

1-04.9 Vacant

1-04.10 Use of Materials Found on the Project

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

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

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

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

1-04.11 Final Cleanup

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

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

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

1-05 Control of Work

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

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

1-05.1 Authority of the WSDOT Engineer

The WSDOT Engineer shall be satisfied that all the Work is being done in accordance with the requirements of the Contract. The Contract and specifications give the WSDOT Engineer authority over the Work. Whenever it is so provided in this Contract, the decision of the WSDOT Engineer shall be final: provided, however, that if a Written protest is brought within the time allowed in the Contract, challenging the WSDOT Engineer's Written Determination or decision, the protest addressing that Written

Determination or decision shall be addressed in accordance with the procedures set forth in Section 1-04.5.

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

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

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

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

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

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

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

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

1-05.1(1) Oral Orders

When an oral order, including directions, instructions, interpretations, and determinations are issued by the WSDOT Engineer, WSDOT will send a Written Determination to the Design-Builder within 3 Calendar Days thereafter. If the WSDOT Engineer determines

that a change to the Contract is warranted, a Written Change Order will be processed in accordance with Section 1-04.4. If the Design-Builder disagrees with the Written Determination, the Design-Builder may protest in accordance with Section 1-04.5. When the Design-Builder believes they have received an oral order, the Design-Builder shall notify the WSDOT Engineer in writing and within 3 Calendar Days. After the Design-Builder notifies the WSDOT Engineer, WSDOT will respond with a Written Determination within 14 Calendar Days. If the WSDOT Engineer determines that a change to the Contract is warranted, a Written Change Order will be processed in accordance with Section 1-04.4. If the Design-Builder disagrees with the Written Determination, the Design-Builder may protest in accordance with Section 1-04.5. Failure to follow procedures of this Section will result in a waiver of claim.

1-05.2 *Authority of Assistants and Inspectors*

Assistants and inspectors have the authority to determine if the Work and materials meet the Contract requirements, reject defective material, and suspend Work that is being done improperly, subject to the final decisions of the WSDOT Engineer or, when appropriate, WSDOT.

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

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

1-05.3 *Plans and Working Drawings*

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

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

1-05.3(2) *Required Approvals*

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

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

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

1-05.3(3) Railroad Approvals

This Section is intentionally omitted.

1-05.3(4) Design Documents

The Design-Builder shall furnish the Design Documents to WSDOT and shall address WSDOT's comments prior to designating them as the RFC Documents.

1-05.3(5) Working Drawings

The Design-Builder shall submit Working Drawings for the performance of the Work. Working Drawings shall be submitted by the Design-Builder electronically to WSDOT in accordance with Section 2.28, *Quality Management Plan*.

Working Drawings will be classified under the following categories:

1. Type 1 – Submitted for information
2. Type 2 – Submitted to the Design-Builder's reviewer for Review and Comment
3. Type 2E, 3 and 3E – Submitted to the Design-Builder's reviewer for approval. The Engineer of Record shall review and approve and then submit to WSDOT for Review and Comment

Unless designated otherwise by the Design-Builder prior to the submittal date, submittals of Working Drawings will be reviewed in the order they are received by WSDOT. In the event that several Working Drawings are received simultaneously without an order of review designated by the Design-Builder the review sequence will be at WSDOT's discretion.

WSDOT's review of Working Drawings shall neither confer upon WSDOT, nor relieve the Design-Builder of, any responsibility for the accuracy of the drawings or their conformity with the Contract. The Design-Builder shall bear all risks and all costs of any Work delays caused by unresolved WSDOT review comments.

1-05.4 Performance

1-05.4(1) Performance Standards

The Design-Builder shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State, in a good and

workmanlike manner, free from defects (except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents.

1-05.5 *Vacant*

1-05.6 *Inspection of Work and Materials*

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

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

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

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

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

1. On any utility, or facility of a public agency
2. To the satisfaction of any Federal, State, or municipal agency

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

1. Is automatic or semi-automatic
2. Can safely and easily obtain representative samples of the materials being produced
3. Can convey the samples to ground level in WSDOT-provided sacks

4. Moves at an even rate through the full width of the materials stream falling from the discharge end of the belt, gate, or chute
5. Is power-driven during the material intercept cycle
6. Can be adjusted to take samples of about 100 pounds as often as the QA Inspector or WSDOT Engineer requires

The Design-Builder shall bear all costs of providing the sampling equipment, the power to operate it, and the space for its use.

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

1-05.7 *Removal of Defective Work*

WSDOT will not pay for defective Work, including any Work, or materials, or both that do not conform to the Contract. The Design-Builder shall be responsible to immediately report to the WSDOT Engineer any defective Work. The Design-Builder shall immediately remedy, remove, replace, or dispose of defective Work or materials and bear all costs of doing so.

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

1-05.8 *Vacant*

1-05.9 *Vacant*

1-05.10 *Guarantees*

The Design-Builder shall furnish to WSDOT any guarantee or Warranty furnished as a customary trade practice in connection with the purchase of any equipment, materials, or

items incorporated into the Project. For additional Warranty requirements, refer to Section 1-05.16 General Warranties.

1-05.11 Final Inspection

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

1-05.12 Final Acceptance

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

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

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

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

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

1-05.12(2) Vacant

1-05.12(3) Assignment of Causes of Action

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

1-05.13 Superintendents, Labor, and Equipment of the Design-Builder

At all times, the Design-Builder shall keep at the Work Site a set of the RFC Plans, specifications, and Working Drawings. The Design-Builder shall devote the attention required to make reasonable progress on the Work and shall cooperate fully with WSDOT representatives.

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

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

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

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

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

1. Progress of Work
2. Quality of Work

3. Equipment
4. Administration/Management/Supervision
5. Coordination and Control of Subcontractors

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

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

1-05.13(1) Emergency Contact List

The Design-Builder shall submit an Emergency Contact List to the WSDOT Engineer as a Type 1 Working Drawing no later than 5 Calendar Days after the date the Contract is executed. The list shall include, but is not limited to, the Design-Builder's Project Manager, or equivalent; Construction Manager; Erosion and Sediment Control (ESC) Lead; Traffic Control Supervisor (TCS); and Communications Specialist. The list shall identify a representative with delegated authority to act as the emergency contact on behalf of the Design-Builder and include one or more alternates. The emergency contact shall be available upon WSDOT's request at other than normal working hours. The Emergency Contact List shall include 24-hour telephone numbers for all individuals identified as emergency contacts or alternates.

1-05.14 Cooperation with Other Contractors

WSDOT may perform other work at or near the Site, including any material site, with other forces than those of the Design-Builder. This work may be done with or without a contract. If such work takes place within or next to this Project, the Design-Builder shall cooperate with all other contractors or forces. The Design-Builder shall carry out Work under this Project in a way that will minimize interference and delay for all forces involved. WSDOT will resolve any disagreements that may arise among the contractors or the Design-Builder and WSDOT over the method or order of doing the Work. WSDOT's decision in these matters shall be final, as provided in Section 1-05.1. Refer to Sections 2.1, *General Information*, and 2.18, *Intelligent Transportation Systems*, for known projects that are on or near the Project limits.

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

1-05.15 Method of Serving Notices

Any notice to the Design-Builder required under the Contract may be served on the Design-Builder via email with a delivery receipt and read receipt to the last known email address of the Design-Builder's Point of Contact.

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

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

1-05.16 Warranties

1-05.16(1) General Warranty

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

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

1-05.16(2) General Warranty – Time of General Warranty

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

Within 7 Calendar Days of receipt of notice from WSDOT, specifying a failure of any Work required satisfying the general Warranty; or specifying a failure of any Subcontractor representation, Warranty, guarantee, or obligation, which the Design-Builder is responsible for enforcing, the Design-Builder and WSDOT shall mutually agree when and how the Design-Builder shall remedy such failure. In the case of an emergency requiring immediate curative action, the Design-Builder shall implement such immediate action it deems necessary, and shall notify WSDOT of the

urgency of a mutually agreed-upon remedy. The Design-Builder and WSDOT shall agree on a remedy immediately upon notice by or to WSDOT of such emergency. If the Design-Builder does not use its best efforts to proceed to effectuate a remedy within the 7 Calendar Day period, or if the Design-Builder and WSDOT fail to reach an agreement within the 7 Calendar Day period (or immediately, in the case of emergency conditions), then WSDOT, upon notice to the Design-Builder, shall have the right to order the Design-Builder to perform the Work, or to perform or have performed by others the remedy approved by WSDOT, and the costs shall be paid by the Design-Builder.

1-05.16(3) General Warranty – Subcontractor Warranties

Without in any way derogating the Design-Builder's own representations, Warranties, and other obligations with respect to the Work, the Design-Builder shall obtain from all Subcontractors and cause to be extended to WSDOT, appropriate representations, Warranties, guarantees, and obligations with respect to design, material, plants, workmanship, equipment, tools, and supplies furnished by all Subcontractors. All representations, Warranties, guarantees, and obligations of Subcontractors shall be in writing, and shall run directly to and be enforceable by the Design-Builder and WSDOT and their respective successors and assigns.

1-05.16(4) General Warranty – Performance Responsibility

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

1-05.16(5) General Warranty – Extension of General Warranty

The Warranty shall apply to all repaired or replaced Work pursuant to the terms of the Contract. The general Warranty for repaired or replaced Work shall extend beyond the original Warranty period, if necessary, to provide an additional 1-year Warranty period following acceptance by WSDOT of any repaired or replaced Work.

1-05.16(6) General Warranty – No Limitations of Liability

The Warranty is in addition to all rights and remedies available under the Contract or Applicable Law, and shall not limit the Design-Builder's liability or responsibility

imposed by the Contract or by Applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability negligence, or fraud.

1-05.16(7) Damages for Breach of Warranty

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

1-05.16(8) Exclusions

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

- Normal wear and tear, provided that damage, deterioration outside allowable limits specified in the Contract, or both, shall not be considered normal wear and tear
- Failure of Owners to perform routine maintenance consistent with policies and procedures established by WSDOT or other maintenance agencies, including Utility Owners, or in the absence of such policies and procedures in accordance with industry standards of maintenance for similar projects in the United States
- Rebellion, war, riot, act of sabotage, civil commotion, or acts of vandalism
- Wind, flood event greater than the design requirements, earthquakes, and other acts of God
- Spill or release of hazardous or contaminated substances not caused by the Design-Builder

1-05.16(9) Elevator System Extended Warranty

In addition to other Warranties described herein, the Design-Builder shall furnish an extended Warranty for elevator systems. This Warranty shall commence on the day of Physical Completion and shall remain in effect for 2 years after Physical Completion.

All provisions set forth in Section 1-05.16 shall apply to this extended warranty period.

For the purposes of this extended Warranty period, elevator systems shall include all Work and associated components required to operate an elevator for its intended purposes. For this extended warranty period, the Design-Builder and their responsible Subcontractors shall perform all required maintenance of the elevators and associated operating systems.

1-05.16(10) Landscaping Warranty

1-05.16(10).1 Applicability

In addition to other work described in this Section 1-05.16(9), the Landscaping Warranty applies to all plant material, without regard to:

1. The type of plant material, including transplanted or seeded, grass, shrub, or tree

2. The purpose of the plant material, including stream mitigation, wetland mitigation, habitat restoration, roadside restoration, and lid landscaping
 3. The location of the plant material, including on and off the project site, and on and off State Right of Way
 4. And without regard to why it was required, including from permits, restoration, mitigation, Section 2.8, *Environmental*; Section 2.15, *Roadside Restoration*, and the *Environmental Commitments List*.
- The provisions of Sections 1-07.13(2) and 1-07.13(3) do not apply to Work covered by the Landscaping Warranty.

1-05.16(10).2 Designation of Landscaping Warranty Areas

For purposes of acceptance of the Initial Planting and management of the Landscaping Warranty, prior to requesting WSDOT to accept any Landscaping Warranty Area for Initial Planting, the Design-Builder shall submit a Type 1 Working Drawing for Review and Comment designating the horizontal footprint of all Landscaping Warranty Areas on the Project. Upon WSDOT's approval of Initial Planting, the Design-Builder shall revise and resubmit these Type 1 Drawings showing the WSDOT approved Initial Planting acceptance date for each Landscaping Warranty Planting Area. A Landscaping Warranty Area shall comprise all areas of the project within which Work described under 1-05.16(9).1 and 1-05.16(9).1 Applicability, has been or will be performed. The Design-Builder may designate all such areas in the Contract collectively as one Landscaping Warranty Area, or may, with the WSDOT Engineer's concurrence, subdivide all such areas into individual, discrete Landscaping Warranty Areas.

1-05.16(10).3 Initial Planting

When the Design-Builder's QA Manager has determined that a given Landscaping Warranty Area is complete and meets all Contract requirements, Design-Builder may request such area to be accepted by WSDOT for Initial Planting. In response to this request, the WSDOT Engineer will inspect the Landscaping Warranty Area. The WSDOT Engineer will notify the Design-Builder, in writing, of any replacements or corrective action necessary to meet the plant installation requirements. The Design-Builder shall replace all materials rejected or missing and correct unsatisfactory conditions. Completion of the Initial Planting within a designated Landscaping Warranty Area includes the following conditions:

1. 100 percent of each of the plant material categories are installed as shown in the Plans.
2. Mulch thickness and coverage is complete.
3. All weeds are controlled.
4. Repairs are completed, including but not limited to, full operation of the irrigation system.
5. The area is free of litter and construction debris, and no further Work of any kind will be performed.

Upon concurrence by the WSDOT Engineer that a Landscaping Warranty Area has met all Contract requirements, such area shall be deemed as accepted for Initial Planting, and the Landscaping Warranty shall commence for that Landscaping Warranty Area.

1-05.16(10).4 Term of Landscaping Warranty

The Landscaping Warranty period for each Landscaping Warranty Area shall:

1. Begin on the date the WSDOT Engineer approves Initial Planting.
2. Have a duration of 3 years for roadside restoration, 5 years for Sensitive Areas in accordance with Wetland and Stream Mitigation Reports (Appendix E), and 5 years for planting within North Creek Forest unless extended for failure by the Design-Builder to fulfill its Landscaping Warranty Obligations as described elsewhere in this Section.

For projects on which the Design-Builder has designated more than one Landscaping Warranty Area, the Landscaping Warranty period will be administered independently for each. For example, each Landscaping Warranty Area could have a different date approved for Initial Planting. As another example, while the duration of the Landscaping Warranty will initially be the same for each Landscaping Warranty Area, this duration will be extended for all areas within which the Design-Builder fails to comply with the Warranty requirements in that Landscaping Warranty Area.

1-05.16(10).5 Ongoing Requirements During the Landscaping Warranty Period

During the first year of the Landscaping Warranty period, the Design-Builder shall meet monthly or at an agreed upon schedule with the WSDOT Engineer for the purpose of joint inspection of the Landscaping Warranty Areas. Subsequent year Landscaping Warranty periods shall begin immediately at the completion of the preceding year's Landscaping Warranty period. Each subsequent Landscaping Warranty shall be one full calendar year in duration. For subsequent Landscaping Warranty periods, the Design-Builder shall meet with the WSDOT Engineer at an agreed upon frequency to ensure the Work necessary for the continued healthy and vigorous growth of all plant material. The Design-Builder shall correct all unsatisfactory conditions identified by the WSDOT Engineer within a 10 Calendar Day period immediately following the inspection. If plant replacement is required, the Design-Builder shall, within the 10 Calendar Day period, submit a plan and schedule for the plant procurement and replacement.

The Design-Builder is notified that WSDOT will invite the City of Bothell to the annual landscape warranty inspections on site for the plantings area within the North Creek Forrest. The Landscaping Warranty shall be extended an amount equal to any periods where the Design-Builder does not comply with the Landscaping Warranty requirements.

The Design-Builder shall perform the Landscaping Warranty activities listed below:

1. Plant Survival - 100 percent of the plants are alive, healthy, and vigorously growing as determined by WSDOT. All dead, dying, or unhealthy plants shall be replaced. Remove all foreign, dead, or rejected plant material. At the end of the first year of

- Landscaping Warranty, if more than 20 percent of plants are not healthy and vigorous, as determined by the WSDOT Engineer, the Landscaping Warranty period will be extended to include an additional year. All replacement plants shall be of the same species as the plants they replace and meet the requirements of Section 9-14.7 unless otherwise approved by the WSDOT Engineer. Replacement plant material larger than specified in the Plans shall meet the applicable section requirements of the ASNS for container class, ball size, spread, and branching
2. Seeded Areas - Protection and Care of Seeded Areas shall meet the requirements of Section 8-02.3(9)E of the Standard Specifications.
 3. Watering - All planting areas shall be required to contain above ground or underground irrigation. Apply water to planting areas as necessary during the season in which the precipitation is not sufficient for plant survival. Apply water at a rate that does not allow runoff to occur. The Design-Builder shall submit a report to the WSDOT Engineer showing the amount of precipitation and water applied for every 2-week period. The Design-Builder shall submit a plan for watering methods and frequency to WSDOT for Review and Comment. Above ground irrigation systems shall be removed, and underground irrigation systems shall be shut off and abandoned at the end of the Landscape Warranty period. The Design-Builder is responsible for payment of the water bill, and water meters shall be removed at the time the system is shut off. Pipes shall be buried a minimum depth of 18 inches if an underground system is used.
 4. Emergent and Aquatic Vegetation - Maintain sufficient water in the soils to support vegetation. At a minimum, soils shall be completely saturated; at a maximum, there shall be a water depth of $\frac{1}{3}$ the height of the vegetation during the growing season.
 5. Stormwater Vegetation - Implement a Water Management Plan to ensure survival of vegetation in accordance with the WSDOT *Highway Runoff Manual*. Ensure an adequate supply of water is present for a minimum of 10 months of the year to ensure survival of emergent vegetation in accordance with the WSDOT *Highway Runoff Manual*.
 6. Mulching - Maintain a 3-inch layer of mulch in a weed free condition over all Landscaping Warranty Areas during the Landscaping Warranty period.
 7. Pruning - Pruning of plant material shall be restricted to the removal of damaged branches on trees and shrubs to prevent injury or disease. Pruning shall be done in such a way that the natural habit of growth is maintained. No unnatural pruning, topping or hedging will be permitted.
 8. Erosion Control - Repair eroded areas and replace mulch as needed to prevent continued erosion.
 9. Weed and Pest Control - Maintain all planting areas in a weed-free condition. The Design-Builder shall comply with its Weed and Pest Control Plan. Seeded areas shall have a dense and healthy stand of the seeded species, free of noxious or undesirable species as defined by the Weed and Pest Control Plan.
 10. Litter Control - Remove litter and debris on an annual basis.
 11. Mowing - Roadside Mowing shall be in accordance with Standard Specifications 8-02.

12. Environmental mitigation areas shall meet all criteria specified in Section 2.8, *Environmental* and in Section 2.14, *Stormwater*, pertaining to environmental mitigation restoration.
13. At any time during the Landscaping Warranty period, if WSDOT determines the Landscaping Warranty Work has not met the standards set forth in the Contract, the Design-Builder shall correct the Work in accordance with this Section, even if the performance of such correction extends beyond the stated Landscaping Warranty period.

1-05.16(10).6 Payment for Landscaping Warranty

All costs related to the Landscaping Warranty Work, including costs in any manner necessary to facilitate that work, including but not limited to submittals, Governmental Approvals, traffic control, establishing and removing access, water, power, disposal fees, supervision, bonding, insurance, overhead, and profit shall be included in the Proposal Price.

1-05.16(11) Fish Passage Warranty and Monitoring Streamflow Mean Recurrence Interval

The short- and long-term performance of fish passages constructed under the Contract is critical to meeting the Contractual environmental permit requirements and to ensure compliance with the “United States of America, et al., v. State of Washington, et al. Permanent Injunction Regarding Culvert Correction, United States District Court, Western District of Washington at Seattle, No. C70-9213 Subproceeding No. 01-1 (Culverts), ordered March 29, 2013” (Appendix H). Therefore, WSDOT intends to thoroughly audit all Work associated with fish passage construction and will regularly audit the Work related to fish passage construction and performance against the terms of the Contract during the Contractual Warranty period. The Design-Builder will be invited to participate in any audits WSDOT performs to ensure there is clear understanding of what warranty work is required. The Contractor has additional streamflow monitoring responsibilities during the warrantee period as noted in Section 2.30, *Water Crossings*

Each individual fish passage structure in the Contract shall have a discrete fish passage Warranty. Each fish passage Warranty shall begin on the Fish Passage Operationally Complete Date for that crossing and shall have a duration of 5 years. During the fish passage Warranty periods, the Design-Builder’s representative shall accompany the WSDOT Engineer annually at a mutually agreeable time and location for site inspections of the crossings. The WSDOT Engineer will inform the Design-Builder approximately 14 Calendar Days after the joint site inspection of any violations of the fish passage Warranty requirements which require corrective action. In addition to the foregoing, at any time during a fish passage Warranty period, if the WSDOT Engineer determines that any of the fish passage Work has not met the standards set forth in the fish passage Warranty requirements, the Design-Builder shall correct the Work within 10 months of being notified for the need for the corrections, even if the performance of such correction extends beyond the stated fish passage Warranty period. The 10-month period may be extended by WSDOT if additional permitting becomes necessary when implementing the directed Warranty corrections. Failure by the Design-Builder to make timely corrections

1 may result in the fish passage Warranty period be extended, in the sole judgment of the
2 WSDOT Engineer.

3 The Design-Builder shall be responsible for obtaining any necessary permits; providing
4 traffic control; modifying the channel or crossing, or both; and performing all other Work
5 necessary to provide unimpeded fish passage that complies with the fish passage
6 Warranty requirements.

7 **1-05.16(10).1 Fish Passage Warranty Requirements**

8 WSDOT will monitor the fish passage structure(s) for changes in stream channel and
9 associated habitat features during the Warranty periods. The criteria in Performance List
10 A and the criteria in Performance List B will be used to determine acceptable
11 performance of each fish passage during each Fish Passage Warranty Period. If any
12 criteria are not met, Warranty work, including construction, design, and any other
13 incidental Work shall be performed by the Design-Builder as needed to bring the Work
14 into compliance.

15 Fish Passage Warranty Performance List A:

16 1. Streambed material:

- 17 a. There shall be streambed material, consistent with the streambed material in the
18 reference reach, or as designed if no reference reach was available, throughout
19 the design channel. For buried structures, this shall include through the
20 structure.
21 b. The actual structure free zone (SFZ) Height shall be greater than or equal to the
22 required minimum SFZ Height.

23 2. Channel spanning:

- 24 a. There shall be no channel spanning hydraulic drops greater than 0.8 feet within
25 the project limits unless the design intent provided for greater hydraulic drops,
26 in which case the hydraulic drops shall be consistent with design expectations
27 and not exceed the documented drop limits.

28 3. Channel flow/shape (cross section):

- 29 a. The extent of subsurface flow within the project area shall not exceed the extent
30 of the subsurface flow of the common condition of the adjacent, representative
31 reaches, both upstream and downstream.
32 b. A defined thalweg (low-flow channel) shall exist continuously through the
33 entire length of the constructed channel.
34 c. The water depth shall be within 20% of the common condition of the reach
35 upstream of the constructed channel.
36 d. The channel shape throughout the structure and constructed channel shall be
37 consistent with the common condition of the representative reach identified in
38 the final hydraulic design (FHD).
39 e. The flow path within the structure and design channel shall be consistent with
40 the design intent.

- f. Active channel contact of the structure wall, and/or evidence of channel contact of the structure wall, shall not reduce the expected sinuosity of the designed channel. This may be evidenced by the persistent presence of designed channel shaping features.
- g. The bank full width within the structure shall be consistent with the FHD.
4. Streambed slope (profile):
 - a. The slope of the channel upstream of the structure, through the structure and downstream of the structure, shall be consistent with the design intent of the FHD, considering expected Regrade (as defined in Section 2.30, *Water Crossings*).
5. Other design features (hydraulic or habitat) shall function as intended, consistent with the FHD.

Fish Passage Warranty Performance List B:

1. The channel bed scour shall not exceed the anticipated scour from the Scour Design Flood event in the FHD.

1-05.16(10).2 Fish Passage Warranty Work Cost Responsibility

For the duration of each fish passage Warranty, the Design-Builder shall be responsible for:

1. Gathering, recording, and evaluating streamflow mean recurrence interval (MRI) data, and
2. Reporting the streamflow monitoring results to WSDOT, and other work as required by the Streamflow MRI Monitoring Plan described in Section 2.30, *Water Crossings*.

Performance List A

If the WSDOT Engineer concurs that flow has exceeded the 25-year streamflow MRI and deems remedial work for the items in Performance List A is required as a result of that flow, WSDOT will bear cost responsibility for the remedial work made necessary because of the flow event exceeding the 25-year streamflow MRI. Accordingly, the WSDOT Engineer will make an equitable adjustment. Payment will be calculated in accordance with Section 1-09.4. The Design-Builder shall bear cost responsibility for remedial work needed to correct deficiencies of items in Performance List A when the need for such remedial work is caused by streamflow events less than or equal to the 25-year streamflow MRI.

Performance List B

If the WSDOT Engineer concurs that flow has exceeded the Scour Design Flood in the Final Hydraulic Design Report and deems remedial work for the items in Performance List B is required as a result of that flow, WSDOT will bear cost responsibility for the remedial work made necessary because of the flow event exceeding the Scour Design Flood. Accordingly, the WSDOT Engineer will make an equitable adjustment. Payment will be calculated in accordance with Section 1-09.4. The Design-Builder shall bear cost responsibility for remedial work needed to correct deficiencies of items in Performance

1 List B when the need for such remedial work is caused by stream flows less than or equal
2 to the Scour Design Flood in the Final Hydraulic Design Report.

3 It shall be understood that remedial work includes but is not limited to design, redesign,
4 obtaining any necessary permits, providing traffic control, and all other Work necessary
5 to comply with the Fish Passage Warranty requirements.

6 At any time during the Warranty period, if WSDOT determines that any of the Work has
7 not met the standards set forth in the Contract, the Design-Builder shall correct the Work,
8 even if the performance of such correction extends beyond the stated Warranty period.

9 The Design-Builder is responsible for obtaining any necessary permits and performing all
10 other Work necessary to provide a fish passage that complies with the Contract
11 requirements, at no cost to WSDOT.

12 **1-05.16(12) Warranty Inspections**

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

18 **1-05.16(13) Warranty Performance Requirements**

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

21 **1-05.16(14) Costs of Correction Work**

22 All costs of repair and replacement Work, including additional testing and inspections,
23 shall be paid by the Design-Builder, except as noted herein. The Design-Builder shall
24 reimburse WSDOT within 14 Calendar Days after receipt of WSDOT's invoice.

25 **1-05.16(15) Damages for Breach of Warranty**

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

29 **1-05.16(16) Disputes**

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