

1 **1-02 Certifications and Representations**

2 **1-02.1 *Responsibility for Design***

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

14 Design-Builder specifically acknowledges and agrees that:

- 15 a) The Conceptual Design is preliminary and conceptual in nature and has not
16 been signed or sealed.
- 17 b) The Design-Builder is responsible for correcting any errors, omissions,
18 inconsistencies, and other defects in the Conceptual Design through the design
19 and construction process. There will be no increase in the Contract Price or
20 extension of the Contract Time for correcting any errors, omissions,
21 inconsistencies, and other defects in the Conceptual Design, except as provided
22 herein with respect to Necessary Basic Configuration Changes.
- 23 c) The Design-Builder's Warranties and indemnities hereunder cover errors,
24 omissions, inconsistencies, and other defects in the Project, even though they
25 may be related to errors, omissions, inconsistencies, and other defects in the
26 Conceptual Design, except as otherwise provided herein with respect to
27 Necessary Basic Configuration Changes.

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

38 **1-02.2 *Disclaimer Regarding Documentation***

39 The Design-Builder is not entitled to rely on any document or information provided by
40 WSDOT, except to the extent expressly provided otherwise in the Contract Documents.
41 The Design-Builder may rely on the Conceptual Design only to the extent it describes the
42 Basic Configuration. WSDOT does not represent or warrant that the information

1 contained in the Conceptual Design is either complete or accurate or that such
2 information conforms to the requirements of the Contract Documents, except as
3 otherwise provided herein with respect to the Basic Configuration. Unless stated
4 otherwise in the Contract, the Design-Builder is not entitled to rely on the Reference
5 Documents.

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

20 **1-02.3 *Design Professional Licensing Requirement***

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

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

37 **1-02.4 *Examination of Site of Work***

38 **1-02.4(1) *General***

39 The Design-Builder has, prior to submitting its Proposal, in accordance with prudent and
40 generally accepted engineering and construction practices, reviewed all Contract and
41 Reference Documents provided by WSDOT; inspected and examined the Site and
42 surrounding locations; and undertaken other appropriate activities sufficient to familiarize

1 itself with surface and subsurface conditions discernible from the surface affecting the
2 Project, to the extent necessary for submittal of a Proposal. Because of such review,
3 inspection, examination, and other activities; the Design-Builder is familiar with and
4 accepts the physical requirements of the Work, including:

- 5 1. The nature and location of the Work.
- 6 2. The general and local conditions that can affect the Work or its cost, including:
 - 7 (a) Conditions bearing upon acquisition, transportation, disposal, handling, and
8 storage of materials
 - 9 (b) The availability of labor, materials, water, electric power, and roads.
 - 10 (c) Uncertainties of weather, river stages, tides, or similar physical conditions at the
11 Site
 - 12 (d) The conformation and condition of the ground
 - 13 (e) The character of equipment and facilities needed preliminary to and during
14 Work performance
 - 15 (f) The Site biological hazards and associated physical hazards
- 16 3. The character, quality, and quantity of surface and subsurface materials or obstacles
17 to be encountered insofar as this information is reasonably ascertainable from an
18 inspection of the Work Site (including material sites), the Geotechnical Baseline
19 Report (GBR), Geotechnical Design Report (GDR), and hydrology reports (if any),
20 as well as from the Contract and information made a part of the Contract.
- 21 4. The adequacy of time allowed for the completion of the Work.
- 22 5. The risk profile conveyed by the Contract including but not limited to the baselines
23 identified in the GBR.

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

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

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

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

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

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

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

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

1. The Longshore and Harbor Workers' Compensation Act (LHWCA) (administered
2 by the U.S. Department of Labor)
2. The State Industrial Insurance (administered by the Washington State Department
3 of Labor and Industries (State L&I)

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

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

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

29 **1-02.4(2) Subsurface Information**

30 When the Contract includes a GBR or GDR, including any supplements to a GBR or
31 GDR, WSDOT makes no representation or warranty expressed or implied that:

1. The Design-Builder's interpretations from the GBR or GDR are correct.
2. Moisture conditions and groundwater elevations will not vary from those identified
3 in the GDR.
3. The ground and subsurface conditions as represented in the GBR and GDR have not
4 been physically disturbed or altered after the documents were prepared.

37 The GBR describes geotechnical baseline conditions with respect to certain subsurface
38 and site conditions that may be encountered during the performance of the Work. These
39 baseline conditions were developed based upon consideration of geotechnical
40 information and data gathered through subsurface explorations, predictions, and

evaluations concerning anticipated means and methods that may likely be used by the Design-Builder, and the interpretation of that information, data, and other relevant factors. These baseline conditions or lack of baseline conditions establish a contractual basis for the allocation of risk for subsurface and site conditions and for the determination if a Differing Site Condition exists.

A description of the various subsurface and site conditions in the GBR, while based on geotechnical investigations included in the GDR shall not be understood or interpreted as guaranteeing or warranting that those conditions actually will be encountered while performing the Work. No amount of investigation and analysis can precisely predict the characteristics, quality, or quantity of subsurface and site conditions, or the behavior of such conditions during the performance of the Work. The behavior of such conditions may be dependent upon and influenced by the means and methods selected by the Design-Builder to perform the Work.

The baseline conditions described in the GBR are not intended to represent, describe, or constitute any warranty, or indication, whether expressed or implied, of the actual conditions that are encountered during the Design-Builder's performance of the Work. The Design-Builder shall not rely exclusively upon the baseline conditions described in the GBR as the only input for planning or performing the Work. Planning and performing the Work by the Design-Builder, includes, at minimum, the following: designs, means and methods, equipment, techniques, sequences, and procedures chosen to meet the terms of the Contract.

Whenever there is an inconsistency between geotechnical conditions described in the GBR and the information in the GDR, then the geotechnical conditions described in the GBR shall take precedence and shall be the geotechnical conditions against which actual geotechnical conditions encountered are compared for the purpose of determining if a Differing Site Condition exists.

The Design-Builder acknowledges that the Contract Price and the Contract Schedule were developed with full consideration given to the contents and the risk allocation of the GBR and GDR, and that the Design-Builder shall not be entitled to an adjustment in the Contract Price or Contract Time as the result of encountering conditions consistent with those described.

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

The geotechnical information in the Contract does not represent Site conditions for an Alternative Technical Concept (ATC). As noted in the Instructions to Proposers (ITP), the Design-Builder is responsible for conducting its own geotechnical investigation, prior to the Proposal Due Date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of any ATC included in the Proposal. As part of the ATC, the Design-Builder shall identify and include geotechnical baselines. The Design-Builder proposed baselines shall be the geotechnical conditions against which actual geotechnical conditions encountered are compared for the purpose of determining if a Differing Site Condition exists with respect to the ATC. The geotechnical

1 investigation, including the geotechnical baselines accepted by WSDOT as part of an
2 approved ATC incorporated in a Proposal will form the basis upon which Differing Site
3 Conditions will be addressed pursuant to Section 1-04.7 for Work implemented as part of
4 said ATC.

5 **1-02.4(3) Hazardous Materials**

6 The Hazardous Materials Report or the asbestos GFI report do not represent Site
7 conditions for an ATC. As noted in the Instructions to Proposers (ITP), the
8 Design-Builder is responsible for conducting its own Hazardous Materials investigation,
9 prior to the Proposal Due Date, for changes to the Conceptual Design or Basic
10 Configuration, if any, that are approved as part of any ATC included in the Proposal. The
11 Hazardous Materials investigation, as part of an approved ATC incorporated in a
12 Proposal, will form the basis upon which Differing Site Conditions will be addressed,
13 pursuant to Section 1-04.7 for Work implemented as part of said ATC.

14 **1-02.5 *Further Assurances***

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