

1-07 Legal Relations and Responsibilities to the Public

1-07.1 Laws to be Observed

1-07.1(1) General

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

The Design-Builder shall be responsible to immediately report to the WSDOT Engineer any deviation from the Contract provisions pertaining to environmental compliance, including, but not limited to, spills, unauthorized fill in waters of the State including wetlands, water quality standards, noise, air quality, etc.

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

1-07.1(2) Health and Safety

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, at a minimum, those promulgated under the Washington Industry Safety and Health Act RCW Chapter 49.17 (WISHA) and as set forth in Title 296 WAC (State L&I). In particular, the Design-Builder's attention is drawn to the requirements of WAC 296.800 which requires employers to provide a safe workplace. More specifically, WAC 296.800.11025 prohibits alcohol and narcotics from the workplace. The Design-Builder shall likewise be obligated to comply with all Federal safety and health standards, codes, rules, and regulations that may be applicable to the Contract Work. A copy of all safety plans (e.g., Fall Protection Work Plan) that are developed by the Design-Builder shall be submitted to the WSDOT Engineer as a Type 1 Working Drawing. When requested by the WSDOT Engineer, the Design-Builder shall provide training to WSDOT employees working on-site for all activities covered by a safety plan. Costs for training that is provided solely to WSDOT employees will be paid to the Design-Builder in accordance with Section 1-09.4.

1-07.1(3) Mine Safety

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

1 notify the nearest Mine Safety and Health sub district office (1) of the Project before it
2 begins, (2) of the starting date, and (3) of the Physical Completion date.

3 **1-07.1(4) Wells**

4 When wells are included in the Contract or encountered as part of the Work, the
5 Design-Builder shall meet all the requirements in WAC 173-160 Minimum Standards for
6 Construction and Maintenance of Wells and all environmental considerations for
7 installing, protecting in place, decommissioning, or abandonment of wells.

8 **1-07.1(5) Changes to Laws to be Observed**

9 **1-07.1(5).1 General**

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

14 **1-07.1(5).2 Taxes**

15 Under certain conditions, WSDOT will adjust payment to compensate for tax changes.
16 First, the changes shall involve Federal or State taxes on materials or fuel used in or
17 consumed for the Project. Second, the changes shall increase or decrease the
18 Design-Builder-paid taxes by more than \$500. Third, the tax change must occur after the
19 Proposal opening date. Within these conditions, WSDOT will adjust compensation by the
20 actual dollar amounts of increase or decrease caused by the tax changes. If WSDOT
21 requests it, the Design-Builder shall certify in writing that the Contract Price does not
22 include any extra amount to cover a possible change in taxes.

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

25 **1-07.2 State Taxes**

26 The Design-Builder shall pay all applicable Federal, State and Local sales, consumer,
27 use, and similar taxes, property taxes, and any other taxes, fees, charges, or levies
28 imposed by a governmental entity, whether direct or indirect, relating to, or incurred in
29 connection with, the Project or performance of the Work, including that portion of the
30 Contract Price relating to design services. The Design-Builder shall include all the
31 Design-Builder paid taxes in the Contract Price unless a specific exception applies. The
32 Washington State Department of Revenue has issued special rules on the State sales tax.
33 Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules.

34 The Design-Builder should contact the Contract Payment Section of the Division of
35 Accounting & Financial Services of the Department of Transportation, Olympia, for
36 answers to questions regarding sales tax.

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

WSDOT may deduct from its payments to the Design-Builder, withhold from the retainage, or place a lien on the retainage bond, in the amount the Design-Builder owes the State Department of Revenue, whether the amount owed relates to the Contract in question or not. Any amount so deducted will be paid into the proper State fund on the Design-Builder's behalf. For additional information on tax rates and application refer to applicable RCWs, WACs, or the Department of Revenue's website.

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

State Department of Revenue Rule 171 (WAC 458.20.171) and its related rules apply for this Section. Appendix R identifies those parts of the Project that require Work on land owned by:

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

For Work performed on such land subject to this Section, and for any elements of Work that are constructed and will be owned, maintained, and operated by Sound Transit, 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 on materials, equipment, and supplies used or consumed in performing such Work. The elements of Work that will be owned, maintained, and operated by Sound Transit are graphically shown in the State Sales Tax Rule 170 & 171 Map (Appendix R). These graphic displays depict the general layout and function of these Work elements. WSDOT recognizes that the final design of these elements may change the physical limits from those depicted. The Design-Builder shall work closely with WSDOT to verify the physical limits of the final scope of Work, based on the final design, that falls under the State Department of Revenue Rule 171, see Rule 171 DOR Ruling (Appendix R).

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

State Department of Revenue Rule 170 (WAC 458.20.170) and its related rules apply for this Section.

Appendix R identifies those parts of the Project that require Work on state-owned or private land. Pursuant to RCW 47.56.878, WSDOT has 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). Based upon this deferral, WSDOT will not add retail sales tax 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.

The tax deferral does not extend to the Design-Builder or its subcontractors. The Design-Builder and its subcontractors are consumers of all items that are not incorporated into the Project. The Design-Builder and its subcontractors are consumers of tools, equipment, and supplies used in the Work. As a consumer, the Design-Builder and its

subcontractors must pay retail sales tax on such items, even though typically the ultimate cost of the tax is to the entity making the improvement.

1-07.3 *Fire Prevention and Merchantable Timber Requirements*

1-07.3(1) Fire Prevention

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

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

1-07.3(2) Merchantable Timber Requirements

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

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

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

1-07.4 *Sanitation*

1-07.4(1) General

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

1-07.4(2) Health Hazards

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

1-07.5 Vacant

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 all required notices.

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 to comply with all the issuing agency requirements, and to hold WSDOT harmless for all Work-related liability incurred under the permit.
6. The permit cost to WSDOT is zero dollars.

1-07.7 Load Limits

1-07.7(1) General

While moving equipment or materials on public highways, 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 the equipment or load data needed to calculate the equipment's weight on the Roadway.

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.

All Design-Builder movement or storage of materials or equipment within the Project limits, shall conform to all of the following conditions:

1. Legal load limits shall apply on all roads open to and in use by public traffic.
2. Legal load limits shall apply on existing roads not scheduled for major reconstruction under the current Contract.
3. The Design-Builder may haul overloads (not more than 25 percent above load limits) on any newly paved roads (with final lift in place) built under this Contract not open to public traffic if this does not damage completed Work.
4. When moving vehicles or operating equipment on or over Structures designed for direct bearing of live load, buried Structures, culverts, pipes, or retaining walls

1 within the Project limits, the Design-Builder shall meet the load-limit restrictions in
2 Section 1-07.7(2).

3 5. When storing material on a Structure or retaining wall, the Design-Builder shall
4 meet the load-limit restrictions in Section 1-07.7(2). These requirements are not
5 intended for long term storage of material.

6 6. The Design-Builder shall remain responsible for and pay all repair costs due to
7 loads that caused damage on newly paved roads, new and existing Structures,
8 culverts, pipes and retaining walls.

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

14 The Contract Price includes all costs for operating vehicles or storing materials on or over
15 Structures, culverts, pipes, and retaining walls. Nothing in this Section affects the
16 Design-Builder's other responsibilities under the Contract or under public highway laws.

17 Bridges that are under construction shall meet the load restrictions in Section 6-01.6 of
18 the Standard Specifications.

19 **1-07.7(2) Load-Limit Restrictions**

20 At the request of the WSDOT Engineer, the Design-Builder shall provide supporting
21 documentation of vehicle, equipment or material loads, axle or support dimensions and
22 any additional information used to determine the loads.

23 1. **Structures Designed for Direct Bearing of Live Loads** - The gross vehicle weight
24 or maximum load on each axle shall not exceed the legal load limit nor any posted
25 weight limit on a Structure.

26 Construction equipment that is not considered a legal vehicle licensed for legal
27 travel on the public Highway, including, but not limited to, track or steel wheeled
28 vehicles, may operate on a Structure. Gross equipment weight, axle spacing,
29 equipment spacing, and other attributes identified in the plans shall not be
30 exceeded. When loads are not identified in the plans, the construction equipment
31 shall not exceed the following load restrictions:

- 32 a. The gross vehicle weight or maximum load on each axle shall not exceed the
33 legal load limit, axle spacing nor posted weight limits on a Structure.
- 34 b. A tracked vehicle with a maximum gross vehicle weight of 40,000 pounds and
35 track contact length no less than 8 feet. The maximum gross vehicle weight may
36 increase by 2,000 pounds for each one foot of track contact length over 8 feet,
37 but shall not exceed 80,000 pounds.
- 38 c. A tracked vehicle with a maximum gross vehicle weight of 20,000 pounds and
39 track contact length less than 8 feet.
- 40 d. No single axle shall exceed 20,000 pounds.
- 41 e. No more than one vehicle shall operate over any Structure at one time.

Track contact length shall be measured once for two or more parallel tracks. The Design-Builder shall not store construction materials on timber Structures or Structures posted for weight limits. When a Structure within the Project limits is not posted for weight limits and there is no other reasonable storage space within the Project limits, the Design-Builder may store construction material on the Structure and shall not exceed the maximum uniformly distributed load and distribution length along the Structure per the following table:

Maximum Uniform Load (psf)		
Maximum Distributed Length Along Structure	Structure Width (curb-to-curb)	
	24 feet or less	greater than 24 feet
15 ft	250	160
40 ft	125	80
80 ft	75	50
Full Structure Length	50	35

The load restrictions for storing material or operating equipment shall not be combined and shall apply to the full Structure length. Materials that are stored in two or more locations on the same Structure shall use the total combined length to determine the maximum load restriction. Vehicle traffic and the Design-Builder's equipment may operate in the adjacent lanes to the stored materials and shall not be allowed on the Structure width that is occupied by the stored materials. Design-Builder's equipment that is used to deliver or remove any stored material with the same Structure width shall be considered in combination with all stored materials. This equipment shall be assumed to be uniformly distributed over the largest axle spacing and average axle width. The Design-Builder shall immediately remove all dirt, rock, or debris that may gather on the Structure's roadway surface.

- Buried Structures-** Buried structures shall include reinforced concrete three sided structures, box culverts, split box culverts, structural plate pipe, pipe arch, and underpasses.

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 buried structure.

When the embankment has reached 5 feet above the top of the buried structure, 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.

- Pipe Culverts and Sewer Pipes -** Pipe culverts and sewer pipes shall include pipe for drainage, storm sewers, and sanitary sewers. 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.

4. **Retaining Walls** – Loads above existing and completed retaining walls designed for vehicular loads, where any part of the load is located within half the retaining wall height, shall not exceed the following load restrictions:

- (a) The gross vehicle weight or maximum load on each axle shall not exceed the legal load limit.
- (b) Construction equipment and material shall not exceed 250 pounds per square foot.

If necessary and safe to do so, the WSDOT Engineer may allow higher loads than those allowed under these load-limit restrictions. For loads on or over Structures designed for direct bearing of live load, the Design-Builder shall prepare Type 3E Working Drawings consisting of calculations and other supporting information in accordance with the requirements of Section 6-01.6 of the Standard Specifications. For loads on or over pipes, culverts, buried structures, and retaining walls the Design-Builder shall prepare Type 2E Working Drawings. All Working Drawings shall contain the following information: a description of the loading details; arrangement, movement and position of all vehicles, equipment and materials on the Structure, culvert or pipe; and statement that the Design-Builder assumes all risk for damage.

1-07.8 High Visibility Apparel

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

The Design-Builder shall ensure that a competent Person as identified in the MUTCD selects the appropriate high-visibility apparel suitable for the job-site conditions.

High visibility garments shall always be the outermost garments.

High visibility garments shall be labeled as, and in a condition compliant with the ANSI/ISEA 107-(2004 or later version) and shall be used in accordance with manufacturer recommendations.

1-07.8(1) Traffic Control Personnel

All personnel performing the Work described in Section 2.22, *Maintenance of Traffic*, (including TCS, flaggers, spotters, and others performing traffic control labor of any kind), shall comply with the following:

1. During daylight hours with clear visibility, workers shall wear a high-visibility ANSI/ISEA 107 Class 2 or 3 vest or jacket, and hard hat meeting the high visibility headwear requirements of WAC 296-155-305.
2. During hours of darkness (0.5 hour before sunset to 0.5 hour after sunrise) or other low visibility conditions (snow, fog, etc.), workers shall wear a high-visibility ANSI/ISEA 107 Class 2 or 3 vest or jacket, high visibility lower garment meeting ANSI/ISEA 107 Class E, and hard hats meeting the high visibility headwear requirements of WAC 296-155-305.

1-07.8(2) Non-Traffic Control Personnel

All personnel, except those performing the Work described in Section 2.22, *Maintenance of Traffic*, shall wear high visibility apparel meeting the ANSI/ISEA 107 Class 2 or 3 standard.

1-07.9 Wages

1-07.9(1) General

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

Prevailing wage rates are issued semi-annually by the Washington State Department of Labor and Industries and are effective 30 Calendar Days after issuance. If a prevailing wage update is issued and subsequently becomes effective after the Proposal Due Date, and prior to the execution date of this Contract, the Design-Builder will be required to comply with the new effective prevailing wage rates.

The hourly minimum rates for wages and fringe benefits in effect on the Proposal Due Date are include in Prevailing Wage Rates (Appendix K). The Design-Builder shall be solely responsible for independently verifying the information included in Prevailing Wage Rates (Appendix K), as true and correct at the time of the Proposal Due Date. If an updated prevailing wage rate is issued and becomes effective prior to the execution date of this Contract, the Design-Builder shall be required to comply with those updated wage rates in place of the rates included in Prevailing Wage Rates (Appendix K), at no additional cost to WSDOT.

The Design-Builder, Subcontractors, and all individuals or firms required by RCW 39.12, WAC 296-127 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. Higher wages and benefits may be paid.

By including the hourly minimum rates for wages and fringe benefits in the Contract provisions, WSDOT does not imply that the Design-Builder will find labor available at those rates. The Design-Builder shall be responsible for any amounts above the minimums that will actually have to be paid. The Design-Builder shall bear the cost of paying prevailing wages above those listed in Prevailing Wage Rates (Appendix K) made effective prior to the execution date of this Contract.

If employing labor in a class not listed in the Contract provisions on State funded projects only, the Design-Builder shall request a determination of the correct wage and benefits rate for that class and locality from the Industrial Statistician, State L&I, and provide a copy of those determinations to the WSDOT Engineer.

The Design-Builder shall ensure that all firms (suppliers, manufacturers, or fabricators) that fall 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 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.

1-07.9(2) Posting Notices

Notices and posters shall be placed in areas readily accessible to read by employees and potential applicants. The Design-Builder shall ensure the most current version of the following are posted:

1. WHD 1088 - Employee Rights Under the Fair Labor Standards Act published by US Department of Labor. Post on all projects.
2. WHD 1420 - Employee Rights and Responsibilities Under The Family And Medical Leave Act published by US Department of Labor. Post on all projects.
3. WHD 1462 - Employee Polygraph Protection Act published by US Department of Labor. Post on all projects.
4. F416-081-000 - Job Safety and Health Law published by State L&I. Post in English and Spanish versions on all projects.
5. F242-191-909 - Notice To Employees published by State L&I. Post on all projects.
6. F700-074-909 - Your Rights as a Worker in Washington State by State L&I. Post on all projects.
7. EMS 9874 - Unemployment Benefits published by Washington State Employment Security Department. Post on all projects.
8. Post one copy of the approved “Statement of Intent to Pay Prevailing Wages” for the contractor, each Subcontractor, each lower tier Subcontractor, and any other firm (supplier, manufacturer, or fabricator) that falls under the provisions of RCW 39.12 because of the definition of “Contractor” in WAC 296-127-010.

9. Post one copy of the prevailing wage rates for the Project.

1-07.9(3) Apprentices

When employing apprentices, the Design-Builder shall supply a link or electronic copy to the WSDOT Engineer of each approved Apprentice Program that shows the ratio of journey level to apprentice workers and the hourly wage rate steps for each craft on a project.

Apprentice workers employed for whom an apprenticeship agreement has been registered and approved with the State Apprenticeship Council must be paid prevailing hourly rate for an apprentice of that trade. Workers, not registered, shall be considered to be a fully qualified journey level worker, and therefore paid at the prevailing hourly rate for journey level workers of that trade in accordance with Section 1-07.9(1).

1-07.9(3).1 Apprentice Utilization

The Design-Builder shall comply with an Apprentice Utilization Requirement. No less than 15 percent of Project Labor Hours shall be performed by Apprentices.

1-07.9(3).2 Definitions

The following definitions apply to Apprentice Utilization:

1. Apprentice is a person enrolled in a State-approved Apprenticeship Training Program.
2. Apprentice Utilization Requirement is the Apprentice labor hours expressed as a percentage of the Project Labor Hours represented on the Project.
3. Good Faith Effort (GFE) is used if the Design-Builder does not meet the Apprentice Utilization Requirement. It describes the Design-Builder's efforts to meet the Apprentice Utilization Requirement including but not necessarily limited to the specific steps as described elsewhere in this specification.
4. Labor Hours are the total hours performed by all workers receiving an hourly wage who are directly employed upon the Project 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.
5. State-approved Apprenticeship Training Program is an apprenticeship training program approved by the Washington State Apprenticeship Council.

1-07.9(3).3 Electronic Reporting

The Design-Builder shall use the State L&I online Prevailing Wage Intent & Affidavit (PWIA) system to submit the "Apprentice Utilization Plan" and "Good Faith Effort" documentation. Reporting instructions are available in the application.

1-07.9(3).4 Apprentice Utilization Plan

The Design-Builder shall submit an "Apprentice Utilization Plan" by filling out WSDOT Form 424-004, *Apprentice Utilization Plan*, within 30 Calendar Days of NTP,

demonstrating how and when they intend to achieve the Apprentice Utilization Requirement. The plan shall be sufficient in detail for the WSDOT Engineer to track the Design-Builder's progress in meeting the utilization requirements and be updated and re-submitted as the Work progresses or when ordered by the WSDOT Engineer.

If the Design-Builder is unable to demonstrate ability to meet the Apprentice Utilization Requirement in their Apprentice Utilization Plan, they must submit Good Faith Effort (GFE) documentation to the State L&I online PWIA system for review and approval with their Apprentice Utilization Plan. The Design-Builder shall actively seek out opportunities to meet the Apprentice Utilization Requirement during the Work.

1-07.9(3).5 Vacant

1-07.9(3).6 Contacts

The Design-Builder may obtain information on State-approved Apprenticeship Training Programs by contacting State L&I at:

Specialty Compliance Services Division
Apprenticeship Section
P.O. Box 44530
Olympia, WA 98504-4530
Phone: 360-902-5320

1-07.9(3).7 Compliance

In the event that the Design-Builder is unable to achieve the Apprentice Utilization Requirement, the Design-Builder shall submit to the State L&I online PWIA system, GFE documentation for review and approval. The GFE documentation shall be submitted after Substantial Completion but no later than 30 Calendar Days after Physical Completion. If GFE documentation was previously submitted as part of the Apprentice Utilization Plan, it shall be updated and re-submitted after Substantial Completion but no later than 30 Calendar Days after Physical Completion.

If the Design-Builder fails to submit GFE documentation or if the WSDOT Engineer does not approve the GFE, the Design-Builder will be subject to disciplinary actions as allowed under WAC 468-16-180.

1-07.9(3).8 Good Faith Efforts

The GFE shall describe in detail why the Design-Builder is not or was not able to attain the Apprentice Utilization Requirement. The GFE documentation shall address one or more of the following areas:

1. Correspondence on solicitation of Apprentices from a State-approved Apprenticeship Training Program(s), and the response from the solicited State-Approved Apprenticeship Training Program(s) when there is a lack of availability of Apprentices.
2. Provide documentation that shows Contract requirements for Tribal Employment Rights Office, Special Training or Disadvantage Business Enterprise requirements affect the ability to obtain Apprentice Labor Hours on the Contract.

3. Provide documentation demonstrating what efforts the Design-Builder has taken to require Subcontractors to solicit and employ Apprentices. Documentation could be posters placed on site, emphasis in Subcontracts about employing Apprentices, letters, memos or other correspondence from Design-Builder to Subcontractor that put an emphasis on employing Apprentices.

The Design-Builder may receive a GFE credit for graduated Apprentice hours through the end of the calendar year for all projects worked on as long as the Apprentice remains continuously employed with the same contractor they were working for when they graduated. If an Apprentice graduates during employment on a project of significant duration, they may be counted towards a GFE credit for up to one year after their graduation or until the end of the project (whichever comes first). Determination of whether or not Contract requirements were met in good faith will be made by subtracting the hours from the journey-level worker total reported hours for the project and adding them to the apprentice hour total. If the new utilization percentage meets the Contract requirement, the contractor will be reported as meeting the requirement in good faith.

1-07.9(3).9 Apprentice Wages

See Section 1-07.9(3).

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 the 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

1-07.9(5).1 General

All "Statements of Intent to Pay Prevailing Wages," "Affidavits of Wages Paid," and Certified Payrolls, including a signed Statement of Compliance for Federal-aid projects, shall be submitted to the WSDOT Engineer using the State L&I online PWIA system.

1-07.9(5).2 Intents and Affidavit

The Design-Builder shall submit via the PWIA system the following documents provided by the Industrial Statistician of the State L&I for themselves and for each firm covered under RCW 39.12 that will or has provided Work and materials for the Contract:

1. The approved "Statement of Intent to Pay Prevailing Wages." WSDOT will make no payment under this Contract until this statement has been approved by State L&I and reviewed by the WSDOT Engineer.
2. The approved "Affidavit of Wages Paid." WSDOT will not grant Completion until all approved "Affidavit of Wages Paid" for the Design-Builder and all Subcontractors have been received by the WSDOT Engineer. WSDOT will not release to the Design-Builder any funds retained under RCW 60.28.011 until all of the "Affidavit of Wages Paid" documents have been approved by State L&I and a

copy of all the approved forms have been submitted to the WSDOT Engineer for every firm that worked on the Contract.

The Design-Builder shall be responsible for paying any fees required by State L&I.

1-07.9(5).3 Certified Payrolls

Certified payrolls are required to be submitted by the Design-Builder for themselves, all Subcontractors, and all lower tier Subcontractors. The payrolls shall be submitted weekly on all Federal-aid projects and no less than monthly on State funded projects.

1-07.9(5).4 Penalties for Noncompliance

The Design-Builder is advised, if the certified payrolls are not supplied within the prescribed deadlines, any or all payments may be withheld until compliance is achieved. In addition, failure to provide these payrolls may result in other sanctions as provided by State laws (RCW 39.12.050) or Federal regulations (29 CFR Part 5), or both.

1-07.9(6) Audits

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

1-07.10 Worker's Benefits

The Design-Builder shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If payments required by Title 50 or Title 51 are 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 State L&I 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 LHWCA administered by the U.S. Department of Labor, or the State Industrial Insurance coverage administered by State L&I.

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 State L&I regarding the insurance coverage.

The Public Works Contract Division of State L&I 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, WSDOT

will verify through State L&I that the Design-Builder is current with respect to the payments of industrial insurance and medical aid premiums.

1-07.11 Requirements for Nondiscrimination

1-07.11(1) General Application

Discrimination in all phases of contracted employment, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964, and other related laws and statutes. These laws (and corresponding regulations) establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this Section.

1-07.11(1).1 Standard Title VI Statutory/Regulatory Authorities

Reference to the term “Acts and Regulations” within Section 1-07.11 will refer to the following:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
2. 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI of the Civil Rights Act Of 19640);
3. 28 C.F.R. section 50.3 (US Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

1-07.11(1).2 Nondiscrimination Authorities

During the performance of this Contract, the Design-Builder, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statues and authorities, which include, but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and C.F.R. Part 21.
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
3. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et. seq.), as amended, (prohibits discrimination on the basis of sex).
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27.
5. The Age of Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).

7. The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age of Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition and terms “programs or activities” to include all of the program or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not).
8. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
9. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123), (prohibits discrimination on the basis of race, color national origin, and sex).
10. Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to-ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

1-07.11(2) Contractual Requirements

1. The Design-Builder, and its Subcontractors, consultants, Subconsultants, suppliers, and service providers shall maintain a Work site that is free of harassment, humiliation, fear, hostility, and intimidation at all times. Behaviors that violate this requirement include but are not limited to:
 - a. Persistent conduct that is offensive and unwelcome
 - b. Conduct that is considered to be hazing
 - c. Jokes about race, gender, or sexuality that are offensive
 - d. Unwelcome, unwanted, rude or offensive conduct, or advances of a sexual nature which interferes with a person’s ability to perform their job or creates an intimidating, hostile, or offensive work environment
 - e. Language or conduct that is offensive, threatening, intimidating or hostile based on race, gender, or sexual orientation
 - f. Repeating rumors about individuals in the Work Site that are considered to be

1 harassing or harmful to the individual's reputation

- 2 2. The Design-Builder shall create a new program, or implement an existing corporate
3 program, to ensure that a respectful workplace is created and maintained on the
4 Project and all associated Work activities. This program shall include all employees
5 working on the Project, including all apprentices in training, and WSDOT
6 employees. The program shall ensure that everyone working on the Project are
7 given the tools and support necessary to create and maintain a safe, respectful,
8 inclusive, and productive environment. The Design-Builder shall provide training
9 related to this program at the start of the Project and for all new employees working
10 the Project, including WSDOT employees, within the first week of their work on
11 the Project. This program shall reflect WSDOT's policy to have a harassment free
12 workplace and that there is zero tolerance for harassment of any kind. The program
13 shall also be supportive of WSDOT's desire to improve the apprenticeship retention
14 rates. The program shall be supportive of all other contractual requirements as
15 noted herein. The Design-Builder shall submit this program to the WSDOT
16 Engineer for Review and Comment within 60 Calendar Days of NTP. WSDOT's
17 review of this program shall be related to whether the program is supportive of all
18 the Contract related requirements. The Design-Builder shall submit updates to this
19 program as needed or at a minimum every 12 months.
- 20 3. The Design-Builder shall not discriminate against any employee or applicant for
21 contracted employment because of race, creed, color, national origin, sex, age,
22 marital status, or the presence of any physical, sensory, or mental disability.
- 23 4. The Design-Builder shall, in all solicitations or advertisements for employees, state
24 that all qualified applicants will be considered for employment, without regard to
25 race, creed, color, national origin, sex, age, marital status, or the presence of any
26 physical, sensory, or mental disability.
- 27 5. The Design-Builder shall make decisions with regard to selection and retention of
28 Subcontractors, procurement of materials and equipment and similar actions related
29 to the Contract without regard to race, creed, color, national origin, sex, age, marital
30 status, or the presence of any physical, sensory, or mental disability.
- 31 6. The Design-Builder shall send to each labor union, employment agency, or
32 representative of workers with which the Design-Builder has a collective bargaining
33 agreement or other contract or understanding, a notice advising the labor union,
34 employment agency or worker's representative, of the Design-Builder's
35 commitments under this Contract with regard to nondiscrimination.
- 36 7. The Design-Builder shall permit access to its books, records, and accounts by
37 WSDOT for the purpose of investigating to ascertain compliance with these
38 *General Provisions*. In the event that information required of a Design-Builder is in
39 the possession of another who fails or refuses to furnish this information, the
40 Design-Builder shall describe, in writing, what efforts were made to obtain the
41 information.
- 42 8. The Design-Builder shall maintain records with the name and address of each
43 minority, woman, or disadvantaged worker referred to the Design-Builder and what
44 action was taken with respect to the referred worker.
- 45 9. 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, women, or disadvantaged individuals' workforce utilization. This being the case, the Design-Builder shall show what relief they have sought under such collective bargaining agreements.

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

1-07.11(2).1 Vacant

1-07.11(3) Equal Employment Opportunity Officer

Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity are set forth in various laws, regulations, and executive orders. The following requirements are applicable to this Project:

The Design-Builder shall officially designate and make known to the WSDOT Engineer during the preconstruction conference and discussions, the firm's EEO Officer. The EEO Officer will also be responsible for making themselves known to each of the Design-Builder's employees. The EEO Officer must possess the responsibility, authority, and capability for administering and promoting an active and effective Design-Builder program of EEO.

1-07.11(4) Dissemination of Policy

1-07.11(4).1 Supervisory Personnel

All members of the Design-Builder's staff authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or are substantially involved in such action, shall be fully cognizant of, and shall implement the Design-Builder's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement is 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 EEO policy and its implementation shall be reviewed and explained. The EEO meetings are to be conducted by the EEO Officer, or another company official who is knowledgeable of the EEO requirements of the contract.
2. **EEO Indoctrination** - All new supervisory or personnel office employees must be provided a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within 30 Calendar Days following their reporting for duty with the Design-Builder.
3. **Internal EEO Procedures** - All personnel who are engaged in direct recruitment for the project, shall be trained by the EEO Officer (or appropriate designee), in the Design-Builder's procedures for locating and hiring minorities, women, or disadvantaged individuals.

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

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

- 6 1. **Notices and Posters** - Notices and posters setting forth the Design-Builder's EEO
7 policy shall be located in areas readily accessible to employees, applicants for
8 employment, and potential employees.
- 9 2. **EEO Indoctrination** - The Design-Builder's EEO policy and the procedures to
10 implement such policy shall be provided to employees by means of meetings,
11 employee handbooks, or other appropriate means.

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

13 Immediately upon the WSDOT Engineer's request, the Design-Builder shall remove
14 from the Work Site any employee engaging in behaviors that promote harassment,
15 humiliation, fear or intimidation including, but not limited to, those described in these
16 *General Provisions*.

17 In the event the Design-Builder is found in noncompliance with the provisions of
18 Section 1-07.11, WSDOT may impose such Contract sanctions as it may determine
19 necessary to gain compliance including, but not limited to:

- 20 1. Progress payments may be withheld until the noncompliance is remedied to the
21 satisfaction of WSDOT.
- 22 2. The Contract may be suspended, in whole or in part until such time as the
23 Design-Builder is determined to be in compliance by WSDOT.
- 24 3. The Contract may be terminated.
- 25 4. The Design-Builder's pre-qualification may be suspended or revoked pursuant to
26 WAC 468-16.

27 **1-07.11(6) Incorporation of Provisions**

28 The Design-Builder shall include the provisions of Section 1-07.11(2) items 1 through 5
29 and Section 1-07.11(5) Sanctions in every Subcontract including procurement of
30 materials and leases of equipment. The Design-Builder shall take such action or enforce
31 sanctions with respect to a Subcontractor or supplier as WSDOT or the FHWA may
32 direct as a means of enforcing such provisions. In the event a Design-Builder becomes
33 involved in litigation with a Subcontractor or supplier as a result of such direction, the
34 Design-Builder may request WSDOT enter into such litigation to protect their interests
35 and WSDOT may request the Federal government to enter into such litigation to protect
36 the interests of the United States.

1-07.11(7) Vacant

1-07.11(8) Vacant

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

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

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

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

1-07.11(10) Records and Reports

1-07.11(10).1 General

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

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

1-07.11(10).2 Required Records and Retention

All records must be retained by the Design-Builder for a period of 3 years following acceptance of the Contract Work. All records shall be available at reasonable times and places for inspection by authorized representatives of either WSDOT or the Federal Highway Administration.

1-07.11(11) Small and Veteran-Owned Business Enterprises and Minority and Women Business Enterprise Participation

1-07.11(11).1 General Statement

The participation of Small and Veteran-Owned Business Enterprises (SVBE) and Minority and Women Business Enterprises (MWBE) is an important strategic objective for the State. This Contract includes enforceable SVBE Contract Goals and voluntary goals for MWBE participation. The Design-Builder is encouraged to utilize SVBEs and MWBEs in accordance with the *General Provisions*, RCW 39.19, and Executive Order 13-01 (issued by the Governor of Washington on May 10, 2013).

The SVBE Program is an element of the Small and Veteran-Owned Business Enforceable Goals Program in accordance with the requirements of Chapter 468-17 WAC. Failure to comply with the requirements of this Section may result in sanctions as provided by the Contract.

1-07.11(11).2 Non-Discrimination

The Design-Builder shall not create barriers to open and fair opportunities for all businesses, including MWBEs and SVBEs, to participate in the Work on this Contract. This includes the opportunity to compete for subcontracts and agreements as sources of supplies, equipment, construction, or services.

The Design-Builder shall make enforceable SVBE participation and voluntary MWBE participation a part of all subcontracts and agreements entered into as a result of this Contract.

1-07.11(11).3 SVBE Contract Goals

The two SVBE Contract Goals are the amount of SBE and VOB participation that must be attained by the Design-Builder.

WSDOT has established the following two enforceable SVBE Contract Goals:

- Small Business Enterprise (SBE) 5 percent
- Veteran-Owned Business Enterprise (VOB) 3 percent

1-07.11(11).4 Minority and Women's Business Enterprise Voluntary Goals

Goals for voluntary MBE and WBE participation have been established as a percentage of Design-Builder's total Proposal Price.

WSDOT has established the following two voluntary goals:

- Minority Business Enterprise 10 percent
- Women Business Enterprise 6 percent

1-07.11(11).5 Small and Veteran-Owned Business Plan

The Design-Builder shall update the SVB Plan as described below.

1 The Design-Builder was required to submit a SVB Plan as part of a responsive Proposal.
2 The WSDOT Engineer will provide any comments about this proposed SVB Plan within
3 the 14 Calendar Days after Contract execution. These comments shall be address in the
4 first monthly SVB Plan update.

5 The Design-Builder shall update the SVB Plan by submitting monthly updates to the
6 WSDOT Engineer on the 10th of each month for Review and Comment. The monthly
7 updated SVB Plan, shall update the Design-Builder's proposed SVB Plan Section 3,
8 *Diverse Business Subcontractors*, Section 5, *Plan To Meet SVBE Contract Goals*, and
9 Section 6, *Plan For Reporting Goal Attainment*.

10 The SVBE Plan shall not include work that is speculative, such as work that might be
11 performed under the warranty requirements of Section 1-05.10 or 1-05.16. This is
12 without regard to whether the warranty work is expected to occur before or after Physical
13 Completion.

14 SVB Plan Section 3, *Diverse Business Subcontractors*, shall contain at a minimum:

15 1. The following information with each SVB Commitment:

- 16 • Identification of any new SVB Commitments along with The Design-Builder's
17 Written commitment to use the SBE or VOB.
- 18 • For each new SVB Commitment Written confirmation, using a fully completed
19 and signed WSDOT Form 226-017, *SVBE Written Confirmation Document*,
20 from each SBE or VOB, firm that it is participating in the contract in the kind
21 and amount of work provided in the SVB Plan.
- 22 • Names of each Committed SVBE
- 23 • Indication if the SVBE Subcontractors is an SBE or VOB
- 24 • A description of the work that each SBE or VOB, will perform
- 25 • Percentage each SVB or VOB Subcontractor will fulfil
- 26 • The dollar amount to date of the participation of each SBE or VOB
- 27 • Start date
- 28 • Invoiced to date by SBE or VOB
- 29 • Total payments made to date
- 30 • Percent of work complete
- 31 • SVBE participation credited toward the SVBE Contract Goals
- 32 • The SVBE Contract Goal the participation is credited toward.

33 SVB Plan Section 5, *Plan To Meet SVBE Contract Goals*, shall contain, at a minimum:

- 34 1. Corrective actions necessary to meet the established SVBE Contract Goals
- 35 2. Outreach done and future outreach strategies
- 36 3. Strategies to meet the SVBE Contract Goal(s)
- 37 4. The Design-Builders projections for meeting the SVBE Contract Goals
- 38 5. Other evidence of GFEs to meet the SVBE Contract Goal.

39 SVB Plan Section 6, *Plan For Reporting Goal Attainment*, shall contain, at a minimum.

1. Pending commitments or opportunities
2. Future potential commitments or opportunities

Once the Design-Builder has demonstrated SVBE Commitments have been made that will meet or exceed the SVBE Contract Goals the Design-Builder may request in writing concurrence from the WSDOT Engineer to submit SVB Plan updates quarterly. The Design-Builder shall receive Written concurrence from the WSDOT Engineer prior to changing from monthly to quarterly SVB Plan updates.

1-07.11(11).6 Minority and Women's Business Enterprise Participation Plan

The Design-Builder shall submit a MWBE Participation Plan within 60 Calendar Days of Notice to Proceed to the WSDOT Engineer for Review and Comment. The plan shall include the information identified in the MWBE Participation Plan Drafting Guidelines, for projects with Small and Veteran's Business Enforceable Goals found at www.wsdot.wa.gov/EqualOpportunity/PoliciesRegs/mwbe.htm. An incomplete plan will be returned for correction and resubmittal.

An updated MWBE Participation Plan will be submitted for Review and Comment monthly with the SVB Plan. The Design-Builder shall provide a 30 Calendar Day review period for WSDOT Review and Comment on all MWBE Participation Plan submittals.

The MWBE Participation Plan shall not include work that is speculative, such as work that might be performed under the warranty requirements of Section 1-05.10 or 1-05.16. This is without regard to whether the warranty work is expected to occur before or after Physical Completion.

With the WSDOT Engineer's approval the Design-Builder may combine the MWBE Participation Plan with the SVB Plan as one submittal once all comments have been resolved on the initial MWBE Participation Plan.

1-07.11(11).7 SVB Plan and MWBE Participation Plan

The Design-Builder shall be responsible for developing and implementing the SVB Plan and MWBE Participation Plan as noted above. The Design-Builder shall be responsible for fulfilling the requirements noted in the guidelines referenced herein. These duties shall include at a minimum the following:

- Administration of the SVB Plan and MWBE Participation Plan
- Oversight of SVBE Contract Goals and MWBE voluntary goals attainment efforts
- Outreach and networking with the SVBE and MWBE communities
- Developing strategies for including SVBE and MWBE firms in the Project
- Developing and assisting in the procurement processes to ensure SVBE and MWBE firms are provided opportunities for consideration during Subcontract procurement
- Hold taskforce meetings
- Submitting required plan updates and SVBE and MWBE payments in the application available at <https://wsdot.diversitycompliance.com>

- Other administrative duties as required.

1-07.11(11).8 Taskforce Meeting

The Design-Builder shall hold, at a minimum, monthly taskforce meetings led by the Design-Builder's Inclusion Manager. At a minimum, the taskforce meeting shall go over the following topics:

1. Status of attaining SVBE Contract Goals and MWBE voluntary goals
2. Projections for attaining SVBE Contract Goals and MWBE voluntary goals
3. Upcoming outreach plans
4. Results of previous outreach and any challenges
5. Any outstanding issues that need to be resolved including terminations and prompt pay

1-07.11(11).9 Commercially Useful Function (CUF)

The Design-Builder may only take credit for the payments made for work performed by a SVBE or MWBE that is performing a CUF. Payment must be commensurate with the work actually performed by the SVBE or MWBE. A SVBE or MWBE that does not perform all of its responsibilities on a Subcontract has not performed a CUF and their work cannot be counted toward SVBE or MWBE goals.

To determine whether an SVBE or MWBE is performing a CUF, evaluate the scope of work, whether the work was completed in accordance with industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

When the SVBE or MWBE firm participates as an extra participant in a transaction, through which funds are passed in order to give the appearance of participation (pass through), the participation is not considered a CUF and would not be counted toward any commitment or Contract goal.

Leasing of equipment from a leasing company is allowed. However, leasing/purchasing equipment from the Design-Builder is not allowed. Lease agreements shall be readily available for review by the WSDOT Engineer.

In order for a SVBE or MWBE traffic control company to be considered to be performing a CUF, the firm must be in control of its work inclusive of supervision. The firm shall employ a Traffic Control Supervisor who is directly involved in the supervision of the traffic control employees and services.

1-07.11(11).10 Crediting Participation

Participation will be evaluated to determine if the Design-Builder has attained the SVBE Commitments made, the SVBE Contract Goals and MWBE voluntary goals at completion of the project.

1-07.11(11).10.1 SVBE Commitment

Payments to each SBE or VOB firm shall demonstrate that the Commitment amounts have been met as shown on the SVB Plan.

Participation is credited to the SVBE Commitments once the following conditions have been met:

- SVBE Commitment has been made and shown on the SVB Plan.
- Written Confirmation of the SVB Commitment using a fully completed and signed WSDOT Form 226-017, *SVBE Written Confirmation Document*, has been included in the SVB Plan.
- Upon payment to the SBE or VOB. If the DB makes a payment to a SVBE between the last monthly SVB Plan update and the following monthly SVB Plan update that shows the DB's SVB Commitment with Written confirmation of the SVB Commitment, participation will count. Participation will not count if the DB fails to make a SVB Commitment with Written confirmation in the SVB Plan.

1-07.11(11).10.2 SVBE and MWBE goals

Amounts paid to an SVBE will only be credited to one of the SVBE Contract Goals as determined by the Design-Builder when an SVBE Commitment is made.

Amounts paid to a MWBE will be credited toward each goal in which the MWBE is eligible. This may result in an MWBE's participation being credited toward more than one goal. If the Design-Builder is a MWBE, their Work will be credited to the voluntary MWBE goals in which they are eligible.

Amounts paid to an SVBE will be credited toward each voluntary MWBE goal in which the SVBE is eligible. This may result in SVBE participation being credited toward more than one MWBE voluntary goal. If the Design-builder is an SVBE their Work will be credited to the MWBE voluntary goals in which they are eligible

Participation is credited to the SVBE or MWBE goal upon payment to the SVBE or MWBE including retainage. Prompt payment to all Subcontractors shall be in accordance with Section 1-08.1. Prompt payment requirements apply to progress payments as well as return of retainage.

1-07.11(11).10.3 General

Firms proposed as counting toward a SVBE or MWBE goal must be certified and be performing a CUF during the execution of the Work. When a SVBE or MWBE firm loses its certification, the participation of that SVBE or MWBE firm shall continue to count as SVBE or MWBE participation as long as a SVBE Commitment has been made and a Subcontract with the SVBE or MWBE firm was executed prior to the date the SVBE or MWBE firm lost its certification.

1-07.11(11).10.4 Design-Builder Credit for Participation (SVBE or MWBE)

Only take credit for that portion of the Work performed that the SVBE or MWBE Design-Builder did not sublet to other firms.

1-07.11(11).10.5 Subcontractor (SVBE or MWBE) Credit for Participation

Only take credit for that portion of the total dollar value of the work that is equal to the distinct, clearly defined portion of the Work that the SVBE or MWBE performs with its own forces. The value of work performed by the SVBE or MWBE includes the cost of supplies and materials purchased by the SVBE or MWBE and equipment leased by the SVBE or MWBE, for its work on the Contract. Supplies, materials or equipment obtained by an SVBE or MWBE that are not utilized or incorporated in the Contract work by the SVBE or MWBE will not be eligible for SVBE or MWBE credit.

The supplies, materials, and equipment purchased or leased from the Design-Builder or its affiliate, including any Design-Builder resources available to SVBE or MWBE subcontractors at no cost, shall not be credited.

SVBE or MWBE credit will not be given in instances where the equipment lease includes the operator. The SVBE or MWBE is expected to operate the equipment used in the performance of its work under the contract with its own forces. Situations where equipment is leased and used by the SVBE or MWBE, but payment is deducted from the payment to the SVBE or MWBE is not allowed.

1-07.11(11).10.6 Lower Tier Subcontractors Credit for Participation

When the Design-Builder, Subcontractor or lower tier subcontractor are part of a SVB Plan or MWBE Participation Plan, the following apply:

1. If a SVBE subcontractor or SVBE lower tier subcontractor subcontracts a portion of the Work of its contract to another firm, the value of the subcontracted Work may be counted toward the SVBE Commitment only if the firm is certified in the specific SVBE Commitment.
2. If a SVBE or MWBE Subcontractor or lower tier subcontractor subcontracts a portion of the Work of its contract to another firm, the value of the subcontracted Work may be counted toward the MWBE voluntary goals only if the Subcontractor or lower-tier subcontractor is also a SVBE or MWBE.
3. Work subcontracted to a non- SVBE or MWBE does not count towards the SVBE Commitment, the SVBE Contract Goals, or MWBE voluntary goals.
4. For SVBE and MWBE Subcontractor and lower tier subcontractors, a valid subcontract must fully describe the Scope of Work committed to be performed by the firm. The subcontract shall incorporate requirements of the Contract. Subcontracts of all tiers, including lease agreements, shall be made available upon request.

1-07.11(11).10.7 Broker Credit for Participation

When a SVBE or MWBE participates as a broker (i.e., arranging a transaction or service but does not provide a work product or enhancement), only the dollar value of the

reasonable fee may count toward the SVBE Commitment towards the SVBE Contract Goals or voluntary MWBE goals. For purposes of SVBE or MWBE Brokers, a reasonable fee shall not exceed 5% of the total cost of the goods or services brokered.

1-07.11(11).10.8 Manufacturer and Supplier (SVBE or MWBE) Credit for Participation

If materials or supplies are obtained from a SVBE or MWBE Manufacturer, one hundred percent (100%) of the cost of materials or supplies can count toward the SVBE Commitment, towards the SVBE Contract Goals, or voluntary MWBE goals.

One hundred percent (100%) of the cost of materials or supplies purchased from a SVBE or MWBE Supplier may be credited toward meeting the SVBE Commitment towards the SVBE Contract Goals or voluntary MWBE goals. If the role of the SVBE or MWBE Supplier is determined to be that of a pass-through, then no credit will be given for its services. If the role of the SVBE or MWBE Supplier is determined to be that of a Broker, then credit shall be limited to the reasonable fee it receives for its services.

1-07.11(11).10.9 Service Provider Credit for Participation

When a SVBE or MWBE participates as a service provider or consultant and provides a bona fide service such as professional, technical, consultant, or managerial services, 100 percent of the total cost counts toward the SVBE Commitment towards the SVBE Contract Goals or voluntary MWBE goals if the firm performs a CUF.

1-07.11(11).10.10 Trucking Credit for Participation

SVBE or MWBE trucking firm participation may only be credited as participation for the value of the hauling services, not for the materials being hauled unless the trucking firm is also certified as a supplier. In situations where the firm's work is priced per ton, the value of the hauling service must be calculated separately from the value of the materials in order to determine credit for hauling.

The SVBE or MWBE trucking firm must own and operate at least one licensed, insured and operational truck on the contract. The truck must be of the type that is necessary to perform the hauling duties required under the contract. The firm receives credit for the value of the transportation services it provides on the Contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs.

The SVBE or MWBE firm may lease additional trucks from another SVBE or MWBE firm. The Work that a SVBE or MWBE trucking firm performs with trucks it leases from other certified trucking firms qualify for 100% credit.

The SVBE or MWBE trucking firm may lease trucks from a non- SVBE or MWBE truck leasing company but can only receive credit as SVBE or MWBE participation if the SVBE or MWBE firm uses its own employees as drivers.

SVBE or MWBE credit for a truck broker is limited to the fee/commission that the firm receives for arranging transportation services.

The trucking Work subcontracted to any non- SVBE or MWBE trucking firm will not receive credit for Work done on the project.

1-07.11(11).10.11 Removal from SVBE or MWBE Programs

When a SVBE or MWBE is “removed” from the program during the course of the Contract, the participation of that SVBE or MWBE shall continue to count towards the SVBE Commitment, towards the SVBE Contract Goals or voluntary MWBE goals as long as the subcontract with the SVBE or MWBE was executed prior to the removal notice.

1-07.11(11).11 Warranty Work Performed After Physical Completion

Payments to SVBE or MWBE firms, for work that otherwise meets the requirements for being counted towards participation, that is for warranty work which occurs after the date of Physical Completion will not count as SVBE or MWBE participation and shall not be reported.

1-07.11(11).12 Reporting SVBE and MWBE Participation for Credit

The Contractor and any subcontractor, supplier, service provider, broker, or manufacturer of any tier that utilize SVBE or MWBE firms to perform Work on the project, shall maintain appropriate records that will enable the WSDOT Engineer to verify SVBE and MWBE participation throughout the life of the project.

The Design-Builder shall report payments to all SVBE and MWBE firms that were used as Subcontractors, lower tier Subcontractors, manufacturers, suppliers, brokers or service providers on the Contract each month between execution of the Contract and Physical Completion of the Contract using the application available at <https://wsdot.diversitycompliance.com>. The monthly report is due 20 Calendar Days following the end of the month whether payments were made or Work occurred.

The monthly report shall include payments to all SVBE and MWBE firms regardless of their listing on the SVB Plan or MWBE Participation Plan. If the Design-Builder is a SVBE or MWBE the amounts paid by WSDOT for Work performed by the certified Design-Builder shall also be reported.

After execution of the Contract, the Design-Builder shall send an email to CRP@wsdot.wa.gov containing the following information: the first and last name, email address, title, and phone number of the Person that will be submitting the above reports for their company. The email shall include the WSDOT Contract number they will be reporting on. After receipt of this information by WSDOT, the Design-Builder will receive an email providing information about their assignment. Training and instructions are available in the application.

1-07.11(11).13 Changes in SVBE Commitment

The Contractor shall utilize the SVBE Commitment firms to perform all of the Work and supply all of the materials for which each is committed unless otherwise approved in writing by the WSDOT Engineer. Any reduction in the Work committed to a SVBE Commitment firm shall be considered a termination and requires the prior Written consent of the WSDOT Engineer. In addition, performance of Work previously designated for a SVBE Commitment firm by another firm or by the Design-Builders own forces, shall also be considered a termination, and requires the prior Written consent of

the WSDOT Engineer. Termination requests shall be submitted in writing to the WSDOT Engineer, who will either grant or deny such request in writing. No termination shall become effective unless and until the WSDOT Engineer provides Written approval.

1-07.11(11).14 Approval of SVBE Termination

Termination of a SVBE Commitment firm is only allowed in whole or in part for good cause and with Written approval of the WSDOT Engineer. If a SVBE Commitment firm is terminated without the Written approval of the WSDOT Engineer, the Design-Builder shall not be entitled to payment for Work or material committed to, but not performed or supplied by, the SVBE Commitment firm. In addition, the Design-Builder may be subject to the remedies set forth elsewhere in this Section.

Prior to requesting approval to terminate a SVBE Commitment firm, notice shall be given in writing to the SVBE Commitment firm with a copy to the WSDOT Engineer of an intent to terminate SVBE Commitment Work and shall cite the cause for doing so, with supporting documentation. The SVBE Commitment firm shall have five (5) days to respond to the notice. The SVBE Commitment firm's response shall either support the termination or advise the WSDOT Engineer and the terminating firm of the reasons it objects to the termination.

1-07.11(11).15 Cause for Termination:

Once the Design-Builder has made a SVBE Commitment there must be good cause to terminate a SVBE Commitment firm. Good cause includes situations where the SVBE Commitment firm is unable or unwilling to perform the work of its subcontract. Good cause may exist if:

1. The SVBE Commitment firm fails or refuses to execute a Written contract.
2. The SVBE Commitment firm fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
3. The SVBE Commitment firm fails or refuses to meet reasonable nondiscriminatory bond requirements, if bonding is required.
4. The SVBE Commitment firm becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. The SVBE Commitment firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal law or applicable State law.
6. The SVBE Commitment firm is ineligible to receive SVBE credit for the type of work involved.
7. The SVBE Commitment firm voluntarily withdraws from the project and provides Written notice of its withdrawal.
8. The SVBE Commitment firm's work is deemed unsatisfactory by the Design-Builder and terminating firm with WSDOT Engineer concurrence and not in compliance with the Contract.

9. The SVBE Commitment firm's owner dies or becomes disabled with the result that the SVBE Commitment firm is unable to complete its work on the Contract.

1-07.11(11).16 Good Cause for Termination Does Not Exist If:

- a. The terminating firm seeks to terminate a SVBE Commitment firm so that the terminating firm can self-perform the work.
- b. The terminating firm seeks to terminate a SVBE Commitment firm so the terminating firm can substitute another SVBE firm or non- SVBE firm after a SVBE Commitment has been made.
- c. The failure or refusal of the SVBE Commitment firm to perform its work on the subcontract results from the bad faith or discriminatory action of the terminating firm (e.g., the failure of the terminating firm to make timely payments or the unnecessary placing of obstacles in the path of the SVBE Commitment firm's Work).

1-07.11(11).17 Owner Initiated Changes

In instances where the WSDOT Engineer makes changes that result in reductions to Work that was part of a SVBE Commitment, the Design-Builder may be directed to substitute for the Work. Changes will be addressed in accordance with Section 1-04.4.

1-07.11(11).18 Design-Builder Initiated Changes

The Design-Builder cannot change the scope or reduce the amount of Work as part of a SVBE Commitment without good cause. Reducing a SVBE Commitment is viewed as a partial termination, and therefore subject to the termination procedures above.

1-07.11(11).19 Good Faith Effort (SVBE) (GFE) Documentation

If the Design-Builder fails to attain the enforceable SVBE Contract Goals, a Good Faith Effort shall be submitted for approval. The efforts employed by the Design-Builder should be commercially reasonable and demonstrate they were actively and aggressively trying to fulfill the established SVBE Contract Goals. Mere pro forma efforts are not commensurate with a GFE.

The following is a list of types of actions, which would be considered as part of the Design-Builder's GFE to achieve SVBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

1. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or Written notices) the interest of all certified SVBE firms who have the capability to perform the Work of the Contract. The Design-Builder must solicit this interest within sufficient time to allow the SVBE to respond to the solicitation. The Bidder must determine with certainty if the SVBE firms are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the Work to be performed by SVBEs in order to increase the likelihood that the SVBE Contract Goals will be achieved. This includes, where appropriate, breaking out Contract Work items into economically feasible units to

- 1 facilitate SVBE participation, even when the Design-Builder might otherwise prefer
2 to perform these Work items with its own forces.
- 3 3. Providing interested SVBEs with adequate information about the RFC Plans and,
4 Specifications, and requirements of the Contract in a timely manner to assist them
5 in responding to a solicitation.
- 6 a. Negotiating in good faith with interested SVBEs. It is the Design-Builder's
7 responsibility to make a portion of the Work available to SVBEs and to select
8 those portions of the Work or material needs consistent with the available
9 SVBEs, so as to facilitate SVBE participation. Evidence of such negotiation
10 includes the names, addresses, and telephone numbers of SVBEs that were
11 considered; a description of the information provided regarding the Work
12 selected for subcontracting; and evidence as to why additional agreements could
13 not be reached for SVBE firms to perform the Work.
- 14 b. A Design-Builder using good business judgment would consider a number of
15 factors in negotiating with Subcontractors, including SVBE Subcontractors, and
16 would take a firm's price and capabilities as well as the SVBE Contract Goals
17 into consideration. However, the fact that there may be some additional costs
18 involved in finding and using SVBEs is not in itself sufficient reason for a
19 Design-Builder's failure to meet the SVBE Contract Goals, as long as such
20 costs are reasonable. Also, the ability or desire of a Design-Builder to perform
21 the Work of a Contract with its own organization does not relieve the
22 Design-Builder of the responsibility to make a GFE. Design-Builder are not,
23 however, required to accept higher quotes from SVBE firms if the price
24 difference is excessive or unreasonable.
- 25 4. Not rejecting SVBE firms as being unqualified without sound reasons based on a
26 thorough investigation of their capabilities. The SVBE firms standing within its
27 industry, membership in specific groups, organizations, or associations and political
28 or social affiliations (for example union vs. non-union employee status) are not
29 legitimate causes for the rejection or non-solicitation of bids in the Design-Builder's
30 efforts to meet the SVBE Contract Goals.
- 31 5. Making efforts to assist interested SVBE firms in obtaining bonding, lines of credit,
32 or insurance as required by WSDOT or Bidder.
- 33 6. Making efforts to assist interested SVBE firms in obtaining necessary equipment,
34 supplies, materials, or related assistance or services.
- 35 7. Effectively using the services of available organizations as allowed on a
36 case-by-case basis to provide assistance in the recruitment and placement of SVBE
37 firms.
- 38 8. Ensuring SVBE participation have been included and enforced as part of all
39 subcontracts and agreements entered into by the Design-Builder, as a result of this
40 Contract
- 41 9. Documentation of GFE must include copies of each SVBE and non- SVBE
42 Subcontractor quotes submitted to the Bidder when a non- SVBE Subcontractor is
43 selected over a SVBE for Work on the Contract.

1-07.11(11).20 Administrative Reconsideration of GFE Documentation

A Design-Builder has the right to request reconsideration if the GFE documentation submitted was determined to be inadequate.

1. The Design-Builder must request reconsideration within seven (7) calendar days of notification of GFE documentation being deemed inadequate.
2. The reconsideration decision on the adequacy of the Design-Builders GFE documentation will be made by an official who did not take part in the original determination.
3. Only original GFE documentation submitted will be considered. The Design-Builder shall not introduce new documentation at the reconsideration hearing.
4. The Design-Builder shall have the opportunity to meet in person with the official for the purpose of setting forth the Design-Builder's position as to why the GFE documentation demonstrates a sufficient effort.
5. The reconsideration official will provide the Design-Builder with a Written decision on reconsideration within seven (7) calendar days of the hearing explaining the basis for their finding.

1-07.11(11).21 Remedies for Failure to Meet SVBE Requirements

Upon completion of a project, a Prime Contractor Performance Report (DBPR) will document the Design-Builders SVBE Contract Goal attainment or GFE. Failure to meet the SVBE Contract Goals or provide an acceptable GFE may lead to the following:

1. Suspension of a Design-Builders prequalification; and/or
2. Withholding from the Design-Builder of an amount up to the value of the un-met SBE or VOB Contract Goal

Un-met SBE Contract Goal calculation:

[[Total Proposal Price + executed change orders] X SBE Contract Goal] –Final amount credited to SBE participation. This calculation excludes tax.

Un-met VOB Contract Goal calculation:

[[Total Proposal Price + executed change orders] X [VOB Contract Goal (%)] –Final amount credited to VOB participation. This calculation excludes tax.

Failure to utilize the SVBE Commitment firms listed in the SVB Plan for the Work for which they were committed, unless termination was approved in writing by the WSDOT Engineer, will be reflected on the Prime Contractor Performance Report.

1-07.12 Vacant

1-07.13 The Design-Builder's Responsibility for Work

1-07.13(1) General

All Work and material for the Contract, including 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 because 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 QMP.

If WSDOT does not issue comments or propose changes within the time periods set forth in the Contract, 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.

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, including pedestrian using the Platform Handover areas, or from the action of the elements or from other causes, 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 WSDOT, of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection Work, lighting, and traffic control and access facilities.
2. A bridge or other Structure of major importance
3. A complete unit of a traffic control signal system or of a highway lighting system
4. A complete unit of permanent highway protection Work
5. A building which is functionally complete and open to the public
6. Platform Handover areas to be turned over to Sound Transit. After the Platform Handover has occurred, the Design-Builder and their responsible Subcontractors shall retain the obligation to perform all required maintenance of the elevators and associated operating systems. See the Vertical Construction Specifications (Appendix S) for further details on Platform Handover and Design-Builder responsibilities.

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.
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 1-09.4.

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, claims 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 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, Sound Transit, King County, City of Kirkland, City of Bothell, and their respective successors and assigns and their respective shareholders, officers, directors, agents, and employees, (collectively referred to in this Section as the "Indemnified Parties") from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of Persons or damage to or loss of property (including damage to Utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from:

- (a) The breach of the Contract (or any representation or Warranty herein) by the Design-Builder, its employees, agents, officers, 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 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).
- (b) The failure or alleged failure by the Design-Builder or its employees, agents, officers, 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.
- (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

1 shall not apply to any infringement resulting from WSDOT's failure to comply
2 with specific Written instructions regarding use provided to WSDOT by the
3 Design-Builder.

- 4 (d) The alleged negligent act or omission or willful misconduct of the
5 Design-Builder, its employees, agents, officers, Subcontractors, or any other
6 Persons performing any of the Work for whom the Design-Builder may be
7 contractually or legally responsible.
- 8 (e) Any and all claims by any governmental or taxing authority claiming taxes
9 based on gross receipts, purchases, or sales, the use of any property or income
10 of the Design-Builder or any of its Subcontractors or any of their respective
11 agents, officers, or employees with respect to any payment for the Work made
12 to or earned by the Design-Builder or any of its Subcontractors or any of their
13 respective agents, officers, or employees under the Contract Documents.
- 14 (f) Any and all stop notices, Liens, or both, filed in connection with the Work,
15 including all expenses and attorneys' fees incurred in discharging any stop
16 notice or Lien, provided that WSDOT is not in default in payments owing to the
17 Design-Builder with respect to such Work.
- 18 (g) Any release or threatened release of a Hazardous Materials:
- 19 (i) Attributable to the negligence, willful misconduct, or breach of contract by
20 the Design-Builder or its employees, agents, officers, Subcontractors, or any
21 other Persons for whom the Design-Builder may be contractually or legally
22 responsible.
- 23 (ii) Which was brought onto the Site by the Design-Builder or its employees,
24 agents, officers, Subcontractors, or any other Persons for whom the
25 Design-Builder may be contractually or legally responsible.
- 26 (h) The claim or assertion by any contractor of inconvenience, disruption, delay, or
27 loss caused by interference by the Design-Builder (or its employees, agents,
28 officers, Subcontractors, or any other Persons for whom the Design-Builder
29 may be contractually or legally responsible) with or hindering the progress or
30 completion of Work being performed by other contractors as described in
31 Section 1-05.14, or failure of the Design-Builder or its employees, agents,
32 officers, Subcontractors, or any other Persons for whom the Design-Builder
33 may be contractually or legally responsible to cooperate reasonably with other
34 contractors in accordance therewith.

35 Within 60 Calendar Days following the date a claim is sent by WSDOT to the
36 Design-Builder, the Design-Builder shall notify both the Claimant, as specified on the
37 Claimant's contact information, and WSDOT by responding to the tendering email.

- 38 (a) Whether the claim is allowed or is denied in whole or in part, and, if so, the
39 specific reasons for the denial of the individual claim, and if not denied in full,
40 when payment has been or will be made to the claimant(s) for the portion of the
41 claim that is allowed.
- 42 (b) If resolution negotiations are continuing. In this event, status updates will be
43 reported no longer than every 60 Calendar Days until the claim is resolved or a
44 lawsuit is filed.

1 If the Design-Builder fails to provide the above notification within 60 Calendar Days,
2 then the Design-Builder shall yield to WSDOT sole and exclusive discretion to allow all
3 or part of the claim on behalf of the Design-Builder, and the Design-Builder shall be
4 deemed to have WAIVED any and all defenses, objections, or other avoidances to
5 WSDOT's allowance of the claim, or the amount allowed by WSDOT, under common
6 law, constitution, statute, or the Contract and these *General Provisions*. If all or part of a
7 claim is allowed, WSDOT will notify the Design-Builder that it has allowed all or part of
8 the claim and make appropriate payments to the claimant(s) with State funds.

9 Payments of State funds by WSDOT to claimant(s) under this Section will be made on
10 behalf of the Design-Builder and at the expense of the Design-Builder, and the
11 Design-Builder shall be unconditionally obligated to reimburse WSDOT for the "total
12 reimbursement amount", which is the sum of the amount paid to the claimant(s), plus all
13 costs incurred by WSDOT in evaluating the circumstances surrounding the claim, the
14 allowance of the claim, the amount due to the claimant, and all other direct costs for
15 WSDOT's administration and payment of the claim on the Design-Builder's behalf.
16 WSDOT will be authorized to withhold the total reimbursement amount from amounts
17 due the Design-Builder, or, if no further payments are to be made to the Design-Builder
18 under the Contract, the Design-Builder shall directly reimburse WSDOT for the amounts
19 paid within 30 Calendar Days of the date notice that the claim was allowed was sent to
20 the Design-Builder. In the event reimbursement from the Design-Builder is not received
21 by WSDOT within 30 Calendar Days, interest shall accrue on the total reimbursement
22 amount owing at the rate of 12 percent per annum calculated at a daily rate from the date
23 the Design-Builder was notified that the claim was allowed. WSDOT's costs to enforce
24 recovery of these amounts are additive to the amounts owing.

25 **1-07.14(1).1 Design Defects**

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

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

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

1-07.14(1).3 Claims by Employees

In claims by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a Subcontractor under the Washington State Industrial Insurance Act, Title 51 RCW, workers' compensation, disability benefit, or any other employee benefits laws. In addition, for purposes of indemnification only, the Design-Builder specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. The Design-Builder's waiver of immunity by the provisions of this Section does not extend to claims by the Design-Builder's employees directly against the Design-Builder.

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

The Design-Builder hereby acknowledges and agrees that it is the Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Design-Builder's performance of such obligation. The Design-Builder further agrees that any review, approval, or both, by WSDOT and 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 the Design-Builder's responsibility for Hazardous Materials pursuant to Section 1-07.14(1) item (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, at a minimum, 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) item (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.

1-07.14(1).6 Indemnification for Regrade

The following indemnification applies to only those fish passages which are required to be designed for Regrade. See 2.30, *Water Crossings*, for the definition and requirements for Regrade.

1. WSDOT agrees to defend, indemnify, and hold harmless the Design-Builder, its officers, employees, and agents, from and against any and all claims, demands, losses, and/or liabilities or by third parties for bodily injury or property damage arising from, resulting from, or connected with, the Project, which may occur as a result of both (i) the contractually required Regrading of certain fish passages identified in Section 2.30, *Water Crossings*, and (ii) the effects of Regrading which occur outside of the existing State right of way. Such indemnification shall be provided to the fullest extent permitted by law and subject to the limitations provided below.
2. WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set forth in item 1 above, shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Design-Builder, including its officers, employees, and agents. Further, WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set out in item 1 above, for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) WSDOT, including its officers, employees, and agents, and (b) Design-Builder, its employees, officers and agents, shall apply only to the extent of negligence of the WSDOT, its officers, agents, or employees.
3. The defense and indemnity obligations identified in items 1 and 2 above have no effect on, and makes no changes to, the contract regarding the Parties' liability for damages arising out of bodily injury to persons or damage to property occurring within the State right of way.
4. WSDOT agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of WSDOT's officers, officials, employees or agents. For this purpose only, WSDOT hereby waives, with respect to Design-Builder only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.

1-07.14(1).7 Indemnification For Flooding

The following indemnification applies to each fish passage that is required to be made fish passable on this Contract.

1. WSDOT agrees to defend, indemnify, and hold harmless the Design-Builder, its officers, employees, and agents, from and against any and all claims, demands, losses, and/or liabilities or by third parties for bodily injury or property damage arising from, resulting from, or connected with, the Project, which may occur as a result of (i) the contractual requirement to increase the flow capacity of all fish passages identified in Section 2.30, *Water Crossings*, and (ii) the effects of flooding, both upstream and downstream of each new fish passage structure, which occur outside of the existing State right of way. Such indemnification shall be provided to the fullest extent permitted by law and subject to the limitations provided below.
2. WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set forth in item 1 above, shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Design-Builder, including its officers, employees, and agents. Further, WSDOT's duty to defend and indemnify Design-Builder, including its officers, employees, and agents, as set out in item 1 above, for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) WSDOT, including its officers, employees, and agents, and (b) Design-Builder, its employees, officers and agents, shall apply only to the extent of negligence of the WSDOT, its officers, agents, or employees.
3. The defense and indemnity obligations identified in items 1 and 2 above have no effect on, and makes no changes to, the contract regarding the Parties' liability for damages arising out of bodily injury to persons or damage to property occurring within the State right of way.
4. WSDOT agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of WSDOT's officers, officials, employees or agents. For this purpose only, WSDOT hereby waives, with respect to Design-Builder only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.

1-07.15 Vacant

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 interference with the property's use. If the Design-Builder refuses or does not respond immediately, the WSDOT Engineer may have such property restored by other means and subtract the cost from money that will be or is due the Design-Builder.

The Design-Builder may access the Work Site from adjacent properties. The Design-Builder shall not use or allow others to use this access to merge with public traffic. During non-working hours, the Design-Builder shall provide a physical barrier that is either locked or physically unable to be moved without equipment. The access shall not go through existing Structures. The access may go through fencing. The Design-Builder shall control or prevent animals from entering the Work Site to the same degree that they were controlled before the fence was removed. The Design-Builder shall prevent Persons not involved in the Contract Work from entering the Work Site through the access or through trails and pathways intersected by the access. If the Contract Documents require that existing trails or pathways be maintained during construction, the Design-Builder will ensure 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 easements associated with the access. The Design-Builder shall replace any fence, repair any damage, and restore the Site to its original state when the access is no longer needed. The Design-Builder shall bear all costs associated with this Work Site access.

1-07.16(2) Vegetation Protection and Restoration

Where shown in the Conceptual Plans, as indicated elsewhere in the Contract Documents, and where further designated in the Design-Builders' Proposal and RFC Documents, existing wetlands and other Sensitive Areas 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, individual flagging, or both.

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

1 pruned with a sharp saw or pruning shear. Damaged, torn, or ripped bark shall be
2 removed as directed by the WSDOT Engineer.

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

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

14 **1-07.16(3) Fences, Mailboxes, Incidentals**

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

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

24 **1-07.16(4) Archaeological and Historical Objects**

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

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

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

1-07.16(5) Wells

1-07.16(5).1 Protection of Wells

The Design-Builder shall save and protect existing wells throughout the life of the Contract at the locations identified in Section 2.6, *Geotechnical*. For the definition of wells types see WAC 173-160-111 and WAC 173-160-410.

The existing wells shall not be disturbed during any construction activity.

1-07.16(5).2 Discovery of Unidentified Wells

If unidentified wells are encountered by the Design-Builder, they shall not be further disturbed. The Design-Builder shall ensure any unidentified wells encountered are protected from all construction activities including spills. The Design-Builder shall follow the procedures set forth in Section 1-04.7. The WSDOT Engineer will determine if the well will be protected in accordance with Section 1-07.1 and 1-07.16 or the well will be decommissioned as part of the Work.

1-07.17 Utilities Relocations

This Section 1-07.17, and Technical Requirements Section 2.10, *Utilities and Relocation Agreements*, address:

- (a) The Prior Relocations (anticipated to be completed by the Utility Owners prior to issuance of the Notice to Proceed, except as may be otherwise specified in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*,
- (b) All other work remaining to be performed (by either the Design-Builder or the Utility Owner) with respect to existing Utilities impacted by the Project; and
- (c) How the risks associated with Utility Relocations are allocated between WSDOT and the Design-Builder. Utilities impacted by the Project are categorized based on whether the Utility Owner has legal responsibility for the costs of Relocation ("Type #1 Utilities"), or does not have legal responsibility for the costs of Relocation ("Type #2 Utilities"), or disputes legal responsibility for the costs of Relocation ("Type #3 Utilities"). Cost responsibility for Type #3 Utilities shall be allocated by the Design-Builder as described in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*.

WSDOT has performed investigations in order to identify and locate existing Utilities within the Project's Right of Way or otherwise potentially impacted by the Project. Utilities identified by WSDOT are described in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*. Utilities are identified as Prior Relocations, Protection in Place or Relocation, or both by Design-Builder. Additional Relocation Work may become necessary, if the Design-Builder finds that any impacted Utilities were incorrectly identified or located, or both (or not identified at all) by WSDOT's investigations. The circumstances under which the Design-Builder may be entitled to an increase in the Contract Price or extension of the Contract Time on account of such additional Relocation Work are described in Section 1-07.17(9).

As necessary for any Type #1 Utilities requiring Relocation Work, unless otherwise noted in the Technical Requirements, WSDOT shall assign certain rights (including the right to require Relocation at the Utility Owner's expense) and delegate certain obligations under the applicable franchises or permits to the Design-BUILDER (see Assignment/Delegation of Utility Permit/Franchise Rights and Obligations, Contract Appendix U), and the Design-BUILDER shall seek reimbursement of any costs it incurs for designing or constructing, or both such a Relocation directly from the Utility Owner. By its execution of the Contract, the Design-BUILDER shall be deemed to have certified that the Contract Price does not include any amounts covering Relocation Costs to be incurred or paid for by the Design-BUILDER for any Type #1 Utility. See Form L, *Utility Certification*.

With respect to Type #2 Utilities, except as otherwise specified in this Section 1-07.17 or in Section 2.10, *Utilities and Relocation Agreements*:

- (a) All Relocation Costs shall be the Design-BUILDER's responsibility, and
- (b) The Design-BUILDER shall reimburse such Utility Owners for their Relocation Costs. The Contract Price shall include this reimbursement obligation as well as any Relocation Costs incurred by the Design-BUILDER with respect to Type #2 Utilities.

1-07.17(1) Design-BUILDER's Responsibility for Utility Work

The Design-BUILDER shall be responsible for all "Utility Work" as described herein and Section 2.10, *Utilities and Relocation Agreements*.

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

1-07.17(1).1 General Scope

The Design-BUILDER is responsible for performing, and the scope of the Utility Work includes, all Relocation Work except for (a) any efforts and costs which are identified as the responsibility of the Utility Owners or of WSDOT or are otherwise specifically excluded from the Utility Work in Section 1-07.17 or in Section 2.10, *Utilities and Relocation Agreements*, of the Technical Requirements, and (b) those efforts and costs which are allocated to the Utility Owners in the Utility Agreements, Intergovernmental Agreements or in the Utility MOUs, if any.

Without limiting the generality of the foregoing, the Design-BUILDER is responsible for performing, and the scope of the Utility Work includes:

- (a) All investigative work necessary to confirm the exact location, size, and type of each Utility (including Prior Relocations) located within the Project Right of Way or otherwise potentially impacted by the Project
- (b) The Incidental Utility Work

- (c) Reimbursement of Utility Owners for their Relocation Costs for Type #2 Utilities
- (d) All tasks, obligations and duties, and all costs, if any, that are the responsibility of the Design-Builder pursuant to any Utility Agreements (unless otherwise specified in the Contract Documents)
- (e) Any Betterments added to the Utility Work pursuant to Section 1-07.17(6)
- (f) Any other efforts and costs by the Design-Builder that are necessary in order to accomplish the Work described in Section 1-07.17 or in Section 2.10, *Utilities and Relocation Agreements*, of the Technical Requirements, or both

The Utility Work does not include acquisition of Utility Easements, but it does include the obligation to reimburse Utility Owners for costs of acquiring Utility Easements, if necessary for the Relocation of any Type #2 Utilities hereunder.

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

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

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

1-07.17(1).2 Prior Relocations

If any Prior Relocation is not completed prior to issuance of the Notice to Proceed, then the Utility Work includes such coordination between the Design-Builder and the affected Utility Owner as may be necessary for orderly completion of such Prior Relocation, including assisting in the determination of an appropriate location for installation of the Relocated Utility (if not yet determined).

1-07.17(1).3 Incidental Utility Work

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

If a Utility Owner accepts the responsibility to perform any Incidental Utility Work, the Design-Builder shall confirm that the Utility Owner in fact timely performs such Incidental Utility Work, or the Design-Builder shall perform such Incidental Utility Work itself in accordance with the Contract Schedule.

1-07.17(1).4 Design-Builder's Responsibility to Perform

The Design-Builder shall perform all Utility Work without regard to any of the following: (a) whether an impacted Utility was indicated in the Utility Information, or if indicated, whether the Utility was accurately indicated therein; (b) the feasibility, estimated duration of work time, cost or any other characteristic of the proposed disposition (e.g., Relocation, Protection in Place) for the Utility (if any) stated in the Utility Information; (c) whether the Design-Builder is entitled to additional compensation or an extension of the Contract Time with respect to such Work; and (d) whether the Utility Work is the Utility Owner's Cost Responsibility.

1-07.17(2) Utility Agreements

Utility Agreements for the Project may include, at a minimum (a) Memorandum of Understanding (MOU) between WSDOT and the Utility Owners that are included in the Contract, (b) the Relocation Agreements that will be entered into by the Design-Builder and the Utility Owners, (c) the Intergovernmental Agreements, and (d) the Prior Relocation Agreements.

1-07.17(2).1 Memoranda of Understanding

The Design-Builder acknowledges that the purpose of the Utility MOUs is to promote cooperation by the Utility Owners with the Project. Nevertheless, the Design-Builder is required to comply with all Utility MOUs included in the Contract, unless otherwise directed by WSDOT. In the event of any conflict between the terms of any Utility MOU and the terms of the Contract Documents, the Contract Documents shall prevail as between WSDOT and the Design-Builder. WSDOT shall have no obligation to enter into a Utility MOU with any Utility Owner.

1-07.17(2).2 Relocation Agreements

Each Relocation performed pursuant to this Section 1-07.17 (not subject to a Prior Relocation Agreement or an Intergovernmental Agreement) shall be addressed in a Relocation Agreement between the Design-Builder and the Utility Owner. A single

Relocation Agreement may address more than one Utility Relocation for the same Utility Owner, unless otherwise directed by WSDOT. The Design-Builder shall prepare and negotiate its Relocation Agreements and obtain execution thereof. Although WSDOT will not be a party to the Relocation Agreements, (a) WSDOT shall have the right to participate in Relocation Agreement negotiations in its sole discretion, (b) each such Relocation Agreement shall be subject to review by WSDOT as more particularly provided in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*, and (c) each such Relocation Agreement shall provide that WSDOT is a third-party beneficiary thereof and that the Design-Builder may assign its rights and obligations hereunder to WSDOT without the Utility Owner's consent. The Design-Builder shall keep WSDOT informed of the status of all negotiations and shall deliver to WSDOT, within 10 Calendar Days after its execution, a true and complete copy of each Relocation Agreement. The Design-Builder shall comply with the terms and conditions of all Relocation Agreements.

The Design-Builder shall have no right to enter into any agreement with a Utility Owner that purports to bind WSDOT to its terms. Relocation Agreements entered into by the Design-Builder shall not be considered Contract Documents. In no event shall any Relocation Agreement be deemed to amend the terms of any other agreement to which WSDOT is a party, provided that a Relocation Agreement may deviate from the requirements of a Utility MOU if WSDOT has agreed to such deviation in writing. In the event of any conflict between the terms of any Relocation Agreement and the terms of the Contract Documents, the Contract Documents shall prevail as between WSDOT and the Design-Builder.

1-07.17(2).3 Intergovernmental Agreements and Prior Relocation Agreements

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

1-07.17(3) Work Responsibility and Cost Responsibility

1-07.17(3).1 Work Responsibility

Section 2.10, *Utilities and Relocation Agreements*, of the Technical Requirements allocates the responsibility for performing particular Relocation Work between the Design-Builder and the affected Utility Owner. Any modification of work responsibility for a Utility subject to an Intergovernmental Agreement or a Prior Relocation Agreement shall be decided by WSDOT (together with the Utility Owner), and implemented through an amendment to the applicable Intergovernmental Agreement or Prior Relocation Agreement and in accordance with Section 1-04.4. The Design-Builder and the affected Utility Owner may modify the allocation in Section 2.10, *Utilities and Relocation Agreements*, of the Technical Requirements for any other Utility by mutual agreement and shall also determine the responsibility for performing any other Relocation Work, in the course of negotiating the applicable Relocation Agreement. Any such changes in work allocation shall be addressed in accordance with Section 1-07.17(13).1.

Regardless of the arrangements made with the Utility Owners, except as may be otherwise provided in this Section 1-07.17, the Design-Builder shall continue to be the responsible party to WSDOT for timely performance of all Relocation Work in accordance with the requirements of the Contract Documents.

1-07.17(3).2 Cost Responsibility

For each Utility identified in the Utility Information, the determination of whether the Utility is a Type #1 Utility, Type # 2 Utility, or a Type #3 Utility shall be as identified in the Existing Utility Listing in Appendix U. If the Type is not specified in the Existing Utility Listing, then the determination of the Utility Type shall be made in accordance with Section 2.10, *Utilities and Relocation Agreements*. If the type is not specified in the Existing Utility Listing or Section 2.10, then in accordance with the applicable Utility Agreement included in the Contract. Except for Incidental Utility Work, if the Cost Responsibility for a particular Utility is not indicated then the Utility shall initially be in Type #1.

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

1-07.17(4) Payment to and Collection from Utility Owners

1-07.17(4).1 Collection from Utility Owners

In regard to a Type #1 Utility, unless otherwise noted in the Technical Requirements, the Design-Builder shall collect the appropriate reimbursement directly from the Utility Owner for any Relocation Work the Design-Builder performs. The Design-Builder also shall collect the appropriate reimbursement directly from the Utility Owner for any increased costs the Design- Builder may incur as a result of actions or inactions on the part of the Utility Owner. If the Design-Builder asserts that any Utility Owner has failed to comply with its obligation under a Relocation Agreement or has otherwise hindered or interfered with the progress or completion of the Work, then except as otherwise set forth in Sections 1-07.17(11) and 1-07.17(12), the Design- Builder's sole remedy shall be to seek recourse against the Utility Owner.

1-07.17(4).2 Failure to Pay

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

1-07.17(4).3 Reimbursements to Utility Owners

Except with respect to any Prior Relocations, or as provided otherwise in the Technical Requirements, the Design-Builder shall reimburse Utility Owners for all Relocation Costs for Type #2 Utilities. The Design-Builder also shall make any other reimbursements to Utility Owners required under any Relocation Agreement (for

example, for damage to a Utility Owner's facilities caused by the Design-Builder's work). The Design-Builder shall make all payments required by this Section 1-07.17(4) in accordance with the time and other requirements of the applicable Utility Agreement(s). The provisions of this Section 1-0 7.17 (4) shall not limit any other obligations of the Design-Builder to WSDOT pursuant to the Contract Documents, for damage caused to Utility Owner facilities or otherwise.

1-07.17(5) Reliance on Utility Information

WSDOT has performed preliminary investigations of existing Utilities located within the Project's ROW, as described in Section 2.10, *Utilities and Relocation Agreements*. The Design-Builder acknowledges that (a) the Utility Information does not identify Service Lines impacted by the Project, and (b) information contained in the Utility Information, including the descriptions of the affected Utilities and their locations, and any concepts regarding nature and extent of the Relocation (if any) required for a Utility, is preliminary and may not be accurate. The Design-Builder shall verify all Utility Information included in the Contract, and shall perform its own investigations in accordance with the Contract Documents. The Design-Builder shall not proceed with any construction Work at any location until such investigations have been completed for that location.

If the Design-Builder's investigations identify Utilities (excluding Service Lines) not described in the Utility Information, or if the Design-Builder determines that any Major Underground Utility was not described in the Utility Information with Reasonable Accuracy (as defined in Section 1-07.17(9).3 the Design-Builder shall notify WSDOT immediately upon such discovery. If any such unidentified Utility is installed within the Project's ROW pursuant to a franchise or permit, WSDOT shall execute an assignment of rights and delegation of obligations thereunder in the same form as Contract Appendix U, in favor of the Design-Builder. The Design-Builder shall be responsible for confirming the exact location (horizontal and vertical) of each Utility (including Prior Relocations) potentially affected by the Project, regardless of whether information with respect to such Utility has been provided by WSDOT or by the Utility Owner.

The Design-Builder shall comply with all of the requirements of chapter 19.122 RCW regarding underground Utilities. In accordance with this RCW and in particular RCW 19.122.030, the Design-Builder shall, among its other duties and obligations required under this RCW, call the one-number locator service (Washington Utility Notification Center) for field location of Utilities. If no locator service is available for the area, notice shall be provided individually to those Utility Owners known to, or suspected of, having underground facilities within the area of the proposed excavation. The Design-Builder shall refresh and maintain the location ground markings in all areas on a daily basis where excavation is in progress.

1-07.17(6) Betterments and Utility Owner Projects

1-07.17(6).1 Betterments

The Design-Builder may agree in a Relocation Agreement to design or construct, or both, a Betterment for a Utility at the Utility Owner's sole expense, subject to compliance with Section 1-07.17(6).3. Such Betterment shall be treated as an addition to the scope of the

Utility Work upon WSDOT's approval and the parties' execution of such Relocation Agreement; however, such addition shall not be treated as a change in the Work directed by WSDOT, and the Design-Builder shall not be entitled to any increase in the Contract Price or extension of the Contract Time on account thereof. Instead, the Design-Builder shall arrange to collect payment for such work directly from the Utility Owner.

Work identified in the Contract Documents as part of the Design-Builder's original scope shall not be considered a Betterment unless expressly identified as such in the Contract Documents. Except as may be otherwise set forth in this Section 1-07.17(6) or in Technical Requirements Section 2.10, *Utilities and Relocation Agreements*, all the terms and conditions of the Contract Documents that apply to the Utility Work shall apply to any Betterment added to the Work pursuant to this Section 1-07.17(6).1.

1-07.17(6).2 Utility Owner Projects

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

1-07.17(6).3 Restrictions on Betterments and Utility Owner Projects

Except as may be otherwise set forth in Section 1-07.17(6) or in Section 2.10, *Utilities and Relocation Agreements*, all the terms and conditions of the Contract Documents that apply to the Utility Work shall also apply to any Betterment added to the Work.

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

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

1-07.17(7) Failure of Utility Owners to Cooperate

1-07.17(7).1 Disputes

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

After giving notice in accordance with the preceding paragraph, the Design-Builder shall remain responsible for coordination with the Utility Owner, shall continue to diligently pursue the Utility Owner's cooperation, and may request WSDOT's assistance for such purpose. Subject to Section 1-07.17(7).2, WSDOT shall provide assistance as reasonably requested by the Design-Builder; provided that such assistance shall be at no cost to WSDOT other than the time of its staff, and WSDOT shall have no obligation to pursue any legal proceedings against the Utility Owner. Any notice provided to WSDOT or assistance requested from WSDOT, provided by WSDOT, or both, shall not relieve the Design-Builder of its responsibility hereunder for the satisfaction of its obligations and timely completion of all Relocations. WSDOT shall take the lead in resolving any disputes relating to Relocations subject to a Prior Relocation Agreement or an Intergovernmental Agreement.

WSDOT also may, in its sole discretion, participate in the resolution of any other dispute between the Design-Builder and a Utility Owner, whether or not requested to do so by the Design-Builder, and may, in its sole discretion, take the lead in resolving any such dispute involving a Type #2 Utility.

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

1-07.17(7).2 Conditions to WSDOT's Assistance

WSDOT shall not be obligated to provide assistance requested by the Design-Builder pursuant to Section 1-07.17(7).1 unless all of the following conditions are satisfied:

- 1 1. The Design-BUILDER has provided to WSDOT a Written report explaining the nature
2 and history of the dispute, the names and contact information for the representatives
3 of each disputant, a description of the assistance requested by the Design-BUILDER,
4 and such other information as WSDOT may reasonably request.
- 5 2. The Design-BUILDER has provided evidence reasonably satisfactory to WSDOT that:
6 (a) The Design-BUILDER has made diligent efforts to obtain the Utility Owner's
7 cooperation or to otherwise resolve the dispute, but that such efforts have not
8 succeeded.
9 (b) Any assistance requested by the Design-BUILDER from WSDOT is reasonable.
10 (c) If applicable, the Design-BUILDER has provided a reasonable Relocation plan and
11 relocation completion schedule to the Utility Owner that has been submitted to
12 WSDOT for Review and Comment.
13 (d) The Design-BUILDER or the Utility Owner has obtained, or is in a position to
14 timely obtain, any Governmental Approvals and WSDOT franchises/permits
15 required in order to implement the Relocation Plan proposed by the
16 Design Builder.
17 (e) The Design-BUILDER's position in the dispute is otherwise reasonable.

18 **1-07.17(8) Avoiding Relocations and Minimizing WSDOT Costs**

19 The Design-BUILDER shall consider the location of Utilities and the potential impact of
20 Utility Relocations in finalizing the design of the Project, with the goals of minimizing
21 Relocation Costs, related construction and disruption to the public, and avoiding schedule
22 delay, to the extent practical and at all times conforming to requirements of the Contract
23 Documents. Notwithstanding the foregoing, the Design-BUILDER shall take all reasonable
24 steps, including revising the Design Documents to work around a newly identified
25 Utility, to minimize costs for which WSDOT is required to reimburse a Utility owner or
26 for which the Design-BUILDER is entitled to additional compensation pursuant to
27 Section 1-07.17.

28 The Design-BUILDER shall endeavor to avoid multiple Relocations of the same Utility,
29 whether by the Utility Owner or by the Design-BUILDER. Accordingly, after a Utility has
30 been Relocated once in order to accommodate the Project, the Design-BUILDER shall be
31 responsible for all Relocation Costs incurred by either the Design-BUILDER or the Utility
32 Owner in order to subsequently relocate such Utility to accommodate the Project.
33 Notwithstanding any contrary provision of the Contract Documents, the Design-BUILDER
34 shall not receive any extension of the Contract Time or increase in the Contract Price
35 because of or in connection with such subsequent Relocation. This Section 1- 07.17(8)
36 relating to multiple Relocations shall not apply to Temporary Relocations that are
37 necessary for construction of the Project.

1-07.17(9) Price Adjustments and Time Extensions for Inaccurate Utility Information

1-07.17(9).1 Eligibility for Change Orders – General

Subject to Sections 1-07.17(9).4, 1-07.17(12), and 1-07.17(13) and to any other Contract requirements relating to entitlement to Change Orders, if any Major Underground Utility not addressed in Section 1-07.17(9).2 is not identified in the Utility Information with Reasonable Accuracy, then the Design-Builder shall be entitled to:

- (a) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to the correction of such inaccurate information.
- (b) Delay and disruption damages that are directly attributable to the inaccuracy.
- (c) For Type #1 Utilities only, an increase in the Contract Price on account of any other increased costs of the Work (excluding Relocation Costs) which are directly attributable to the correction of such inaccurate information and
- (d) For Type #2 Utilities only, an increase in the Contract Price on account of any other increased costs of the Work (including Relocation Costs) which are directly attributable to the correction of such inaccurate information.

WSDOT shall be entitled to a credit if a Type #2 Major Underground Utility is not described in the Utility Information with Reasonable Accuracy and the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(9).2 Eligibility for Change Orders – Utilities Subject to Intergovernmental Agreements and Prior Relocation Agreements

Subject to Sections 1-07.17(9).4, 1-07.17(12), and 1-07.17(13) and to any other Contract requirements relating to entitlement to Change Orders, if any Major Underground Utility not addressed in Section 1-07.17(9).1 is not identified in the Utility Information with Reasonable Accuracy, then the Design-Builder shall be entitled to:

- (a) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to the correction of such inaccurate information.
- (b) Delay and disruption damages that are directly attributable to the inaccuracy.
- (c) An increase in the Contract Price on account of any other increased costs of the Work which are directly attributable to the correction of such inaccurate information.
- (d) WSDOT shall be entitled to a credit if any such Major Underground Utility is not described in the Utility Information with Reasonable Accuracy and the inaccuracy has the effect of reducing the Design-Builder's costs.

1-07.17(9).3 Reasonable Accuracy Defined

“Reasonable Accuracy” shall mean that a Major Underground Utility is referenced in the Utility Information, and

1. The Utility's actual centerline location is within 10 feet of the horizontal centerline location indicated in the Utility Information (with no limitation on vertical location) unless noted otherwise in Section 2.10, *Utilities and Relocation Agreements*.
2. One of the following applies, with regard to any difference (whether larger or smaller) between the Utility's actual inside diameter, excluding casings and any other appurtenances (the "actual size") and the inside diameter (as applicable to pipe style Utilities) or actual cross-sectional area (as applicable to duct bank-style Utilities), excluding casings and any other appurtenances (the "actual size") and the inside diameter or cross-sectional area, as applicable, indicated for such Utility in the Utility Information (the "stated size"):

Stated size (pipe style)	Actual size
12" or less	not more than 24"
greater than 12" but less than or equal to 36"	stated size $\pm$ 50%
greater than 36" but less than or equal to 72"	stated size $\pm$ 25%
greater than 72"	stated size $\pm$ 15%

For example, if the stated size of an underground pipeline listed in the Utility Information is 36 inches, but the pipeline's actual size is 48 inches and its centerline is actually located 8 feet away from the horizontal centerline location shown in the Utility Information, such pipeline shall be deemed indicated with Reasonable Accuracy and the Design-Builder shall not be entitled to a Change Order for any increased costs or delays resulting from the increased size or differing location of the pipeline. As a further example, if the stated size of a Type #2 underground pipeline listed in the Utility Information is 36 inches, but the pipeline's actual size is 60 inches and its centerline is actually located 8 feet away from the horizontal centerline location shown (without regard to vertical location), then such pipeline shall be deemed not indicated with Reasonable Accuracy, and the Design-Builder shall be entitled to a Change Order for any increased costs or delays resulting from the increased size (but not from the differing location) of the pipeline.

Stated size (duct bank style)	Actual size
4 to 16 conduits	Nominal cross section $\pm$ 50%
16 to 36 conduits	Nominal cross section $\pm$ 25%
More than 36 conduits	Nominal cross section $\pm$ 15%

Duct bank size calculations are performed as follows: the nominal duct bank cross section is calculated based on number, size, and orientation of conduit with 2-inch edge to edge spacing between conduit, 3-inch outside cover; and 6-inch over pour to sides and top. Example calculation:

For a 2 by 3 duct bank with 5-inch conduit the nominal cross section is calculated as follows:

$$\text{width} = 3 + 5 + 2 + 5 + 3 + 6 = 24 \text{ inches}$$

$$\text{depth} = 3 + 5 + 2 + 5 + 2 + 5 + 3 + 6 = 31 \text{ inches}$$

$$\text{Nominal cross section area} = 24 \times 31 \text{ inches} = 744 \text{ in}^2$$

$$\text{Actual cross section may be } (744 \text{ in}^2 \times 0.5) = 372 \text{ in}^2 \text{ to } (744 \text{ in}^2 \times 1.5) = 1116 \text{ in}^2$$

Location accuracy standards for duct bank style Utilities are determined in the same manner as for pipe style Utilities noted above.

In case of any discrepancy between the information provided by one component of the Utility Information and information provided by another component of the Utility Information, only the more accurate information shall be relevant in determining Reasonable Accuracy.

1-07.17(9).4 Limitations and Exclusions

The Design-Builder shall not be entitled to a Change Order pursuant to this Section for any of the following:

1. Any inaccuracies in the Utility Information to the extent that the correct information:
 - (a) Was known to the Design-Builder as of the Proposal Due Date
 - (b) Would have been apparent during a surface inspection of the area conducted prior to the Proposal Due Date
 - (c) Could have been inferred from the presence of other facilities or surface features, such as buildings, meters, junction boxes, manholes, vaults, or identifying markers
2. Increased costs or time attributable to inaccuracies in the Utility Information, to the extent that such costs could have been avoided by timely identifying the correct information and addressing the actual field conditions in the “RFC” Design Documents for the Work in question.
3. Any inaccuracies in the Utility Information regarding Utilities other than Major Underground Utilities

1-07.17(10) Certain Other Price Adjustments

1-07.17(10).1 Determination of Cost Responsibility

WSDOT may, at any time, notify the Design-Builder of a change in the determination of Cost Responsibility for a particular Utility. Such change in the Work directed by WSDOT shall be treated in accordance with Section 1-04.4, resulting in either an increase or a decrease in the Contract Price, as applicable.

1-07.17(10).2 Early Relocation Work

If, prior to issuance of NTP, WSDOT reimburses a Utility Owner for Relocation Work performed on a Type #2 Utility (other than with regards to a Prior Relocation), the resulting reduction in the scope of the Work shall be treated as a change in the Work directed by WSDOT in accordance with Section 1-04.4, entitling WSDOT to a decrease in the Contract Price.

1-07.17(11) Delayed Prior Relocations

Subject to Sections 1-04.4, 1-07.17(13), and 1-08.8, and to any other Contract requirements relating to entitlement to Change Orders, if the Utility Owner fails to

complete a Prior Relocation on or before the date of issuance of the NTP then the Design-Builder shall be entitled to:

- (a) An increase in the Contract Price because of any increased costs of the Work directly resulting from such failure.
- (b) An extension of the Contract Time to the extent that any delay in a Critical Path is directly attributable to such failure.

1-07.17(12) Utility Delays

Except as specified in this Section 1-07.17(12) or in Section 1-07.17(11), any time frames for completion of the Relocation Work or components thereof included in the Contract are estimates only and shall not be relied upon by the Design-Builder.

The provisions of Section 1-07.17(12) shall not apply to any Prior Relocations and are subject in all cases to the conditions and applicable limitations stated in Section 1-07.17(9), Sections 1-07.17(10), 1-04.4, and 1-08.8, and to any other Contract requirements relating to entitlement to Change Orders.

1-07.17(12).1 Utility Delays - General

1-07.17(12).1.1 Type #1 Utilities Subject to an Assigned Franchise/Permit, Relocation Agreement, or Both

Design-Builder shall not be entitled to any extension in Contract Time or to any increase in the Contract Price for Project delays or increased costs incurred by Design-Builder resulting from a Utility Owner's failure to timely complete any task for Relocation of a Type #1 Utility that is accommodated by a franchise/permit, Relocation Agreement, or both.

1-07.17(12).1.2 Type #1 Utilities Not Subject to an Assigned Franchise/Permit and not Addressed in a Relocation Agreement

For purposes of Section 1-07.17(12).1.2, the term "Utility Delay" means an unavoidable delay to a Critical Path that is directly attributable to a Utility Owner's failure to complete any task necessary for Relocation of its Type #1 Utility (excluding Prior Relocations) not accommodated by an assigned franchise/permit before the deadline for performance of such task under the applicable Utility Agreement (if there is no applicable Utility Agreement or it does not specify a deadline, the time reasonably scheduled by Design-Builder for such task as stated in the Contract Schedule approved by WSDOT), where the Design-Builder has been unable with due diligence to enter into a Relocation Agreement with the Utility Owner covering such Relocation.

The Design-Builder shall be entitled to:

- (a) An increase in the Contract Price on account of any increased costs of the Work that are directly attributable to a Utility Delay as defined in Section 1-07.17(12).1.2.
- (b) An extension of the Contract Time based on the number of days of Critical Path delay that are directly attributable to such Utility Delay.

Section 1-07.17(12).1.2 does not apply to any Type #1 Utilities that are addressed in a Relocation Agreement between the Design-Builder and the respective Utility Owner regardless of the existence of a franchise/permit addressing said Utility.

1-07.17(12).1.3 Type #2 Utilities

For purposes of Section 1-07.17(12).1.3 the term “Utility Delay” means an unavoidable delay to a Critical Path that is directly attributable to a Utility Owner’s failure to complete any task necessary for Relocation of its Type #2 Utility before the later to occur of: (a) the deadline for performance of such task under the applicable Utility Agreement (or if there is no applicable Utility Agreement or it does not specify a deadline, the time reasonably scheduled by the Design-Builder for such task as stated in the Contract Schedule approved by WSDOT), and (b) the deadline in the applicable Relocation Agreement.

The Design-Builder shall be entitled to an extension of the Contract Time based on the number of days of Critical Path delay that are directly attributable to a Utility Delay, but any such delay shall not be grounds for any increase in the Contract Price.

1-07.17(12).2 Vacant

1-07.17(12).3 Conditions to Time Extension for Utility Delays

The Design-Builder shall not be entitled to any time extension for a Utility Delay unless all of the following conditions are satisfied:

1. The Design-Builder has provided evidence reasonably satisfactory to WSDOT that:
 - (a) The Design-Builder took advantage of Float available early in the Contract Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates.
 - (b) The Design-Builder has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such Utility Delay.
 - (c) The Design-Builder has otherwise made diligent efforts to obtain timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.
2. If applicable, the Design-Builder has provided a reasonable Relocation Plan to the Utility Owner that has been submitted to WSDOT for Review and Comment.
3. The Design-Builder or the Utility Owner has obtained, or is in a position to timely obtain, all Governmental Approvals and any WSDOT franchises/permits required in order to design and construct such Relocation.
4. There exist no circumstances which have delayed or are delaying the affected Relocation, other than those that fit within the definition of a Utility Delay.
5. The time extension is otherwise allowable under Section 1-08.8.

1-07.17(13) Additional Provisions Concerning Utility Change Orders

The Design-Builder’s entitlement to any increase in the Contract Price or extension of the Contract Time relating to Utility Relocations shall be subject to the restrictions and

limitations set forth in this Section 1-07.17(13), in addition to the other specified requirements and limitations.

1-07.17(13).1 Changes in Work Allocation

The Work includes responsibility for causing all Relocation Work to occur in a timely fashion, including reimbursing the Utility Owners for their Relocation Costs for Type #2 Utilities (except as may be otherwise provided in Section 1-07.17) and scheduling all Relocation Work (whether performed by the Design-Builder or by the affected Utility Owner) so as to attain Substantial Completion by the contractual deadline. Accordingly, if a Utility Owner performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Design-Builder, or if the Design-Builder performs or furnishes Relocation Work that was initially anticipated to be performed or furnished by the Utility Owner, the following shall apply:

- (a) There shall be no resulting extension of the Contract Time for Type #1 or Type #2 Utilities.
- (b) For Type #2 Utilities, any resulting increase or decrease in the costs of the Work shall be reflected in an increase or decrease in the Contract Price, as applicable, in accordance with Section 1-04.4.
- (c) For Type #1 Utilities, there shall be no resulting change in the Contract Price (either up or down).

The provisions of Section 1-07.17(13).1 shall not apply to any delayed Prior Relocations.

1-07.17(13).2 Changes in Utility Standards

There shall be no increase or decrease in the Contract Price pursuant to Section 1-07.17 because of any change in Utility Standards, whether or not such change qualifies as a Betterment. However, any change in Utility Standards that constitutes or results from a change in Governmental Rules may be grounds for a Change Order under other Contract provisions.

1-07.17(13).3 Unavoidable Costs and Delays Only

The Design-Builder shall not be entitled to a Change Order for any cost or delay that could have been avoided by timely request for information under the Underground Utilities One Number Locating Service Statute (chapter 19.122 RCW), or for any amount that the Design-Builder has the right to obtain from a Utility Owner under said statute.

The Design-Builder shall provide documentation satisfactory to WSDOT evidencing compliance with Section 1-07.17(8). The Design-Builder shall be responsible for any increased costs of the Work and any time that could have been avoided by such compliance.

1-07.17(13).4 Incremental Costs Only

Any increase in the Contract Price pursuant to this Section 1-07.17 shall include only the incremental costs arising from the circumstances giving rise thereto; i.e., the amount payable shall take into account the costs that would have been incurred absent such circumstance and a credit shall be allowed for any avoided costs.

1-07.17(13).5 No Adjustment for Incidental and Coordination Work

All Incidental Utility Work and all costs of coordinating with Utility Owners as necessary for the Project are included in the Contract Price, regardless of whether or not (a) the Utility Information reveals the circumstances requiring such Incidental Utility Work or coordination, or both, or (b) the Utility is the subject of a Prior Relocation. Accordingly, no adjustment in the Contract Price or extension of the Contract Time will be allowed on account of costs incurred, cost savings, or delays associated with the performance of Incidental Utility Work by the Design-Builder or by any Utility Owner, regardless of whether or not the Utility Information reveals the circumstances requiring such Incidental Utility Work. Furthermore, the Design-Builder shall not be entitled to any increase in the Contract Price for any costs of coordinating with Utility Owners.

1-07.17(13).6 No Adjustment for Voluntary Action by Design-Builder

If the Design-Builder elects to make payments to Utility Owners or to undertake any other efforts with respect to Relocation of Utilities that are not required by the terms of the Contract Documents, then unless the Design-Builder has received direction from WSDOT in accordance with Section 1-04.4, to do so, the Design-Builder shall not be entitled to any extension of the Contract Time or increase in the Contract Price in connection therewith. The Design-Builder shall promptly notify WSDOT of the terms of any such arrangements.

1-07.17(14) Vacant

1-07.18 Public Liability and Property Damage Insurance

The Design-Builder shall procure and maintain insurance as specified in Section 1-07.18. The insurance provided hereunder shall be available for the benefit of the Indemnified Parties and the Design-Builder with respect to covered claims, but shall not be interpreted to relieve the Design-Builder of any obligations hereunder. Unless otherwise specified in the Contract, all insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by WSDOT and with companies or through sources approved by the State Insurance Commissioner pursuant to Chapter 48.05 RCW. If an insurer is not an admitted carrier (unauthorized insurer), the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC. Unless otherwise indicated below, the policies shall be kept in force from the execution date of the Contract until the date of Final Acceptance, as determined pursuant to Section 1-05.12. Under no circumstances shall a “wrap up” policy be obtained to satisfy all or part of the insurance requirements under this Section. A “wrap up” policy is defined as “an insurance agreement or arrangement under which all of the parties working on a specified or designated project are insured under one policy for liability arising out of that specified or designated project.”

1-07.18(1) Minimum Insurance Requirements

1-07.18(1).1 Workers' Compensation

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

To the extent not provided under a Design-Builder's multi-state workers' compensation policy, the 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. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise.

1-07.18(1).2 Commercial General Liability

The Design-Builder shall provide commercial general liability coverage (CGL), on a primary basis, for bodily injury, property damage, personal injury, and advertising injury liability Written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office form CG 00 01 04 13. The Design-Builder shall maintain such insurance through the Physical Completion Date, and during any Warranty Work.

The commercial general liability insurance shall include, at a minimum, coverage for liability arising out of: (i) fire legal liability in an amount not less than \$50,000; (ii) blanket contractual; (iii) independent contractors; (iv) premises operations; (v) products and completed operations for a minimum of 3 years following Completion; and (vi) the acts, errors, and omissions in the rendering or failure to render professional services under the Contract Documents or in the performance of the Work. This coverage shall have an annual minimum limit of \$3,000,000 per occurrence, \$3,000,000 general annual aggregate, and \$3,000,000 products/completed operations aggregate. If commercial general liability insurance with a general aggregate limit and products and completed operations aggregate limit is used, then the general liability aggregate limits shall apply separately and exclusively to the Project, or the Design-Builder may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the Design-Builder. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits

provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise.

The required limits may be satisfied by any combination of primary and excess policies.

The Design-Builder shall be the named insured. Each of the Indemnified Parties shall also be added to the CGL as either (a) named insured or (b) additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity, whether occurring on or off of the Site. If the State is added to this policy as a named insured, then the Design-Builder is not required to obtain the owners and contractors protective (OCP) coverage pursuant to Section 1-07.18(1).11.

1-07.18(1).3 Automobile Liability

The Design-Builder shall provide commercial automobile liability insurance covering the ownership, maintenance, or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, both on and off the Site, including loading and unloading, with limits of not less than \$3,000,000 per accident, combined single limit for bodily injury and property damage liability. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise. The Design-Builder shall maintain such insurance through Completion; provided, however, that such coverage shall be maintained for vehicles used in the performance of Warranty Work until the expiration of the Warranty periods described in Section 1-05.16. Coverage shall be provided on Insurance Services Office form number CA 0001 or an equivalent and shall include endorsement CA 9948 (in transit pollution risks coverage). The 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 Pollution/Environmental Liability

The Design-Builder shall provide pollution/environmental liability coverage, on an occurrence or claims made basis, with annual limits of not less than \$3,000,000 per claim and in the aggregate, including liability arising out of transportation and non-owned disposal sites. The policy shall include as additional insureds (if a corporate practice policy is used) or named insureds (if a project-specific policy is used) the State, the Design-Builder, and any Related Entity of any tier performing Work for which such coverage is appropriate. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise. The remaining Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site.

1 The policy shall have a 5-year extended reporting period and cover claims made on and
2 prior to Final Acceptance and claims made after Final Acceptance, but within the
3 extended reporting period. The required limits can be satisfied by a combination of a
4 primary policy and an excess policy.

5 **1-07.18(1).5 Excess Liability**

6 Design-Builder shall provide excess liability insurance with annual limits not less than
7 \$12,000,000 which will provide coverage at least as broad as the primary coverages set
8 forth herein, including Workers' Compensation, Commercial General Liability,
9 Automobile Liability, and Aircraft Liability, in excess of the amounts set forth in
10 Sections 1-07.18(1).1 (for Jones Act and LHWCA liability), 1-07.18(1).2, 1-07.18(1).3,
11 1-07.18(1).9, and 1-07.18(1).10, respectively. Should the Design-Builder maintain, at any
12 time during the period of the Project, coverage limits in excess of those required herein,
13 then those additional coverage limits shall also apply to WSDOT and the Indemnified
14 Parties. This includes, at a minimum, any coverage limits provided under any risk
15 financing program of any description, and whether such limits are primary, excess,
16 contingent or otherwise. The Indemnified Parties shall be additional insureds with respect
17 to liability arising out of the Project or any acts, errors or omissions of any Related
18 Entity, whether occurring on or off the Site to the extent that they are not named on any
19 of the foregoing policies as named insureds.

20 **1-07.18(1).6 Professional Liability**

21 The Design-Builder shall provide evidence to WSDOT that the Design-Builder or its lead
22 engineering firm shall maintain or cause to be maintained the appropriate Professional
23 Liability Insurance coverage with total limits not less than \$10,000,000 per claim and
24 policy or annual aggregate for any negligent act, error, or omission arising out of any and
25 all architectural and engineering services or professional services performed, per RCW
26 39.80.020(5), under this Project. If a corporate practice professional liability policy is
27 used to satisfy this requirement, the evidence shall take the form of a sworn certification
28 (Form U, *Professional Liability Insurance Certification*) from an officer of the
29 Design-Builder that the insurance required under this Section has been issued and will
30 remain in full force and effect as required hereunder, and shall be submitted at the time of
31 execution of the Contract.

32 The policy shall have a retroactive date no later than the date on which the RFP was
33 issued and shall remain in place through Physical Completion. The policy shall be
34 continuously renewed for a period of 6 years following Physical Completion or provide
35 an extended reporting period of not less than 6 years after Physical Completion. This
36 policy may be excess over coverage for claims, which may also be covered pursuant to
37 the commercial general liability policy required in Section 1-07.18.

38 Should project specific coverage be obtained for the Project, such coverage shall also
39 include an indemnity endorsement to provide coverage for the Indemnified Parties for
40 liability arising out of or any negligent act, error, or omission of any Related Entity
41 providing professional services hereunder. Such project specific coverage policy shall be
42 submitted to WSDOT in accordance with Section 1-07.18(2).2.

Should corporate practice policies be utilized to satisfy this requirement, coverage not less than the total coverage limits specified above shall apply for liability arising out of the Project.

1-07.18(1).7 Builder's Risk

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

a. Minimum Scope

The policy shall be a builder's risk insurance policy on an "all risk" basis for the entire Project including: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against damage or loss caused by earth movement, flood, fire, accidental breakdown of machinery, theft, vandalism and malicious mischief; (3) coverage for removal of debris, (4) coverage for buildings, Structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (5) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to WSDOT.

In satisfaction of the requirements of subsection (5) above concerning "ocean marine coverage", the Design-Builder may obtain separate ocean marine insurance on an "All Risk" basis known as "Institute Cargo Clauses (A)" including war, riots and strikes, covering all materials and equipment associated with the Work at full replacement value while in transit, shipment and/or moorage until the earlier of the date of Completion or when the materials and equipment is otherwise covered by the builder's risk policy.

b. Minimum Coverage Limits

Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, including earth movement and flood coverage, with a minimum limit of liability equal to the greater of (a) \$150,000,000 or (b) the probable maximum loss of the Project and the components thereof. Coverage shall include earth movement insurance with sub limits of \$100,000,000 minimum annual aggregate limit and flood insurance with sub limits of \$100,000,000 minimum annual aggregate limit. The coverage shall be Written without risk of liability of WSDOT for payment and without deduction for depreciation. There shall be no coinsurance penalty provision in any such

policy. Deductibles or self-insured retentions shall be no greater than 2 percent of the total value of each insured unit at the time of loss.

1-07.18(1).8 Railroad Protective Liability

The Design-Builder shall provide any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Said policy shall be effective during the period any Work is being performed across, under, or adjacent to any railroad tracks or any railroad ROW. Refer to Section 2.23, *Railroad* for additional information.

1-07.18(1).9 Aircraft Liability

The Design-Builder shall provide, or caused to be maintained, insurance, with annual limits of not less than \$3,000,000 per occurrence, in all cases where any aircraft is used on the Project that is owned, leased, or chartered by any Related Entity, protecting against claims for damages resulting from such use. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path, and altitude, including landing of any aircraft on the Site or on any property owned by the State shall be subject to review and Written acceptance by WSDOT prior to occurrence of any such usage. If any aircraft are leased or chartered with crew or pilot, or both, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft. The Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors, or omissions of any Related Entity, whether occurring on or off the Site.

1-07.18(1).10 Marine Liability

The Design-Builder shall provide, or caused to be maintained, marine protection and indemnity (P&I) insurance for all liabilities arising out of the operation of a watercraft or vessel used on the Project that is owned, leased or chartered by the Design-Builder or any Related Entity. The policy shall include, among other things, coverage for bodily injury, illness and/or loss of life to any person or crew member (including any and all claims arising pursuant to the Jones Act and LHWCA and claims for maintenance and cure), damage to cargo while loading, carrying or unloading cargo, damage to piers and docks, pollution liability, charterer's liability, and removal of wreckage as required by law. Such coverage shall have primary limits of not less than \$5,000,000 per occurrence, and excess limits of not less than \$3,000,000 shall be required in all cases where any watercraft or vessel is used on the Project that is owned, leased, or chartered by any Related Entity. Should the Design-Builder maintain, at any time during the period of the Project, coverage limits in excess of those required herein, then those additional coverage limits shall also apply to WSDOT and the Indemnified Parties. This includes, at a minimum, any coverage limits provided under any risk financing program of any description, and whether such limits are primary, excess, contingent or otherwise. If any watercraft or vessels are leased or chartered with crew, evidence of non-owned watercraft liability

insurance complying with the requirements of this Section will be acceptable but must be provided to WSDOT prior to use of the watercraft or vessel. The Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or any acts, errors or omissions of any Related Entity, whether occurring on or off the Site.

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

The Design-Builder shall either include the State as a named insured under the CGL policy required above or provide owners and contractors protective (OCP) liability insurance, with an annual minimum limit of \$3,000,000 per occurrence, \$3,000,000 general annual aggregate, providing bodily injury and property damage liability coverage until the Completion date, as determined pursuant to Section 1-08.5. Such coverage shall be provided exclusively under Insurance Services Office form CG 0009, together with WSDOT Amendatory Endorsement No. CG 29 08, specifying the State as named insured. Such coverage shall be provided to the State on a primary and non-contributory basis, and no portion of the coverage limit required shall be provided pursuant to an excess policy.

1-07.18(2) General Insurance Requirements

1-07.18(2).1 Premiums and Deductibles

The Owners and Contract Protective Insurance policy issued to the State as Named Insured shall not be subject to a deductible or contain provisions for a deductible. The Commercial General Liability Insurance, Professional Liability, Pollution/Environmental Liability, and Commercial Automobile Liability Insurance policies may, at the discretion of the Design-Builder, include a deductible amount, or may contain provisions for deductibles. No policy, with the exception of the professional liability coverage, shall contain an amount or provision for a self-insured retention (SIR). If a deductible or SIR applies to any claim under these policies, then payment of that deductible or SIR shall be the responsibility of the Design-Builder, or the lead engineering firm if applicable, notwithstanding any claim of liability against WSDOT. The deductible limits for these policies are as follows:

- (i) the Commercial General Liability Insurance policy deductible shall not exceed \$500,000,
- (ii) the Professional Liability Insurance policy deductible or SIR shall not exceed \$500,000,
- (iii) the Pollution/Environmental Liability Insurance policy deductible shall not exceed \$500,000, and
- (iv) the Commercial Automobile Liability Insurance policy deductible shall not exceed \$500,000.

1-07.18(2).2 Verification of Coverage

With the exception of any corporate practice professional liability policy used to satisfy the requirements of Section 1-07.18(1).6, the Design-Builder shall file with WSDOT, Contract Payment Section, P.O. Box 47420, Olympia, WA 98504-7420, certified copies of all policies required hereunder evidencing the minimum insurance coverages required

to be provided, at least 10 Calendar Days prior to Contract execution. If the 10 Calendar Day requirement cannot be met, WSDOT will accept an email with a delivery receipt and read receipt from the Design-Builder's insurance broker stating that the certified copies of the policies will be provided as soon as they are received from the insurance carriers. WSDOT shall have no duty to pay or perform under the Contract Documents until such policies, in compliance with all requirements of 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 Section 1-07.18 at any time in the future. The Design-Builder shall promptly deliver to WSDOT a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificates shall be delivered to WSDOT not less than 30 Calendar Days prior to the expiration date of any policy and bear a notation evidencing payment of the premium therefore. If requested by WSDOT, certified duplicate copies of any renewal policy shall also be provided.

1-07.18(2).3 Subcontractor Insurance Requirements

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

1-07.18(2).4 Endorsements and Waivers

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

- (a) For claims covered by the insurance specified herein, all insurance coverage shall be primary insurance and non-contributory with respect to the named insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants, and shall specify that coverage continues notwithstanding the fact that the 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, except for the Professional Liability Insurance policy (including 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 the 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 Calendar Days (10 Calendar Days for non-payment of premium) prior Written notice 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 general Liability endorsements adding additional insureds to required policies shall only be provided pursuant to form CG-20-10 (1985 edition) or a combination of the following: CG 2010 entitled *Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization* and CG 2037 entitled *Additional Insured - Owners, Lessees or Contractors - Completed Operations*; or CG 2033 entitled *Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You* and CG 2037 entitled *Additional Insured - Owners, Lessees or Contractors - Completed Operations*. No form shall contain limitations or exclusions with respect to “products/completed operations” or ongoing operations coverage. No additional insured endorsement shall seek to limit coverage for the additional insureds for their own negligence with respect to liability arising out of Project operations and/or solely to vicarious liability arising out of the ongoing or completed operations of the named insured, its contractors, subcontractors of any tier, consultants, agents or employees. The coverage afforded to the additional insureds shall be primary and non-contributory with respect to any other insurance maintained by the additional insured. Any insurance or self-insurance that is maintained by an additional insured, or their members, directors, officers, employees, agents, and consultants shall be in excess of, and shall not contribute with, the insurance required herein.

- (f) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous Materials clean up (MCS-90) or its equivalent and Form CA 2048.
- (g) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of pollution liability, professional liability, and earth movement policies).
- (h) The commercial general liability insurance policy shall not exclude coverage for the additional insureds for bodily injury to Related Entity employees.

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. The 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 or Subconsultants, or both, of the Design-Builder or those claims asserted by the Design-Builder against any Subcontractors or suppliers, or both. Each insurance policy required under this Section, including 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 will notify the Design-Builder in writing of any changes in the requirements applicable to insurance required to be provided by the Design-Builder. Except as set forth in Section 1-07.18(2), any additional cost from such change shall be paid by WSDOT and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

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 Section 1-07.18(2).

1-07.18(2).8 Support of Indemnifications

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

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

If, through no fault of the Design-Builder, any of the coverages required in Section 1-07.18 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, WSDOT will consider in good faith alternative insurance packages and programs

proposed by the Design-Builder, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. The Design-Builder must demonstrate to WSDOT's reasonable satisfaction that it has used diligent efforts in the global insurance markets to obtain the required insurance coverages, and shall advise WSDOT of the specific results of those efforts. The Design-Builder shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. WSDOT shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the EPD escrowed pursuant to Section 1-03.15 (or based on other evidence of insurance premiums as of the Proposal Due Date if the EPD do not provide adequate information).

1-07.18(3) WSDOT's Right to Remedy Breach by Design-Builder

The Design-Builder shall provide WSDOT with notice of any cancellation of a policy required hereunder within 2 Calendar Days of receipt. Failure on the part of the Design-Builder to maintain the insurance as required hereunder shall constitute a material breach of the Contract, upon which WSDOT may, after giving 5 Calendar Days' notice to the Design-Builder to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to WSDOT on demand, or at the sole discretion of WSDOT, offset against funds due to the Design-Builder from WSDOT.

1-07.18(4) Insurance Proceeds and Prosecution of Claims

Unless otherwise directed by WSDOT in writing, the Design-Builder shall be responsible for reporting and processing all potential claims by WSDOT or the Design-Builder against the insurance required to be provided under Section 1-07.18. Except as noted otherwise, the Design-Builder shall not be entitled to receive a Change Order for any costs, which it could have recovered from the insurer. The Design-Builder agrees to report timely to the insurer(s) any and all matters, which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of WSDOT, the Indemnified Parties, and any additional insureds, whether for defense or indemnity or both. WSDOT agrees to promptly notify the Design-Builder of WSDOT's incidents, potential claims, and matters, which may give rise to an insurance claim by WSDOT, to tender its defense of the claim to the Design-Builder, and to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

1-07.18(5) Claims Relating to Differing Site Conditions

The Design-Builder shall be responsible for reporting and processing all potential insurance claims relating to Differing Site Conditions. The proceeds of all such claims shall be paid directly to WSDOT. The Design-Builder agrees to report timely to the insurer(s) any such matters which may give rise to an insurance claim and to promptly and diligently pursue such claims on behalf of WSDOT. The Design-Builder shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending a determination by the insurance company regarding the claim.

WSDOT agrees to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

1-07.18(6) Commencement of Work

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

1-07.18(7) Disclaimer

The Design-Builder and each Subcontractor shall have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. Nothing in this Contract shall be construed as limiting in any way the extent to which the Design-Builder may be held responsible for any claims resulting from its performance of the Work hereunder. The Design-Builder's obligations to procure insurance are separate and independent of its contractual defense and indemnity obligations. The coverage limits set forth in 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 the 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. The Design-Builder shall not 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 State L&I.

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 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 Design-Builder uses explosives, the Design-Builder's insurance shall contain a special clause permitting the use of explosives.

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 this Contract. 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 Section 2.22, *Maintenance of Traffic*.

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 Section 2.24, *Right of Way*.)

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

1-07.26 Personal Liability of Public Officers

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

1-07.27 No Waiver of State's Legal Rights

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

1-07.27(1) No Waiver of Subsequent Rights

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

1-07.27(2) Custom Does Not Constitute Waiver

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

1-07.27(3) Waivers Must Be in Writing

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