design-Builder for traffic signal controllers when the accepted Baseline Contract Schedule contains price-loaded activities as follows:

1. 50% when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory; and/or
2. 100% when the traffic signal controller is approved for shipment to the Project by the State Materials Laboratory.

The Design-Builder shall provide sufficient written evidence of production costs to enable WSDOT to compute the cost of Design-Builder produced materials (such as sand, gravel, surfacing material, or aggregates). For other materials, the Design-Builder shall provide invoices from material suppliers, detailed sufficiently to enable WSDOT to determine the actual costs. Payment for materials on hand shall not exceed the amount allocated thereto in the CPM and Payment Schedule.

If payment is based upon an unpaid invoice, the Design-Builder shall provide WSDOT with a paid invoice within 60 Calendar Days after WSDOT's initial payment for materials on hand. If the paid invoice is not furnished in this time, any payment WSDOT had made will be deducted from the next progress estimate and withheld until the paid invoice is supplied.

WSDOT will not pay for material on hand when the invoice cost is less than $2,000. As materials are used in the Work, credits equaling the partial payments for them will be taken on future estimates. Partial payment for materials on hand shall not constitute acceptance. Any material will be rejected if found to be faulty even if partial payment for it has been made.

1-09.9 PAYMENTS

1-09.9(1) INVOICING REQUIREMENTS

The Design-Builder shall submit monthly invoices to the WSDOT on a mutually agreed date consistent with the progress payment cutoff date set by WSDOT.

Partial Payments - No payment item shall be included on an invoice for Work that has been documented as deficient by the QA staff, or Work that is not being performed in accordance with the Contract.

Reimbursement - If requested by WSDOT, the Design-Builder shall provide separate invoices for Work subject to reimbursement by the Federal government or third parties. Such invoices shall be organized to meet all applicable reimbursement requirements and to facilitate the reimbursement process.

1-09.9(1).1 Maximum Rate of Payment

In this Section 1-09.9(1)1, the word "payment" refers to payments from WSDOT to the Design-Builder, and includes not only progress payments for the Contract Price, but also includes payments by WSDOT to the Design-Builder for all other causes including but not limited to incentives, disincentives, and Change Orders.

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

1-09.9(1).2 Invoicing Documents

No invoice will be processed until WSDOT has received the documents listed in this Contract.

The invoice value will be based on the agreed-upon progress for the Contract Schedule activities as outlined in Section 1-08.3 and on other exception items as expressly detailed in this Payments section.

Submit the following documents with each invoice:

1. Invoice cover sheet,
2. Progress report,
3. Certification by Design and Construction Quality Assurance Managers,
4. Invoice data sheet(s) and supporting documents based on the price loaded Contract Schedule, and
5. Monthly design exception report.

Make all invoices and progress reports consistent with the accepted Baseline Contract Schedule or the applicable accepted Monthly Contract Schedule Update.

Obtain the signatures of the Design-Builder's Project Manager, the Design Quality Assurance Manager and the Construction Quality Assurance Manager on the progress report.

1-09.9(1).3 Invoice Cover Sheet

Indicate the following on the invoice cover sheet:

1. Project number and title,
2. Invoice number (numbered consecutively, starting with "1"),
3. Period covered by the invoice (specific beginning and ending calendar days),
4. Total amount earned to date for the Project as a whole,
5. Authorized signature, title of signer, and date of signature, and
6. Signature of the Design and Construction Quality Assurance Managers.

1-09.9(1).4 Progress Report

The Design-Builder shall submit a Monthly Progress Report to WSDOT along with its Monthly Invoice. This Report will consist of two parts: A narrative report addressing progress of the work and performance of the parties, and a technical report concerning operation and maintenance of the project schedule as set forth at Section 1-08.3(7).

The Narrative Report will include the following:

1. An "executive summary" of the Project achievements and difficulties for the period just ended and an overview of the goals for the period just beginning;
2. An analysis of the Project condition with respect to on time and on budget performance:

a. Include discussion of Contract Milestones and critical path,

b. Describe plans to achieve Contract completion dates including any special, and measures that may be necessary;

3. A more detailed review for design and for construction of each discipline past performance and future goals;

4. Discuss areas of special concern such as Quality Management, Environmental protection, Utility coordination, Public Relations and Cooperation with adjacent contractors;

5. Address status of required submittals, RFIs, design approvals and other administrative issues that may impact timely performance;

6. Review past period Safety performance and issues for forthcoming period;

7. Offer a self-assessment of performance against incentive performance issues; and

8. Review pending and potential Changes to determine actions required for early resolution.

Attach the Monthly Contract Schedule Update Submittal Package as required in Section 1-08.3(7).

1-09.9(1).5 Certification by Design and Construction QA Managers

Each invoice shall include a certificate signed by the Design and Construction QA Managers that certifies:

1. All work (including that of designers, Subcontractors, suppliers, fabricators, and builders) has been tested and/or inspected by the Design-Builder's Design QA staff and Construction QA Staff;

2. All Work, except as specifically noted in the certification, conforms to the requirements of the Contract; and

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

1-09.9(1).6 Invoice Data Sheets and Supporting Documents

WSDOT and the Design-Builder agree to the process, requirements, exceptions, and format of invoice data sheets and supporting documents as described in this Section.

General - With the exception of force account or other "exception" items, WSDOT will base payments on an estimate of the percentage of Work completed as mutually agreed with the Design-Builder, and not on measured quantities. The Design-Builder shall design a Primavera report to WSDOT's satisfaction that can be submitted in letter size hard copy, text searchable PDF electronic file format and comma-delimited ASCII electronic file format. The report shall contain an individual line entry for each price-loaded activity in the Contract Schedule. For each activity, it will show the total percent complete, the percent completed this period, and the total dollar billing for the activity. The report data will be grouped and subtotaled by Cost Account with activities sorted in start sequence within the groups.

Exception Items - WSDOT will pay the Design-Builder for items not included in the price-loaded schedule. These include, but are not necessarily limited to Force Account Work, Incentives, Disincentives and Price Adjustments provided in the Contract. For each of these, the Design-Builder will assemble the required supporting documents, tally the value of the various items and include them as a separate sub-total line(s) on its monthly invoice.

Format - The Design-Builder shall present the format of the invoice data sheets for WSDOT approval at least 14 Calendar Days before the submittal of the first invoice. Once WSDOT has approved the invoice format, the format shall not be changed unless the change is approved in writing by WSDOT.

1-09.9(2) PAYMENT

WSDOT and the Design-Builder agree to the payment process as described in this Section.

General - WSDOT will simultaneously review each invoice and progress report in detail and process the invoice for payment. Partial Payments will be made once each month. If WSDOT questions or disputes any item, it will redline the item and refer the item back to the Design-Builder for resolution before payment. WSDOT will deduct from the payment the value of the items not resolved to its satisfaction before the payment date.

Incorrect Invoices - If problems persist in obtaining correct invoices and the required accompanying documents from the Design-Builder, WSDOT reserves the right to withhold payment until correct and complete invoices and documents have been submitted.

Failure to perform any of the obligations under the Contract by the Design-Builder may be decreed by WSDOT to be adequate reason for withholding any payments until compliance is achieved.

Upon Completion and after Final Inspection (Section 1-05.11), the amount due the Design-Builder under the Contract will be paid based upon the final estimate made by WSDOT and presentation of a Final Contract Voucher Certification signed by the Design-Builder. Such voucher shall be deemed a release of all claims of the Design-Builder unless a claim is filed in accordance with the requirements of Section 1-09.11 and is expressly accepted from the Design-Builder's certification on the Final Contract Voucher Certification. The date the Secretary signs the Final Contract Voucher Certification constitutes the Final Acceptance Date (Section 1-05.12).

If the Design-Builder fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for Completion and Final Acceptance of the Contract, WSDOT reserves the right to establish a Completion date (for the purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract. Unilateral Final Acceptance will occur only after the Design-Builder has been provided the opportunity, by written request from the WSDOT Engineer, to voluntarily submit such documents. If voluntary compliance is not achieved, formal notification of the impending establishment of a Completion Date and unilateral Final Acceptance will be provided by certified letter from the Secretary to the Design-Builder, which will provide 30 Calendar Days for the Design-Builder to submit the necessary documents. The 30 Calendar Day period will begin on the date the certified letter is received by the Design-Builder. The date the Secretary unilaterally signs the Final Contract Voucher Certification shall constitute the Completion Date and the Final Acceptance date (Section 1-05.12). The reservation by WSDOT to unilaterally accept the Contract will apply to contracts that are physically completed in accordance with Section 1-08.5, or for contracts that are terminated in accordance with Section 1-08.10. Unilateral Final Acceptance of the Contract by WSDOT does not in any way relieve the Design-Builder of its responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

Payment to the Design-Builder of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

1-09.9(3) RETAINAGE

Pursuant to RCW 60.28, a sum of 5% of the monies earned by the Design-Builder will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and

payment (1) to the State with respect to taxes imposed pursuant to Title 82, RCW, and (2) the claims of any person arising under the Contract.

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

1. Retained in a fund by WSDOT; or

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

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

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

1. On contracts totaling more than $35,000, a release has been obtained from the Washington State Department of Revenue;

2. Affidavits of Wages Paid for the Design-Builder and all Subcontractors are on file with WSDOT (RCW 39.12.040);

3. A certificate of *Payment of Contributions Penalties and Interest on Public Work Contract* is received from the Washington State Employment Security Department;

4. Washington State Department of Labor & Industries (per Section 1-07.10) shows the Design-Builder is current with payments of industrial insurance and medical aid premiums; and

5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3 and 4 are met, the Design-Builder will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by WSDOT sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

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 1-04.5 to resolve a dispute, the Design-Builder may file a claim as provided in this Section. The Design-Builder agrees to waive any claim for additional payment if the written notifications provided in Section 1-04.5 are not given, or if WSDOT is not afforded reasonable access by the Design-Builder to complete records of actual cost and additional time incurred as required by Section 1-04.5, or if a claim is not filed as provided in this Section. The fact that the Design-Builder has provided a proper notification, provided a properly filed claim, or provided WSDOT access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by WSDOT, is found to have merit, WSDOT will make an equitable adjustment either in the amount of costs to be paid or in the time required for the Work, or both. If WSDOT finds the claim to be without merit, no adjustment will be made.

All claims filed by the Design-Builder shall be in writing and in sufficient detail to enable WSDOT to ascertain the basis and amount of the claim. All claims shall be submitted to the WSDOT Engineer as provided in Section 1-05.15. At a minimum, the following information must accompany each claim submitted:

1. A detailed factual statement of the claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the claim;
2. The date on which facts arose which gave rise to the claim;
3. The name of each WSDOT individual, official, or employee involved in or knowledgeable about the claim;

4. The specific provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim;

5. If the claim relates to a decision of WSDOT which the Contract leaves to WSDOT's discretion or as to which the Contract provides that WSDOT's decision is final, the Design-Builder shall set out in detail all facts supporting its position relating to the decision of WSDOT;

6. The identification of any documents and the substance of any oral communications that support the claim;

7. Copies of any identified documents, other than WSDOT documents and documents previously furnished to WSDOT by the Design-Builder, that support the claim (manuals which are standard to the industry, used by the Design-Builder, may be included by reference);

8. If an extension of time is sought:

   (a) The specific days and dates for which it is sought,

   (b) The specific reasons the Design-Builder believes a time extension should be granted,

   (c) The specific provisions of Section 1-08.8 under which it is sought, and

   (d) The Design-Builder's analysis of its progress schedule to demonstrate entitlement to a time extension;

9. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:

   (a) Labor;

   (b) Materials;

   (c) **Direct equipment** - The actual cost for each piece of equipment for which a claim is made or in the absence of actual cost, the rates established by the AGC/WSDOT Equipment Rental Agreement which was in effect when the Work was performed. In no case shall the amounts claimed for each piece of equipment exceed the rates established by that Equipment Rental Agreement even if the actual cost for such equipment is higher. WSDOT may audit the Design-Builder's cost records as provided in Section 1-09.12 to determine actual equipment cost. The following information shall be provided for each piece of equipment:

      (1) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12 "G," Tractor Crawler ROPS & Dozer Included Diesel, etc.);

      (2) The hours of use or standby; and

      (3) The specific day and dates of use or standby;

   (d) Job overhead;

   (e) Overhead (general and administrative);

   (f) Subcontractor's claims; and

   (g) Other categories as specified by the Design-Builder or WSDOT;

10. A notarized statement shall be submitted to the WSDOT Engineer containing the following language:

_____, _____

(name) (title)

of _____

(company)

Under the penalty of law for perjury or falsification, the undersigned hereby certifies that the claim for extra compensation and time, if any, made herein for Work on this Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between the parties.

Dated _____/s/_____

Subscribed and sworn before me this _____ day of _____

_____

Notary Public

My Commission Expires: _____

It will be the responsibility of the Design-Builder to keep full and complete records of the costs and additional time incurred for any alleged claim. The Design-Builder shall permit WSDOT to have access to those records and any other records as may be required by WSDOT to determine the facts or contentions involved in the claim. The Design-Builder shall retain those records for a period of not less than three years after Final Acceptance.

The Design-Builder shall pursue administrative resolution of any claim with WSDOT or the designee of WSDOT.

Failure to submit with the Final Contract Voucher Certification such information and details as described in this Section for any claim shall operate as a waiver of the claims by the Design-Builder as provided in Section 1-09.9.

Provided that the Design-Builder is in full compliance with all the provisions of this Section and after the formal claim document has been submitted, WSDOT will respond, in writing, to the Design-Builder as follows:

1. Within 45 Calendar Days from the date the claim is received by WSDOT if the claim amount is less than $100,000;
2. Within 90 Calendar Days from the date the claim is received by WSDOT if the claim amount is equal to or greater than $100,000; or
3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Design-Builder will be notified within 15 Calendar Days from the date the claim is received by WSDOT as to the amount of time which will be necessary for WSDOT to prepare its response.

Full compliance by the Design-Builder with the provisions of this Section is a contractual condition precedent to the Design-Builder's right to commence arbitration or litigation proceedings.

1-09.11(3) TIME LIMITATION AND JURISDICTION

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Design-Builder has against the State of Washington arising from the Contract shall be brought within 180 Calendar Days from the date of Final Acceptance

(Section 1-05.12) by WSDOT; and it is further agreed that any such claims or causes of action shall be brought, unless otherwise noted, only in the Superior Court of Thurston County. The parties understand and agree that the Design-Builder's failure to bring an action in the proper forum within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Design-Builder asserts against the State of Washington arising from the Contract are filed with the State, initiated in arbitration, or initiated in court, the Design-Builder shall permit the State to have timely access to any records deemed necessary by the State to assist in evaluating the claims or action.

1-09.12 AUDITS

1-09.12(1) GENERAL

The Design-Builder's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than three years after the date of Final Acceptance. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that the wage, payroll, and cost records of all Subcontractors and all lower tier subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of WSDOT or by an auditor under contract with WSDOT. The Design-Builder, Subcontractors, or lower tier subcontractors shall provide adequate facilities, acceptable to the WSDOT Engineer, for the audit during normal business hours. The Design-Builder's Subcontractors, or lower tier subcontractors shall make a good faith effort to cooperate with the auditors. If an audit is to be commenced more than 60 Calendar Days after the Final Acceptance, the Design-Builder will be given 20 Calendar Days notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is completed.

1-09.12(2) CLAIMS

All claims filed against WSDOT shall be subject to audit at any time following the filing of the claim. Failure of the Design-Builder, Subcontractors, or lower tier subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of the Design-Builder, Subcontractors, or lower tier subcontractors shall constitute a waiver of a claim and shall bar any recovery 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, and
23. Worksheets, software, and all other documents used by the Design-Builder to prepare its Proposal.

An audit may be performed by employees of WSDOT or a representative of WSDOT. The Design-Builder and its Subcontractors shall provide adequate facilities acceptable to WSDOT for the audit during normal business hours. The Design-Builder and all Subcontractors shall cooperate with WSDOT's auditors.

1-09.13 CLAIMS RESOLUTION

1-09.13(1) GENERAL

Prior to seeking claim resolution through nonbinding alternative dispute resolution processes, binding arbitration, or litigation, pursuant to this Section, the Design-Builder shall proceed under the administrative procedures in Sections 1-04.5, 1-09.11 and any Special Provision provided in the Contract for resolution of disputes. The provisions of these Sections must be complied with in full, as a **CONDITION PRECEDENT**, to the Design-Builder's right to seek claim resolution through any nonbinding alternative dispute resolution process, binding arbitration or litigation, as provided in this Section.

1-09.13(2) NONBINDING ALTERNATIVE DISPUTES RESOLUTION (ADR)

Nonbinding ADR processes are encouraged and available upon mutual agreement of the Design-Builder and WSDOT for all claims submitted in accordance with Section 1-09.11, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. WSDOT has been given the time and opportunity to respond to the Design-Builder as provided in Section 1-09.11(2); and
3. WSDOT has determined that it has sufficient information concerning the Design-Builder's claims to participate in a nonbinding ADR process.

WSDOT and the Design-Builder mutually agree that the cost of the nonbinding ADR process shall be shared equally by both parties with each party bearing its own preparation costs.

The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Washington at a location mutually acceptable to the parties.

The Design-Builder agrees that the participation in a nonbinding ADR process does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180 Calendar Days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

1-09.13(3) CLAIMS $250,000 OR LESS

The Design-Builder and WSDOT mutually agree that those claims which total $250,000 or less, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through mandatory and binding arbitration as described herein.

1-09.13(3).1 Administration of Arbitration

Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. The current version of the Northwest Region Expedited Commercial Arbitration Rules shall be used for claims with an amount less than $25,000;
2. The current version of the Expedited Procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $25,000 and less than $50,000; or
3. The current version of the standard procedures of the Construction Industry Arbitration Rules shall be used for claims with an amount equal to or greater than $50,000 and not greater than $250,000.

WSDOT and the Design-Builder mutually agree the venue of any arbitration hearing shall be within the State of Washington and any such hearing shall be conducted within the State of Washington.

WSDOT and the Design-Builder mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of Thurston County. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

1-09.13(3).2 Procedures to Pursue Arbitration

If the dispute cannot be resolved through administrative procedures provided in Sections 1-04.5, 1-09.11, and any special provision provided in the Contract for resolution of disputes or through a mutually agreed upon nonbinding ADR process, the Design-Builder shall advise WSDOT, in writing, that mandatory and binding arbitration is desired. The parties may agree on an arbitration process, or, if the parties cannot agree a demand for arbitration shall be filed by the Design-Builder, in accordance with the AAA rules, with WSDOT, and with the AAA. Selection of the arbitrator and the administration of the arbitration shall proceed in accordance with AAA rules using arbitrators from the list developed by the AAA, except that: for claims under $25,000 using the Northwest Region Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55 of the Expedited Procedure of the Construction Industry Arbitration Rules. Arbitration shall proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim as provided in Section 1-09.13(3).1.

Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to binding arbitration prior to Physical Completion of the Project, provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. The dispute has been pursued to the claim status as provided in Section 1-09.11(2); and
3. The Design-Builder certifies in writing that claims for delays or impacts to the Work will not result from the dispute.

Unless WSDOT and the Design-Builder agree otherwise, all other unresolved claims (disputes which have been pursued to the claim status) which arise from the Contract must be brought in a single arbitration hearing and only after Physical Completion has occurred. The total of those unresolved claims cannot be greater than $250,000 to be eligible for arbitration.

In addition, the Design-Builder agrees arbitration proceedings must commence, by filing of the aforementioned demand for arbitration, within 180 Calendar Days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

The scope and extent of discovery shall be determined by the arbitrator in accordance with AAA rules. In addition, each party for claims greater than $25,000 shall serve upon the other party a "statement of proof." The statement of proof shall be served, with a copy to the AAA, no less than 20 Calendar Days prior to the arbitration hearing and shall include:

1. The identity, current business address, and residential address of each witness who will testify at the hearing;
2. The identity of any expert witness to be called, a statement as to the subject matter and the substance of the facts and opinions on which the expert is expected to testify, a summary of the grounds for each opinion, and a resume of the expert's qualifications; and
3. A list of each document that the party intends to offer in evidence at the arbitration hearing. Either party may request from the other party a copy of any document listed. If such a request is made, a copy of the document shall be provided within 5 Calendar Days from the date the request is received.

The arbitrator may permit a party to call a witness or offer a document not shown or included in the statement of proof only upon a showing of good cause.

1-09.13(4) CLAIMS IN EXCESS OF $250,000

The Design-Builder and WSDOT mutually agree that those claims in excess of $250,000, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through

binding arbitration.