

1-09 Measurement and Payment

1-09.1 *Measurement of Quantities*

In measuring all acceptably completed Work, WSDOT will:

1. Use United States standard measure
2. Make all measurements as described in this Section, unless individual specifications require otherwise
3. Follow methods generally recognized as conforming to good engineering practice
4. Conform to the usual practice of WSDOT by carrying measurements and computations to the proper significant figure or fraction of units for each item
5. Measure horizontally or vertically (unless otherwise specified)

The terms listed below shall be defined as follows in all measurements under this Section:

“Lump Sum” (when used as an item of payment): complete payment for the Work described for that item in the Contract.

“Gage” (in measurement of plates): the U.S. Standard Gage.

“Gage” (in measurement of galvanized sheets used to manufacture corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing): that specified in AASHTO M 36, M 167, M 196, M 197, or M 219.

“Gage” (in measurement of wire): that specified in AASHTO M 32.

“Ton:” 2,000 pounds of avoirdupois weight.

Items of payment, that have “Lump Sum” or “Force account” in the bid item of Work shall have no specific unit of measurement requirement.

For each basis of measurement listed below, WSDOT will use the method of measurement described. For Work measured on the basis of:

Square Yard or Square Foot - the measurement shall be a calculation from the neat dimensions shown in the Design Documents or as altered pursuant to the Contract. If there is an exception within the measured area where the item of Work is not performed (such as a drainage vault within a measured sidewalk) and if the exception area is greater than 9 square feet, then the area of the exception will be subtracted from the payment area calculated from the neat dimensions.

Linear Foot (pipe culverts, guard rail, underdrains, etc.) - measured parallel to the Structure’s base or foundation, unless the plans require otherwise.

Weight - weighed as required in Section 1-09.2.

Volume (of excavation and embankment) - measured by the average-end-area method or by the finite element analysis method utilizing digital terrain modeling techniques. All or some computations may be based on ground elevations and other data derived photogrammetrically. WSDOT may correct for curvature.

Volume (in the hauling vehicle) - measured at the point of delivery. Hauling vehicles may be of any size or type WSDOT approves provided that the body is of such shape that the actual contents may be readily and accurately determined. If WSDOT requires, the Design-Builder shall level loads at the delivery point to facilitate measurement.

For each item listed below, the WSDOT Engineer will use the method of measurement described.

Structures - measured on the neat lines shown in the Design Documents or as altered by the Contract. When a complete Structure or structural unit is specified as the unit of measurement, the unit shall include all fittings and accessories.

Timber - measured by the thousand board feet (MBM) actually used in the Structure. Measurements will be based on nominal widths and thicknesses and the extreme length of each piece.

Standard Manufactured Items (fence, wire, plates, rolled shapes, pipe conduit, etc., when specified) - measured by the manufacturer's identification of gage, unit weight, section dimension, etc. The WSDOT Engineer will accept manufacturing tolerances set by each industry unless cited specifications require more stringent tolerances.

Cement - measured by the pound, ton, or sack. A sack shall be 94 pounds.

Asphalt - measured by the gallon or ton. If measured by gallon, measurement will be made at 60 F (or will be corrected to the volume at 60 F in keeping with ASTM D 1250). If shipped by rail, truck, or transport, measurement will be by net certified scale masses or certified volumes (corrected for material lost in route or not actually incorporated into the Work). No measurement will be made for:

1. Work performed or materials placed outside lines shown in the Design Documents
2. Materials wasted, used, or disposed of in a manner contrary to the Contract
3. Rejected materials (including those rejected after placement if the rejection resulted from the Design-Builder's failure to comply with the Contract)
4. Hauling and disposing of rejected materials
5. Material remaining on hand after the Work is completed, except as provided in Section 1-09.5
6. Any other Work or material contrary to any Contract provision

1-09.2 Weighing Equipment

1-09.2(1) General Requirements for Weighing Equipment

Unless specified otherwise, any Highway or Bridge construction materials to be proportioned or measured and paid for by weight shall be weighed on a scale.

Scales

Scales shall:

1. Be accurate to within 0.5 percent of the correct weight throughout the range of use
2. Not include spring balances
3. Include beams, dials, or other reliable readout equipment

4. Be built to prevent scale parts from binding, vibrating, or being displaced and to protect all working parts from falling material, wind, and weather
5. Be carefully maintained, with bunkers and platforms kept clear of accumulated materials that could cause errors and with knife edges given extra care and protection

Scale Operations

The Design-Builder provided scale operations are defined as operations where a scale is set up by the Design-Builder specifically for the Project and most, if not all, material weighed on the scale is utilized for Contract Work. In this situation, the Design-Builder shall provide a Person to operate the Project scale, generate e-tickets, perform scale checks, and prepare reports.

Commercial scale operations include the use of established scales used to sell materials to the public on a regular basis. In addition, for the purposes of this specification, all batch, hopper, and belt scales are considered to be commercial scales. When a commercial scale is used as the Project scale, the Design-Builder may utilize a commercial scale operator provided it is at no additional cost to WSDOT.

In addition, the Design-Builder shall ensure that:

1. WSDOT is allowed to observe the weighing operation and check the daily scale weight record.
2. Scale verification checks are performed at the direction of WSDOT (see Section 1-09.2(5)).
3. Several times each day, the scale operator records and makes certain the platform scale balances and returns to zero when the load is removed.
4. Test results and Daily Summary Reports for each day's hauling operations are provided to the WSDOT Engineer daily.

Trucks and E-Tickets

Each truck to be weighed shall bear a unique identification number. This number shall be legible and in plain view of the scale operator. The Design-Builder shall provide e-tickets for all weighed materials. All e-tickets shall, at a minimum, contain the following information:

1. Date of haul
2. Contract number
3. Work item/activity number and material description
4. Unit of measure
5. Identification number of hauling vehicle
6. Weight delivered
 - (a) Net weight in the case of batch and hopper scales
 - (b) Gross weight, tare weight (a.m. and p.m. minimum), and net weight in the case of platform scales
 - (c) Approximate load out weight in the case of belt conveyor scales

The e-ticket shall be uploaded to a designated site so that it can be accessed by the material receiver at the material delivery point. The material delivery point is defined as the location where the material is incorporated into the permanent Work. The Design-Builder's representative shall make report summaries available to the WSDOT Engineer's designated receiver, not later than the end of shift, for reconciliation. E-tickets for loads not verified as delivered will receive no pay.

Electronic Delivery Management System (E-Ticketing)

No fewer than 30 Calendar Days prior to delivery or placement activities, the Design-Builder shall submit a Type 1 Working Drawing to the WSDOT Engineer detailing E-Ticketing Systems (ETS) used to provide the required information. It is recognized that multiple systems may be used to accommodate the Design-Builder and material supplier capabilities. The Working Drawings shall explain how partial loads will be tracked and include contingency plans for lost internet connectivity or phone reception, or both. The Design-Builder shall provide on-site technical assistance and training during the initial setup to all parties requiring access to the e-ticket information. The Design-Builder shall provide ETS support as necessary during the Work to ensure effective ongoing utilization.

Equipment

The Design-Builder shall demonstrate that the ETS can provide the following:

1. The ETS shall be fully integrated with the Design-Builder's load read-out scale system at the material source site. In the absence of a fully integrated system, digital data can be captured by a photo of the ticket (PDF ticket) generated at the scale at load out. The information shall be immediately uploaded to a designated site so the information can be accessed by the Inspector located at the material delivery site.
2. The ETS shall be accessible by real-time monitoring with a mobile communication device such as a tablet, smartphone, etc.

The material source site (point of load out) shall have a reliable, stable internet connection, with a local Wi-Fi device (hot spot) in areas with poor or no cell service.

The Design-Builder shall install and operate equipment in accordance with their accepted ETS. The submitted information shall identify an alternative method for manually capturing and electronically delivering data if internet access or cell phone service, or both, is temporarily unavailable at the load out site.

E-Tickets

The e-tickets must provide, at a minimum, the information required in this Section for truck weight measurement and Section 6-02.3(5)B of the Standard Specifications for concrete delivery.

Daily Summary Report

The Design-Builder shall provide to the WSDOT Engineer a means in which to gather report summaries using mobile communication devices. The following summary of information shall be provided to the WSDOT Engineer electronically, in a file format that cannot be edited, at the end of the days hauling operation or as agreed to by the WSDOT Engineer. The summary report shall include:

1. for each Material:
 - a. List of Individual Loads, including:
 - i. Contractor Name and Material Producer
 - ii. Project number and county
 - iii. Truck number
 - iv. Net weight for payment (nearest 0.1 tons) or volume for payment
 - v. Date placed
 - vi. Time loaded

1-09.2(2) Specific Requirements for Batching Scales

Each batching scale shall be designed to support a weighing container. The arrangement shall make it convenient for the operator to remove material from the weighing container while watching readout devices. Any weighing container mounted on a platform scale shall have its center of gravity directly over the platform center line. Batching scales used for Portland cement concrete or hot mix asphalt shall not be used for batching other materials.

Readout devices used for batching or hopper scales shall be marked at intervals evenly spaced throughout and shall be based on the scale's nominal rated capacity. These intervals shall not exceed 1-tenth of 1 percent of the nominal rated capacity. Before use at a new site and then at 6 month intervals, all batching and hopper scales shall be: approved under rules of the Weights and Measures section of the Washington State Department of Agriculture, or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In either case, the Design-Builder shall provide WSDOT with a copy of the final test results.

1-09.2(3) Specific Requirements for Platform Scales

Each platform scale shall be able to weigh the entire hauling vehicle or combination of connected vehicles at one time. No part of the vehicle or vehicle combination will be permitted off the platform as it is weighed. A tare weight shall be taken of each hauling vehicle at least once daily.

Any platform scale shall be installed and maintained with the platform level and with rigid bulkheads at either end to prevent binding or shifting. The readout device shall be marked at intervals of no more than 40 pounds. Test records shall show results to the nearest 20 pounds. During weighing operations, weights shall be read and recorded to the nearest 100 pounds. Before use at a new site and then at 6 month intervals, any platform scale shall be: approved under rules of the Washington State Department of Agriculture's Weights and Measures section, or serviced and tested with at least 10,000 pounds by an agent of its manufacturer. In either case, the Design-Builder shall provide WSDOT with a copy of the final test results.

1-09.2(4) Specific Requirements for Belt Conveyor Scales

WSDOT may approve conveyor-belt weighing of untreated materials if the method and device meet all general requirements for weighing equipment. The recording tape,

odometer, totalizer, calibration adjustment, and clock-time imprinter shall be kept locked and the WSDOT Engineer shall retain all keys. All belt-conveyor scales shall comply with the requirements for Belt-Conveyor Scales in the National Institute of Standards and Technology (NIST) Handbook No. 44, except where these specifications modify those requirements.

A static load test shall be made: each day after the belt-conveyor has run continuously for about 30 minutes, and again, immediately after the air temperature changes significantly. If the static load test reveals a need for adjustment, the Design-Builder shall perform a chain test. The Design-Builder shall make the computation of the test chain calibration, the calibration procedures and results, and related records available for the WSDOT Engineer's review. The test chain shall be clearly marked with its calibration, carried in a suitable container, and kept immediately available for testing.

1-09.2(5) Measurement

Scale Verification Checks

The Design-Builder shall verify the accuracy of each batch, hopper or platform scale. The frequency of verification checks will be such that at least one test weekly is performed for each scale used in weighing Contract items of Work.

The Design-Builder shall notify WSDOT at least 24 hours in advance of a scale verification.

Verification checks may not be routinely conducted for weighed material, whose proposal quantity multiplied by the Material Unit Price as shown in Table 5, Section 2.25, *Control of Materials*, has a value less than \$20,000.

The verification will consist of one of the following methods and be at the Design-Builder's option:

- Weigh a loaded truck on a separate certified platform scale designated by the Design-Builder, for the purpose of scale verification
- Weigh a vehicle that weighs at least 10,000 pounds on a separate certified scale and then check the Project scale with it
- Establish a certified fixed load weighing at least 10,000 pounds as a check-weight. The certification shall consist of an affidavit affirming the correct weight of the fixed load

Should the scale verification check reveal a weight difference of more than 0.5 percent, a second scale verification check shall be performed immediately. If the weight differences of both comparison checks exceed the 0.5-percent limit, the Design-Builder shall immediately stop weighing and the scale shall be recertified at the Design-Builder's expense.

Belt Scales

To test the accuracy of a belt-conveyor scale, the Design-Builder shall weigh five or more payloads from sequential hauling units and compare these weights with weights of the same payloads taken on a separate certified platform scale. If the test results fluctuate, WSDOT may require more than five check loads. Conveyor weights will be based on

tonnage values taken from the sealed odometer at the beginning and end of each check period.

If scale verification checks show the scale has been under weighing, it shall be adjusted immediately.

If scale verification checks show the scale has been overweighing, its operation will cease immediately until adjusted.

Minor Construction Items

If the specifications and plans require weight measurement for minor construction items, the Design-Builder may request permission to convert volume to weight. If WSDOT approves, an agreed factor may be used to make this conversion and volume may be used to calculate the corresponding weight for payment.

1-09.2(6) Payment

Unless specified otherwise WSDOT will pay for no materials received by weight unless they have been weighed as required in this Section or as required by another method WSDOT has approved in writing.

The Design-Builder shall not be compensated for any loss from under weighing that is revealed by scale verification checks.

If scale verification checks reveal that the scale is over weighing, then payment for all material weighed since the last valid scale verification check will be adjusted. WSDOT will calculate the combined weight of all materials weighed after the last verification check showing accurate results. This combined weight will then be reduced for payment by the percentage of scale error that exceeds 0.5 percent unless the Design-Builder demonstrates to the satisfaction of WSDOT that the defect in the scale was present for a lesser period of time.

The Contract Price covers all costs related to weighing and proportioning materials for payment. These costs include, at a minimum:

1. Furnishing, installing, certifying, and maintaining scales
2. Providing a weigher to operate a Design-Builder provided scale
3. Providing a weigher to operate a commercial scale, if necessary
4. Providing self-printing tickets, if necessary
5. Rerouting a truck for verification weighing
6. Assisting WSDOT with scale verification checks
7. Any other related costs associated with meeting the requirements of this Section

All costs to comply with this Section, unless otherwise stated, are the responsibility of the Design-Builder.

1-09.3 Scope of Payment

The payment provided for in the Contract shall be full payment to the Design-Builder for:

1. Performing all design services, furnishing all materials and performing all construction and other Work under the Contract (including changes in the Work) in a complete and acceptable manner
 2. All risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the Work
 3. All expense incurred resulting from a suspension or discontinuance of the Work as specified under the Contract
- Payment hereunder shall not relieve the Design-Builder of the obligation to make good any defective Work or materials.

1-09.3(1) Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 1-09.1. Unit prices shall be deemed to include all costs for labor, material, overhead, and profit; and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, WSDOT will issue a modified Change Order setting forth the final adjustment to the Contract Price.

1-09.4 Equitable Adjustment

The equitable adjustment provided for elsewhere in the Contract shall be determined in one or more of the following ways:

1. If the parties are able to agree, the price will be determined by using:
 - (a) Unit prices
 - (b) Other agreed-upon prices
2. If the parties cannot agree, the price will be determined by WSDOT using:
 - (a) Unit Prices
 - (b) Other means to establish costs

The following limitations shall apply in determining the amount of the equitable adjustment:

1. The equipment rates shall be actual cost but shall not exceed the rates set forth in the AGC/WSDOT Equipment Rental Agreement in effect at the time the Work is performed, as referred to in Section 1-09.6.
2. To the extent any delay of performance was concurrently caused by WSDOT and the Design-Builder, the Design-Builder shall be entitled to a time extension to the extent of such concurrent delay, provided the Design-Builder complies with the provisions of Section 1-08.8. The Design-Builder shall not be entitled to an adjustment in the Contract Price for any concurrent delay.
3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be allowed.
4. No claim for consequential damages of any kind will be allowed.

1-09.5 Deleted or Terminated Work

WSDOT may delete portions of the Work by Change Order as provided in Section 1-04.4 or may terminate the Contract in whole or part as provided in Section 1-08.10(2). When the Contract is terminated in part, the partial termination shall be treated as a deletion Change Order for payment purposes under this Section.

When any item is deleted in whole or in part by Change Order or when the Contract is terminated in whole or in part, payment for deleted or terminated Work will be made as follows:

1. Payment for partially completed lump sum items will be as mutually agreed. If the parties cannot agree, the WSDOT Engineer will determine the amount of the equitable adjustment in accordance with Section 1-09.4.
2. To the extent not paid for by the portion of the Contract Price allocated to completed Work, WSDOT will pay as part of the equitable adjustment those direct costs necessarily and actually incurred by the Design-Builder in anticipation of performing the Work that has been deleted or terminated.
3. The total payment for any one item in the case of a deletion or partial termination shall not exceed the Contract Price as modified by approved Change Orders less the estimated cost (including overhead and profit) to complete the Work and less any amount paid to the Design-Builder for the item.
4. The total payment where the Contract is terminated in its entirety shall not exceed the total Contract Price as modified by approved Change Orders less those amounts paid to the Design-Builder before the effective date of the termination.
5. No claim for damages of any kind or for loss of anticipated profits on deleted or terminated Work will be allowed because of the termination or Change Order.

Contract Time shall be adjusted as the parties agree. If the parties cannot agree, WSDOT will determine the equitable adjustment for Contract Time.

Acceptable materials ordered by the Design-Builder prior to the date the Work was terminated as provided in Section 1-08.10(2) or deleted as provided in Section 1-04.4 by WSDOT, will either be purchased from the Design-Builder by WSDOT at the actual cost and shall become the property of WSDOT, or WSDOT will reimburse the Design-Builder for the actual costs connected with returning these materials to the suppliers.

1-09.6 Force Account

The terms of the Contract or of a Change Order may call for Work or material to be paid for by force account. If so, then the objective of this specification is to reimburse the Design-Builder for all costs associated with the Work, including costs of design, engineering, labor, small tools, supplies, equipment, specialized services, materials, applicable taxes and overhead, and to include a profit commensurate with those costs. The amount to be paid shall be determined as shown below for Construction forces:

1. **For Labor** - Labor reimbursement calculations shall be based on a "Project Labor List" (List) prepared and submitted by the Design-Builder and by any Subcontractor before that firm commences Force Account Work. Once a List is approved by WSDOT, it shall be used to calculate force account labor payment until a new List

1 is submitted and approved. WSDOT may compare the List to payrolls and other
2 documents and may, at any time, require the Design-Builder to submit a new List.
3 The Design-Builder may submit a new List at any time without such a requirement.
4 Prior payment calculations shall not be adjusted as a result of a new List.

5 To be approved, the List must be accurate and meet the requirements of this
6 Section. It shall include regular time and overtime rates for all employees (or work
7 classifications) expected to participate in Force Account Work. The rates shall
8 include the basic wage and fringe benefits, the current rates for Federal Insurance
9 Compensation Act (FICA), Federal Unemployment Tax Act (FUTA) and State
10 Unemployment Tax Act (SUTA), the company's present rates for Medical Aid and
11 Industrial Insurance premiums and the planned payments for travel and per diem
12 compensation.

13 In the event that an acceptable initial List or requested revised List is not received
14 by the time that force account calculations are begun, the WSDOT Engineer will
15 develop a List unilaterally, utilizing the best data available, that will be used until
16 the Design-Builder's List is received and approved. Again, prior calculations,
17 prepared using the WSDOT List, will not be revised as a result of differences with
18 the Design-Builder's List.

19 In addition to compensation for direct labor costs defined above, WSDOT will pay
20 the Design-Builder 29 percent of the sum of the costs calculated for labor
21 reimbursement to cover Project overhead, general company overhead, profit,
22 bonding, insurance required by Sections 1-07.10 and 1-07.18, Business and
23 Occupation tax, and any other costs incurred, except paid sick leave. WSDOT will
24 pay the Design-Builder an additional 2 percent of the sum of the costs calculated for
25 labor reimbursement to cover the cost of paid sick leave. This amount will include
26 any costs of safety training and health tests, but will not include such costs for
27 unique Force Account Work that is different from typical Work and which could
28 not have been anticipated at time of Proposal.

- 29 2. **For Materials** - WSDOT will reimburse invoice cost for Design-Builder-supplied
30 materials. For the purpose of this provision, "Materials" shall include those items
31 incorporated into the Work, supplies used during the Work, and items consumed.
32 This cost shall include freight and handling charges and applicable taxes. Before
33 Work is started, the WSDOT Engineer may require the Design-Builder to obtain
34 multiple quotations for the materials to be utilized and select the vendor with prices
35 and terms most advantageous to WSDOT.

36 WSDOT will provide a list of the types and quantities of Design-Builder-supplied
37 materials witnessed by WSDOT as being utilized in Force Account Work. The list
38 will be furnished promptly after the material is incorporated, on a daily basis unless
39 agreed otherwise. The Design-Builder may propose corrections to the list and will
40 supply prices for the materials and other costs and return the list to WSDOT. To
41 support the prices, the Design-Builder shall attach valid copies of vendor invoices.
42 If invoices are not available for materials from the Design-Builder's stocks, the
43 Design-Builder shall certify actual costs (at a reasonable level) by affidavit.
44 WSDOT will review the prices and any Design-Builder-proposed corrections and, if

reasonable, approve the completed list. Once approved, the prices will be utilized in the calculation of force account reimbursement for materials.

If, in the case of non-invoiced materials supported by the Design-Builder's affidavit, the price appears to be unreasonable, WSDOT will determine the cost for all or part of those materials, utilizing the best data available.

WSDOT reserves the right to provide materials. In this case, the Design-Builder will receive no payment for any costs, overhead, or profit arising from the value of the materials themselves. Additional costs to handle and place the Agency-furnished material shall be compensated as described in this specification.

In addition to compensation for direct materials cost, WSDOT will pay the Design-Builder 21 percent of the sum of the costs calculated for materials reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business and Occupation tax, and any other costs incurred.

3. **For Equipment** - WSDOT will reimburse the Design-Builder for the cost of equipment utilized in the Work. The equipment provided by the Design-Builder shall be of modern design and in good working condition. For the purpose of this provision, "provided" shall mean that the equipment is owned (either through outright ownership or through a long-term lease) and operated by the Design-Builder or Subcontractor or that the equipment is rented and operated by the Design-Builder or Subcontractor. Equipment that is rented with operator shall not be included here, but shall be considered a service and addressed according to Section 1-09.6 (item 4) below.

The amount of payment for any Design-Builder-owned equipment that is utilized shall be determined according to the version of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time the force account is authorized. The rates listed in the Rental Rate Blue Book (as modified by the current AGC/WSDOT Equipment Rental Agreement) shall be full compensation for all fuel, oil, lubrication, ordinary repairs, maintenance, and all other costs incidental to furnishing and operating the equipment except labor for operation.

Payment for rented equipment will be made on the basis of a valid invoice, covering the time period of the Work. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the rental of equipment to be utilized and select the vendor with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the vendor is not a firm independent from the Design-Builder or Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of submitted invoice.

In addition to the payments for Design-Builder-owned and rented equipment, one or more lump-sum payments may be made for small tools. The amount to be paid shall be determined as outlined in the AGC/WSDOT Equipment Rental Agreement.

WSDOT will add 21 percent to equipment costs to cover Project overhead, general company overhead, profit, bonding, insurance required by Sections 1-07.10 and

1-07.18, Business and Occupation tax, and any other costs incurred. This markup will be over and above those equipment costs and will not be adjusted for any equipment overhead amounts included in the Blue Book rates.

Current copies of the Rental Rate Blue Book and the AGC/WSDOT Equipment Rental Agreement will be maintained on WSDOT's website at www.wsdot.wa.gov.

4. **For Services** - Compensation under force account for specialized services shall be made on the basis of an invoice from the providing entity. A "specialized service" is a work operation, which is not typically done by worker classifications as defined by State L&I and by the Davis Bacon Act, and therefore bills by invoice for work in road, bridge and municipal construction. Before Work is started, WSDOT may require the Design-Builder to obtain multiple quotations for the service to be utilized and select the provider with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the service invoice is submitted by a Subcontractor, then after-the-fact quotations may be obtained by WSDOT from the open market in the vicinity and the lowest such quotation may be used in place of the submitted invoice.

Except as noted below, WSDOT will pay the Design-Builder an additional 21 percent of the sum of the costs included on invoices for specialized services to cover Project overhead, general company overhead, profit, bonding, insurance required by Section 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

When a supplier of services is compensated through invoice, but acts in the manner of a Subcontractor, as described in item 6 of this Section, then markup for that invoice shall be according to item 6. "For the Design-Builder Markup on Subcontractor's Work."

The cost of labor for non-construction-related Work (including design, surveying, utility coordination, permits, professional environmental services, and similar aspects of the Work), whether provided by the Design-Builder or a Subcontractor, will equal the sum of (1) actual wages (i.e. the base wage paid to the employee exclusive of fringe benefits), plus (2) a labor surcharge of 150 percent on such amount, which shall constitute full compensation for all state and Federal payroll, unemployment and other taxes, workers' compensation, fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for overhead. This amount shall be considered full compensation and no further markups will be allowed.

5. **For Mobilization** - Force account mobilization is defined as the preparatory Work performed by the Design-Builder including procurement; loading and transportation of tools and equipment; and personal travel time (when such travel time is a contractual obligation of the Design-Builder or a customary payment for the Design-Builder to all employees). Mobilization also includes the costs incurred during demobilization. Pro-rata adjustments may be made when the mobilization applies to both force account and other Contract Work. WSDOT will pay for mobilization for off-site preparatory Work for force account items provided that

notice has been provided sufficiently in advance to allow WSDOT to witness the activity, if desired.

Any costs experienced during mobilization activities for labor, equipment, materials, or services shall be listed in those Sections of the force account summary and paid accordingly. Note that no additional mobilization expense will be paid for any Equipment presently on-site.

6. **For The Design-Builder Markup on Subcontractor's Work** - When Work is performed on a force account basis by one or more approved Subcontractors, by lower-tier Subcontractors or suppliers, or through invoice by firm(s) acting in the manner of a Subcontractor, the Design-Builder will be allowed an additional markup, from the table below, applied to the costs computed for Work done by each Subcontractor through items 1, 2, 3, 4, and 5 of this Section, to compensate for all administrative costs, including Project overhead, general company overhead, profit, bonding, insurance required by Sections 1-07.10 and 1-07.18, Business & Occupation tax, and any other costs incurred.

A firm may be considered to be acting as a Subcontractor when WSDOT observes one or more of the following characteristics:

- (a) The Person in charge of the firm's activities takes an active role in managing the overall Project, including extensive coordination, interpretation of plans, interaction with WSDOT, or management of a complex and interrelated operation.
- (b) Rented equipment is provided fueled, operated, and maintained by the firm. Operators of rented equipment are supervised directly by the firm's representative. There is little interaction between the Design-Builder and the employees of the firm.
- (c) The firm appears to be holding the risk of performance and quality of the Work.
- (d) The firm appears to be responsible for liability arising from the Work.

Markups on Work Performed by Subcontractor(s):

- | | |
|---|------------|
| 1. On amounts paid for work performed by each Subcontractor on each force account and calculated through items 1 - 5 up to \$25,000 | 12 percent |
| 2. On amounts greater than \$25,000 up to \$100,000 | 10 percent |
| 3. On amounts greater than \$100,000 | 7 percent |

The amounts and markup rates shall be calculated separately for each Subcontractor on each force account item established.

The payments provided above shall be full payment for all Work done on a force account basis. The calculated payment shall cover all expenses of every nature, kind, and description, including those listed above and any others incurred on the work being paid through force account.

Nothing in this provision shall preclude the Design-Builder from seeking an extension of time or time-related damages to unchanged Work arising as a result of the Force Account

1 Work. The amount and costs of any Work to be paid by force account shall be computed
2 by WSDOT, and the result shall be final as provided in Section 1-05.1.

3 An item which was included in the original scope of the Work will not be paid as force
4 account unless a change as defined in Section 1-04.4 has occurred and the provisions
5 require a payment adjustment.

6 Force Account Work may, at any time and by agreement of the parties, be converted to
7 agreed unit prices or lump sums applicable to the remaining Work.

8 **1-09.6(1) Daily Reports**

9 The Design-Builder shall furnish daily, on forms approved by WSDOT, reports of Force
10 Account Change Order Work. The reports shall itemize all costs for labor, materials, and
11 equipment rental and give total of costs to date for the Force Account Change Order
12 Work. For workers, the reports shall include hours worked, rates of pay, names and
13 classifications. For equipment, the reports shall include size, type, identification number,
14 rental rate, and hours of operation. All such records and reports shall be made
15 immediately available to WSDOT upon its request. The cost of furnishing such reports
16 shall be included in the Design-Builder's overhead and fee percentages.

17 **1-09.6(2) Reports As Basis for Payment**

18 All Force Account Change Order reports shall be signed by the Design-Builder or its
19 authorized representative. WSDOT will compare its records with the Design-Builder's
20 reports, make the necessary adjustments and compile the costs of Force Account Change
21 Order work. When such reports are agreed upon and signed by both parties, they will
22 become the basis of payment.

23 **1-09.7 Mobilization**

24 The mobilization payment is intended to compensate the Design-Builder for certain start-
25 up expenses associated with performance of design and construction Work hereunder.
26 Items which are not to be included in mobilization include, at a minimum, profit, interest
27 on borrowed money, overhead, or management costs.

28 The Design-Builder shall identify, in the price loaded Contract Schedule, a dollar amount
29 for mobilization. This amount shall be represented by price loaded schedule activities in
30 the Design-Builder's 90-Day Look-Ahead Schedule and its Baseline Contract Schedule
31 (See Section 1-08.3).

32 Nothing herein shall be construed to limit or preclude partial payments otherwise
33 provided by the Contract.

34 **1-09.8 Payment for Material on Hand**

35 WSDOT may reimburse the Design-Builder for materials purchased before their
36 incorporation into the Project if they:

- 37 1. Are identified as separate and distinct activities in the accepted price loaded
38 Baseline Contract Schedule

2. Have substantiated prices assigned to the schedule activities as set forth in Section 1-08.3(9)
3. Are invoiced as described in Section 1-09.9
4. Consist of: reinforcing steel, bronze plates, structural steel, machinery, piling, timber and lumber (not including forms or falsework), large signs unique to the Project, prestressed concrete beams or girders, or other materials WSDOT may approve

WSDOT may reimburse the Design-Builder for traffic signal controllers when the accepted Baseline Contract Schedule contains price-loaded activities as follows:

1. 50 percent when the traffic signal controller and all components are received and assembled into a complete unit at the State Materials Laboratory
2. 100 percent when the traffic signal controller is approved for shipment to the Project by the State Materials Laboratory

The Design-Builder shall provide sufficient Written evidence of production costs to enable WSDOT to compute the cost of Design-Builder produced materials (such as sand, gravel, surfacing material, or aggregates). For other materials, the Design-Builder shall provide invoices from material suppliers, detailed sufficiently to enable WSDOT to determine the actual costs. Payment for materials on hand shall not exceed the amount allocated thereto in the CPM and Payment Schedule.

If payment is based upon an unpaid invoice, the Design-Builder shall provide WSDOT with a paid invoice within 60 Calendar Days after WSDOT's initial payment for materials on hand. If the paid invoice is not furnished in this time, any payment WSDOT had made will be deducted from the next progress estimate and withheld until the paid invoice is supplied.

WSDOT will not pay for material on hand when the invoice cost is less than \$2,000. As materials are used in the Work, credits equaling the partial payments for them will be taken on future estimates. Partial payment for materials on hand shall not constitute acceptance. Any material will be rejected if found to be faulty even if partial payment for it has been made.

1-09.9 *Payments*

1-09.9(1) Invoicing Requirements

The Design-Builder shall submit monthly invoices to the WSDOT on a mutually agreed date consistent with the progress payment cutoff date set by WSDOT.

State Fiscal Year End Closure Requirements (RCW 43.88) – The Design-Builder shall submit an invoice for all un-invoiced work completed through June 30th (end of State fiscal year) by July 15th of the same year.

If the Design-Builder is unable to provide an invoice for such cost by this date, an ESTIMATE of what is owed by WSDOT through June 30th must be submitted by July 15th of the same year for the most probable invoice amount. The estimated invoice must be labeled "ESTIMATE." WSDOT will accrue this estimated invoice amount. To release accrued amounts, a final invoice for the period accrued must be submitted as soon

as all final payments are known. This requirement applies to invoices from the Design-Builder and all subs providing services under the contract and includes any direct expense which applies to the final fiscal year invoice.

Failure to comply with these requirements may result in the need for WSDOT to file for an approval of belated claims pursuant to chapter 43.88 RCW, which may significantly delay payment. WSDOT shall not be required to pay to the Design-Builder late payment fees, interest, or incidental cost incurred by the Design-Builder or any other cost related to a delayed payment if the Design-Builder fails to comply with the invoice requirements of this Section.

Partial Payments - No payment item shall be included on an invoice for Work that has been documented as deficient by the QA staff, or Work that is not being performed in accordance with the Contract.

Reimbursement - If requested by WSDOT, the Design-Builder shall provide separate invoices for Work subject to reimbursement by the Federal government or third parties. Such invoices shall be organized to meet all applicable reimbursement requirements and to facilitate the reimbursement process.

1-09.9(1).1 Maximum Rate of Payment

In this Section, the word “payment” refers to payments from WSDOT to the Design-Builder, and includes not only progress payments for the Contract Price, but also includes payments by WSDOT to the Design-Builder for all other causes including at a minimum incentives, disincentives, and Change Orders.

Due to the rate at which funding will become available for this Project, payments to the Design-Builder shall not exceed shall not exceed \$350,000,000 total prior to June 30, 2025. Consequently, the price-loaded Baseline Contract Schedule and price loaded Monthly Schedule Updates shall not reflect more than \$350,000,000 of Work before June 30, 2025.

At no time shall the Design-Builder invoice WSDOT for amounts exceeding the aforementioned funding restrictions. WSDOT’s inability to pay more than these amounts shall not absolve the Design-Builder of responsibility to make timely payment to Subcontractors.

1-09.9(1).2 Invoicing Documents

No invoice will be processed until WSDOT has received the documents listed in this Contract.

The invoice value will be based on the agreed-upon progress for the Contract Schedule activities as outlined in Section 1-08.3 and on other exception items as expressly detailed in the Payments Section.

Submit the following documents with each invoice:

1. Invoice cover sheet
2. Progress report including accepted, updated price-loaded schedule
3. Certification by Design and Construction QA Managers

4. Invoice data sheet(s) and supporting documents based on the price loaded Contract Schedule

5. Monthly design exception report

Make all invoices and progress reports consistent with the accepted Baseline Contract Schedule or the applicable accepted Monthly Contract Schedule Update.

Obtain the signatures of the Design-Builder's Project Manager, the Design QA Manager and the Construction QA Manager on the progress report.

1-09.9(1).3 Invoice Cover Sheet

Indicate the following on the invoice cover sheet:

1. Project number and title
2. Invoice number (numbered consecutively, starting with "1")
3. Period covered by the invoice (specific beginning and ending Calendar Days)
4. For each Contract compensation item:
 - (a) Current approved Contract amount
 - (b) Previous period total to date
 - (c) This period earnings
 - (d) New total to date earnings
5. Subtotal each column above
6. Add applicable sales tax
7. Deduct retention, (if any)
8. Total net earned to date for the Project as a whole
9. Authorized signature, title of signer, and date of signature
10. Signature of the Design and Construction QA Managers

1-09.9(1).4 Progress Report

The Design-Builder shall submit a Monthly Progress Report to WSDOT along with its Monthly Invoice. This Report will consist of two parts: a narrative report addressing progress of the Work and performance of the parties, and a technical report concerning operation and maintenance of the Project schedule as set forth in Section 1-08.3(7).

The Narrative Report will include the following:

1. An "executive summary" of the Project achievements and difficulties for the period just ended and an overview of the goals for the period just beginning.
2. An analysis of the Project condition with respect to on time and on budget performance:
 - (a) Include discussion of Contract milestones and critical path.
 - (b) Describe plans to achieve Contract completion dates including any special measures that may be necessary.
 - (c) Include discussion of Project elements associated with Juanita Creek fish passage.

3. A more detailed review for design and for construction of each discipline past performance and future goals.
 4. Discuss areas of special concern such as quality management, environmental protection, utility coordination, public relations, and cooperation with adjacent contractors.
 5. Address status of required submittals, requests for information, design approvals, and other administrative issues that may impact timely performance.
 6. Review past period safety performance and issues for forthcoming period.
 7. Offer a self-assessment of performance against incentive performance issues.
 8. Review pending and potential changes to determine actions required for early resolution.
- Attach the Monthly Contract Schedule Update Submittal Package as required in Section 1-08.3(7).

1-09.9(1).5 Certification by Design and Construction Quality Assurance Managers

Each invoice shall include a certificate signed by the Design and Construction QA Managers that certifies:

1. All Work (including that of designers, Subcontractors, suppliers, fabricators, and builders) has been tested and inspected by the Design-Builder's Design QA staff and Construction QA staff.
2. All Work, except as specifically noted in the certification, conforms to the requirements of the Contract.
3. The design and construction QMPs and all of the measures and procedures provided therein are functioning properly and are being followed.
4. All As Built Plans and documentation are complete, current, and conform to the QMP requirements.

1-09.9(1).6 Invoice Data Sheets and Supporting Documents

WSDOT and the Design-Builder agree to the process, requirements, exceptions, and format of invoice data sheets and supporting documents as described in this Section.

General - With the exception of force account or other "exception" items, WSDOT will base payments on an estimate of the percentage of Work completed as mutually agreed with the Design-Builder, and not on measured quantities. For each activity, the Design-Builder shall describe how the percent complete was determined. Payments for any activity shall not exceed 95% until all close out documents for that activity have been reviewed and approved by WSDOT Engineer. The Design-Builder shall design a Primavera report to WSDOT's satisfaction that can be submitted in a text searchable PDF electronic file format and comma-delimited ASCII electronic file format. The report shall contain an individual line entry for each price-loaded activity in the Contract Schedule. For each activity, it will show the total percent complete, the percent completed this period, and the total dollar billing for the activity. The report data will be grouped and subtotaled by Cost Account with activities sorted in start sequence within the groups.

Exception Items - WSDOT will pay the Design-Builder for items not included in the price-loaded schedule. These include, but are not necessarily limited to Force Account Work, Incentives, Disincentives, and Price Adjustments provided in the Contract. For each of these, the Design-Builder will assemble the required supporting documents, tally the value of the various items and include them as a separate sub-total line(s) on its monthly invoice.

Rule 170 & 171 Sales Tax – Portions of the Project elements of Work fall under the State Department of Revenue Rule 170 or 171 Sales Tax Collection. See Section 1-07.2(1) for further details of elements of Work that will be owned, maintained, and operated by Sound Transit that fall under Sales Tax Rule 171. The Design-Builder shall clearly identify the Project elements of Work that fall under Rule 171 are accurately accounted for during each invoicing cycle and ensure that appropriate documentation is provided for future auditing purposes.

Format - The Design-Builder shall present the format of the invoice data sheets for WSDOT approval at least 14 Calendar Days before the submittal of the first invoice. Once WSDOT has approved the invoice format, the format shall not be changed unless the change is approved in writing by WSDOT.

1-09.9(2) Payment

WSDOT and the Design-Builder agree to the payment process as described in this Section.

General - WSDOT will simultaneously review each invoice and progress report in detail and process the invoice for payment. Partial Payments will be made once each month. If WSDOT questions or disputes any item, it will redline the item and refer the item back to the Design-Builder for resolution before payment. WSDOT will deduct from the payment the value of the items not resolved to its satisfaction before the payment date.

Incorrect Invoices - If problems persist in obtaining correct invoices and the required accompanying documents from the Design-Builder, WSDOT reserves the right to withhold payment until correct and complete invoices and documents have been submitted.

Failure to perform any of the obligations under the Contract by the Design-Builder may be decreed by WSDOT to be adequate reason for withholding any payments until compliance is achieved.

Upon Completion and after Final Inspection (Section 1-05.11), the amount due the Design-Builder under the Contract will be paid based upon the final estimate made by WSDOT and presentation of a Final Contract Voucher Certification to be signed by the Design-Builder. The Design-Builder's signature on such voucher shall be deemed a release of all claims of the Design-Builder unless a Certified Claim is filed in accordance with the requirements of Section 1-09.11 and is expressly accepted from the Design-Builder's certification on the Final Contract Voucher Certification. The date the Secretary signs the Final Contract Voucher Certification constitutes the Final Acceptance Date (Section 1-05.12).

If the Design-Builder fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for Completion and Final Acceptance of the Contract, WSDOT reserves the right to establish a Completion Date (for the purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract. Unilateral Final Acceptance will occur only after the Design-Builder has been provided the opportunity, by Written request from the WSDOT Engineer, to voluntarily submit such documents. If voluntary compliance is not achieved, formal notification of the impending establishment of a Completion Date and unilateral Final Acceptance will be provided by email with a delivery confirmation from the Secretary to the Design-Builder, which will provide 30 Calendar Days for the Design-Builder to submit the necessary documents. The 30 Calendar Day period will begin on the date the email with delivery confirmation is received by the Design-Builder. The date the Secretary unilaterally signs the Final Contract Voucher Certification shall constitute the Completion Date and the Final Acceptance date (Section 1-05.12). The reservation by WSDOT to unilaterally accept the Contract will apply to contracts that are physically completed in accordance with Section 1-08.5, or for contracts that are terminated in accordance with Section 1-08.10. Unilateral Final Acceptance of the Contract by WSDOT does not in any way relieve the Design-Builder of its responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

The Design-Builder shall provide a Digital Signature using the software provided by WSDOT and return the Final Contract Voucher Certification (FCVC) as indicated in this Section. Prior to Physical Completion, the Design-Builder shall submit a Type 1 Working Drawing designating who is authorized to sign the FCVC, including their full name, email address, and a text-message capable phone number.

Payment to the Design-Builder of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

1-09.9(2).1 Asphalt Cost Price Adjustment

WSDOT will make an asphalt cost price adjustment, either a credit or a payment, for qualifying changes in the reference cost of asphalt binder. The adjustment will be applied to partial payments made according to Section 1-09.9 for the following items of work:

- All classes of HMA used on the Project

The adjustment is not a guarantee of full compensation for changes in the cost of asphalt binder. WSDOT does not guarantee that asphalt binder will be available at the reference cost.

WSDOT will establish the asphalt binder reference cost twice each month and post the information on the Agency website at: <https://wsdot.wa.gov/business-wsdot/how-do-business-us/public-works-contracts/payments-reporting/asphalt-binder-reference-cost>. The reference cost will be determined using posted prices furnished by Poten & Partners, Inc. If the selected price source ceases to be available for any reason, then WSDOT will select a substitute price source to establish the reference cost.

The base cost established for this Contract is the reference cost posted on the WSDOT website for the “Date Effective” immediately preceding the Proposal Due Date.

Adjustments will be based on the most current reference cost for Western Washington or Eastern Washington as posted on the Agency website, depending on where the work is performed. For work completed after the completion times specified in the Contract, the adjustment will be based on the posted reference cost for the month during which contract time was exhausted. The adjustment will be calculated as follows:

No adjustment will be made if the reference cost is within 5 percent of the base cost.

If the reference cost is greater than or equal to 105 percent of the base cost, then

Adjustment = (Current Reference Cost – (1.05 x Base Cost)) x (Q x 0.056).

If the reference cost is less than or equal to 95 percent of the base cost, then

Adjustment = (Current Reference Cost – (0.95 x Base Cost)) x (Q x 0.056).

Where Q = total tons of all classes of HMA paid in the current month’s progress payment.

The Design-Builder shall perform all calculations and accounting, and provide all documentation required to support the price adjustment for WSDOT approval. This includes submission of HMA quantity amounts along with supporting documentation such as HMA quantity tickets as part of the Invoicing Documents, for each month that HMA is used on the Project.

1-09.9(3) Retainage

Pursuant to RCW 60.28, a sum of 5 percent of the monies earned by the Design-Builder will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and payment (1) to WSDOT with respect to taxes imposed pursuant to Title 82, RCW, and (2) the claims of any Person arising under the Contract.

Monies retained under the provisions of RCW 60.28 shall, at the option of the Design-Builder, be:

1. Retained in a fund by WSDOT.
2. Deposited by WSDOT in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Design-Builder). Deposits are to be in the name of WSDOT and are not to be allowed to be withdrawn without WSDOT’s Written authorization. WSDOT will issue a check representing the sum of the monies reserved, payable to the bank or trust company. Such check shall be converted into bonds and securities chosen by the Design-Builder as the interest accrues.

At the time the Contract is executed, the Design-Builder shall designate the option desired. The Design-Builder in choosing option (2) agrees to assume full responsibility to pay all costs, which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities. WSDOT may also, at its option, accept a bond in lieu of retainage.

Release of the retainage will be made 60 Calendar Days following the Completion Date (pursuant to RCW 39.12, and RCW 60.28) provided the following conditions are met:

1. On contracts totaling more than \$35,000, a release has been obtained from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Design-Builder and all Subcontractors are on file with WSDOT (RCW 39.12.040).
3. A certificate of Payment of Contributions Penalties and Interest on Public Work Contract is received from the Washington State Employment Security Department.
4. State L&I (per Section 1-07.10) shows the Design-Builder is current with payments of industrial insurance and medical aid premiums.
5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3, and 4 are met; the Design-Builder will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by WSDOT sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

1-09.9(4) Steel Escalation Cost Adjustment

This Section provides for an adjustment in the Contract Price to address fluctuations in certain steel-based material costs, which may occur over the life of the Project. The Design-Builder may elect to participate in the steel cost adjustments for Work permanently incorporated into this Contract. Steel cost adjustment is not a guarantee of full compensation for changes to the cost of steel items, not eligible for all items with steel, and any adjustment provided by this Section will not obligate WSDOT for any costs beyond the amount adjusted by this Section.

This Section provides the option to opt-in to steel cost adjustments for eligible Bid items. The Design-Builder is provided one opportunity to opt-in and there are no future opt-out provisions. The steel cost adjustment requirements of this Section apply for the duration of the Contract. WSDOT will make a steel cost adjustment, either a credit or a payment, for qualifying changes in the index price of raw steel used in the production of specified materials that are incorporated into the permanent Work in accordance with Steel Escalation Cost Adjustment (Appendix B). The maximum adjustment amount, either as a credit or a payment, shall not exceed \$3,000,000 in the aggregate over the life of the Project. An adjustment made pursuant to this Section shall be the sole basis under the Contract upon which the Design-Builder may seek payment for increases in the price of the specified steel products.

1-09.10 Partnering

WSDOT will require partnering among WSDOT, key stakeholders, the Design-Builder, and its Subcontractors. The partnering process is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals, including achieving completion of the Work on time, within budget, and in accordance with its intended purpose. A primary consideration of partnering is the prompt and equitable resolution of issues affecting the conduct of the Work under the Contract and the rights and responsibilities of the respective parties.

Any cost associated with this partnering will be agreed to by both parties and will be shared equally between WSDOT and the Design-Builder, except for travel expenses, which will be borne by each party. WSDOT will reimburse the Design-Builder for 50 percent of such payments, under the Price Proposal item "Project Partnering".

Within 30 Calendar Days of the NTP, WSDOT and the Design-Builder shall mutually select a third-party facilitator to conduct a team building workshop for the attendees. The initial workshop should be held within 90 Calendar Days of the NTP. The workshop is expected to last approximately 1 day. The Design-Builder's and the major Subcontractor's key staff as well as WSDOT's key staff responsible for the management and administration of the Contract should attend the workshop. During the initial workshop, a program for the continuation and maintenance of the partnering initiative will be developed for use through the duration of the Project.

Follow-up sessions may be held periodically throughout the duration of the Contract, as agreed to by WSDOT and the Design-Builder.

Each party may withdraw from partnering upon Written notice to the other. However, no claim or dispute settled or change approved through partnering may be revived. The establishment of partnering and any charter will not change the legal relationship of the parties to the Contract, nor relieve either party from any terms of the Contract. Neither the language of this Section, nor any statements made nor documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

1-09.11 Claims

1-09.11(1) Vacant

1-09.11(2) Claims

If the Design-Builder claims that additional payment is due and the Design-Builder has pursued and exhausted all the means provided in Section 1-04.5 and 1-04.5(1) to resolve a dispute, the Design-Builder may file a claim as provided in this Section. If either WSDOT or the Design-Builder does not accept the Dispute Review Board recommendation pursuant to Section 1-04.5(1), the Design-Builder shall submit to the WSDOT Engineer a Written notification of intent to file a Certified Claim, within 14 Calendar Days of the acceptance of Board recommendation. If a Dispute Review Board was not utilized, the Design-Builder shall submit to the WSDOT Engineer Written notification of intent to file a Certified Claim within 14 Calendar Days from the issuance of the WSDOT Engineer's determination on merit of the protest pursuant to Section 1-04.5. The Design-Builder agrees to waive any claim for additional payment if the Written notifications provided in Section 1-04.5 are not given, or if WSDOT is not afforded reasonable access by the Design-Builder to complete records of actual cost and additional time incurred as required by Section 1-04.5, or if a claim is not filed as provided in this Section. The fact that the Design-Builder has provided a proper notification, provided a properly filed claim, or provided WSDOT access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the Certified Claim.

1 All Certified Claims filed by the Design-Builder shall be in writing and in sufficient
2 detail to enable WSDOT to ascertain the basis and amount of compensation and time
3 claim, if any. All claims shall be submitted to the WSDOT Engineer as provided in
4 Section 1-05.15. At a minimum, the following information must accompany each claim
5 submitted:

- 6 1. A detailed factual statement of the claim for additional compensation and time, if
7 any, providing all necessary dates, locations, and items of Work affected by the
8 claim
- 9 2. The date on which facts arose which gave rise to the claim
- 10 3. The name of each WSDOT individual, official, or employee involved in or
11 knowledgeable about the claim
- 12 4. The specific provisions of the Contract, which support the claim and a statement of
13 the reasons why such provisions support the claim
- 14 5. If the claim relates to a decision of WSDOT, which the Contract leaves to
15 WSDOT's discretion or as to which the Contract provides that WSDOT's decision
16 is final, the Design-Builder shall set out in detail all facts supporting its position
17 relating to the decision of WSDOT.
- 18 6. The identification of any documents and the substance of any oral communications
19 that support the claim
- 20 7. Copies of any identified documents, other than WSDOT documents and documents
21 previously furnished to WSDOT by the Design-Builder, that support the claim
22 (manuals which are standard to the industry, used by the Design-Builder, may be
23 included by reference).
- 24 8. If an extension of time is sought:
 - 25 (a) The specific days and dates for which it is sought
 - 26 (b) The specific reasons the Design-Builder believes a time extension should be
27 granted
 - 28 (c) The specific provisions of Section 1-08.8 under which it is sought
 - 29 (d) The Design-Builder's analysis of its progress schedule to demonstrate
30 entitlement to a time extension
- 31 9. If additional compensation is sought, the exact amount sought and a breakdown of
32 that amount into the following categories:
 - 33 (a) Labor
 - 34 (b) Materials
 - 35 (c) Direct equipment - The actual cost for each piece of equipment for which a
36 claim is made or in the absence of actual cost, the rates established by the
37 AGC/WSDOT Equipment Rental Agreement, which was in effect when the
38 Work was performed. In no case shall the amounts claimed for each piece of
39 equipment exceed the rates established by that Equipment Rental Agreement
40 even if the actual cost for such equipment is higher. WSDOT may audit the
41 Design-Builder's cost records as provided in Section 1-09.12 to determine
42 actual equipment cost. The following information shall be provided for each
43 piece of equipment:

- 1 (1) Detailed description (e.g., Motor Grader Diesel Powered Caterpillar 12 “G,”
2 Tractor Crawler ROPS & Dozer Included Diesel, etc.)
3 (2) The hours of use or standby
4 (3) The specific day and dates of use or standby
5 (d) Job overhead
6 (e) Overhead (general and administrative)
7 (f) Subcontractor’s claims
8 (g) Other categories as specified by the Design-Builder or WSDOT

9 10. A statement shall be submitted to the WSDOT Engineer containing the following
10 language:

11 _____,
12 (name) (title)
13 of _____
14 (company)

15 Under the penalty of law for perjury or falsification, the undersigned hereby
16 certifies that the claim for extra compensation and time, if any, made herein for
17 Work on this Contract is a true statement of the actual costs incurred and time
18 sought, and is fully documented and supported under the Contract between the
19 parties.

20 Dated _____/s/_____

21 If the Certified Claim, after consideration by the WSDOT Engineer, is found to have
22 merit, the WSDOT Engineer will make an equitable adjustment either in the amount of
23 costs to be paid in accordance with Section 1-09.4 or in the time required for the Work, in
24 accordance with Section 1-08.8 or both. If the WSDOT Engineer finds the Certified
25 Claim to be without merit, no adjustment will be made. If the Design-Builder does not
26 accept the WSDOT Engineer’s determination as to its Certified Claim, then the
27 Design-Builder shall pursue its remedies in accordance with Section 1-09.13.

28 It will be the responsibility of the Design-Builder to keep full and complete records of the
29 costs and additional time incurred for any alleged claim. The Design-Builder shall permit
30 WSDOT to have access to those records and any other records as may be required by
31 WSDOT to determine the facts or contentions involved in the claim. The Design-Builder
32 shall retain those records for a period of not less than 3 years after Final Acceptance.

33 The Design-Builder shall pursue administrative resolution of any claim with WSDOT or
34 the designee of WSDOT.

35 When the Design-Builder fails to submit such Certified Claim information and details as
36 described in this Section with the Final Contract Voucher Certification or prior to the
37 WSDOT’s unilateral Final Acceptance, all claims, including Certified Claims shall be
38 waived as provided in Section 1-09.9.

39 Provided that the Design-Builder is in full compliance with all the provisions of this
40 Section and after the formal Certified Claim document has been submitted, WSDOT will
41 respond, in writing, to the Design-Builder as follows:

1. Within 45 Calendar Days from the date the claim is received by WSDOT if the claim amount is less than \$200,000.
2. Within 90 Calendar Days from the date the claim is received by WSDOT if the claim amount is equal to or greater than \$200,000.
3. If the above restraints are unreasonable due to the complexity of the claim under consideration, the Design-Builder will be notified within 14 Calendar Days from the date the claim is received by WSDOT as to the amount of time, which will be necessary for WSDOT to prepare its response.

Full compliance by the Design-Builder with the provisions of this Section is a contractual condition precedent to the Design-Builder's right to seek judicial relief.

1-09.11(3) Time Limitation and Jurisdiction

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Design-Builder has against WSDOT arising from the Contract shall be brought within 180 Calendar Days from the date of Final Acceptance (Section 1-05.12) of the Contract by WSDOT; and it is further agreed that any such claims or causes of action shall be brought, unless otherwise noted, only in the Superior Court of Thurston County unless otherwise agreed in writing by the parties. The parties understand and agree that the Design-Builder's failure to bring an action in the proper forum within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Design-Builder asserts against WSDOT arising from the Contract are filed with WSDOT, initiated in arbitration, or initiated in court, the Design-Builder shall permit WSDOT to have timely access to any records deemed necessary by WSDOT to assist in evaluating the claims or action.

1-09.12 Audits

1-09.12(1) General

The Design-Builder's wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than 3 years after the date of Final Acceptance. The Design-Builder shall retain these records for that period. The Design-Builder shall also guarantee that the wage, payroll, and cost records of all Subcontractors and all lower tier Subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of WSDOT or by an auditor under contract with WSDOT. The Design-Builder, Subcontractors, or lower tier Subcontractors shall provide adequate facilities, acceptable to the WSDOT Engineer, for the audit during normal business hours. The Design-Builder's Subcontractors or lower tier Subcontractors shall make a GFE to cooperate with the auditors. If an audit is to be commenced more than 60 Calendar Days after the Final Acceptance, the Design-Builder will be given 20 Calendar Days' notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is completed.

1-09.12(2) Audit Claims

All Certified Claims filed against WSDOT shall be subject to audit at any time following the filing of the claim. Failure of the Design-Builder, Subcontractors, or lower tier Subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of the Design-Builder, Subcontractors, or lower tier Subcontractors shall constitute a waiver of a claim and shall bar any recovery thereunder.

1-09.12(3) Required Documents for Audits

At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports
2. Collective Bargaining Agreements
3. Insurance, welfare, and benefits records
4. Payroll registers
5. Earnings records
6. Payroll tax forms
7. Material invoices and requisitions
8. Material cost distribution worksheet
9. Equipment records (list of company equipment, rates, etc.)
10. Vendors', rental agencies', Subcontractors', and lower tier Subcontractors' invoices
11. True and complete copies or originals of all contracts (including leases and purchase orders), between the Design-Builder and each of its Subcontractors and suppliers, and all lower-tier Subcontractor contracts and all supplier contracts
12. Subcontractors' and lower tier Subcontractors' payment certificates
13. Canceled checks (payroll and vendors)
14. Job cost reports, including monthly totals
15. Job payroll ledger
16. General ledger
17. Cash disbursements journal
18. Financial statements for all years reflecting the operations on this Contract. In addition, WSDOT may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 3 years following Final Acceptance
19. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others
20. If a source other than depreciation records is used to develop costs for the Design-Builder's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents
21. All documents which relate to each and every claim together with all documents, which support the amount of damages as to each claim

22. Worksheets or software used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals

23. Worksheets, software, and all other documents used by the Design-Builder to prepare its Proposal

An audit may be performed by employees of WSDOT or a representative of WSDOT. The Design-Builder and its Subcontractors shall provide adequate facilities acceptable to WSDOT for the audit during normal business hours. The Design-Builder and all Subcontractors shall cooperate with WSDOT's auditors.

1-09.13 Claims Resolution

1-09.13(1) General

Any claims or causes of action which the Design-Builder has against WSDOT arising from the Contract shall be resolved, as prescribed herein, through binding arbitration or litigation.

The Design-Builder and WSDOT mutually agree that those claims or causes of action which total \$1,000,000 or less, which are not resolved by mediation, shall be resolved through mandatory and binding arbitration as described herein, subject to the limitations described in Section 1-09.13(3).3.

The Design-Builder and WSDOT mutually agree that those claims or causes of action in excess of \$1,000,000, which are not resolved by mediation, shall be resolved through litigation unless the parties mutually agree in writing to resolve the claim through binding arbitration.

1-09.13(1).1 Conditions Precedent to Binding Arbitration or Litigation

Prior to seeking claims resolution through arbitration or litigation, the Design-Builder shall proceed in accordance with Sections 1-04.5 and 1-09.11. The provisions of Sections 1-04.5 and 1-09.11 must be complied with in full as a condition precedent to the Design-Builder's right to seek claim resolution through binding arbitration or litigation.

1-09.13(1).2 Time Limitation

For the convenience of the parties to the Contract, it is mutually agreed by the parties that any arbitration or litigation shall be initiated within 180 Calendar Days from the "acceptance date" described in Section 1-05.12. Arbitration shall be deemed to be initiated on the date the Design-Builder has successfully completed the requirements of Section 1-09.13(3).2. Litigation shall be deemed to be initiated on the date the Design-Builder files a cause of action with the Thurston County Superior Court, or such other Superior Court as mutually agreed to in writing by the parties. The parties understand and agree that the Design-Builder's failure to initiate arbitration or initiate litigation within the time period provided shall be a complete bar to any such claims or causes of action.

1-09.13(2) Mediation

After WSDOT has been given the time and opportunity to respond to the Design-Builder as provided in Section 1-09.11(2), mediation may be used upon mutual agreement of the Design-Builder and WSDOT. When parties mutually agree to use mediation, the following conditions apply:

1. The cost of the mediation shall be shared equally by both parties with each party bearing its own preparation costs.
2. The mediation shall be agreed upon by the parties and shall be conducted within the State at a time and place mutually agreeable.
3. The Design-Builder agrees that the participation in mediation does not in any way waive the requirement that binding arbitration or litigation proceedings must commence within 180 Calendar Days of Final Acceptance, the same as any other claim or causes of action as provided in Section 1-09.11(3).

1-09.13(3) Arbitration

1-09.13(3).1 Arbitration General

Arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

1. For Certified Claims with an amount less than or equal to \$250,000 the current version of the *Construction Industry Arbitration Rules and Mediation Procedures Fast Track Procedures* shall be used.
2. For Certified Claims with an amount greater than \$250,000 and less than or equal to a \$1,000,000, the current version of the *Construction Industry Arbitration Rules and Mediation Procedures Fast Track Procedures* shall be subject to the limitation in Section 1-09.13(3).3.

Certain aspects of the arbitration may be held by video conference if agreed by the parties and the arbitrator. If aspects of the arbitration require the parties to be at the same physical location, the locale shall be as agreed by the parties and the arbitrator, but in any case within the State. If the parties and the arbitrator are unable to agree, the locale shall be in the city in which the WSDOT's headquarters is located.

WSDOT and the Design-Builder mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of Thurston County or such other Superior Court as mutually agreed to in writing by the parties. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

1-09.13(3).2 Procedures to Initiate Arbitration

The Design-Builder shall file a demand with the AAA in accordance with item (a) "Filing a Demand", of Section R-4 "Filing Requirements Under Arbitration Agreement in a Contract", of The Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association, amended effective July 1, 2015. The fee schedule

1 used shall be the fee schedule effective on the date of filing. The Design-Builder shall
2 notify the WSDOT Engineer, in writing, that a demand has been filed with the AAA.

3 **1-09.13(3).3 Limitations on Arbitration Related to Physical Completion**

4 Unresolved disputes which do not involve delays or impacts to unchanged Work may be
5 brought to binding arbitration prior to Physical Completion of the Project, provided the
6 Design-Builder certifies in writing that claims for delays or impacts to the Work will not
7 result from the dispute.

8 Unless WSDOT and the Design-Builder agree otherwise, all other unresolved claims
9 (disputes which have been pursued to the claim status) which arise from the Contract
10 must be brought in a single arbitration hearing and only after Physical Completion has
11 occurred. The total of those unresolved claims cannot be greater than \$1,000,000 to be
12 eligible for arbitration.

13 The Design-Builder and WSDOT mutually agree that those Certified Claims in excess of
14 \$1,000,000, submitted in accordance with Section 1-09.11 and not resolved by
15 nonbinding Alternative Disputes Resolution (ADR) processes, shall be resolved through
16 litigation unless the parties mutually agree to resolve the claim through binding
17 arbitration.

18 **1-09.13(4) Venue for Litigation**

19 Litigation shall be brought in the Superior Court of Thurston County or such other
20 Superior Court as mutually agreed to in writing by the parties. It is mutually agreed by
21 the parties that when litigation occurs, the Design-Builder shall permit WSDOT to have
22 timely access to any records deemed necessary by WSDOT to assist in evaluating the
23 claims or action.