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DESIGN-BUILD CONTRACT

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

**SR 99 BORED TUNNEL ALTERNATIVE
DESIGN-BUILD PROJECT**

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- 4 Appendix 3 Design-Builder's Proposal Commitments and Clarifications
- 5 Appendix 4 Property Acquisition Schedule
- 6 Appendix 5 Prevailing Wage Requirements and Additional Federal Requirements
- 7 5-A Prevailing Wage Requirements
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1 **DESIGN-BUILD CONTRACT**

2 **SR 99 Bored Tunnel Alternative Design-Build Project**

3 **Washington State Department of Transportation**

4 This Design-Build Contract (referred to herein as the "Contract") is entered into and
5 effective as of _____, 2010 (the "Effective Date") by and between the Washington State
6 Department of Transportation ("WSDOT") and _____,
7 a _____ ("Design-Builder"), with reference to the definitions contained in
8 Appendix 2 hereto and the following facts:

9 **Recitals**

10 A. WSDOT has been directed by the Washington State Legislature to develop a large
11 diameter bored tunnel in downtown Seattle, King County, Washington (the "Project"), to replace the
12 Alaskan Way Viaduct (State Route 99). The Project legislation, codified at RCW 47.01.402,
13 requires the Project to be developed as a matter of urgency, for the safety of Washington's
14 traveling public and the needs of the transportation system in central Puget Sound.

15 B. The Project legislation provides that time is of the essence in completion of the
16 Project and includes limitations on funding available for development of the Project. WSDOT
17 determined that the legislative mandate to expedite completion of the Project, within budget, is
18 feasible if the design-build delivery methodology is used, with a contract that obligates the design-
19 builder to perform all work necessary to complete the Project by specified deadlines and for
20 specified compensation, subject only to specified limited exceptions. WSDOT issued a Request for
21 Proposals for such a design-build contract on _____ (the "RFP"), pursuant to
22 procurement authority set forth in RCW 47.20.780 to 785.

23 C. On _____, 2010 (the "Proposal Date"), WSDOT received _____ proposals
24 in response to the RFP, and following evaluation of the proposals, WSDOT selected Design-
25 Builder as the best value proposer. WSDOT's decision was based on its overall evaluation of the
26 proposals, WSDOT's conclusion that Design-Builder has offered the best value to the State, and
27 WSDOT's determination that the price offered by Design-Builder is consistent with the cost
28 estimates provided to the legislature under RCW 47.01.402(3).

29 D. Design-Builder is willing and able to design and construct the Project in accordance
30 with the terms and conditions of the Contract Documents, and fully understands the legislative
31 constraints affecting the Project and the nature of the risks and responsibilities included in the
32 Contract Documents.

33 E. WSDOT is in the process of conducting an environmental analysis in conjunction
34 with the Federal Highway Administration analysis regarding the Alaskan Way Viaduct Project. The
35 environmental analysis includes the Bored Tunnel Alternative as one of the reasonable alternatives
36 under consideration. The environmental analysis also assumes that the Project will include two
37 separate two-lane roadways, with the southbound roadway stacked above the northbound lanes in
38 order to conform to existing exterior roadway configurations. It is possible that modifications to the
39 Project will occur as the result of the environmental analysis. It is also possible that a "no build"
40 determination will be made, or that another alternative could be selected as the Selected
41 Alternative.

F. As permitted under the Federal Highway Administration’s design-build rule and the National Environmental Policy Act, performance of certain limited work will be authorized by a first Notice to Proceed (“NTP 1”), while the environmental analysis is underway. If a Record of Decision is issued that selects the Bored Tunnel Alternative, the remaining work will be authorized by a second Notice to Proceed (“NTP 2”), with completion deadlines tied to NTP 2.

NOW, THEREFORE, WSDOT and Design-Builder, for the consideration hereinafter named, agree as follows:

1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

Appendix 2 hereto contains the meaning of various terms used in the Contract Documents.

1.2 Order of Precedence

The Contract Documents are intended to be complementary and to describe and provide for a complete contract. Each of the Contract Documents is an essential part of the contract, and a requirement occurring in one is as binding as though occurring in all. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

- (a) Change Orders and Contract amendments;
- (b) The Contract, including Appendices 1 through 13, except that Appendix 3 which has a lower order of precedence;
- (c) Appendix 3 to the Contract, constituting Design-Builder’s Proposal Commitments and Clarifications;
- (d) Technical Requirements;
- (e) All other RFP Documents listed as Contract Documents in Appendix A1 to the Technical Requirements; and
- (f) The Proposal.

If the Proposal includes statements or incorporates Alternative Technical Concepts (“ATCs”) that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to WSDOT than the requirements of the Contract Documents, Design-Builder’s obligations hereunder shall include compliance with all such statements, offers and terms.

1.3 Mandatory Standards

Mandatory Standards shall be deemed incorporated into the Contract Documents to the extent that they are referenced therein, with the same order of precedence as the Contract Document(s) in which the reference occurs.

1.4 Omission of Details; Clarification by WSDOT

Design-Builder shall not take advantage of any apparent error, omission, ambiguity, deficiency or defect in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Design-Builder shall apply to WSDOT in writing for such further written explanations as may be necessary and

1 shall conform to the explanation provided. Design-Builder shall promptly notify WSDOT of all
2 errors, omissions, ambiguity, deficiencies or defects which it may discover in the Contract
3 Documents, and shall obtain specific instructions in writing regarding any such error, omission,
4 ambiguity, deficiency or defect before proceeding with the Work affected thereby. The fact that the
5 Contract Documents omit or misdescribe any details of any Work which are necessary to carry out
6 the intent of the Contract Documents, or which are customarily performed under similar
7 circumstances, shall not relieve Design-Builder from performing such omitted Work or
8 misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and
9 described in the Contract Documents, without entitlement to a Change Order hereunder except as
10 specifically allowed under Article 11.

11 **1.5 Computation of Periods**

12 References to “days” contained in the Contract Documents shall mean calendar days unless
13 otherwise specified, provided that if the date to perform any act or give any notice specified in the
14 Contract Documents (including the last date for performance or provision of notice “within” a
15 specified time period) falls on a non-Business Day, such act or notice may be timely performed on
16 the next succeeding day which is a Business Day. Notwithstanding the foregoing, requirements
17 contained in the Contract Documents relating to actions to be taken in the event of an emergency,
18 requirements contained in Sections 5.7 and 5.8 and any other requirements for which it is clear
19 that performance is intended to occur on a non-Business Day, shall be required to be performed as
20 specified, even though the date in question may fall on a non-Business Day.

21 **1.6 Standard for Approvals**

22 In all cases where approvals, acceptances or consents are required to be provided by WSDOT or
23 Design-Builder hereunder, such approvals, acceptances or consents shall not be withheld
24 unreasonably except in cases where a different standard (such as sole discretion) is specified, and
25 shall not be unreasonably delayed if no response time is specified. In cases where sole discretion
26 is specified, the decision shall not be subject to dispute resolution or other legal challenge;
27 provided, however, the issue of whether the decision was arbitrary or capricious shall be subject to
28 dispute resolution hereunder.

29

30

2. OBLIGATIONS OF DESIGN-BUILDER; REPRESENTATIONS AND COVENANTS

2.1 Performance Requirements

2.1.1 Performance Standards

Design-Builder shall design 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 Technical Requirements), and in accordance with the terms and conditions set forth in the Contract Documents.

2.1.2 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Design-Builder shall perform as directed by WSDOT in a diligent manner and without delay. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Article 24.

2.2 General Obligations of Design-Builder (States in Part)

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

- (a) furnish all design and other services, provide all materials and labor and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts which the Contract Documents specify will be undertaken by other Persons) to construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, so as to achieve Substantial Completion, Physical Completion and Final Completion by the applicable Completion Deadlines.
- (b) at all times provide Design-Builder's Project Manager, approved by WSDOT, who (i) will have full responsibility for the prosecution of the Work, (ii) will act as agent and be a single point of contact in all matters on behalf of Design-Builder, (iii) will be present (or have an approved designee present) at the Site at all times that Work is performed, and (iv) will have authority to bind Design-Builder on all matters relating to the Project;
- (c) obtain all Governmental Approvals (other than the Environmental Approvals) specifically including any Governmental Approvals required to implement any approved ATCs incorporated into the Contract Documents;
- (d) comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, including implementation of all environmental mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to WSDOT or to another Person;
- (e) provide such assistance as is reasonably requested by WSDOT in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require Design-Builder to provide legal services;

- 1 (f) comply with all requirements of all Laws, including Environmental Laws, including
2 environmental mitigation and monitoring measures required for the Project,
3 including those set forth in TR Section 2.8, and requirements regarding the
4 handling, generation, treatment, storage, transportation and disposal of Hazardous
5 Materials;
- 6 (g) cooperate with WSDOT and Governmental Bodies with jurisdiction over the Project
7 in the review and oversight of the Project and other matters relating to the Work;
- 8 (h) supervise and be responsible to WSDOT for acts and omissions of all DB-Related
9 Entities, as though all such Persons were directly employed by Design-Builder; and
- 10 (i) mitigate delay to the Project and mitigate damages due to delay in all
11 circumstances, to the extent possible, including by resequencing, reallocating or
12 redeploying Design-Builder's forces to other work, as appropriate.

13 **2.3 Representations and Covenants**

14 Design-Builder represents and covenants for the benefit of WSDOT as follows:

15 **2.3.1 Maintenance of Professional Qualifications**

16 Design-Builder and its design and construction Subcontractor(s) have maintained, and throughout
17 the term of the Contract shall continue to maintain, all required authority, license status,
18 professional ability, skills and capacity to perform the Work.

19 **2.3.2 Evaluation of Constraints**

20 Design-Builder has evaluated the constraints affecting delivery of the Project, including the
21 Property Acquisition Schedule and Basic Configuration as well as the assumed conditions of the
22 Environmental Approvals, and has reasonable grounds for believing and does believe that the
23 Project can be delivered within such constraints.

24 **2.3.3 Feasibility of Performance**

25 Design-Builder has evaluated the feasibility of performing the Work within the time specified herein
26 and for the compensation specified herein, and has reasonable grounds for believing and does
27 believe that such performance (including achievement of Substantial Completion, Physical
28 Completion and Final Completion by the applicable Completion Deadlines) for such compensation
29 is feasible and practicable.

30 **2.3.4 Review of Site Information**

31 Prior to submitting its Proposal, in accordance with prudent and generally accepted engineering
32 and construction practices, Design-Builder reviewed the boring logs provided by WSDOT in TR
33 Appendix G2, inspected and examined the Site and surrounding locations, and has undertaken
34 other appropriate activities sufficient to familiarize itself with surface conditions and subsurface
35 conditions discernible from the surface affecting the Project. As a result of such review, inspection,
36 examination and other activities, Design-Builder is familiar with and accepts the physical
37 requirements of the Work. Before commencing any Work on a particular aspect of the Project,
38 Design-Builder shall verify all governing dimensions and conditions at the Site and shall examine
39 all adjoining work which may have an impact on such Work. Design-Builder shall be responsible
40 for ensuring, including through field verification, that the Design Documents and Working Drawings
41 accurately depict all governing and adjoining dimensions and conditions.

1 **2.3.5 Governmental Approvals**

2 Design-Builder has no reason to believe that any Governmental Approval required to be obtained
3 by Design-Builder will not be granted in due course and thereafter remain in effect so as to enable
4 the Work to proceed in accordance with the Contract Documents. For Governmental Approvals
5 required to be obtained by Design-Builder that must formally be issued in the name of WSDOT,
6 Design-Builder shall undertake all efforts to obtain such approvals, subject to WSDOT's
7 reasonable cooperation with Design-Builder, including execution and delivery of appropriate
8 applications and other documentation in a form approved by WSDOT. Design-Builder shall assist
9 WSDOT in obtaining any Governmental Approvals which WSDOT may be obligated to obtain,
10 including providing information requested by WSDOT and participating in meetings regarding such
11 approvals.

12 **2.3.6 Progression of Work**

13 Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of
14 the Work to achieve Substantial Completion, Physical Completion and Final Completion by the
15 applicable Completion Deadlines and in accordance with the Contract Schedule, including
16 furnishing such employees, materials, facilities and equipment and working such hours (including
17 extra shifts, overtime operations, and on Sundays and public holidays) as may be necessary to
18 achieve such goals, all at Design-Builder's own expense, except as otherwise specifically provided
19 in Article 11.

20 **2.3.7 Organization**

21 Design-Builder is a _____, *[to be provided with executed Contract]* duly
22 organized and validly existing under the laws of _____, with all requisite power to own its
23 properties and assets and carry on its business as now conducted or proposed to be conducted.
24 Design-Builder is duly qualified to do business, and is in good standing, in the State, and will
25 remain in good standing throughout the term of the Contract and for as long thereafter as any
26 obligations remain outstanding under the Contract Documents. *[If Design-Builder is a joint venture,*
27 *identify its members and provide organizational information, qualification to do business and good*
28 *standing representations regarding each member.]*

29 **2.3.8 Labor Harmony**

30 Design-Builder shall ensure labor harmony on Site during all stages of the Project, including taking
31 appropriate steps to prevent strikes, walkouts, Work stoppages, Work slowdowns, Work
32 curtailments, cessations or interruptions of production due to labor disputes. If failure to maintain
33 labor harmony results in delay in completion of the Project, Design-Builder shall not be entitled to a
34 time extension or increase in compensation under Sections 11.3 and 11.4, respectively.

1 **3. DESIGN REQUIREMENTS**

2 **3.1 Responsibility for Design**

3 **3.1.1 Design Work To Be Performed By Licensed Personnel**

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

10 **3.1.2 Obligation to Correct Errors**

11 Design-Builder agrees that it has full responsibility for the design of the Project, regardless of the
12 fact that certain conceptual design work occurred and was provided to Design-Builder prior to the
13 date of execution of the Contract. Design-Builder specifically acknowledges and agrees that:

- 14 (a) Design-Builder is not entitled to rely on and has not relied on (i) the Reference
15 Documents or (ii) any other documents or information provided by WSDOT, except
16 to the extent specifically permitted in the Contract Documents.
- 17 (b) The Conceptual Design, including the Basic Configuration, is preliminary and
18 conceptual in nature, may contain errors, and may not be suitable as the basis for
19 the final design.
- 20 (c) Design-Builder is responsible for providing Released for Construction Documents
21 that comply with the requirements of the Contract Documents, regardless of any
22 errors, omissions, deficiencies or other defects in the Conceptual Design, without
23 any increase in compensation or extension of a Completion Deadline, subject only
24 to the right to a Change Order for Necessary Basic Configuration Changes.

25 The foregoing shall in no way affect WSDOT's agreement herein to issue Change Orders in
26 accordance with Article 11 with respect to Necessary Basic Configuration Changes.

27 **3.2 Design Requirements**

28 **3.2.1 Design Review Process**

29 Design-Builder shall furnish the Released for Construction Documents and other Design
30 Documents (including Final Design documents) to WSDOT in accordance with TR Sections 2.12
31 and 2.28. Design-Builder shall obtain WSDOT's acceptance or approval of the Design Documents
32 (as applicable) in accordance with the Technical Requirements.

33 WSDOT shall have the right to review and comment on the Design Documents for compliance with
34 the requirements of the Contract Documents in accordance with TR Section 2.28. Design-Builder
35 shall review comments upon receipt and shall promptly notify WSDOT if Design-Builder anticipates
36 that incorporation of the comments would adversely affect the design or construction of the Project
37 or the Contract Schedule, in which event WSDOT shall have the right to modify its comments. If
38 Design-Builder fails to notify WSDOT regarding concerns associated with any WSDOT comments
39 in a timely manner after receipt of such comments, Design-Builder shall be deemed to have fully
40 accepted all responsibility for changes made to the documents in response to such comments.
41 Within 14 days of receipt of comments from WSDOT (including modifications to previous

1 comments) or such longer period as may be allowed by WSDOT, Design-Builder shall revise and
2 modify all such documents so as to fully reflect all such comments.

3 **3.2.2 Third Party Approvals**

4 (a) Design-Builder shall be responsible for coordinating all design reviews required by
5 local agencies, Utility Owners and other third parties. WSDOT will assist in
6 obtaining approvals from Utility Owners as specified in Section 7.2, and agrees to
7 assist Design-Builder in its efforts to obtain other third party approvals as may be
8 reasonably requested by Design-Builder.

9 (b) Design-Builder acknowledges that it has sole responsibility for obtaining any
10 approvals from third parties required to implement approved ATCs incorporated in
11 the Contract Documents. Design-Builder agrees that if Design-Builder fails to
12 obtain any such approval, Design-Builder shall comply with the corresponding
13 baseline requirements (unmodified by the ATC) without any increase in
14 compensation or extension of the Completion Deadlines.

15 **3.2.3 Compliance with Contract Requirements; Changes in Basic Configuration**

16 Design-Builder shall not perform any Work that is inconsistent with the requirements of the
17 Contract Documents or that modifies the Basic Configuration unless such Work has been
18 specifically authorized by Change Order or Directive Letter specifically authorizing the change.
19 This requirement applies regardless of whether the Work in question is required by a
20 Governmental Approval, is desired by Design-Builder for its benefit, or for any other reason.
21 Design-Builder acknowledges and agrees that constraints set forth in the Contract Documents, as
22 well as Site conditions, the Property Acquisition Schedule and the requirement to obtain approval,
23 will impact Design-Builder's ability to revise the Basic Configuration.

24 **3.2.4 Ownership of Design**

25 Except for proprietary TBM-related design information, all Work product, including Working
26 Drawings, Released for Construction Documents, Design Documents, studies, manuals, As-Built
27 Plans, and technical reports, resulting from Design-Builder's performance of its obligations under
28 the Contract Documents shall be considered works for hire and shall become the property of
29 WSDOT without restriction of limitation on their use.

30 **3.3 Reference Documents**

31 WSDOT has provided the Reference Documents to Design-Builder for information only, and such
32 documents are not mandatory or binding on Design-Builder. Design-Builder understands and
33 agrees that WSDOT shall not be responsible or liable in any respect for any loss, damage, injury,
34 liability, cost or cause of action whatsoever suffered by any DB-Related Entity by reason of any
35 use of any information contained in the Reference Documents or any action or forbearance in
36 reliance thereon, except to the extent that WSDOT has specifically agreed herein that Design-
37 Builder shall be entitled to an increase in its compensation and/or extension of a Completion
38 Deadline with respect to such matter. Design-Builder further acknowledges and agrees that (a) if
39 and to the extent Design-Builder or anyone on Design-Builder's behalf uses any of said information
40 in any way, such use is made on the basis that Design-Builder, not WSDOT, has approved and is
41 responsible for said information, and (b) Design-Builder is capable of conducting and obligated
42 hereunder to conduct any and all studies, analyses and investigations as it deems advisable to

1 verify or supplement said information, and that any use of said information is entirely at Design-
2 Builder's own risk and at its own discretion.

3 **3.4 Design Professional Licensing Laws**

4 WSDOT does not intend to contract for, pay for, or receive any design services which are in
5 violation of any professional licensing laws, and by execution of this Contract, Design-Builder
6 acknowledges that WSDOT has no such intent. It is the intent of the parties that Design-Builder
7 will furnish the design of the Project through subcontracts with licensed design and engineering
8 firm(s) as provided herein. Any references in the Contract Documents to Design-Builder's
9 responsibilities or obligations to "perform" the design portions of the Work shall be deemed to
10 mean that Design-Builder shall "furnish" the design for the Project.

11

1 **4. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; SCHEDULING**

2 **4.1 Time of Essence**

3 Time is of the essence of the Contract.

4 **4.2 Time for Completion**

5 Design-Builder shall achieve Substantial Completion within _____ days after the effective date of
6 NTP 2 [number of days (not more than 1,905) to be inserted from Proposal Form D], shall achieve
7 Physical Completion within 120 days after Substantial Completion, and shall achieve Final
8 Completion within 120 days after Physical Completion. Except as otherwise specifically provided
9 in this Article 4 and Article 11, WSDOT shall have no obligation to extend any of the foregoing
10 Completion Deadlines, and Design-Builder shall not be relieved of its obligation to comply with the
11 Contract Schedule and achieve Substantial Completion, Physical Completion and Final Completion
12 by the applicable Completion Deadlines for any reason.

13 **4.3 Notice to Proceed**

14 The NEPA documentation and environmental permits for the Project will not be completed prior to
15 Contract execution. Consequently, WSDOT will issue two notices to proceed for the Project (NTP
16 1 and NTP 2). WSDOT anticipates that NTP 1 will be issued shortly after Contract execution, but
17 WSDOT may defer issuance of NTP 1 for up to 30 days after Contract execution. NTP1 will
18 authorize Design-Builder to proceed with the NTP 1 Work consistent with FHWA's design-build rule
19 and NEPA. Work that is authorized in NTP 1 will focus on preliminary design, including
20 investigations, and analysis necessary to support the Final EIS, the Section 106 process,
21 Endangered Species Act consultation, and environmental permitting. Details regarding the types
22 of work to be authorized under NTP 1 can be found in TR Section 2.8.

23 The NTP 1 Work does not include preparation of the NEPA document or any decision-making
24 responsibility with respect to the NEPA process, though NTP 1 Work will support the NEPA
25 documents prepared by WSDOT. WSDOT will be responsible for completing the NEPA
26 documentation and obtaining FHWA's approval thereof. Under no circumstances shall Design-
27 Builder commence Final Design or construction until such time FHWA has issued the Record of
28 Decision and WSDOT issues NTP 2, nor shall Design-Builder take any other action during the
29 NTP 1 period that would materially affect WSDOT's or FHWA's objective consideration of
30 alternatives under NEPA.

31 NTP 2 will be issued only if the final NEPA documents, including the Record of Decision, choose
32 the Bored Tunnel Alternative as the Selected Alternative. Upon the issuance of NTP 2, Design-
33 Builder shall commence NTP 2 Work, which will generally consist of Final Design and construction.

34 In the event that the final NEPA documents select the "no-build" alternative or select an alternative
35 other than the Bored Tunnel Alternative, WSDOT will terminate the Contract for convenience and
36 Design-Builder will be paid for the NTP 1 Work as provided herein.

37 **4.3.1 Conditions to Issuance of NTP 2 and Start of NTP 2 Work**

38 NTP 2 will be issued only after final NEPA documents have been approved, and only if the Bored
39 Tunnel Alternative is chosen as the Selected Alternative in the final approved documents. In
40 addition, if the final approved documents, including the Record of Decision, include any
41 modifications to the Project requirements requiring a modification to the Contract Documents,
42 NTP 2 will be issued only after the parties have reached agreement regarding such modifications.

1 Following issuance of NTP 2, Design-Builder may continue performance of Work authorized by
2 NTP 1 and may also proceed with Final Design and construction.

3 23 CFR 636.302 (a) (1) (iv) and (vi) requires that subsequent approval of final design and
4 construction activities will be contingent upon a finding of price reasonableness by WSDOT, and
5 concurred in by FHWA. Any major changes or scope changes to the contract that result between
6 the issuing of NTP 1 and NTP 2 will be subject to price reasonableness analysis and, in
7 conformance with 23 CFR 636.302 (a) (1) (vi), WSDOT's finding of price reasonableness is subject
8 to FHWA concurrence.

9 **4.3.2 Schedule for Issuance of NTPs**

10 WSDOT anticipates that it will issue NTP 1 concurrently with or shortly after execution and delivery
11 of the Contract and that NTP 2 will be issued approximately 180 days after issuance of NTP 1. If
12 WSDOT fails to issue NTP 2 on or before August 31, 2011, Design-Builder shall have the right to
13 an increase in the Lump Sum Amount as specified in Section 10.1.2. If WSDOT fails to issue NTP
14 2 on or before March 1, 2012, Design-Builder shall have the right to terminate the Agreement for
15 convenience as specified in Section 15.6, by written notice of termination delivered to WSDOT at
16 any time prior to issuance of NTP 2 by WSDOT.

17 If the effective date of NTP 2 is less than 180 days after the effective date of NTP 1, Design-Builder
18 will have the right to receive an extension of the Completion Deadlines, if and to the extent that
19 Design-Builder establishes that Work that would otherwise have performed during NTP 1 is on the
20 Critical Path as the result of acceleration of NTP 2. However, no extension will be allowed to the
21 extent that the reduced timeframe for NTP 1 resulted from a delay in NTP 1 due to Design-
22 Builder's action or inaction, or to the extent that the impact to the Critical Path could reasonably
23 have been avoided by Design-Builder.

24 **4.4 Contract Schedule**

25 Design-Builder shall deliver the Project, including planning, design, construction, management,
26 development and completion, in accordance with the Contract Schedule, as described in TR
27 Section 2.1.6. Such schedule shall also be the basis for determining the amount of monthly
28 progress payments to be made to Design-Builder, subject to the cap on payment set forth in
29 Section 10.4.

30 **4.5 Prerequisites for Start of Construction**

31 The following must occur prior to commencement of any physical construction work in the field that
32 disturbs existing soils or man-made objects in any way:

- 33 (a) Issuance of the Record of Decision by FHWA identifying the Project as the Selected
34 Alternative;
- 35 (b) Issuance of NTP 2;
- 36 (c) Those portions of the following plans to the extent they relate to the design package
37 being proposed for construction: the Quality Management Plan in accordance with
38 TR Section 2.28; the Public Information Plan in accordance with TR Section 2.9; the
39 Environmental Compliance Plan in accordance with TR Section 2.8; the Utility Work
40 Plan in accordance with TR Section 2.10; the Traffic Management Plan in
41 accordance with TR Section 2.22;

- 1 (d) Design-Builder shall have met all requirements of the Quality Management Plan that
2 are a condition to construction;
- 3 (e) All Governmental Approvals necessary for such Work to proceed obtained (whether
4 by Design-Builder or WSDOT), and all pre-requisites to the commencement of
5 construction set forth therein satisfied;
- 6 (f) All necessary rights of access for such Work in place; and
- 7 (g) WSDOT's acceptance of the Released for Construction Documents and Traffic
8 Control Plans for such portion of the Project in accordance with TR Sections 2.22
9 and 2.28.

10 The Contract Schedule shall reflect the anticipated dates set forth in TR Section 2.8 for WSDOT to
11 obtain Governmental Approvals. An equitable adjustment shall be made to the Lump Sum Amount
12 and Completion Deadlines in the event that the approvals are delayed beyond such anticipated
13 dates, upon Design-Builder's compliance with all applicable requirements of Article 11, and subject
14 to the limitations contained therein.

15 **4.6 Limitation of Operations**

16 Design-Builder may perform Work at all times except as limited by Project permits, City of Seattle
17 Street Use Permits and TR Sections 2.8 and 2.22.

1 **5. CONTROL OF WORK; ALLOCATION OF CERTAIN RISKS**

2 **5.1 Control and Coordination of Work**

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

7 **5.2 Safety**

8 Design-Builder shall take all reasonable precautions and be solely responsible for safety on the
9 Project in compliance with TR Section 2.1.3.

10 **5.3 Obligation to Minimize Impacts**

11 Design-Builder shall ensure that all of its activities and the activities of all DB-Related Entities are
12 undertaken in a manner that will minimize the effect on surrounding property and the public to the
13 maximum extent reasonably practicable.

14 **5.4 Quality Management**

15 **5.4.1 Design-Builder Quality Management**

16 Design-Builder shall strictly comply with the Quality Management Plan in the performance of the
17 Work in compliance with TR Section 2.28 and the Contract Documents.

18 **5.4.2 Oversight, Inspection, and Testing by WSDOT and Others**

19 All materials and each part or detail of the Work shall also be subject to oversight, inspection and
20 testing by WSDOT and other Persons designated by WSDOT. Such oversight, inspection and/or
21 testing does not make such Person a party to the Contract nor will it change the rights of the
22 parties hereto. Design-Builder hereby consents to such oversight, inspection and testing. Upon
23 request from WSDOT, Design-Builder shall furnish information to such Persons as are designated
24 in such request and shall permit such Persons access to the Site and all parts of the Work.

25 **5.4.3 Obligation to Uncover Finished Work**

26 At all times before Final Completion, Design-Builder shall remove or uncover such portions of the
27 finished construction Work as directed by WSDOT. After examination by WSDOT and any other
28 Persons designated by WSDOT, Design-Builder shall restore the Work to the standard required by
29 the Contract Documents. If the Work exposed or examined is not in conformance with the
30 requirements of the Contract Documents, then uncovering, removing and restoring the Work and
31 recovery of any delay to the Critical Path occasioned thereby shall be at Design-Builder's expense
32 and Design-Builder shall not be entitled to a time extension. Furthermore, any Work done or
33 materials used without notice to and opportunity for prior inspection by WSDOT may be ordered
34 uncovered, removed or restored at Design-Builder's expense and without a time extension, even if
35 the Work proves acceptable after uncovering. Except with respect to Work done or materials used
36 as described in the foregoing sentence, if Work exposed or examined under this Section 5.4.3 is in
37 conformance with the requirements of the Contract Documents, then any delay in the Critical Path
38 from uncovering, removing and restoring Work shall be considered a WSDOT-Caused Delay, and
39 Design-Builder shall be entitled to a Change Order for the cost of such efforts and recovery of any

1 delay to the Critical Path occasioned thereby, upon Design-Builder's compliance with all applicable
2 requirements of Article 11, and subject to the limitations contained therein.

3 **5.5 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances, and Approvals**

4 Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the
5 Contract Documents, or any of its other obligations under the Contract Documents, by reason of
6 oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals by any
7 Persons, or by any failure of any Person to take such action. The oversight, spot checks, audits,
8 reviews, tests, inspections, acceptances and approvals by any Person do not constitute final
9 acceptance of the particular material or Work, or waiver of any legal or equitable right with respect
10 thereto. WSDOT may reject or require Design-Builder to remedy any Nonconforming Work and/or
11 identify additional Work which must be done to bring the Project into compliance with the
12 requirements of the Contract Documents at any time prior to Final Acceptance, whether or not
13 previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were
14 conducted by any Person.

15 WSDOT shall not be precluded, by any measurement, estimate or certificate made either before or
16 after Final Acceptance and payment therefor, from showing that any such measurement, estimate
17 or certificate was incorrectly made or untrue, or from showing the true amount and character of the
18 work performed and materials furnished by Design-Builder, or from showing that the work or
19 materials do not in fact conform to the requirements of the Contract Documents. Notwithstanding
20 any such measurement, estimate or certificate, or payment made in accordance therewith,
21 WSDOT shall not be precluded from recovering from Design-Builder and its Surety(ies) such
22 damages as WSDOT may sustain by reason of Design-Builder's failure to comply with the terms of
23 the Contract Documents.

24 **5.6 Nonconforming Work**

25 **5.6.1 Rejection, Removal and Replacement of Work**

26 Subject to WSDOT's right, in its sole discretion, to accept or reject Nonconforming Work, Design-
27 Builder shall remove and replace rejected Nonconforming Work so as to conform to the
28 requirements of the Contract Documents, at Design-Builder's expense and without any time
29 extension; and Design-Builder shall promptly take all action necessary to prevent similar
30 deficiencies from occurring in the future. The fact that WSDOT may not have discovered the
31 Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If Design-
32 Builder fails to correct any Nonconforming Work within five days of receipt of notice from WSDOT
33 requesting correction (or, for Nonconforming Work which can not be corrected within five days, if
34 Design-Builder fails to (i) provide within such five-day period a schedule for WSDOT's approval to
35 promptly correct any such Nonconforming Work; (ii) begin correction of the Nonconforming Work
36 within such five-day period and thereafter diligently prosecute and complete such correction in
37 accordance with the WSDOT-approved schedule), then WSDOT may cause the Nonconforming
38 Work to be remedied or removed and replaced, and may deduct the cost of doing so from any
39 moneys due or to become due Design-Builder and/or obtain reimbursement from Design-Builder
40 for such cost.

41 **5.6.2 Acceptance of Nonconforming Work**

42 WSDOT may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully
43 corrected, and shall be entitled to reduce the Design-Builder's compensation in the manner
44 described below (and seek reimbursement of previous payments, if applicable). In certain

1 instances, it may not be possible or practical to remedy the Nonconforming Work so that it meets
2 the requirements of the Contract Documents. Unless expressly provided otherwise elsewhere in
3 the Contract Documents for specific events, the reduction in compensation shall equal, at
4 WSDOT's election, (a) Design-Builder's cost savings associated with its failure to perform the Work
5 in accordance with the requirements of the Contract Documents or (b) the amount deemed
6 appropriate by WSDOT to provide compensation for impacts arising out of the failure to comply
7 with the Contract Documents, including additional lifecycle and future maintenance costs and/or
8 other costs arising out of or affected by the Nonconforming Work.

9 **5.7 Subsurface Work**

10 **5.7.1 Tunnel Boring Machine Intervention Work**

11 To reasonably allocate risk of tunneling on the Project, WSDOT shall share in the cost and
12 schedule risk of Intervention Work in accordance with this Section 5.7.1. Intervention Work is work
13 of any nature performed in or around the TBM for a continuous period of time by workers operating
14 under hyperbaric pressure. TBM maintenance work performed under hyperbaric pressure qualifies
15 as Intervention Work. WSDOT will not consider work performed in conditions other than under
16 hyperbaric pressure as Intervention Work. Intervention Work will be measured on an hour by hour
17 basis rounded to the nearest hour. For example, if Intervention Work is completed in 7.25 hours,
18 the Intervention Work will be calculated as having taken seven hours. If the Intervention Work is
19 completed in 7.5 hours, the Intervention Work will be calculated as having taken eight hours. The
20 total of the two instances of Intervention Work would count as a cumulative 15 hours of
21 Intervention Work.

22 **5.7.1.1 Intervention Work Included in Original Scope**

23 The Lump Sum Amount and Contract Schedule include the cost and schedule impact of 1440
24 cumulative hours of Intervention Work. Work performed under hyperbaric pressure that is
25 necessitated by Design-Builder's breach of its obligations under the Contract Documents is not
26 Intervention Work and will not count towards the cumulative total hours of Intervention Work.

27 **5.7.1.2 Routine Maintenance Included in Original Scope**

28 Routine Maintenance is not considered Intervention Work, and all costs associated with Routine
29 Maintenance are included in the Lump Sum Amount. Design-Builder is not entitled to a time
30 extension or additional compensation for any Routine Maintenance.

31 **5.7.1.3 Extraordinary Intervention Work**

32 Design-Builder shall be entitled to a time extension for delays to the Critical Path due to
33 Extraordinary Intervention Work, through a Change Order issued in accordance with Section 11.3,
34 with the right to receive additional compensation for such Work limited as specified in the following
35 sentence. Design-Builder's right to receive compensation from WSDOT for costs incurred as the
36 result of Extraordinary Intervention Work shall be limited to 50 percent of the direct costs expended
37 in performing work directly related to the Extraordinary Intervention Work. WSDOT will not
38 consider profit and home office overhead expenses in calculating the amount payable to Design-
39 Builder for Extraordinary Intervention Work.

40 WSDOT will pay amounts owing from the Shared Contingency, but if the Shared Contingency is
41 fully consumed, WSDOT shall remain responsible for the costs of Extraordinary Intervention Work

1 described in this Section 5.7.1.3. Unused amounts in the Shared Contingency shall be shared by
2 Design-Builder and WSDOT in accordance with the provisions of Article 13.

3 **5.7.2 Geotechnical and Environmental Reports**

4 The Geotechnical Baseline Report, TR Appendix G1, and the Environmental Baseline Report, TR
5 Appendix E6 contain the narrative description of geotechnical and environmental conditions that
6 Design-Builder should expect to encounter during subsurface construction Work. In the event the
7 Geotechnical Baseline Report or Environmental Baseline Report, as applicable, is silent with
8 respect to a particular geotechnical or environmental condition, Design-Builder may rely upon the
9 Geotechnical & Environmental Data Report, TR Appendix G2, as describing such condition.
10 Whenever there is an inconsistency between conditions described in the Geotechnical Baseline
11 Report or Environmental Baseline Report and the conditions described in the Geotechnical &
12 Environmental Data Report, then the conditions described in the Geotechnical Baseline Report or
13 Environmental Baseline Report, as applicable, shall take precedence, and shall be the conditions
14 against which actual conditions encountered are compared for the purpose of determining if a
15 Differing Site Condition exists. Design-Builder acknowledges that, in developing its Proposal,
16 Design-Builder gave full consideration to the contents of the Geotechnical Baseline Report,
17 Environmental Baseline Report and the Geotechnical & Environmental Data Report, and further
18 acknowledges that it shall not be entitled to a time extension or increase in the Lump Sum Amount
19 or unit prices as the result of encountering conditions consistent with those described in the
20 Geotechnical Baseline Report or Environmental Baseline Report, except as otherwise provided in
21 Section 5.7.

22 **5.7.3 Notice of and Report Regarding Differing Site Conditions**

23 **5.7.3.1 Notice**

24 Design-Builder shall exercise due diligence and the standard of care of an experienced global
25 tunneling contractor in continually evaluating site conditions as they are encountered, including
26 subsurface geological conditions, so to ensure prompt identification of potential Differing Site
27 Conditions. If, in the exercise of such due diligence and standard of care Design-Builder
28 determines or reasonably should have determined that it has encountered Differing Site
29 Conditions, Design-Builder shall provide written notice to WSDOT. Such notice shall be provided
30 within seven days (for the tunnel) or immediately (for all other areas) after the date of such
31 determination or date that Design-Builder should have known of the conditions (such time frame
32 being subject to any event beyond the reasonable control of Design-Builder which materially
33 impairs Design-Builder's ability to prepare and deliver such notice, in which case the time frame
34 shall be extended by the period of time in which Design-Builder is so materially impaired).

35 **5.7.3.2 Continuation of Work**

36 Pending a determination by WSDOT whether a condition constitutes a Differing Site Condition,
37 Design-Builder shall continue to progress the Work unless the Parties mutually agree that doing so
38 would be commercially unreasonable under the circumstances. Design-Builder shall, to the extent
39 practicable, mitigate the impact of the claimed Differing Site Conditions.

40 **5.7.3.3 Report**

41 Within 30 days of the initial notice, or such other period of time that the parties may agree to as
42 being reasonable under the circumstances, Design-Builder shall provide WSDOT a written report
43 that shall include a narrative and supporting documentation regarding the nature of the Differing

1 Site Conditions, the anticipated schedule impact and financial impact of the claimed Differing Site
2 Conditions, and information regarding insurance that may be available to cover such impacts.
3 Such report shall provide sufficient detail to allow WSDOT to thoroughly analyze and determine
4 whether the referenced conditions are in fact Differing Site Conditions. If the parties mutually
5 agree that it is appropriate under the circumstances, Design-Builder may submit a preliminary
6 written report within the time frame required by this Section 5.7.3.3, followed by periodic updates to
7 the report at interim stages agreed to by the parties.

8 **5.7.3.4 Waiver**

9 Failure of Design-Builder to provide notice to WSDOT strictly in accordance with the provisions of
10 this Section 5.7.3 shall result in the waiver of Design-Builder's rights, if any, to the relief described
11 in this Section 5.7.

12 **5.7.4 WSDOT Investigation**

13 **5.7.4.1 Commencement of Investigation**

14 Upon receipt of the report described in Section 5.7.3.3, WSDOT shall commence an investigation
15 of the identified conditions to determine whether the conditions are Differing Site Conditions.

16 **5.7.4.2 WSDOT Determination**

17 If WSDOT decides in accordance with the investigation described above that the claimed changed
18 conditions in fact constitute Differing Site Conditions, WSDOT shall then investigate: (a) whether
19 the existence of the conditions are expected to have an adverse financial impact on Design-Builder
20 or result in a Critical Path delay and (b) whether any Project insurance policies are available to
21 cover some or all of the damages suffered as a result of the conditions. WSDOT shall within 30
22 days of its receipt of Design-Builder's written report as described in Section 5.7.3.3, issue its
23 determination as to whether the described conditions constitute Differing Site Conditions for which
24 Design-Builder is entitled to relief pursuant to the terms of this Contract. If Design-Builder
25 disagrees with WSDOT's determination, it may submit the matter for dispute resolution in
26 accordance with Article 24.

27 **5.7.5 Insurance**

28 Prior to filing any request for a Change Order relating to a Differing Site Condition, Design-Builder
29 shall inquire whether insurance proceeds may be available to cover any of its costs. If Design-
30 Builder finds that reasonable grounds for filing an insurance claim exist, then Design-Builder shall
31 so notify WSDOT. WSDOT shall not be in default for failure to pay any amounts which Design-
32 Builder or WSDOT finds may be covered by insurance, unless and until the claim is denied by the
33 insurance company. Design-Builder shall maintain contemporaneous records of all costs incurred
34 by it with respect to the Differing Site Condition pending the insurance company's determination
35 regarding the claim. Upon denial of any such claim by the insurance company and receipt of a
36 Change Order request, WSDOT will process the Change Order request. WSDOT shall have the
37 right to contest the denial of any insurance claim, and Design-Builder shall cooperate with WSDOT
38 in that regard. Notwithstanding anything to the contrary contained in this Section 5.7 and
39 Article 11, Design-Builder shall not be obligated to include amounts which may be covered by
40 insurance in any Change Order request until 20 days after the insurance company has denied the
41 claim. However, the notice requirements of this Section 5.7 and Article 11 shall remain effective
42 with respect to the event in question.

1 **5.7.6 Change Orders for Differing Site Conditions**

2 Upon Design-Builder's compliance with all applicable requirements of this Section 5.7 and
3 Article 11, and subject to the limitations contained therein, WSDOT shall issue one or more
4 Change Orders, (a) to compensate Design-Builder for additional costs directly attributable to the
5 Differing Site Conditions, and (b) to extend the Completion Deadlines and compensate Design-
6 Builder for delay damages with respect to any delay in the Critical Path caused by any such
7 conditions. The Change Order may designate as provisional some or all of the costs described
8 therein, subject to adjustment based on actual costs incurred as the result of the Differing Site
9 Conditions.

10 **5.7.7 Burden of Proof**

11 Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it
12 could not reasonably have mitigated the impact of the Differing Site Condition.

13 **5.8 Action To Be Taken Upon Discovery of Specified Site Conditions**

14 **5.8.1 Archaeological and Historical Objects**

15 Archaeological or historical objects, such as ruins, sites, buildings, artifacts, human skeletal
16 remains or other objects of antiquity that may have significance from a historical, cultural, or
17 scientific standpoint, which may be encountered by Design-Builder, shall not be further disturbed.
18 Except for those archaeological or historical objects described in the Technical Requirements,
19 Design-Builder shall immediately notify the WSDOT Engineer by telephone or in person of any
20 archaeological or historical objects it encounters in performing the Work. Any telephone or in-
21 person notification shall be followed by written notification within three days of discovery thereof.
22 Design-Builder shall cease all Work adjacent to the discovery, in a manner adequate to provide for
23 the security, protection and integrity of the affected area until and unless directed to proceed by the
24 WSDOT Engineer.

25 Upon notification by Design-Builder under this Section 5.8.1, the WSDOT Engineer will determine if
26 the objects need further documentation or treatment. Design-Builder will be required to stop Work
27 in the vicinity of the discovery until such determination is made. The WSDOT Engineer will require
28 Design-Builder to suspend Work in the vicinity of the discovery until said documentation or
29 treatment is accomplished.

30 If the WSDOT Engineer finds that the suspension of Work in the vicinity of the discovery increases
31 or decreases the cost to perform the Work or will result in a Critical Path delay, WSDOT shall issue
32 one or more Change Orders (a) to compensate Design-Builder for additional costs directly
33 attributable to changes in the scope of the Work arising from the site conditions, and (b) to extend
34 the Completion Deadlines and compensate Design-Builder for delay damages with respect to any
35 Critical Path delay caused by such conditions.

36 **5.8.2 Hazardous Materials**

37 **5.8.2.1 Notification by Design-Builder**

38 If Design-Builder becomes aware of any Hazardous Materials on the Site not described in the
39 Technical Requirements (including in the Environmental Baseline Report) that Design-Builder
40 believes may require removal or treatment, Design-Builder shall immediately notify the WSDOT
41 Engineer of any such finds in writing within three days of discovery thereof, before the Hazardous

1 Materials are disturbed and before the affected Work is performed. Such notification shall identify
2 the conditions represented in the Contract, the conditions encountered at the Site, an explanation
3 of the difference between the materials encountered and what is described in the Environmental
4 Baseline Report, and shall describe the type of Remediation Work, if any, which Design-Builder
5 proposes to undertake with respect thereto. Upon receipt of the written notification, WSDOT will
6 investigate the affected area. WSDOT will notify Design-Builder of its determination whether or not
7 a Change Order is warranted under Section 5.8.2.2. If Design-Builder disagrees with WSDOT's
8 determination, it may submit the matter for dispute resolution in accordance with Article 24.

9 **5.8.2.2 Cost and Schedule Relief**

10 Upon Design-Builder's compliance with all applicable requirements of this Section 5.8 and
11 Article 11, and subject to the limitations contained therein, Design-Builder shall be entitled to a
12 Change Order priced in accordance with Section 11.8 for cost impacts and Critical Path delays
13 associated with the performance of Remediation Work for Hazardous Materials not described in
14 the Contaminated Materials Baseline Report or in the Technical Requirements generally.

15 Allowable costs shall be limited to the incremental costs of performance of Remediation Work,
16 deducting any avoided costs such disposal of materials had they not been contaminated) after
17 completion of the testing process to determine whether Hazardous Materials are present. Design-
18 Builder shall take all reasonable steps to minimize any such costs. In addition, compensation for
19 Remediation Work will be allowed only if Design-Builder demonstrates to WSDOT's satisfaction
20 that (a) the Remediation Work could not have been avoided by reasonable design modifications or
21 construction techniques and (b) Design-Builder's plan for the Remediation Work represents the
22 approach which is most beneficial to the Project and the public. Design-Builder shall provide
23 WSDOT with such information, analyses and certificates as may be requested by WSDOT in order
24 to enable a determination regarding eligibility for payment.

25 Except as expressly provided in this Section 5.8, the Lump Sum Amount and unit prices include
26 the cost of all activities to be performed by Design-Builder pursuant to Section 2.2(f) and TR
27 Section 2.8.

28 **5.8.3 Action To Be Taken For Conditions Indicated in the Contract Documents**

29 Except as otherwise specified in TR Section 2.8.4.3, Design-Builder shall not be obligated to stop
30 Work upon discovery of archaeological or historical objects or Hazardous Materials which the
31 Contract Documents indicate are present in the location in question. Design-Builder shall provide
32 prompt notice to the WSDOT Engineer of any such discovery and shall proceed with Work in
33 accordance with the requirements of the Contract Documents. In the event that any Environmental
34 Approvals specify a procedure to be followed which differs from the procedure set forth above,
35 Design-Builder shall follow the procedure set forth in the Environmental Approvals.

36 **5.8.4 Burden of Proof**

37 Design-Builder shall bear the burden of proving that a condition under this Section 5.8 exists and
38 that it could not reasonably have mitigated the impact of the condition.

1 **5.9 Deformation Mitigation and Repair**

2 **5.9.1 Design-Builder's Responsibility**

3 Subject to Sections 5.9.2 and 7.2 *[cross-reference to be added by Addendum]*, Design-Builder
4 shall perform all deformation mitigation measures required by the Contract Documents and such
5 other deformation mitigation measures that it deems necessary or prudent under the
6 circumstances at its sole cost and expense.

7 **5.9.2 Responsibility for Deformation of Structures and Utilities Within Tolerances**

8 If, deformation occurs at any time prior to Physical Completion with resultant property damage to a
9 Structure or a Utility, despite Design-Builder's performance of deformation mitigation measures as
10 described in Section 5.9.1, and if such deformation is within the allowable deformation tolerance
11 specified for such Structure or Utility as set forth in TR Section 2.52, Design-Builder shall perform
12 Additional Deformation Work as directed by WSDOT. WSDOT shall prepare a scope of work and
13 issue a Change Order for the Additional Deformation Work pursuant to Section 11.2 to cover the
14 cost of the Additional Deformation Work. WSDOT shall also grant a time extension under
15 Section 11.3 for any Critical Path delay associated with the performance of the Additional
16 Deformation Work. In lieu of directing Design-Builder to perform the Additional Deformation Work,
17 WSDOT may, in its sole discretion, (a) retain other contractors to perform the Additional
18 Deformation Work, or (b) elect not to perform such work and instead make payments to owners of
19 Structures or Utilities affected by the deformation.

20 WSDOT will use the Shared Contingency to pay for Additional Deformation Work, whether
21 performed by Design-Builder or by others, and to make payments to property owners if WSDOT
22 elects not to perform the work as described in this Section 5.9.2. If the Shared Contingency is fully
23 consumed, WSDOT shall remain responsible for such costs. Unused amounts in the Shared
24 Contingency shall be shared by Design-Builder and WSDOT in accordance with the provisions of
25 Article 13.

26 **5.9.3 Responsibility for Deformation of Structures and Utilities Outside of Tolerances**

27 If, prior to Physical Completion, deformation occurs with resultant property damage to a Structure
28 or Utility, and that deformation exceeds the allowable deformation tolerance specified for such
29 Structure or Utility as set forth in TR Section 2.52, Design-Builder shall, as directed or approved by
30 WSDOT, perform all deformation mitigation measures and property damage repair arising out of or
31 related to the deformation at its sole expense. Design-Builder shall confer with WSDOT in
32 developing the scope and extent of the necessary deformation mitigation measures and property
33 damage repairs. Design-Builder and WSDOT shall work cooperatively with the owner of the
34 Structure or Utility in defining and scheduling performance of the additional deformation mitigation
35 measures and property damage repairs. Work to be performed under this Section 5.9.3 will be
36 identified in a no-cost Change Order. Design-Builder shall be responsible for paying compensation
37 in lieu of such mitigation and repair work as agreed to by owners of Structures or Utilities affected
38 by the deformation. Design-Builder shall not be entitled to a time extension for any Critical Path
39 delay resulting from the performance of work required under this Section 5.9.3.

40 **5.9.4 Additional Deformation After Authorization of Repair Work**

41 If, after WSDOT has directed or approved performance of Additional Deformation Work under
42 Section 5.9.2, the Structure or Utility in question is affected by deformation outside of the allowable
43 deformation tolerance for such Structure or Utility as set forth in TR Section 2.52, Design-Builder

1 shall, as directed or approved by WSDOT, perform all deformation mitigation measures and
2 property damage repair arising out of or related to the deformation at its sole expense. Design-
3 Builder shall confer with WSDOT in developing the scope and extent of the necessary deformation
4 mitigation measures. Design-Builder and WSDOT shall work cooperatively with the owner of the
5 Structure or Utility in defining and scheduling performance of the additional deformation mitigation
6 measures and property damage repairs. WSDOT's liability for deformation mitigation and repairs
7 directed or approved by WSDOT under this Section 5.9.4 will be limited to the cost of the
8 Additional Deformation Work previously authorized under Section 5.9.2. Design-Builder shall be
9 responsible for paying compensation in lieu of such mitigation and repair work as agreed to by
10 owners of Structures or Utilities affected by the deformation. Design-Builder shall not be entitled to
11 a time extension for any Critical Path delay resulting from the performance of work required under
12 this Section 5.9.4.

13 **5.10 Changes in Basic Configuration**

14 **5.10.1 Change Order for Necessary Basic Configuration Change**

15 Upon Design-Builder's fulfillment of all applicable requirements of Article 11, and subject to the
16 limitations contained therein, if the cost and/or time required to perform the Work is adversely
17 affected by a Necessary Basic Configuration Change, Design-Builder shall be entitled to an
18 increase in the Lump Sum Amount and/or an extension of the Completion Deadlines
19 commensurate with the cost impact and Critical Path delay associated therewith, excluding any
20 costs and/or time that could have been reasonably avoided by Design-Builder; provided, however,
21 Design-Builder shall not be entitled to an increase in its compensation or an extension of the
22 Completion Deadlines in connection with errors resulting from approved ATCs incorporated in the
23 Contract Documents.

24 If the cost and/or time required to perform the Work is reduced by a Necessary Basic Configuration
25 Change, the Lump Sum Amount shall be decreased and/or Completion Deadlines shall be
26 shortened accordingly.

27 **5.10.2 Change in Basic Configuration Resulting From Design-Builder Initiated Change** 28 **Proposal**

29 If a Design-Builder Initiated Change Proposal results in a change in Basic Configuration, any cost
30 savings from such change shall be shared in accordance with Article 12.

31

1 **6. COOPERATION AND COORDINATION**

2 **6.1 Cooperation with Other Contractors**

3 Design-Builder acknowledges that WSDOT has awarded and/or plans to award contracts for
4 construction and other work at or near the Site, and that other projects at or near the Site may be
5 in various stages of design and construction. Design-Builder and any DB-Related Entity shall fully
6 cooperate and coordinate with such other contractors and projects, and shall schedule and
7 sequence the Work as reasonably necessary to accommodate the work of such other contractors
8 and projects, as more particularly described in TR Section 2.58. Further, Design-Builder shall
9 conduct its Work and perform its obligations under the Contract Documents without unreasonably
10 interfering with or hindering the progress or completion of the work being performed by other
11 contractors or of the work relating to such other projects.

12 The coordination of the Work shall be taken into account by Design-Builder as part of the Site
13 investigation in accordance with Section 2.3.4, and any resulting costs shall be incidental and
14 included within the Lump Sum Amount.

15 **6.2 Coordination with Adjacent Property Owners**

16 Design-Builder shall coordinate with owners of property adjoining the Project, as necessary to
17 implement the Work, as more particularly described in TR Sections 2.9 and 2.58.

1 **7. ACCESS TO PROPERTY; UTILITY RELOCATIONS; ENVIRONMENTAL MITIGATION**

2 **7.1 Acquisition of Property Rights**

3 WSDOT shall undertake and complete the acquisition of property rights for the Project in
4 accordance with the acquisition schedule (“Property Acquisition Schedule”) set forth in Appendix 4.
5 Refer to TR Section 2.24 for specific information regarding the property interests to be acquired.

6 Design-Builder may request that WSDOT obtain access to property rights not identified in the
7 Property Acquisition Schedule, and in such case WSDOT shall cooperate with Design-Builder.
8 Design-Builder acknowledges that all acquisitions of property rights by WSDOT will be subject to
9 requirements of the Uniform Relocation and Real Property Acquisition Act of 1970, including the
10 requirement for WSDOT to make a determination that the acquisition is necessary. Design-Builder
11 agrees that it shall be fully responsible for and shall bear all risk of increased costs and delays
12 resulting from or arising in connection with the acquisition of such additional property rights.

13 **7.2 Utility Adjustments**

14 *[Section 7.2 to be provided by addendum]*

15 **7.3 Environmental Compliance**

16 **7.3.1 Performance by Design-Builder**

17 In performance of the Work, Design-Builder shall comply with all requirements of all applicable
18 Environmental Laws and Governmental Approvals issued thereunder, whether obtained by
19 WSDOT or Design-Builder. Design-Builder acknowledges and agrees that it will be responsible for
20 all fines and penalties that may be assessed in connection with any failure to comply with such
21 requirements.

22 **7.3.2 Environmental Mitigation**

23 Design-Builder shall comply with all environmental performance requirements and perform all
24 environmental mitigation measures required by the Contract Documents and the Governmental
25 Approvals, including those contained in the Environmental Approvals. The Lump Sum Amount and
26 unit prices include compensation for Design-Builder’s compliance with and performance of the
27 environmental performance requirements and environmental mitigation measures identified by the
28 Environmental Approvals (whether draft or final) as of the Proposal Date. In the event the
29 environmental performance requirements and environmental mitigation measures in the final
30 Environmental Approvals differ from those included in Design-Builder’s original scope of work,
31 WSDOT will issue a Change Order modifying the Work as appropriate to ensure that the Project
32 will comply with the final Environmental Approvals, as a WSDOT-Directed Change.

1 **8. CONTRACTING AND LABOR PRACTICES**

2 **8.1 Equal Employment Opportunity**

3 **8.1.1 Policy**

4 Design-Builder shall comply with the Equal Employment Opportunity (EEO) requirements set forth
5 in Appendix 6.

6 **8.1.2 Inclusion in Subcontracts**

7 Design-Builder shall include Section 8.1.1 and Section 1 of Appendix 6 in every Subcontract and
8 agreement with a supplier over \$10,000, and shall require that they be included in all Subcontracts
9 and agreements with suppliers over \$10,000 at lower tiers, so that such provisions will be binding
10 upon each such Person.

11 **8.2 Disadvantaged Business Enterprises**

12 **8.2.1 Policy**

13 Design-Builder shall comply with the requirements set forth in Appendix 6. WSDOT has
14 established a DBE goal for the Contract in the amount of eight percent of the compensation
15 payable to Design-Builder.

16 **8.2.2 Inclusion in Subcontracts**

17 Design-Builder shall include provisions to effectuate the requirements of Appendix 6, including the
18 assurance required by Section 1.1(g) thereof, in every Subcontract and agreement with supplier,
19 and shall require that they be included in all Subcontracts and agreements with suppliers at lower
20 tiers, so that such provisions will be binding upon each such Person.

21 **8.3 Subcontracting Requirements**

22 Design-Builder shall comply with all applicable requirements of the Contract Documents relating to
23 Subcontracts and agreements with suppliers (including Appendices 5 and 6), and shall ensure that
24 its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents
25 relating to subcontracting and purchasing (including Appendices 5 and 6).

26 **8.3.1 Major Participants**

27 Design-Builder shall not add, delete, or change the role of, any Major Participant as set forth in its
28 Proposal without the prior written approval of WSDOT.

29 **8.3.2 Assignment of Subcontract Rights**

30 Each Subcontract and agreement with a supplier shall provide that, pursuant to terms in form and
31 substance satisfactory to WSDOT, (a) WSDOT is a third party beneficiary of the Subcontract and
32 shall have the right to enforce all terms of the Subcontract for its own benefit, (b) all guarantees
33 and warranties, express and implied, shall inure to the benefit of WSDOT, its successors and
34 assigns, as well as Design-Builder, and (c) the rights of Design-Builder under such instrument are
35 assigned to WSDOT contingent upon delivery of written request from WSDOT following default by
36 Design-Builder or termination or expiration of the Contract, allowing WSDOT to assume the benefit

1 of Design-Builder's rights with liability only for those remaining obligations of Design-Builder
2 accruing after the date of assumption by WSDOT. The assignment shall not release or relieve
3 Design-Builder from its obligations or liabilities incurred under the assigned Subcontract prior to the
4 effective date of the assignment.

5 **8.3.3 Subcontract Terms**

6 Each Subcontract and agreement with a supplier shall include terms and conditions sufficient to
7 ensure compliance by the Subcontractor, supplier with all applicable requirements of the Contract
8 Documents, and shall include provisions addressing the following requirements as well as any
9 other terms that are specifically required by the Contract Documents to be included therein:

- 10 (a) Each such agreement shall include terms that are substantially similar to those
11 terms required by Sections 5.1, 5.2, 5.3, 5.4.3, 5.7, 8.1 (as appropriate), 8.2, 8.3,
12 8.4.3, 9.1, 11.9, 14, 15, 19, 21.4 and 25.13 and Appendices 5 (as appropriate) and 6
13 (as appropriate), specifically including an agreement by the Subcontractor to be
14 joined in any dispute resolution proceeding pursuant to Article 24 if such joinder is
15 reasonably necessary to resolve the dispute; and
- 16 (b) Each such agreement (other than agreements with suppliers) shall include terms
17 that are substantially similar to those contained in Sections 2.2(e), 2.2(f), 2.2(g),
18 2.3.1, 2.3.2 (as appropriate) and 2.3.

19 **8.3.4 Subcontract Data**

20 Design-Builder shall provide WSDOT with a list of the name and address of, licenses held by, and
21 any insurance documents required pursuant to Article 20 for, each Subcontractor (excluding
22 suppliers), as soon as the potential Subcontractor has been identified by Design-Builder, but in no
23 event less than 14 days prior to the scheduled initiation of Work by such proposed Subcontractor.
24 Design-Builder shall provide WSDOT with an updated list of its Subcontractors and suppliers from
25 time to time upon request by WSDOT; shall allow WSDOT access to all agreements with
26 Subcontractors and suppliers and records regarding such agreements; and shall deliver to
27 WSDOT, within 10 days after receipt of a request from WSDOT, copies of all such agreements as
28 may be requested. All such agreements shall be in writing.

29 **8.3.5 Responsibility for Work by Subcontractors**

30 Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Builder shall be
31 fully responsible for all of the Work. WSDOT shall not be bound by any Subcontract, and no
32 Subcontract shall include a provision purporting to bind WSDOT. Each Subcontract shall include
33 the following provision:

34 Nothing contained herein shall be deemed to create any privity of contract between
35 the State of Washington through its Secretary of Transportation (WSDOT) and
36 Subcontractor, nor does it create any duties, obligations or liabilities on the part of
37 WSDOT to Subcontractor except those allowed under Washington law. In the event
38 of any claim or dispute arising under this Subcontract and/or Design-Builder's
39 contract with WSDOT, Subcontractor shall look only to Design-Builder for any
40 payment, redress, relief or other satisfaction. Subcontractor hereby waives any
41 claim or cause of action against WSDOT arising out of this Subcontract or otherwise
42 arising in connection with Subcontractor's work.

1 **8.3.6 Subcontract Work**

2 Design-Builder shall coordinate the Work performed by Subcontractors.

3 **8.3.7 Debarred Subcontractors**

4 Design-Builder shall not enter into any Subcontracts with any Person then debarred or suspended
5 from submitting bids by any agency of the State.

6 **8.3.8 Subcontract Completion and Return of Retainage Withheld**

7 The following procedure shall apply to all Subcontracts entered into hereunder.

8 **8.3.8.1 Requirements**

9 The requirements and procedure for release and return of retainage withheld from Subcontractors
10 are as follows:

- 11 (a) The Subcontractor shall make a written request to Design-Builder for the release of
12 the Subcontractor's retainage or bond;
- 13 (b) Within 14 calendar days of the request, Design-Builder shall determine if the
14 subcontract has been satisfactorily completed and shall inform the Subcontractor, in
15 writing, of Design-Builder's determination;
- 16 (c) If Design-Builder determines that the subcontract has been satisfactorily completed,
17 the Subcontractor's retainage or retainage bond shall be released by Design-Builder
18 within 10 calendar days from the date of the written notice;
- 19 (d) If Design-Builder determines that the Subcontractor has not achieved satisfactory
20 completion of the Subcontract, Design-Builder must provide the Subcontractor with
21 written notice, stating specifically why the Subcontract Work is not satisfactorily
22 completed and what has to be done to achieve completion. Design-Builder shall
23 release the Subcontractor's retainage or retainage bond within eight calendar days
24 after the Subcontractor has satisfactorily completed the Work identified in the notice;
- 25 (e) In determining whether satisfactory completion has been achieved, Design-Builder
26 may require the Subcontractor to provide documentation such as certifications and
27 releases, showing that all laborers, lower-tiered subcontractors, suppliers of material
28 and equipment, and others involved in the Subcontractor's Work have been paid in
29 full. Design-Builder may also require any documentation from the Subcontractor
30 that is required by the Subcontract or by this Contract or by Law, such as affidavits
31 of wages paid, material acceptance certifications and releases from applicable
32 Governmental Bodies to the extent that they relate to the Subcontractor's Work; and
- 33 (f) If Design-Builder fails to comply with the requirements of this Section 8.3.8 and the
34 Subcontractor's retainage or retainage bond is wrongfully withheld, the
35 Subcontractor may seek recovery against Design-Builder under applicable prompt
36 pay statutes in addition to any other remedies provided for by the Subcontract or by
37 Law.

38 **8.3.8.2 Conditions**

39 The following conditions shall apply:

- 1 (a) This clause does not create a contractual relationship between WSDOT and any
2 Subcontractor. Also, it is not intended to bestow upon any Subcontractor, the status
3 of a third-party beneficiary to the Contract between WSDOT and Design-Builder;
4 and
- 5 (b) This Section 8.3.8 does not apply to retainage withheld by WSDOT from monies
6 earned by Design-Builder. WSDOT shall continue to process the release of that
7 retainage in accordance with the requirements and procedures set forth in Chapter
8 60.28 RCW.

9 **8.3.8.3 Payment**

10 Design-Builder will be solely responsible for any additional costs involved in paying retainage to the
11 Subcontractors prior to Completion. Those costs shall be deemed included in the Lump Sum
12 Amount and unit prices.

13 **8.4 Key Personnel; Character of Workers**

14 **8.4.1 Key Personnel**

15 Appendix 7 hereto identifies certain key positions required of Design-Builder for the Project.
16 WSDOT shall have the right to review the qualifications and character of each individual to be
17 assigned to a key position (including personnel employed by Subcontractors) and to approve or
18 disapprove use of the person proposed for such key position prior to the commencement of any
19 Work by such individual. Design-Builder shall notify WSDOT in writing of any proposed changes in
20 any Key Personnel, and shall not change any Key Personnel without the prior written approval of
21 WSDOT.

22 **8.4.2 Representations, Warranties and Covenants**

23 Design-Builder acknowledges and agrees that the award of the Contract by WSDOT to Design-
24 Builder was based, in large part, on the qualifications and experience of the personnel listed in the
25 Proposal and Design-Builder's commitment that such individuals would be available to undertake
26 and perform the Work. Design-Builder represents, warrants and covenants that such individuals
27 are available for and will fulfill the roles identified for them in the Proposal in connection with the
28 Work. Unless otherwise agreed to by WSDOT in writing, individuals filling key personnel roles
29 shall devote a sufficient amount of their time for the applicable role with respect to the prosecution
30 and performance of the Work and Design-Builder shall document such commitment to WSDOT's
31 satisfaction upon WSDOT's request.

32 **8.4.3 Employee Performance Requirements**

33 All individuals performing the Work shall have the skill and experience and any licenses or
34 certifications required to perform the Work assigned to them. If WSDOT determines that any
35 Person employed by Design-Builder or by any Subcontractor is not performing the Work properly
36 and skillfully, or who is intemperate or disorderly, then, at the written request of WSDOT, Design-
37 Builder or such Subcontractor shall remove such Person and such Person shall not be re-
38 employed on the Project without the prior approval of WSDOT in its sole discretion. If Design-
39 Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and
40 experienced personnel for the proper performance of the Work, then WSDOT may, in its sole
41 discretion, suspend the affected portion of the Work by delivery of written notice of such
42 suspension to Design-Builder. Such suspension shall in no way relieve Design-Builder of any

1 obligation contained in the Contract Documents or entitle Design-Builder to a Change Order. Once
2 compliance is achieved, Design-Builder shall be entitled to and shall promptly resume the Work.

3 **8.5 Apprentice Utilization**

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

6 **8.5.1 Plan**

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

12 **8.5.2 Reporting**

13 Design-Builder shall submit a "Statement of Apprentice /Journeyman Participation" (DOT form 422-
14 110 EF) on a monthly basis. The report shall be submitted to WSDOT by the last Business Day of
15 the subsequent month, until the date that Substantial Completion is achieved. The data reported
16 shall be cumulative to date and consolidated to include Design-Builder and all Subcontractors. At
17 Design-Builder's request, WSDOT may suspend this reporting requirement during periods of
18 minimal or no applicable work activities on the project. Design-Builder shall submit documentation
19 of its Good Faith Effort if (1) Design-Builder is unable to provide a plan demonstrating how it
20 intends to meet the Apprentice Utilization Requirement or (2) the Project has been completed
21 without meeting the Apprentice Utilization Requirement.

22 **8.5.3 Contacts**

23 Design-Builder may obtain information on State-approved Apprenticeship Training Programs by
24 contacting the Department of Labor and Industries at:

25 Specialty Compliance Services Division, Apprenticeship Section, P.O. Box 44530, Olympia, WA
26 98504-4530 or by phone at (360) 902-5320.

27 **8.5.4 Good Faith Efforts**

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

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

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

- 1 1. Submit documentation demonstrating successful Apprentice utilization on previous
- 2 contracts.
- 3 2. Submit documentation indicating company wide Apprentice utilization efforts and
- 4 percentages of attainment.
- 5

9. SITE SECURITY; MAINTENANCE; TITLE

9.1 Site Security

Design-Builder shall provide appropriate security for the Work Area and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, as well as all other property in the Work Area, whether owned by Design-Builder, WSDOT, or any other Person. Design-Builder shall at all times keep the Work Area in a neat and clean condition, including performing litter removal, removal of graffiti and weed control.

9.2 Maintenance and Repair of Work and On-Site Property

9.2.1 Responsibility of Design-Builder

Except as otherwise provided in Section 9.2.2, Design-Builder shall maintain, rebuild, repair, restore, or replace all Work, whether temporary or permanent, that is damaged or destroyed prior to Final Completion. All such work shall be at no additional cost to WSDOT except to the extent that WSDOT is responsible for such costs as provided in Article 11. WSDOT retains the right to beneficially occupy all or any portion of the Work prior to Final Completion. Should WSDOT exercise its right to beneficial occupancy, Design-Builder shall coordinate access to the Site to complete Work or to correct Nonconforming Work to minimize disruption of WSDOT's activities. WSDOT shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of Design-Builder's Work.

9.2.2 Relief from Liability for Maintenance

Effective as of Final Completion, WSDOT shall be considered to have accepted maintenance liability for all elements of the Project. Notwithstanding the foregoing, all elements of the Work which will be owned by Persons other than WSDOT (such as Utility facilities) will be considered accepted for purposes of maintenance responsibility only as of the date of acceptance of maintenance responsibilities by such Persons. Effective as of the date on which the Project or any portion thereof is opened to traffic, Design-Builder shall be relieved of maintenance liability and responsibility for repair of damage caused by the traveling public to the opened portions of the Project .

9.3 Protection and Restoration of Off-Site Private/Public Property

Design-Builder shall protect private or public property on or in the vicinity of the Site or likely to be affected by the Work. Design-Builder shall ensure that such property is not removed, damaged, destroyed, or prevented from being used unless the Contract so specifies. Damages to Structures and Utilities located within the area of settlement trough influence as identified in TR Section 2.52 shall be addressed pursuant to Section 5.9.

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

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

If any DB-Related Entity damages, destroys, or interferes with the use of such property, Design-Builder shall restore it to original condition. Design-Builder shall also halt any interference with the property's use. If Design-Builder refuses or does not respond immediately, WSDOT may have such property restored by other means and subtract the cost from money that will be or is due Design-Builder.

Design-Builder may access the worksite from adjacent properties. Design-Builder shall not use or allow others to use this access to merge with public traffic. During non-working hours, Design-Builder shall provide a physical barrier that is either locked or physically unable to be moved without equipment. The access shall not go through any existing structures. The access may go through fencing. Design-Builder shall effectively control airborne particulates that are generated by use of the access. The location and use of the access shall not adversely affect wetlands or sensitive areas in any manner. Design-Builder shall be responsible for obtaining all haul road agreements, permits and/or easements associated with the access. Design-Builder shall replace any fence, repair any damage and restore the site to its original state when the access is no longer needed. Design-Builder shall bear all costs associated with this worksite access.

9.4 Title

Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for WSDOT for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to WSDOT, free and clear of all Liens, upon payment by WSDOT to Design-Builder of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, and subject to Section 9.1, Design-Builder shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Completion or until Design-Builder is removed from the Project.

1 **10. PAYMENT**

2 **10.1 Compensation**

3 As full compensation for the Work and all other obligations to be performed by Design-Builder
4 under the Contract Documents, WSDOT shall pay to Design-Builder a lump sum amount of
5 \$_____ [the Total Proposal Price from Appendix 1, less the line items for unit priced Work]
6 (such compensation, as adjusted from time to time to account for Change Orders, is referred to
7 herein as the "Lump Sum Amount"), plus an amount for unit priced Work to be determined based
8 on actual quantities and the unit prices set forth in Appendix 1. Said compensation shall be
9 increased or decreased only pursuant to Section 10.1.2 below, by a Change Order issued in
10 accordance with Article 11, or by an amendment to the Contract. The total amount payable for unit
11 priced Work shall be determined pursuant to Section 10.1.3 below.

12 **10.1.1 Items Included in Contract Amount**

13 Design-Builder acknowledges and agrees that, subject only to Design-Builder's rights under
14 Article 13 concerning Contract Incentives and Article 11 concerning Change Orders (which also
15 addresses Design-Builder's rights to payment from the Shared Contingency as described more
16 specifically described in Section 5.7.1.3 and Section 5.9.2), the Lump Sum Amount and unit prices
17 include:

- 18 (a) performance of each and every portion of the Work in accordance with the Contract
19 Documents and all applicable Laws;
- 20 (b) all designs, equipment, materials, labor, insurance and bond premiums, home
21 office, jobsite and other overhead, profit and services relating to Design-Builder's
22 performance of its obligations under the Contract Documents (including all Work,
23 Warranties, equipment, materials, labor and services provided by Subcontractors
24 and intellectual property rights necessary to perform the Work);
- 25 (c) the cost of obtaining, complying with and maintaining all Governmental Approvals
26 (except for approvals which are the responsibility of WSDOT, as specifically
27 provided elsewhere in the Contract Documents);
- 28 (d) payment of any taxes, duties, and permit and other fees and/or royalties imposed
29 with respect to the Work and any equipment, materials, labor, or services included
30 therein.

31 **10.1.2 Adjustment in Lump Sum Amount for Delay in Issuance of NTP 2**

32 If WSDOT issues NTP 2 on or before August 31, 2011, the Lump Sum Amount shall not be subject
33 to adjustment under this Section 10.1.2.

34 If WSDOT issues NTP 2 after August 31, 2011 and on or before March 1, 2012, Design-Builder
35 shall be entitled to an increase in the Lump Sum Amount, in the amount of \$56,000 per day for
36 each day after August 31, 2011 until the NTP 2 issuance date, which price increase shall be
37 Design-Builder's sole and exclusive remedy for such delay. The unit prices are not subject to
38 adjustment under this Section 10.1.2.

39 Design-Builder shall not be entitled to the additional compensation described above to the extent
40 the delay in issuance of NTP 2 was due to incorporation of ATCs into the Project scope or a

1 breach of this Contract by Design-Builder, or if a concurrent delay occurred that was attributable to
2 Design-Builder.

3 Any price increase under this Section 10.1.2 shall be amortized proportionally over all Work
4 covered by the Lump Sum Amount remaining to be performed as of the date of issuance of NTP 2,
5 and shall be evidenced by a Change Order.

6 **10.1.3 Unit Priced Work**

7 Certain Work will be unit priced, as identified in Appendix 1. Payment to Design-Builder for such
8 Work will be made on the basis of the unit prices shown in said Appendix and the actual quantities
9 of each item of unit priced Work completed in accordance with the Contract Requirements.
10 Design-Builder shall keep detailed records of the quantities for unit priced Work, and shall submit
11 supporting documentation of such quantities with its invoices.

12 WSDOT does not warrant, expressly or by implication, that the actual quantities of unit priced Work
13 will correspond to the estimated quantities shown on Appendix 1. No change in the unit prices will
14 be made based on any difference between the actual and estimated quantities.

15

16 **10.2 Invoices and Payment**

17 Payment for completed Work shall be made through periodic progress payments (“Progress
18 Payments”) as provided herein, subject to the retainage requirements set forth in Section 10.3 and
19 to the caps on payment set forth in Section 10.4.1.

20 **10.2.1 Invoicing Requirements**

21 Design-Builder shall submit monthly invoices to WSDOT on a mutually agreed date consistent with
22 the cutoff date for Progress Payments set by WSDOT. No payment item shall be included on any
23 invoice for Work that has been documented as deficient by Design-Builder’s Quality Assurance
24 Manager, or Work that has not been performed in accordance with the Contract.

25 Design-Builder acknowledges that WSDOT will obtain funding for portions of the Work from various
26 sources, and also that the financing for various elements of the Work may be subject to certain
27 special requirements. If requested by WSDOT, Design-Builder shall provide separate invoices for
28 Work that is subject to reimbursement by the Federal government or third parties. Such invoices
29 shall (1) be organized to meet all applicable reimbursement requirements and facilitate the
30 reimbursement process, and (2) be submitted in a format reasonably requested by WSDOT.

31 Each monthly invoice shall include the following:

- 32 (a) An invoice cover sheet that shall indicate each of the following items:
- 33 (1) Project number and title;
 - 34 (2) invoice number (numbered consecutively, starting with “1”)
 - 35 (3) period covered by the invoice (specific beginning and ending calendar days);
 - 36 (4) total amount earned to date for the Project as a whole;
 - 37 (5) authorized signature, title of signer, and date of signature; and
 - 38 (6) signature of Design-Builder’s Quality Assurance Manager.

1 (b) A progress report including: (1) a narrative report addressing progress of the Work
2 and performance of the parties; and (2) a technical report concerning the Contract
3 Schedule as described in TR Section 2.1.6.

4 The narrative report shall include:

- 5 (1) an executive summary of the Project achievements and difficulties for the
6 period just ended, and an overview of the goals for the period just beginning;
- 7 (2) an analysis of the Project's condition with respect to on time and on budget
8 performance, which shall include: (1) a discussion of Contract milestones
9 and Critical Path items; and (2) a description of plans to complete the Work
10 by the Completion Deadlines, including any special measures that may be
11 necessary;
- 12 (3) a more detailed review for design and for construction of each discipline's
13 past performance and future Project goals;
- 14 (4) a discussion of areas of special concern, such as quality management,
15 environmental protection, Utility coordination, public relations, and
16 cooperation with adjacent contractors;
- 17 (5) a status report of required submittals, RFIs, design approvals, and other
18 administrative issues that may impact timely performance;
- 19 (6) a review of past period safety performance and safety issues for the period
20 just beginning;
- 21 (7) a self-assessment of Design-Builder's performance against any incentive
22 performance issues;
- 23 (8) a review of pending and potential Change Orders to determine actions
24 required for early resolution; and
- 25 (9) the Monthly Contract Schedule Update Submittal Package, as required in TR
26 Section 2.1.6.2.3.

27 (c) Certification signed by Design-Builder's Quality Assurance Manager, certifying that:

- 28 (1) all Work (including that of designers, Subcontractors, suppliers, fabricators,
29 and builders) has been tested and/or inspected by the Quality Assurance
30 Team;
- 31 (2) all Work, except as specifically noted in the certification, conforms to the
32 requirements of the Contract; and
- 33 (3) the elements of the Quality Management Plan and all of the measures and
34 procedures provided for therein are functioning properly and are being
35 followed.

36 (d) Written releases, in a form reasonably acceptable to WSDOT, signed by each
37 Subcontractor or supplier that provided services, materials or equipment included in
38 any preceding invoice and for which Design-Builder received payment.

39 Said release(s) shall certify that each Subcontractor or supplier (1) received
40 payment in full for its services, materials or equipment, except only for retainage and
41 amounts in dispute, and (2) waives and releases any liens, claims or security
42 interests, known or unknown, suspected or unsuspected, arising out of such
43 services, materials or equipment against any person or property whatsoever, except

1 potential liens and claims against retention funds or bonds for retainage and
2 amounts in dispute. The release shall state any amounts in dispute.

3 (e) Invoice data sheet(s) and supporting documents allowing WSDOT to determine the
4 amount payable, as follows:

5 (1) General. With the exception of force account or other “exception items”,
6 WSDOT will base payments on an estimate of the percentage of Work
7 completed, as mutually agreed with Design-Builder, and not on measured
8 quantities. Design-Builder shall design a Primavera report, to WSDOT’s
9 reasonable satisfaction, that can be submitted in letter size hardcopy, text-
10 searchable PDF electronic file format, and comma-delimited ASCII electronic
11 format. The Primavera report shall contain an individual line entry for each
12 price-loaded activity in the Contract Schedule. For each such activity, the
13 Primavera report will show the total percent complete, the percent completed
14 in the period covered by the invoice, and the total dollar billing for the
15 activity. The Primavera report will be grouped and subtotaled by cost
16 account with activities sorted in start sequence within groups.

17 (2) Exception Items. WSDOT will pay Design-Builder for items not included in
18 the price-loaded schedule. Such exception items include force account
19 work, incentives, disincentives and price adjustments, if contemplated in the
20 Contract. Design-Builder shall assemble the required supporting documents
21 for each exception item and submit them with its monthly invoice. Design-
22 Builder shall tally the value of each exception item for each invoice, and
23 provide a separate exception items subtotal line on each monthly invoice.

24 (3) Format. Design-Builder shall submit the format of the invoice data sheets to
25 WSDOT for approval at least 14 calendar days before the submittal of the
26 first invoice. Once WSDOT has approved the invoice format, the format
27 shall not be changed unless the change is approved in writing by WSDOT.

28 (f) Report identifying design exceptions requested or approved during the prior month.

29 **10.2.2 Draft Invoice and Progress Meeting**

30 Design-Builder shall deliver a draft invoice to WSDOT on or about the first business day of each
31 month. Prior to submission of the first draft invoice, Design-Builder shall prepare and submit to
32 WSDOT for approval a standard invoice form, based on the form set forth in Appendix 8 and the
33 requirements set forth in Section 10.2.1, which will correlate with and reflect the activities shown on
34 the current Contract Schedule as set forth in TR Section 2.1.6.

35 Progress payment meetings (“Progress Meetings”) will be held within seven days of submission of
36 each draft invoice. At each Progress Meeting, Design-Builder and WSDOT’s designated
37 representative shall ascertain the progress of the Work and verify the quantities for any unit priced
38 Work. Design-Builder and WSDOT’s designated representative shall review the draft invoice
39 reflecting the value of Work completed as of the last day of the previous month (based on
40 quantities and unit prices for unit priced Work, based on force account records for force account
41 Work, and based on progress for all other Work) and showing the maximum amount payable under
42 Section 10.4.

43 Design-Builder and WSDOT’s designated representative shall sign the draft invoice, indicating that
44 it has been approved and setting forth the proposed total payment amount, which shall be the
45 difference between the value of the Work then completed, calculated based on progress, plus the

1 value of unit priced and force account Work, less retainage and Progress Payments previously
2 made. The amounts set forth in the draft invoice shall be used by Design-Builder in preparation of
3 its monthly invoice described in Section 10.2.

4 **10.2.3 Delivery of Invoices**

5 Within seven days after each Progress Meeting, Design-Builder shall submit to WSDOT one hard
6 copy and one electronic copy of its final invoice, which shall be based upon the approved draft
7 invoice and otherwise comply with the invoicing requirements set forth above.

8 **10.2.4 WSDOT Review of Invoices**

9 Within seven business days after WSDOT's receipt of the invoice, WSDOT will review the invoice
10 and all attachments thereto and shall notify Design-Builder of the amount approved for payment
11 and specify the reason for disapproval of any remaining invoiced amounts. Design-Builder may
12 include such disapproved amounts in the next month's invoice after correction of the deficiencies
13 noted by WSDOT (all such disapproved amounts shall be deemed in dispute unless otherwise
14 agreed).

15 **10.2.5 Payment by WSDOT**

16 Subject to retention as provided in Section 10.3, and provided that Design-Builder and each
17 Subcontractor covered under RCW 39.12 have submitted to the State Department of Labor and
18 Industries and it has approved a Statement of Intent to Pay Prevailing Wages in the form required
19 under the Standard Specifications, WSDOT shall pay or cause to be paid Design-Builder for all
20 undisputed amounts set forth in an invoice that complies with Section 10.2.

21 **10.2.6 Timing of Payment**

22 Provided the invoice is received by WSDOT no later than the tenth day of the month, WSDOT shall
23 make payment to Design-Builder no later than the tenth day of the following month. If an invoice is
24 received by WSDOT after the tenth day of the month, WSDOT shall make payment no later than
25 30 days after WSDOT receives the invoice.

26 **10.3 Retainage**

27 Pursuant to RCW 60.28, a sum of 5 percent of the monies earned by Design-Builder will be
28 retained from progress payments. Such retainage shall be used as a trust fund for the protection
29 and payment (1) to the State with respect to taxes imposed pursuant to Titles, 50, 51, and 82
30 RCW, and (2) the claims of any person arising under the Contract Documents.

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

- 32 (a) Retained in a fund by WSDOT; or
33 (b) Deposited by WSDOT in an escrow (interest-bearing) account in a bank, mutual
34 saving bank, or savings and loan association (interest on monies so retained shall
35 be paid to Design-Builder). Deposits are to be in the name of WSDOT and are not
36 to be allowed to be withdrawn without WSDOT's written authorization. WSDOT will
37 issue a check representing the sum of the monies reserved, payable to the bank or
38 trust company. Such check shall be converted into bonds and securities chosen by
39 Design-Builder as the interest accrues.

1 At the time the Contract is executed, Design-Builder shall designate the option desired. In
2 choosing option (b), Design-Builder agrees to assume full responsibility to pay all costs which may
3 accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in
4 connection with the investment of the retained percentages in securities.

5 Design-Builder may also submit a bond (“retainage bond”) for all or any portion of the retainage
6 addressed herein. The bond shall be in a form acceptable to WSDOT and issued by a Surety
7 meeting the requirements of Section 19.

8 Release of the retainage will be made 60 days following the date of Final Completion (pursuant to
9 RCW 39.12, and RCW 60.28) provided the following conditions are met:

- 10 (a) A release has been obtained from the Washington State Department of Revenue;
- 11 (b) Affidavits of Prevailing Wages Paid for Design-Builder and all Subcontractors are on
12 file with WSDOT (RCW 39.12.040);
- 13 (c) A certificate of *Payment of Contributions Penalties and Interest on Public Work*
14 *Contract* is received from the Washington State Employment Security Department;
- 15 (d) Subject to Section 8 of Appendix 5-A, Washington State Department of Labor &
16 Industries shows Design-Builder is current with payments of industrial insurance and
17 medical aid premiums; and
- 18 (e) All claims, as provided by Law, filed against the retainage have been resolved. In
19 the event claims are filed and provided the conditions of subsection (a)-(d) above
20 are met, Design-Builder will be paid such retained percentage less an amount
21 sufficient to pay any such claims together with a sum determined by WSDOT
22 sufficient to pay the cost of foreclosing on claims and to cover attorney’s fees.

23 **10.4 Limitations on Payment**

24 **10.4.1 Cap on Payments**

25 For Work covered by the Lump Sum Amount, in no event shall WSDOT have any obligation to pay
26 Design-Builder any amount which would result in (a) payment for any activity in excess of the value
27 of the activity times the completion percentage of such activity, or (b) aggregate payments of the
28 Lump Sum Amount hereunder in excess of the overall completion percentage for the Project times
29 the Lump Sum Amount. Furthermore, due to the rate at which funding will become available for
30 this Project, payments to Design-Builder (including unit priced items as well as the Lump Sum
31 Amount) shall not exceed the following cumulative limits:

- 32 (a) For periods up to and including June 30, 2011 \$ 60,000,000
- 33 (b) For periods up to and including June 30, 2012 \$ 354,000,000
- 34 (c) For periods up to and including June 30, 2013 \$ 626,000,000
- 35 (d) For periods up to and including June 30, 2014 \$ 875,000,000
- 36 (e) For periods up to and including June 30, 2015 \$1,071,000,000
- 37 (f) For periods up to and including June 30, 2016 \$1,090,000,000

38 The Payment Schedule shall not provide for payments to be made during any period exceeding the
39 cumulative limits set forth in this Section 10.4.1. At no time shall Design-Builder invoice WSDOT
40 for amounts exceeding the aforementioned funding restrictions. The Department’s inability to pay

1 more than these amounts shall not absolve Design-Builder of responsibility to make timely
2 payment to Subcontractors and suppliers.

3 **10.4.2 Payment for Materials**

4 **10.4.2.1 Delivery of Materials**

5 Materials shall be delivered to the Site, or delivered to Design-Builder and promptly stored by
6 Design-Builder in storage approved by WSDOT. Materials that have not been delivered to or
7 adjacent to the Site will be eligible for payment only if they were specifically manufactured or
8 produced for the Project, and then only after being irrevocably assigned to WSDOT. As a
9 condition to inclusion of such materials in any invoice, Design-Builder shall submit certified bills for
10 such materials with its invoice. Payment will not be made when the invoice value of such
11 materials, as determined by WSDOT, amounts to less than \$2,000 or if materials are to be stored
12 less than 30 days.

13 **10.4.2.2 Title to Materials**

14 All such materials so delivered shall become the property of WSDOT. Payment for stockpiled
15 materials will not constitute final acceptance of such materials. At WSDOT's request, Design-
16 Builder at its own expense shall promptly execute, acknowledge and deliver to WSDOT actual bills
17 of sale or other instruments in a form acceptable to WSDOT, conveying and assuring to WSDOT
18 title to such materials included in any invoice, free and clear of all Liens. Design-Builder at its own
19 expense shall conspicuously mark such materials as the property of WSDOT, shall not permit such
20 materials to become commingled with non-WSDOT-owned property and shall take such other
21 steps, if any, as WSDOT may require or regard as necessary to vest title to such materials in
22 WSDOT free and clear of Liens. The required invoice, billing, title, or assignment documents,
23 furnished by Design-Builder, shall contain complete material description and identification data.

24 **10.4.2.3 Deductions for Lost or Damaged Materials**

25 The amount shown in an invoice for material which is subsequently lost, damaged or unsatisfactory
26 will be deducted from succeeding invoices until the material is repaired or replaced (at Design-
27 Builder's expense). In case any supplier claims against Design-Builder remain (for materials so
28 paid for) unsatisfied for more than 30 days following issuance of payment to Design-Builder, the
29 applicable payment may be canceled on the next invoice.

30 **10.4.2.4 Not to Exceed Amount**

31 Payment for material furnished and delivered as indicated in this Section 10.4.2 will not exceed the
32 amount paid by Design-Builder as evidenced by a bill of sale supported by paid invoice, or 75
33 percent of the in-place price, whichever is less.

34 **10.4.3 No Payment for Nonconforming Work**

35 WSDOT will make no payment for Nonconforming Work, except as provided under Section 5.6.

36 **10.4.4 Withholding of Progress Payments**

37 If WSDOT deems that any schedule fails to provide the information required in TR Section 2.1.6,
38 WSDOT may withhold progress payments until the schedule containing the required information
39 has been submitted by Design-Builder and accepted by WSDOT.

1 If the Baseline Contract Schedule is not accepted within four months of issuance of NTP 1, the
2 monthly Progress Payment may be withheld until said schedule has been accepted by WSDOT.

3 **10.5 Final Payment Process**

4 Upon Final Completion and after Final Inspection under Section 21.3, and following satisfaction of
5 the conditions precedent in Section 10.5.1.1 and presentation of a Final Contract Voucher
6 Certification prepared by WSDOT and signed by Design-Builder, the amount due Design-Builder
7 will be paid. Said certification may identify one or more outstanding claims that were properly filed
8 and prosecuted under Article 24 but which remain pending thereunder. Said certification shall be
9 deemed a release of all claims of Design-Builder unless a claim is filed in accordance with the
10 requirements of Article 24 and is expressly excepted from Design-Builder's certification on the Final
11 Contract Voucher Certification. The date of Final Acceptance is the date the Secretary signs the
12 Final Contract Voucher Certification.

13 **10.5.1 Final Payment**

14 **10.5.1.1 Conditions Precedent to Final Payment**

15 As a condition to its obligation to make payment to Design-Builder based on the Final Contract
16 Voucher Certification, WSDOT shall have received the following:

- 17 (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness
18 connected with the Work have been paid or otherwise satisfied;
- 19 (b) a certificate evidencing that insurance required by the Contract Documents to
20 remain in force after Final Payment is currently in effect and shall not be canceled or
21 allowed to expire until at least 30 days' prior written notice has been given to
22 WSDOT;
- 23 (c) releases and waivers, from Design-Builder in favor of WSDOT, of liens, claims
24 (except those previously identified in writing on the Final Contract Voucher
25 Certification or claims which Design-Builder may be entitled to assert against
26 WSDOT with respect to indemnities under this Contract or with respect to WSDOT's
27 breach of obligations under this Contract to be performed after Final Payment),
28 security interests and encumbrances arising out of the Contract Documents,
29 whether known or unknown, suspected or unsuspected;
- 30 (d) releases and waivers from Subcontractors and suppliers in favor of WSDOT of liens,
31 claims, security interests or encumbrances, known or unknown, suspected or
32 unsuspected, arising out of Subcontracts, the Work or the Project;
- 33 (e) materials acceptance certification documents, on WSDOT forms or other forms
34 WSDOT approves;
- 35 (f) final right-of-way maps and as-built drawings for the Project;
- 36 (g) an assignment of warranties from suppliers of equipment and software to be
37 assigned pursuant to TR Section 2.12;
- 38 (h) consent of the Surety to Final Payment;
- 39 (i) bills of sale and instruments of title transfer to Work product, free and clear of liens
40 and encumbrances;

- 1 (j) "Affidavits of Wages Paid" signed and submitted by Design-Builder and each
2 Subcontractor required to submit such an affidavit under RCW 39.12 in accordance
3 with TR Section 2.12.3.2.3;
- 4 (k) Affidavits of amounts paid DBE participants, on WSDOT forms or forms WSDOT
5 approves; and
- 6 (l) a certificate that all guarantees and warranties required by the Contract Documents
7 to remain in force after Final Payment are in effect.

8 **10.5.1.2 Prior Payments Subject to Correction**

9 All prior payments shall be subject to correction in the Final Payment.

10 **10.5.1.3 Deductions to Final Payment**

11 The Final Payment amount will be reduced by any amounts deductible under Section 10.4.2.3.

12 **10.5.2 WSDOT Right to Establish Final Completion Date**

13 If Design-Builder fails, refuses, or is unable to sign and return any documentation required for Final
14 Completion, WSDOT reserves the right to establish the date of Final Completion (for the purpose
15 of meeting the requirements of RCW 60.28) and unilaterally accept the Work. Such unilateral
16 acceptance will occur only after Design-Builder has been provided the opportunity, by written
17 request from WSDOT, to voluntarily submit the required documents. If voluntary compliance is not
18 achieved, formal notification of the impending establishment of the date of Final Completion will be
19 provided by certified letter from the Secretary to Design-Builder, which will provide 30 days for
20 Design-Builder to submit the necessary documents. The 30-day period will begin on the date the
21 certified letter is received by Design-Builder. The date the Secretary unilaterally signs the Final
22 Contract Voucher Certification shall be considered both the date of Final Completion and the date
23 of Final Acceptance. WSDOT's right to unilaterally accept the Work will apply whether the Work
24 has been completed in accordance with Section 21.4 or terminated in accordance with Article 15.
25 Unilateral Final Acceptance of the Contract by WSDOT does not in any way relieve Design-Builder
26 of its responsibility to perform work required by the Contract Documents or applicable Laws.

27 **10.6 Payments to Subcontractors**

28 Within 30 days after receipt of payment from WSDOT, Design-Builder shall pay each
29 Subcontractor, out of the amount paid to Design-Builder on account of such Subcontractor, all
30 undisputed amounts (less any retainage and any other offsets and deductions provided in the
31 Subcontract or by Law) due and owing in accordance with the Subcontract. Within 30 days after
32 satisfactory completion of all Work to be performed by a Subcontractor, including provision of
33 appropriate releases, certificates and other evidence of the Subcontractor's compliance with all
34 applicable requirements of the Contract Documents, Design-Builder shall return any moneys
35 withheld in retention from the Subcontractor. Design-Builder shall, by appropriate agreement with
36 each Subcontractor, require each Subcontractor to make payments to its lower tier Subcontractors
37 in a similar manner. WSDOT shall have no obligation to pay or to see to the payment of money to
38 a Subcontractor, except as may otherwise be required by Law.

39 **10.7 Disputes**

40 Subject to WSDOT's right to withhold from progress payments any amounts in dispute, and except
41 as expressly stated otherwise in this Article 10, any disagreement between WSDOT and Design-

1 Builder relating to this Article 10 shall be subject to Article 24. Failure by WSDOT to pay any
2 amount in dispute shall not alleviate, diminish or modify in any respect Design-Builder's obligation
3 to perform under the Contract Documents, including Design-Builder's obligation to achieve Final
4 Completion in accordance with the Contract Documents, and Design-Builder shall not cease or
5 slow down its performance under the Contract Documents on account of any such amount in
6 dispute. Design-Builder shall proceed as directed by WSDOT pending resolution of the dispute.
7 Upon resolution of any such dispute each party shall promptly pay to the other any amount owing.

8 **10.8 State Taxes**

9 Design-Builder shall pay all applicable federal, State and local sales, consumer, use and similar
10 taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental
11 Body, whether direct or indirect, relating to, or incurred in connection with, the Project or
12 performance of the Work, including that portion of the compensation payable hereunder relating to
13 design services. Unless a specific exception applies (including the exception specified in
14 Section 2.4.2), the Lump Sum Amount and unit prices include all such taxes.

15 The Washington State Department of Revenue has issued special rules on the state sales tax.
16 Sections 2.4.1 and 2.4.2 are meant to clarify those rules. Design-Builder should contact the
17 Financial System Manager, Department of Transportation, Olympia, for answers to questions in
18 this area.

19 The compensation payable hereunder is not subject to adjustment if Design-Builder based its
20 Proposal on a misunderstood tax liability.

21 As a condition to release of retainage under Section 10.3, Design-Builder shall provide a certificate
22 from the State Department of Revenue showing that all Contract-related taxes have been paid
23 (RCW 60.28.050). WSDOT may deduct from its payments to Design-Builder any amount Design-
24 Builder may owe the State Department of Revenue, whether the amount owed relates to this
25 Contract or not. Any amount so deducted will be paid into the proper State fund.

26 **10.8.1 State Sales Tax: Work Performed on City, County, or Federally-Owned Land**

27 State Department of Revenue Rule 171 and its related rules apply to this Section. TR Appendix R-
28 1 identifies those parts of the Project that require Work on land owned by:

- 29 (a) a municipal corporations such as the City of Seattle;
- 30 (b) a political subdivision of the State; or
- 31 (c) the United States of America.

32 For Work performed on such land, Design-Builder shall include Washington State retail sales taxes
33 in the portion of its compensation allocable to such Work. These retail sales taxes shall include
34 those Design-Builder pays on purchases of materials, equipment, and supplies used or consumed
35 in performing such Work.

36 **10.8.2 State Sales Tax: Work on State-Owned or Private Land**

37 State Department of Revenue Rule 170 and its related rules apply to this Section. TR
38 Appendix R-1 identifies those parts of the Project that require Work on State-owned or private land.

39 For Work performed on State-owned or private land, Design-Builder shall collect from WSDOT,
40 retail sales tax on the portion of its compensation allocable to such Work. WSDOT will

1 automatically add this sales tax to each payment to Design-Builder. For this reason, Design-
2 Builder shall not include such retail sales tax on Work performed on State-owned or private land in
3 the Lump Sum Amount, unit prices, Change Order requests, or any other Contract amount.

4 However, WSDOT will not add in sales tax Design-Builder or Subcontractor pays on the purchase
5 or rental of tools, machinery, equipment, or consumable supplies not integrated into the Project.
6 Such sales taxes shall be included in the Lump Sum Amount and unit prices, and shall be
7 accounted for in Change Order pricing, regardless of whether the Work is performed on State-
8 owned or private land.

11. CHANGES IN THE WORK

This Article 11 sets forth the requirements for obtaining all Change Orders under the Contract. Design-Builder waives the right to make any claim for a time extension or for any monetary compensation in addition to that specified in the Contract Documents, except as specifically permitted hereunder. Design-Builder shall bear the burden of proving entitlement to a time extension or additional compensation.

11.1 Circumstances Under Which Change Orders May Be Issued

11.1.1 Change Orders

The term "Change Order" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Article 11, for the following purposes (or combination thereof):

- (a) to modify the scope of the Work;
- (b) to revise a Completion Deadline;
- (c) to revise the Lump Sum Amount or unit prices; and
- (d) to revise other terms and conditions of the Contract Documents.

A Change Order shall not be effective for any purpose unless executed by WSDOT, as specified herein. WSDOT may issue unilateral Change Orders as specified in Section 11.2.

11.1.2 Directive Letters

WSDOT may at any time issue a Directive Letter to Design-Builder in the event of any desired change in the Work or of any dispute regarding the scope of the Work. The Directive Letter will state that it is issued under this Section 11.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Design-Builder shall proceed immediately with the Work as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within the original scope of the Work, Design-Builder shall proceed with the Work as directed but shall have the right pursuant to Section 11.3 to request that WSDOT issue a Change Order). The fact that a Directive Letter was issued by WSDOT does not constitute evidence that in fact a WSDOT-Directed Change occurred. Such determination shall be based on an analysis of the original requirements of the Contract Documents and the effect of the Directive Letter on those requirements.

11.1.3 Changed or Extra Work Performed Without Change Order or Directive Letter

To the extent that Design-Builder undertakes performance of any changed or extra work without receiving a Directive Letter or Change Order executed by WSDOT, Design-Builder shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, Design-Builder may be required to remove or otherwise undo any such work, at its sole cost.

11.2 WSDOT-Directed Changes

11.2.1 Issuance of Request for Change Proposal and Initial Consultation

If WSDOT desires to issue a WSDOT-Directed Change or to evaluate whether to initiate such a change, then WSDOT may, at its discretion, issue a Request for Change Proposal. Within seven days after Design-Builder's receipt of a Request for Change Proposal, WSDOT and Design-Builder shall consult to define the proposed scope of the change. Within seven days after the initial consultation, WSDOT and Design-Builder shall consult concerning the estimated cost and time impacts. Design-Builder shall provide data regarding such matters as requested by WSDOT.

11.2.2 WSDOT Determination

Within seven days after the second consultation and provision of any data as described in Section 11.2.1, WSDOT shall notify Design-Builder whether WSDOT:

- (a) wishes to issue a Change Order;
- (b) wishes to request Design-Builder to prepare a Change Order form as discussed at the meeting; or
- (c) no longer wishes to issue a Change Order.

WSDOT may at any time, in its sole discretion, require Design-Builder to provide two alternative Change Order forms, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

11.2.3 Submittal of Change Order Form

If so requested, Design-Builder shall, within 10 days after receipt of the notification described in Section 11.2.2, prepare and submit to WSDOT for review and approval a Change Order form for the requested change, complying with all applicable requirements of Section 11.5. If the Change Order is approved, any design and engineering costs incurred in developing the Change Order form will be included within the Change Order, otherwise, a separate Change Order will be issued allowing reimbursement for such costs.

11.2.4 Order To Proceed Notwithstanding Disagreement

If WSDOT and Design-Builder agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the compensation or a Completion Deadline, WSDOT may, in its sole discretion, order Design-Builder to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at WSDOT's option, be in the form of:

- (a) a force account Change Order as provided in Section 11.9; or
- (b) a Directive Letter as described in Section 11.1.2.

11.2.5 Unilateral Change Orders

WSDOT may issue a unilateral Change Order at any time, regardless of whether it has issued a Request for Change Proposal. Such Change Order shall provide for compensation to be paid in accordance with Section 11.9. If the Change Order results in a reduction in the Work, the Change

Order may contain a price deduction deemed appropriate by WSDOT, and Design-Builder shall have the right to submit the amount of such price deduction to dispute resolution in accordance with Article 24.

11.3 Time Extensions for Excusable Delays

The Completion Deadlines may only be changed by a Change Order. Any claim by Design-Builder for an extension of a Completion Deadline shall be subject to Design-Builder's fulfillment of all applicable requirements of this Article 11, and subject to the limitations contained herein.

11.3.1 Excusable Delays

The term "Excusable Delay" shall mean delays to the Critical Path caused by (a) acts, omissions, conditions, events, or circumstances that are beyond the reasonable control of Design-Builder including seismic events, acts of war, public insurrection, riot and WSDOT-Caused Delays; and (b) events for which the Contract Documents provide that Design-Builder is entitled to claim a schedule adjustment by reference to this Article 11, provided that in either case the event was not caused by the negligent acts or omissions, fault, recklessness, willful misconduct, breach of contract, or violation of law of any DB-Related Entity, and could not reasonably have been prevented or avoided by Design-Builder.

Upon Design-Builder's fulfillment of all applicable requirements of this Article 11, and subject to the limitations specified herein, where Design-Builder is prevented from completing any part of the Work by the applicable Completion Deadline due to an Excusable Delay, the Completion Deadline will be extended in an amount equal to the delay to the Critical Path.

Design-Builder shall be required to demonstrate to WSDOT's satisfaction that the change in the Work or other event or situation which is the subject of the request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity.

Notwithstanding the preceding, the risks arising from the following events or circumstances shall be borne exclusively by Design-Builder, shall not be deemed Excusable Delays, and shall not be the basis for any relief, monetary or otherwise, to Design-Builder:

1. general market and economic conditions affecting the availability, supply or cost of labor, equipment and materials, construction equipment and supplies, or commodities;
2. weather conditions of any type, including heat, rain, wind, snow, and flooding caused by weather conditions, except that adverse weather conditions may be considered an Excusable Delay if they were abnormal for the period of time in question, could not have been reasonably anticipated and had an adverse effect on the scheduled construction;
3. strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions, unless such strikes, disputes, slowdowns, stoppages, boycotts or disruption affect a specific trade on a national or regional level and were not caused by the improper acts or omissions of any DB-Related Entity;
4. delays in obtaining or delivery of goods or services from any Subcontractor or supplier, unless Subcontractor's reason for delay arises from an event that would otherwise be excusable to Design-Builder hereunder;

5. delays of common carriers unless the common carrier's reason for the delay arises from an event that would otherwise be excusable to Design-Builder hereunder; and
6. bankruptcy or insolvency of a DB-Related Entity, or inability of a DB-Related Entity to perform, unless such inability would otherwise be excusable to Design-Builder hereunder.

The adjustment to the Completion Deadlines allowed for Excusable Delays constitutes Design-Builder's sole and exclusive remedy for such delays, except for the compensation allowed for certain types of delays as provided in Section 11.4.

11.3.2 No Change Order for Non-Excusable Delay

Design-Builder shall not be entitled to any additional compensation or extension of a Completion Deadline for any delays which are not Excusable Delays. Delays attributable to and within the control of a DB-Related Entity shall be deemed to be delays within the control of Design-Builder.

11.4 Increase in Compensation

Any claim by Design-Builder for an increase in compensation shall be subject to Design-Builder's fulfillment of all applicable requirements of this Article 11, and subject to the limitations contained herein.

Design-Builder may request a Change Order to increase its compensation only as allowed by Section 10.1 or Article 13 and for the following:

- (a) additional costs of performance of the Work directly attributable to WSDOT-Directed Changes for which a Change Order or a Request for Change Proposal has not been issued;
- (b) delay and disruption damages directly attributable to (i) WSDOT-Caused Delays and (ii) Excusable Delays under Section 5.7.6 (Change Orders for Differing Site Conditions), Section 5.8.1 (Archaeological and Historical Objects), Section 5.8.2 (Hazardous Materials) or Section 5.10.1 (Change Order for Necessary Basic Configuration Change);
- (c) additional costs of performance of the Work directly attributable to WSDOT direction to uncover Work, Differing Site Conditions, certain other Site conditions, Necessary Basic Configuration Changes, Hazardous Materials, and deformation within specified parameters, to the extent provided in Sections 5.4.3, 5.7, 5.8, 5.9 and 5.10;
- (d) certain costs of performance of Utility Work, as provided in Section 7.2;
- (e) additional costs directly attributable to any of the following events which materially and adversely affects performance of the Work:
 - (1) an earthquake that results in damage to the Work or to materials or equipment on the Site;
 - (2) a rebellion, war, riot, sabotage, terrorism or civil commotion;
 - (3) the discovery at, near, or on the Site of any paleontological, cultural or biological resources or any species presently or in the future listed as threatened or endangered under the federal or state endangered species

act, provided that the existence of such resources was not disclosed in the RFP documents;

- (4) the suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any such Environmental Approval, except to the extent caused by a failure of Design-Builder to comply with the Contract Documents; and
- (5) any change in a Law, change in the judicial interpretation of a Law, or adoption of any new Law, which is materially inconsistent with Laws in effect on the Proposal Date (excluding any such change or new Law which was passed or adopted but not yet effective as of such date), and which (A) requires a material modification in the Project design, (B) requires a major State or federal environmental approval not previously required for the Project or (C) specifically targets the Project or Design-Builder.

11.5 Conditions Precedent to Change Orders

The requirements set forth in this Section 11.5 constitute conditions precedent to Design-Builder's entitlement to request and receive a Change Order pursuant to Sections 11.3 and/or 11.4.

11.5.1 Delivery of Change Notice

Design-Builder shall deliver to WSDOT written notice (a "Change Notice") stating that an event or situation has occurred within the scope of Section 11.3 and/or 11.4 and shall state which subsection thereof is applicable. The first Change Notice shall be labeled "Change Notice No. 1" and subsequent notices shall be numbered sequentially.

Each Change Notice shall be delivered as promptly as possible after such event or situation becomes apparent. If any Change Notice is delivered later than 14 days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, Design-Builder shall be deemed to have waived its right to a Change Order. Furthermore, in the event any Change Notice concerns any condition or material described in Article 5 and is delivered after the 14-day period specified herein, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that WSDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.

11.5.2 Contents of Change Notice

The Change Notice shall: (a) state in detail the facts underlying the potential Change Order, the reasons why Design-Builder believes additional compensation or time will or may be due and the date of occurrence; (b) state in detail the basis that the work is not required by the Contract Documents, if applicable; (c) identify particular elements of performance for which additional compensation may be sought under this Article 11; (d) identify any potential Critical Path impacts; and (e) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

Any adjustments made to the Contract Documents shall not include increased costs or time extensions for delay resulting from Design-Builder's failure to provide requested additional information under this Section 11.5.

11.5.3 Delivery of Requests for Change Orders

Design-Builder shall deliver a detailed request for Change Order to WSDOT within 30 days after delivery of the Change Notice indicating the relief being sought with particularity and detailed written support. If Design-Builder requests a time extension, then WSDOT, in its sole discretion, may require Design-Builder to provide two alternative Change Order requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

11.5.4 Incomplete Change Orders

Each request for Change Order provided under Section 11.5.3 shall meet all requirements set forth in Section 11.6; provided that if any such requirements cannot be met due to the nature of the occurrence, Design-Builder shall provide an incomplete request for Change Order which shall:

- (a) comply with all requirements capable of being met;
- (b) include a list of requirements which are not fulfilled together with an explanation reasonably satisfactory to WSDOT stating why such requirements cannot be met;
- (c) provide such information regarding projected impact on the Critical Path as is requested by WSDOT; and
- (d) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

Design-Builder shall furnish, when requested by WSDOT, such further information and details as may be required to determine the facts or contentions involved. Design-Builder agrees that it shall give WSDOT access to all of Design-Builder's books, records and other materials relating to the Work in question, and shall cause its Subcontractors to do the same, so that WSDOT can investigate the basis for such proposed Change Order. Design-Builder shall provide WSDOT with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to WSDOT, time expenditures to date and time anticipated for completion of the activities for which the time extension is claimed.

11.5.5 Importance of Timely Delivery

Design-Builder acknowledges and agrees that timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to WSDOT. WSDOT is relying on Design-Builder to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether Design-Builder believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect the compensation payable to Design-Builder or a Completion Deadline, WSDOT will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within WSDOT's funding and time restraints.

The following matters (among others) shall be considered in determining whether WSDOT has been prejudiced by Design-Builder's failure to provide timely notice:

- (a) the effect of the delay on alternatives available to WSDOT (that is, a comparison of alternatives which are available at the time notice was actually given and

alternatives which would have been available had notice been given when required under the Contract Documents); and

- (b) the impact of the delay on WSDOT's ability to obtain and review objective information contemporaneously with the event.

11.5.6 Subcontractor Claims

Prior to submission by Design-Builder of any request for a Change Order to WSDOT which is based in whole or in part on a request by a Subcontractor to Design-Builder for a price increase or time extension under its Subcontract, Design-Builder shall have reviewed all claims by the Subcontractor which constitute the basis for the request for Change Order and determined in good faith that each such claim is justified hereunder and that Design-Builder is justified in requesting an increase in compensation and/or change in Completion Deadlines in the amounts specified in the request for Change Order. Each request for Change Order involving Subcontractor Work, and each update to an incomplete request for Change Order involving such Work, shall include a summary of Design-Builder's analysis of all components of the Subcontractor claims and a sworn certification in form acceptable to WSDOT signed by Design-Builder's Project Manager stating that Design-Builder has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested, has reviewed and verified the adequacy of all back-up documentation and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any request for Change Order involving Subcontractor Work shall be considered incomplete if it is not accompanied by such analysis and certification.

11.6 Contents of Change Orders

11.6.1 Form of Change Order

Each Change Order form and request for Change Order shall be prepared in form acceptable to WSDOT, and shall meet all applicable requirements of this Article 11. Design-Builder shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 11.6.1 for each Change Order form and request for Change Order.

11.6.1.1 Scope of Work

The scope of work shall describe in detail satisfactory to WSDOT all activities associated with the Change Order, including a description of additions, deletions and modifications to the existing requirements of the Contract Documents.

11.6.1.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless WSDOT agrees otherwise. The estimate shall include costs allowable under Section 11.7.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Design-Builder shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Design-Builder's estimate. No markup shall be allowed in excess of the amounts allowed under Sections 11.7.2 and 11.9. Design-Builder shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

11.6.1.3 Time Impact Analysis

If Design-Builder claims that such event, situation or change affects the Critical Path, it shall provide a time impact analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost. Design-Builder shall be responsible for preparing a Contract Schedule update, in form satisfactory to WSDOT, which compares the proposed new schedule to the Baseline Contract Schedule or Monthly Contract Schedule Update, as appropriate. The Contract Schedule update shall demonstrate to WSDOT's reasonable satisfaction that the event or circumstance: (1) had a specific impact on the Critical Path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by re-sequencing of the Work or other reasonable alternatives. If a request for time extension, combined with previous extension requests, equals 20 percent or more of the Baseline Contract Schedule, Design-Builder shall provide with the request a written consent of the Surety or Sureties if WSDOT requests such consent.

11.6.1.4 Other Supporting Documentation

Design-Builder shall provide such other supporting documentation as may reasonably be required by WSDOT.

11.6.2 Justification

All requests for Change Orders shall include a narrative justification therefor, detailing all causes of the proposed change, making specific reference to the applicable provisions of this [Article 11](#) which permit a Change Order to be issued, and describing the data and documents which establish the necessity and amount of such proposed change.

11.6.3 Design-Builder Representation

Each Change Order (other than Change Orders issued unilaterally by WSDOT) shall contain a sworn certification in form acceptable to WSDOT by Design-Builder that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change and that Design-Builder has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

11.7 Certain Limitations

11.7.1 Limitation on Increases in Compensation

Any increase in Design-Builder's compensation allowed hereunder shall exclude:

- (a) costs caused by the breach of contract or fault or negligence, or act or failure to act of any DB-Related Entity;
- (b) costs which could reasonably have been avoided by Design-Builder, for example by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (with the understanding that any additional costs reasonably incurred in connection with such reallocation or redeployment are allowable);
- (c) costs for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work;

- (d) Costs payable by Design-Builder under Section 5.9.3 and Section 5.9.4; and
- (e) any standby or rental costs for the TBM (although additional costs of operation and maintenance of the TBM are allowable).

11.7.2 Limitation on Delay and Disruption Damages

11.7.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by WSDOT as an alternative to allowing an extension of a Completion Deadline as contemplated by Section 11.3. Other delay and disruption damages shall be compensable hereunder only with respect to delays described in Section 11.4(b).

11.7.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 11.7.2.1 and markups thereon as determined by the parties. In addition, before Design-Builder may obtain any increase in compensation for extended overhead, Acceleration Costs or other damages relating to delay, Design-Builder shall have demonstrated to WSDOT's satisfaction that:

- (a) its schedule which defines the affected Critical Path in fact set forth a reasonable method for completion of the Work;
- (b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity;
- (c) the delay or damage was not due to any breach of contract or fault or negligence, or act or failure to act of any DB-Related Entity, and could not reasonably have been prevented or avoided by Design-Builder, for example by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment);
- (d) the delay for which compensation is sought is not concurrent with any other delay other than a WSDOT-Caused Delay; and
- (e) Design-Builder has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to WSDOT.

11.8 Pricing of Change Orders

Except as otherwise provided herein, WSDOT and Design-Builder (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order.

11.8.1 Negotiated Change Orders

A negotiated Change Order shall specify, as applicable, scheduling requirements, time extensions and all costs of any nature arising out of the Work covered by the Change Order. Notwithstanding the foregoing, the parties may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated construction cost and which provides for a revised

Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction cost.

11.8.2 Unit Priced Change Orders

WSDOT and Design-Builder may agree to negotiate unit prices for changed Work. Measurement of unit-priced quantities will be as specified in the Change Order. 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.

11.8.3 Added Work

When the Change Order adds Work to Design-Builder's scope that is not covered by existing unit prices, the increase in Design-Builder's compensation shall be (a) negotiated based on estimated costs of labor, material and equipment, or (b) based on actual costs and markups in accordance with Section 11.9.

11.8.4 Deleted Work

When the Change Order deletes Work from the scope of the Work covered by the Lump Sum Amount (including deletion of any Work contained in the Contract Documents that is found to be unnecessary), the amount of the reduction in the Lump Sum Amount shall be based upon a current estimate including a bill of material, a breakdown of labor and equipment costs and overhead and profit associated with the deleted work. The current estimated amount of risk associated with such Work shall be a factor in determining the markup for the deduction. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

11.8.5 Work Both Added and Deleted

When the Change Order involves lump sum pricing and includes both added and deleted Work, Design-Builder shall prepare a statement of the cost of labor, material and equipment for both added and deleted work.

- (a) If the change results in a net increase in cost, the change shall be treated as Work added. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Lump Sum Amount.
- (b) If the change results in a net decrease in cost, the change shall be treated as Work deleted and the provisions of Section 11.8.4 shall be used on the net decrease in cost in order to establish the amount to be deducted from the Lump Sum Amount.
- (c) If the change results in a net change of zero, there will be no change in the the Lump Sum Amount.

11.9 Force Account

The Contract Documents or Change Orders may call for Work or material to be paid for by force account. WSDOT shall reimburse Design-Builder for all costs associated with force account Work, including costs of design, engineering, labor, small tools, supplies, equipment, specialized services, materials, applicable taxes, overhead and profits commensurate with those costs. The amount to be paid shall be determined in accordance with this Section 11.9.

11.9.1 Construction Labor Costs

Labor reimbursement calculations shall be based on a "Project Labor List" prepared and submitted by Design-Builder and by any Subcontractor before commencing force account Work. Once a Project Labor List is approved by WSDOT, it shall be used to calculate force account Work labor payment until a new Project Labor List is submitted and approved. WSDOT may compare the Project Labor List to payrolls and other documents and may, at any time, require Design-Builder to submit a new Project Labor List. Design-Builder may submit a new Project Labor List at any time. Prior payment calculations shall not be adjusted as a result of a new Project Labor List.

11.9.1.1 Preparation of Project Labor List

The Project Labor List shall be accurate and satisfy the requirements of this Section 11.9.1.1. The Project Labor List shall include regular time and overtime rates for all employees (or work classifications) expected to participate in force account Work. The rates shall include the basic wage and fringe benefits, the current rates for Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), the company's present rates for Medical Aid and Industrial Insurance premiums and the planned payments for travel and per diem compensation.

11.9.1.2 WSDOT Acceptance of Project Labor List

In the event that an acceptance initial Project Labor List or requested revised Project Labor List is not received and approved by WSDOT by the time the force account Work calculations have begun, WSDOT will develop a Project Labor List unilaterally, utilizing the best data available, that will be used until Design-Builder's Project Labor List is received and approved. Prior calculations, prepared using the WSDOT list, will not be revised as a result of differences between it and Design-Builder's Project Labor List.

11.9.1.3 Labor MarkUp

In addition to the compensation for direct labor costs described in Sections 11.9.1.1 and 11.9.1.2, WSDOT will pay Design-Builder 29 percent of the sum of the costs calculated for labor reimbursement to cover Project overhead, general company overhead, profit, bonding, insurance required by Article 20, Business and Occupation tax, and any other costs incurred. This amount will include any costs of safety training and health tests, but will not include such costs for unique force account Work that is different from typical Work and which could not have been anticipated during preparation of the Proposal.

11.9.1.4 Monthly Contract Schedule Update for Force Account Work

Force account Work activities will not be initially price loaded, but said "as-built" activities will be added to the Monthly Contract Schedule Updates described in Section 10.2 to show their relationship (if any) to other scheduled Work activities and the price paid for completed work will be added to these activities at the end of each payment period..

11.9.2 Non-Construction Labor

The cost of labor for non-construction-related force account Work (including design, surveying, utility coordination, permits, professional environmental services and similar aspects of the Work), whether provided by 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.

11.9.3 Material Costs

WSDOT will reimburse invoice costs for Design-Builder supplied Materials. The costs shall include freight handling charges and applicable taxes. Before force account Work is started, WSDOT may require Design-Builder to obtain multiple quotations for the materials to be utilized and select the supplier with prices and terms most advantageous to WSDOT.

11.9.3.1 Calculation of Cost of Materials

WSDOT will provide a list of the types and quantities of Design-Builder-supplied materials witnessed by WSDOT as being utilized in force account Work. The list will be furnished promptly after the material is incorporated, on a daily basis unless agreed otherwise. Design-Builder may propose corrections to the list and will supply prices for the materials and other costs and return the list to WSDOT. To support the prices, Design-Builder shall attach valid copies of supplier invoices. If invoices are not available for materials from Design-Builder's stocks, Design-Builder shall certify actual costs (at a reasonable level) by affidavit. WSDOT will review the prices and any Design-Builder-proposed corrections and, if reasonable, approve the completed list. Once approved, the prices will be utilized in the calculation of force account reimbursement for materials.

If, in the case of non-invoiced materials supported by Design-Builder's affidavit, prices appear unreasonable, WSDOT will determine the costs for all or part of materials, utilizing the best data available.

11.9.3.2 WSDOT-Supplied Material

WSDOT reserves the right to provide materials (including materials that WSDOT arranges for third parties to provide). In this case, 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 WSDOT-supplied materials shall be compensated as described in this Section 11.9.

11.9.3.3 Materials Markup

In addition to compensation for direct materials costs, WSDOT will pay 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 Article 20, Business and Occupation tax, and any other costs incurred.

11.9.3.4 Affiliated Source of Supply

If the materials are obtained from a supply or source owned in whole or in part by Design-Builder or a Subcontractor, the cost of such materials shall not exceed the lesser of the lowest price charged by Design-Builder or such Subcontractor (as applicable) for similar materials furnished to other jobs or the current wholesale price for such materials delivered to the Site.

11.9.4 Equipment

WSDOT will reimburse Design-Builder for the cost of equipment utilized in force account Work that is owned (either through outright ownership or through a long-term lease) and operated by Design-Builder or a Subcontractor or equipment rented and operated by Design-Builder or Subcontractor as specified in this Section 11.9.4. Equipment that is rented with operator is considered a service and addressed in accordance with Section 11.9.5.

11.9.4.1 Payment for Equipment

- (a) Payment for use of the TBM for force account Work shall be limited to actual additional costs incurred in operation and maintenance of the TBM directly attributable to such Work, including the cost of additional parts for the TBM required as a result of such Work. Labor costs for such operation and maintenance, and markups thereon, shall be determined in accordance with Section 11.9.1.
- (b) The amount of payment for any other Design-Builder-owned equipment used in force account Work shall be determined according to the version of the AGC/WSDOT Equipment Rental Agreement which is in effect at the time force account Work is performed. 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. Current copies of the Rental Rate Blue Book and the AGC/WSDOT Equipment Rental Agreement are maintained at www.wsdot.wa.gov.
- (c) Payment for rented equipment will be made on the basis of a valid invoice, covering the time period of the force account Work. Before force account Work is started, WSDOT may require Design-Builder to obtain multiple quotations for the rental of equipment to be utilized and select the supplier with prices and terms most advantageous to WSDOT. In the event that prior quotations are not obtained and the supplier is not a firm independent from Design-Builder or 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.

11.9.4.2 Small Tools

In addition to the payments for Design-Builder-owned and rented equipment pursuant to Section 11.9.4.1, 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.

11.9.4.3 Equipment Markup

WSDOT will add 21 percent to equipment costs to cover Project overhead, general company overhead, profit, bonding, insurance required by Article 20, 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.

11.9.5 Specialized Services

Compensation for force account Work for specialized services shall be made on the basis of an invoice from the providing entity. A "specialized service" shall be one which is typically billed through invoice in standard industry practice. Before force account Work is started, WSDOT may require 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 provided in this Section 11.9.5, WSDOT will pay 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 Article 20, Business & Occupation tax, and any other costs incurred.

When a supplier of services is compensated through invoice, but acts in the manner of a Subcontractor, as described in Section 11.9.7, then markup for that invoice shall be according to Section 11.9.7.

11.9.6 Mobilization

Force account Work involving mobilization is the preparatory Work performed by Design-Builder, including procurement, loading and transportation of tools and equipment, and personal travel time (when such travel time is a contractual obligation of Design-Builder or a customary payment from 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 Work and other Contract Work. WSDOT will pay for mobilization for off-Site preparatory Work for force account Work 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 included with the other types of force account Work and paid accordingly. Note that no additional mobilization expense will be paid for any equipment presently on Site.

11.9.7 Markups on Subcontracted Works

The foregoing markups will be paid to Design-Builder only for Work it performs; in the case of Work that is subcontracted, said markups will be allowed to the Subcontractor that actually performs the work. When force account Work is performed by one or more approved Subcontractors or suppliers, or through invoice by firm(s) acting in the manner of a subcontractor, Design-Builder will be allowed an additional markup, determined in accordance with Section 11.9.7.2, applied to the costs computed for Work done by each Subcontractor or supplier through Sections 11.1 through 11.6, to compensate for all administrative costs, including Project overhead, general company overhead, profit, bonding, insurance required by Article 20, Business & Occupation tax, and any other costs incurred. Only one such markup shall be allowed, notwithstanding the actual number of intervening Subcontractors. This markup shall fully compensate Design-Builder for overhead and profit with respect to subcontracted Work.

11.9.7.1 Characterization of Subcontracted Work

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 Design-Builder and the employees of the firm;
- (c) The firm appears to be holding the risk of performance and quality of the Work; and/or
- (d) The firm appears to be responsible for liability arising from the Work.

11.9.7.2 Calculation of Markup

Markups shall be based on the amount paid for force account Work performed by each Subcontractor on each force account and calculated to include Sections 11.9.1 through 11.9.6. The markup for this amount is as follows:

- | | | |
|-----|--|------------|
| (a) | On amounts up to \$25,000 | 12 percent |
| (b) | On amounts greater than \$25,000 up to \$100,000 | 10 percent |
| (c) | 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 described in this Section 11.9.7 shall be full payment for force account Work. The calculated payment shall cover all expenses of every nature, kind, and description, including those listed above and any others incurred in performance of the force account Work.

An item which was included in the original scope of the Work will not be paid as force account Work unless pursuant to a Change Order that requires a payment adjustment. Force account Work may, at any time and by agreement of the Parties, be converted to agreed unit prices or lump sums applicable to the remaining Work.

11.9.8 Force Account Records

11.9.8.1 Daily Reports

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

11.9.8.2 Reports As Basis for Payment

All force account Work reports shall be signed by Design-Builder or its authorized representative. WSDOT will compare its records with Design-Builder's reports, make the necessary adjustments and compile the costs of force account Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. Design-Builder's (and each Subcontractor's) cost records pertaining to force account Work shall be open, during all regular business hours, to inspection or audit by representatives of WSDOT during the life of the Contract and for a period of not less than seven years after Final Acceptance, and Design-Builder (and each Subcontractor) shall retain such

records for that period. If an audit is to be commenced more than 60 days after Final Acceptance, Design-Builder will be given a 20 day notice of the time when such audit is to begin.

11.9.9 Compliance with the Federal Acquisition Regulation

Reimbursable expenses shall be limited to and comply with the FAR. Expenses excluded by the FAR shall not be reimbursed. If FHWA asserts that any claimed reimbursable expenses are not reimbursable under FAR, WSDOT will allow Design-Builder the opportunity to respond to FHWA and defend the allowability of the expenses.

11.10 Disputes

If WSDOT refuses to issue a Change Order based on Design-Builder's request, Design-Builder shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to dispute resolution in accordance with Article 24. Design-Builder shall maintain and deliver to WSDOT, upon request, contemporaneous records, meeting the requirements of Section 11.9.8, for all work performed which Design-Builder believes constitutes extra work (including non-construction work), until all disputes regarding entitlement or cost of such work are resolved.

If WSDOT and Design-Builder agree that a request by Design-Builder to increase its compensation and/or extend any Completion Deadline has merit, but are unable to agree as to the amount of such increase and/or time extension, WSDOT agrees to mark up the Change Order request or Change Order form provided by Design-Builder to reduce the amount of the increase and/or time extension as deemed appropriate by WSDOT. In such event, WSDOT will execute and deliver the marked-up Change Order to Design-Builder within a reasonable period after receipt of a request by Design-Builder to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order.

Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims by Design-Builder of any nature arising from or relating to the Work covered by the Change Order. Design-Builder's claim and any award by the dispute resolver shall be limited to the incremental costs incurred by Design-Builder with respect to the disputed matter (crediting WSDOT for any corresponding reduction in Design-Builder's other costs) and shall in no event exceed the amounts allowed by Section 11.9 with respect thereto.

11.11 No Release or Waiver

11.11.1 Extension of Time for Performance

No extension of time granted hereunder shall release Design-Builder's Surety from its obligations. WSDOT shall not be deemed to have waived any rights under the Contract Documents (including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Work, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to Design-Builder after such date.

11.11.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

No course of conduct or dealings between the Parties nor express or implied acceptance of alterations or additions to the Work, and no claim that WSDOT has been unjustly enriched shall be

the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, Design-Builder shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. Design-Builder shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, WSDOT may require Design-Builder to remove or otherwise undo any such work, at Design-Builder's sole cost.

1 **12. DESIGN-BUILDER INITIATED CHANGE PROPOSALS**

2 **12.1.1 Eligible Proposals**

3 A Design-Builder Initiated Change Proposal is a proposal developed and documented by Design-
4 Builder which meets any of the following criteria:

- 5 (a) Any change that requires a Design Deviation. If approved by WSDOT, the cost
6 savings realized by these types of changes shall be shared in accordance with
7 Section 12.1.4.
- 8 (b) Changes proposed by Design-Builder which borrow ideas from non-successful
9 Proposals. If approved by WSDOT, the cost savings realized by these types of
10 changes shall be shared in accordance with Section 12.1.4.
- 11 (c) Changes deemed by WSDOT in its sole discretion to be equal or better than the
12 requirement proposed to be changed. If approved by WSDOT, all cost savings for
13 these changes shall be retained by Design-Builder. These changes shall be
14 implemented in accordance with Section 12.1.5.
- 15 (d) Changes that do not fit into subsections (a), (b) or (c) above. If approved by
16 WSDOT, the cost savings on these changes shall be shared as the parties mutually
17 agree. If the parties are unable to agree on how the savings will be shared, the
18 proposed change shall be considered denied.

19 WSDOT shall have sole discretion to approve or disapprove any Design-Builder Initiated Change
20 Proposal.

21 **12.1.2 Required Information**

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

- 24 (a) A statement that the submission is a Design-Builder Initiated Change Proposal, and
25 a narrative description of the proposed change.
- 26 (b) Description of the existing requirements of the Contract Documents that are
27 involved in the proposed change and an itemization of the requirements that must
28 be revised if the Design-Builder Initiated Change Proposal is approved.
- 29 (c) Discussion of the differences between the existing requirements of the Contract
30 Documents and the proposed change, together with advantages and disadvantages
31 of each difference.
- 32 (d) A description of any previous use of, or tests related to, the proposed change. If the
33 proposed change was previously submitted on another WSDOT project, indicate the
34 date, contract number and the action taken by WSDOT.
- 35 (e) Impact on the proposed on life cycle costs.
- 36 (f) Date or time by which a Change Order adopting the Design-Builder Initiated Change
37 Proposal must be issued in order to obtain the maximum cost reduction, noting any
38 effect on the Contract Schedule.
- 39 (i) A complete cost analysis including (i) a cost estimate for the existing requirements
40 of the Contract Documents compared to Design-Builder's cost estimate of the
41 proposed changes, (ii) an estimate of any additional costs that will be incurred by

1 WSDOT if the change is approved; and (iii) the costs of development and
2 implementation of the change by Design-Builder.

3 Design-Builder shall provide any additional information requested by WSDOT in a timely manner.
4 Additional information could include results of field investigations and surveys, design
5 computations and field change sheets.

6 **12.1.3 WSDOT Review and Approval or Rejection**

7 **12.1.3.1 Review of Design-Builder Initiated Change Proposals**

8 Upon receipt of a Design-Builder Initiated Change Proposal, WSDOT will process it expeditiously,
9 but shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section
10 12.1. Design-Builder may withdraw all or part of any Design-Builder Initiated Change Proposal at
11 any time prior to approval by WSDOT. Each party shall bear its own costs in connection with
12 preparation and review of Design-Builder Initiated Change Proposals.

13 **12.1.3.2 Approval of Design-Builder Initiated Change Proposals**

14 WSDOT may approve, in its sole discretion, in whole or in part, by Change Order, any Design-
15 Builder Initiated Change Proposal submitted. Until a Change Order is issued on a Design-Builder
16 Initiated Change Proposal, Design-Builder shall remain obligated to perform the Work in
17 accordance with the Contract Documents. WSDOT's rejection or approval of any Design-Builder
18 Initiated Change Proposal shall be final and not subject to collaborative partnering, dispute
19 resolution or appeal.

20 **12.1.4 Compensation Price Adjustment**

21 Except for as specified in Section 12.1.1(c), if WSDOT accepts a Design-Builder Initiated Change
22 Proposal submitted by Design-Builder pursuant to this Article 12, the compensation payable to
23 Design-Builder shall be adjusted in accordance with this Section 12.1.4.

24 **12.1.4.1 Estimated Net Savings**

25 The term "estimated net savings" as used in this Section 12.1 shall mean (a) the difference
26 between the estimated cost of performing the Work according to the Contract Documents and the
27 estimated cost to perform it according to the proposed change, less (b) the costs of studying and
28 preparing the Design-Builder Initiated Change Proposal as proven by Design-Builder and approved
29 by WSDOT in accordance with the Change Order procedures set forth herein. Design-Builder's
30 profit shall not be considered part of the cost.

31 **12.1.4.2 Collateral and Future Savings**

32 Except as specified in Section 12.1.4.4, Design-Builder is not entitled to share in either collateral or
33 future contract savings. The term "collateral savings" means those measurable net reductions in
34 WSDOT's costs resulting from the Design-Builder Initiated Change Proposal, including costs of
35 maintenance by WSDOT, logistics and WSDOT-furnished property. The term "future contract
36 savings" shall mean reductions in the cost of performance of future construction contracts for
37 essentially the same item resulting from a Design-Builder Initiated Change Proposal submitted by
38 Design-Builder.

1 **12.1.4.3 Price Adjustment Factor**

2 The Lump Sum Amount shall be reduced by an amount equal to the sum of (a) 100 percent of any
3 additional costs incurred by WSDOT resulting from the Design-Builder Initiated Change Proposal
4 plus (b) 50 percent of estimated net savings, provided that Design-Builder's profit shall not be
5 reduced as part of this calculation.

6 **12.1.4.4 Payment Due Date**

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

11 **12.1.5 "Or Equal" Changes**

12 Changes proposed by Design-Builder pursuant to Section 12.1.1(c) and, in WSDOT's sole
13 discretion, deemed equal or better than the requirement proposed to be changed, shall be priced
14 as "no cost," and shall be documented as Change Orders. In making the determination of equal or
15 better, WSDOT may consider, among other criteria, the following:

- 16 (a) Does the proposed change meet or exceed the functional intent or intended
17 purpose?
- 18 (b) Does the proposed change meet or exceed structural requirements?
- 19 (c) Does the proposed change meet or exceed safety requirements?
- 20 (d) Does the proposed change meet or exceed life-cycle cost or maintenance
21 requirements?
- 22 (e) Does the proposed change meet or exceed aesthetic expectations?

23 In no case shall a Design-Builder Initiated Change Proposal that requires a Design Deviation be
24 considered equal or better.

25 **12.1.6 Changes Which Are Not Design-Builder Initiated Change Proposals or "Or Equal"**
26 **Changes**

27 Changes proposed by Design-Builder pursuant to Section 12.1.1(d) and, in WSDOT's sole
28 discretion, not deemed equal or better than the requirement proposed to be changed but which
29 WSDOT is otherwise willing to consider may be executed with a sharing of costs or savings as the
30 parties may agree.

31 **12.1.7 Use of Design-Builder Initiated Change Proposals by WSDOT**

32 Design-Builder Initiated Change Proposals shall contain no restrictions imposed by Design-Builder
33 on use or disclosure thereof. WSDOT retains the right to use, duplicate and disclose in whole or in
34 part any data necessary for the utilization of Design-Builder Initiated Change Proposal on any other
35 or subsequent Projects without any obligation to Design-Builder. This provision is not intended to
36 deny rights provided by Law with respect to patented materials or processes.

37

1 **13. CONTRACT INCENTIVES**

2 WSDOT has established a Shared Contingency in the amount of \$40,000,000. WSDOT and
3 Design-Builder shall equally share in any amount remaining in the Shared Contingency following
4 Physical Completion of the Work and WSDOT's determination of all amounts owing to Design-
5 Builder for (a) Extraordinary Intervention Work under Section 5.7 and (b) Deformation Mitigation
6 and Repair Work under Section 5.9. Design-Builder's share of the unused funds in the Shared
7 Contingency shall be due and payable at the same time as the Final Payment.

8

1 **14. SUSPENSION OF WORK**

2 **14.1 Suspension for Convenience**

3 WSDOT may, at any time and for any reason, by written notice, order Design-Builder to suspend
4 all or any part of the Work required under the Contract Documents for the period of time that
5 WSDOT deems appropriate for the convenience of WSDOT. Design-Builder shall promptly comply
6 with any such written suspension order. Design-Builder shall promptly recommence the Work
7 upon receipt of written notice from WSDOT directing Design-Builder to resume Work. Suspensions
8 related to seasonal or climatic conditions shall not be considered a WSDOT-Caused Delay.

9 **14.2 Suspension for Cause**

10 WSDOT has the authority by written order to suspend the Work without liability to WSDOT wholly
11 or in part for Design-Builder's failure to:

- 12 (a) correct conditions unsafe for the Project personnel or general public;
- 13 (b) comply with any Governmental Approval, Law or otherwise carry out the
14 requirements of the Contract Documents;
- 15 (c) carry out reasonable orders of WSDOT; or
- 16 (d) comply with environmental requirements or requirements for developing and
17 implementing the Quality Management Plan.

18 Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall
19 promptly recommence the Work upon receipt of written notice from WSDOT directing Design-
20 Builder to resume Work.

21 **14.3 Design-Builder Responsibilities During Suspension**

22 During periods that Work is suspended, Design-Builder shall continue to be responsible for the
23 Work and shall prevent damage or injury to the Project and other facilities in the Project vicinity,
24 provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all
25 Design-Builder-provided insurance and bonds and erect necessary temporary structures, signs or
26 other facilities required to maintain the Project and other facilities in the Project vicinity. During any
27 suspension period, unless otherwise directed by WSDOT, Design-Builder shall continue to be
28 responsible for maintenance of traffic in accordance with the Traffic Management Plan and TR
29 Section 2.22, and for maintenance during construction in accordance with TR Section 2.29. If the
30 suspension is for WSDOT's convenience, the additional work performed by Design-Builder during
31 the suspension period shall be considered WSDOT-Directed Changes.

32

1 **15. TERMINATION FOR CONVENIENCE**

2 **15.1 Notice of Termination**

3 WSDOT may terminate the Contract and the performance of the Work by Design-Builder in whole
4 or, from time to time, in part, if WSDOT determines, in its sole discretion, that a termination is in the
5 best public, State or national interest to do so. In addition, in the event that the Record of Decision
6 (ROD) results in selection of either the no-build alternative or a build alternative different from the
7 Bored Tunnel Alternative, the Contract will be terminated for convenience, Design-Builder will be
8 paid for the NTP 1 Work pursuant to the Contract, and Design-Builder will not be entitled to any
9 further compensation.

10 WSDOT shall notify Design-Builder of its decision to terminate by delivering to Design-Builder a
11 written Notice of Termination specifying the extent of termination and its effective date.
12 Termination (or partial termination) of the Contract shall not relieve any Surety of its obligation for
13 any claims arising out of the Work performed.

14 **15.2 Design-Builder's Responsibilities Upon Termination**

15 After receipt of a Notice of Termination, and except as otherwise directed by WSDOT, Design-
16 Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting
17 any amounts due under this Article 15.

- 18 (a) Stop Work as specified in the notice;
- 19 (b) Communicate such notice to all affected Subcontractors and suppliers and that their
20 Subcontracts and supply agreements are not to be further performed unless
21 otherwise authorized in writing by WSDOT;
- 22 (c) Place no further Subcontracts or orders for materials, services or facilities, except as
23 necessary to complete the continued portion of the Work, if any, or for mitigation of
24 damages;
- 25 (d) Terminate all Subcontracts to the extent that they relate to the Work terminated
26 unless directed by WSDOT to assign all of the right, title and interest of Design-
27 Builder under one or more Subcontracts so terminated, in which case Design-
28 Builder shall assign the Subcontracts identified by WSDOT and terminate all
29 remaining Subcontracts;
- 30 (e) Subject to the prior approval of WSDOT, settle all outstanding liabilities and claims
31 arising out of such termination of Subcontracts;
- 32 (f) Provide WSDOT with an inventory list of all materials previously produced,
33 purchased or ordered from suppliers for use in the Work and not yet used in the
34 Work, including its storage location, as well as any documentation or other property
35 required to be delivered hereunder which is either in the process of development or
36 previously completed but not yet delivered to WSDOT, and such other information
37 as WSDOT may request; and transfer title and deliver to WSDOT, in the manner, at
38 the times, and as and to the extent, if any, directed by WSDOT (i) fabricated or
39 unfabricated parts, the Work in process, completed Work, supplies and other
40 material produced or acquired for the Work terminated; and (ii) the Design
41 Documents, Working Drawings and all other completed or partially completed
42 drawings (including plans, elevations, sections, details and diagrams),

- 1 specifications, records, samples, information and other property that would have
2 been required to be furnished to WSDOT if the Work had been completed;
- 3 (g) Complete performance in accordance with the Contract Documents of all Work not
4 terminated;
- 5 (h) Take all action that may be necessary, or that WSDOT may direct, for the safety,
6 protection and preservation of (a) the public, including public and private vehicular
7 movement, (b) the Work and (c) the equipment, machinery, materials and property
8 related to the Contract Documents that is in the possession of Design-Builder and in
9 which WSDOT has or may acquire an interest;
- 10 (i) As authorized by WSDOT in writing, use its best efforts to sell, in a manner, at the
11 times, to the extent, and at the price or prices directed or authorized by WSDOT,
12 any property of the types referred to in Section 15.2(f); provided, however, that
13 Design-Builder (i) is not required to extend credit to any purchaser, and (ii) may
14 acquire the property under the conditions prescribed and at prices approved by
15 WSDOT. The proceeds of any transfer or disposition will be applied to reduce any
16 payments to be made by WSDOT under the Contract Documents or paid in any
17 other manner directed by WSDOT;
- 18 (j) If requested by WSDOT, withdraw from the portions of the Site designated by
19 WSDOT and remove such materials, equipment, tools and instruments used by, and
20 any debris or waste materials generated by, Design-Builder and any Subcontractor
21 in the performance of the Work as WSDOT may direct; and
- 22 (k) Take other actions directed by WSDOT.

23 **15.3 Responsibility After Notice of Termination**

24 Design-Builder shall continue to be responsible for damage to materials after issuance of the
25 Notice of Termination, except as follows:

- 26 (a) Design-Builder's responsibility for damage to materials for which partial payment
27 has been made as provided herein shall terminate when WSDOT certifies that those
28 materials have been stored in the manner and at the locations directed by WSDOT.
- 29 (b) Design-Builder's responsibility for damage to materials purchased by WSDOT
30 subsequent to the issuance of the notice that the Contract is to be terminated shall
31 terminate when title and delivery of those materials has been taken by WSDOT.

32 Immediately after WSDOT determines that Design-Builder has completed the Work directed to be
33 completed prior to termination and such other work as may have been ordered to secure the
34 Project for termination, Design-Builder will not be required to provide for continuing safety, security
35 and maintenance at the Site.

36 **15.4 Negotiated Termination Settlement**

37 **15.4.1 Settlement Proposal**

38 After receipt of a Notice of Termination, Design-Builder shall submit a final termination settlement
39 proposal to WSDOT in the form and with the certification prescribed by WSDOT. Design-Builder
40 shall submit the proposal promptly, but no later than 60 days from the effective date of termination,
41 unless Design-Builder has requested a time extension in writing within such 60-day period and
42 WSDOT has agreed in writing to allow such an extension. WSDOT will then review Design-
43 Builder's termination settlement proposal and will act upon it, return it with comments or reject it. If

1 Design-Builder fails to submit the proposal within the time allowed, WSDOT may determine, on the
2 basis of information available to it, the amount, if any, due Design-Builder because of the
3 termination and shall pay Design-Builder the amount so determined. Design-Builder agrees to
4 make all records available to the extent deemed necessary by WSDOT to verify the costs in
5 Design-Builder's settlement proposal.

6 **15.4.2 Negotiated Settlement Amount**

7 Design-Builder and WSDOT may agree, as provided in Section 15.4.1, upon the whole or any part
8 of the amount or amounts to be paid to Design-Builder by reason of the total or partial termination
9 of Work pursuant to this Article 15. Such negotiated settlement may include a reasonable
10 allowance for profit solely on Work which has been completed as of the termination date and
11 subsequently accepted by WSDOT. Upon determination of the settlement amount, the Contract
12 will be amended accordingly, and Design-Builder will be paid the agreed amount. Nothing in
13 Section 15.5, prescribing the amount to be paid to Design-Builder in the event that Design-Builder
14 and WSDOT fail to agree upon the whole amount to be paid to Design-Builder by reason of the
15 termination of Work pursuant to this Article 15, shall be deemed to limit, restrict or otherwise
16 determine or affect the amount(s) which may be agreed upon to be paid to Design-Builder
17 pursuant to this Section 15.4. WSDOT's execution and delivery of any settlement agreement shall
18 not affect any of its rights under the Contract Documents with respect to completed Work, relieve
19 Design-Builder from its obligations with respect thereto, including Warranties, or affect Design-
20 Builder's rights under the Contract Bonds as to such completed or non-terminated Work.

21 **15.5 Determination of Settlement Amount If Negotiations Fail**

22 If Design-Builder and WSDOT fail to agree, as provided in Section 15.4.2, upon the whole amount
23 to be paid to Design-Builder by reason of the termination of Work pursuant to this Article 15, the
24 amount payable (exclusive of interest charges) shall be determined by WSDOT in accordance with
25 the following, but without duplication of any amounts agreed upon in accordance with Section 15.4:

26 **15.5.1 Payment Amount**

27 Subject to the limit on WSDOT expenditures set forth in Section 10.4.1, WSDOT will pay Design-
28 Builder the sum of the following amounts for Work performed prior to the effective date of the
29 Notice of Termination, as such amounts are determined by WSDOT:

- 30 (a) Design-Builder's actual reasonable out-of-pocket cost (without profit, and including
31 equipment costs only to the extent permitted by Article 11) for all Work performed
32 other than unit priced Work. Costs to be reimbursed include mobilization,
33 demobilization and work done to secure the Project for termination, including
34 reasonable overhead and accounting for any refunds payable with respect to
35 insurance premiums, deposits or similar items, as established to WSDOT's
36 satisfaction. In determining the reasonable cost, deductions will be made for the
37 cost of materials to be retained by Design-Builder, amounts realized by the sale of
38 materials and for other appropriate credits. Deductions will also be made for the
39 cost of damaged materials. When, in the opinion of WSDOT, the cost of an item of
40 Work is excessively high due to costs incurred to remedy or replace defective or
41 rejected Work, the reasonable cost to be allowed will be the estimated reasonable
42 cost of performing that Work in compliance with the requirements of the Contract
43 Documents and the excessive actual cost will be disallowed.
- 44 (b) As profit on clause (a) above, a sum determined by WSDOT to be fair and
45 reasonable; provided, however, that if it appears that Design-Builder would have

1 sustained a loss on the entire Contract had it been completed, no profit shall be
2 included or allowed under this Section 15.5.1 and an appropriate adjustment shall
3 be made by reducing the amount of the settlement to reflect the indicated rate of
4 loss.

5 (c) The cost of settling and paying claims arising out of the termination of Work under
6 Subcontracts and supply agreements as provided in Section 15.2(e), exclusive of
7 the amounts paid or payable on account of supplies or materials delivered or
8 services furnished by the Subcontractor or supplier prior to the effective date of the
9 Notice of Termination under the Contract, which amounts shall be included in the
10 cost on account of which payment is made under clause (a) above.

11 (d) The reasonable out-of-pocket cost (including reasonable overhead) of the
12 preservation and protection of property incurred pursuant to Section 15.2(h) and any
13 other reasonable out-of-pocket cost (including overhead) incidental to termination of
14 Work under the Contract, including the reasonable cost to Design-Builder of
15 handling material returned to the supplier, delivered to WSDOT or otherwise
16 disposed of as directed by WSDOT, and including a reasonable allowance for
17 Design-Builder's administrative costs in determining the amount due to Design-
18 Builder as the result of the termination of Work under the Contract.

19 (e) For unit priced Work, payment will be made for the actual number of units of Work
20 completed at the Contract unit prices.

21 **15.5.2 Maximum Compensation**

22 Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in
23 excess of the value of the Work performed (determined as provided in Section 15.5.1) plus its
24 settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and
25 opportunity costs shall not be recoverable by it upon termination of the Contract. However, the
26 total amount to be paid to Design-Builder for Lump Sum Work performed prior to the termination
27 may not exceed the total Lump Sum Amount Price less the amount of payments previously made
28 and less the portion of the Lump Sum Amount allocable to Work not terminated. In addition, the
29 costs identified in Sections 15.5.1(b), (c), (d) and (e) will be allowed as described therein.
30 Furthermore, if any refund is payable with respect to insurance or bond premiums, deposits or
31 similar items which were previously passed through to WSDOT by Design-Builder, such refund
32 shall be paid directly to WSDOT or otherwise credited to WSDOT.

33 **15.5.3 Excluded Items**

34 Except for normal spoilage, and except to the extent that WSDOT will have otherwise expressly
35 assumed the risk of loss, there will be excluded from the amounts payable to Design-Builder under
36 Section 15.5.1, the fair value, as determined by WSDOT, of equipment, machinery, materials and
37 property which is destroyed, lost, stolen or damaged so as to become undeliverable to WSDOT, or
38 to a buyer pursuant to Section 15.2(i). The amount set forth in the Proposal by Design-Builder for
39 the Work terminated shall be a factor to be analyzed in determining the value of the Work
40 terminated.

41 **15.5.4 Payment of Termination Amount**

42 Upon determination of the amount of the termination payment, the Contract shall be amended to
43 reflect the agreed termination payment, and Design-Builder shall be paid the agreed amount.

1 **15.6 Termination for Failure to Issue NTP 2**

2 If NTP 2 has not been issued by March 1, 2012, Design-Builder's sole and exclusive remedy for
3 such failure shall be as follows:

4 **15.6.1** Design-Builder may seek to negotiate a Change Order including an extension in time for
5 issuance of NTP 2 and an increase in the Lump Sum Amount mutually acceptable to Design-
6 Builder and WSDOT.

7 **15.6.2** If Design-Builder does not wish to seek a Change Order as provided above or WSDOT fails
8 to agree to a Change Order acceptable to Design-Builder, then Design-Builder shall have the right
9 to notify WSDOT that this Contract is terminated for convenience under this Article 15. Upon
10 delivery by Design-Builder to WSDOT of such a notice of termination at any time after March 1,
11 2012 and before NTP 2 is issued, the provisions of this Article 15 shall apply. If NTP 2 is issued
12 before Design-Builder has delivered notice of termination, Design-Builder shall be entitled to an
13 increase in the Lump Sum Amount in the amount of \$56,000 per day, for each day after August 31,
14 2011 until the NTP 2 issuance date.

15 **15.7 Partial Termination**

16 If a termination hereunder is partial, the portion of the Lump Sum Price allocable to the remainder
17 of the Work shall be adjusted as appropriate to account for the change in the overall scope of the
18 Project. Unit prices will not be adjusted.

19 **15.8 Reduction in Amount of Claim**

20 The amount otherwise due Design-Builder under this Article 15 shall be reduced by (a) all
21 unliquidated advance or other payments made to or on behalf of Design-Builder applicable to the
22 terminated portion of the Contract, (b) the amount of any claim which WSDOT may have against
23 any DB-Related Entity in connection with the Contract Documents, (c) the agreed price for, or the
24 proceeds of the sale of, any property, materials, supplies or other things acquired by Design-
25 Builder or sold, pursuant to the provisions of this Article 15, and not otherwise recovered by or
26 credited to WSDOT, (d) amounts that WSDOT deems advisable to retain to cover any existing or
27 threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners,
28 (e) the cost of repairing any Nonconforming Work and (f) any amounts due or payable by Design-
29 Builder to WSDOT.

30 **15.9 Partial Payments**

31 WSDOT may, from time to time, under such terms and conditions as it may prescribe and in its
32 sole discretion, make partial payments on account against costs incurred by Design-Builder in
33 connection with the terminated portion of the Contract, whenever in the opinion of WSDOT the
34 aggregate of such payments shall be within the amount to which Design-Builder will be entitled
35 under this Article 15. If the total of such payments is in excess of the amount finally agreed or
36 determined to be due under this Article 15, such excess shall be payable by Design-Builder to
37 WSDOT upon demand together with interest thereon as set forth in Section 10.7.

38 **15.10 Subcontracts**

39 Design-Builder shall insert in all Subcontracts and supply agreements a requirement that the
40 Subcontractor or supplier shall stop Work on the date and to the extent specified in a Notice of
41 Termination from WSDOT in accordance with this Article 15, and shall require Subcontractors to
42 insert the same provision in each Subcontract and supply agreement at all tiers.

1 For the purposes of Sections 15.4.2 and 15.5, upon termination under Section 15.2(d) of Work
2 under any Subcontract or supply agreement, Design-Builder will not be entitled to reimbursement
3 for that portion of the termination settlement with any such Subcontractor or supplier which
4 constitutes anticipatory or unearned profit on Work not performed, or which constitutes
5 consequential damages on account of the termination or partial termination.

6 **15.11 No Unearned Profits or Consequential Damages**

7 Under no circumstances shall Design-Builder be entitled to anticipatory or unearned profits or
8 consequential or other damages as a result of a termination or partial termination under this
9 Article 15. The payment to Design-Builder determined in accordance with this Article 15
10 constitutes Design-Builder's sole and exclusive remedy for a termination under this Article 15.

11 **15.12 No Waiver**

12 Anything contained in the Contract to the contrary notwithstanding, a termination under this
13 Article 15 shall not waive any right or claim to damages which WSDOT may have, and WSDOT
14 may pursue any cause of action which it may have at law or in equity or under the Contract.

15 **15.13 Dispute Resolution**

16 The failure of the parties to agree on amounts due under this Article 15 shall be a dispute to be
17 resolved in accordance with Article 24.

18 **15.14 Allowability of Costs**

19 All costs claimed by Design-Builder under this Article 15 shall, at a minimum, be allowable,
20 allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

21 **15.15 Suspension of Work**

22 In the event of any suspension of Work by WSDOT for more than 180 consecutive days, Design-
23 Builder shall have the right to notify WSDOT that this Contract is terminated for convenience under
24 this Article 15. Design-Builder shall notify WSDOT of such election by delivering to WSDOT a
25 written notice of termination due to such suspension specifying its effective date. Upon delivery by
26 Design-Builder to WSDOT of a notice of termination, delivered at any time after 180 days of
27 suspension and before the suspension is lifted, the provisions of this Article 15 shall apply.

1 **16. DEFAULT; REMEDIES**

2 **16.1 Default By Design-Builder**

3 **16.1.1 Events of Default**

4 Design-Builder shall be in breach under the Contract upon the occurrence of any one or more of
5 the following events or conditions:

- 6 (a) Design-Builder fails to promptly begin the Work under the Contract Documents
7 following the effective date of NTP 1 or NTP 2, as the case may be;
- 8 (b) Design-Builder fails to diligently prosecute the Work to completion or otherwise fails
9 to perform the Work with sufficient resources to ensure the prompt completion
10 thereof ;
- 11 (c) Design-Builder fails to perform Quality Control and/or Quality Assurance activities
12 and/or fails to execute remedial action in accordance with the Quality Management
13 Plan;
- 14 (d) Design-Builder fails to perform the Work in accordance with the Contract
15 Documents, refuses to remove and replace rejected materials or Nonconforming or
16 unacceptable Work, or fails to remove and replace workers as directed by WSDOT
17 under Section 8.4.3;
- 18 (e) Design-Builder discontinues or suspends the prosecution of the Work (exclusive of
19 Work stoppage due to (i) termination by WSDOT, (ii) suspension by WSDOT, or
20 (iii) nonpayment by WSDOT not related to a breach by Design-Builder);
- 21 (f) Design-Builder fails to resume performance of Work which has been suspended or
22 stopped, within a reasonable time after receipt of notice from WSDOT to do so or (if
23 applicable) after cessation of the event preventing performance;
- 24 (g) Design-Builder breaches any other agreement contained in the Contract
25 Documents, or Design-Builder fails to perform any other obligation under the
26 Contract Documents, including EEO and DBE requirements;
- 27 (h) Design-Builder fails to provide and maintain the required insurance and payment
28 and performance bond;
- 29 (i) Design-Builder assigns or transfers the Contract Documents or any right or interest
30 therein, except as expressly permitted under Section 26.4;
- 31 (j) Design-Builder fails, absent a valid dispute, to make payment when due for labor,
32 equipment or materials in accordance with applicable Law and its agreements with
33 Subcontractors and suppliers, fails to comply with any Law or Governmental
34 Approval; or fails reasonably to comply with the instructions of WSDOT consistent
35 with the Contract Documents;
- 36 (k) Design-Builder fails to discharge or obtain a stay within 10 days of any final
37 judgment(s) or order for the payment of money against it in excess of \$100,000 in
38 the aggregate arising out of the prosecution of the Work (provided that, for purposes
39 hereof, posting of a bond in the amount of 125 percent of such judgment or order
40 shall be deemed an effective stay);
- 41 (l) Design-Builder shall have become insolvent, generally does not pay its debts as
42 they become due, admits in writing its inability to pay its debts, or makes an

1 assignment for the benefit of creditors, or insolvency, receivership, reorganization or
2 bankruptcy proceedings shall have been commenced by or against Design-Builder;

3 (m) Any joint venture member or general partner of Design-Builder shall have become
4 insolvent, generally does not pay its debts as they become due, admits in writing its
5 inability to pay its debts, or makes an assignment for the benefit of creditors, or any
6 insolvency, receivership, reorganization or bankruptcy proceedings shall have been
7 commenced by or against any joint venture member or general partner of Design-
8 Builder;

9 (n) Any representation or warranty made by Design-Builder in the Contract Documents
10 or in any certificate, schedule, instrument or other document delivered pursuant to
11 the Contract Documents shall have been false or materially misleading when made;

12 (o) Design-Builder is a party to fraud;

13 (q) Design-Builder fails to take commercially reasonable action to maintain labor
14 harmony in accordance with the requirements of the Contract Documents.

15 **16.1.2 Right to Cure**

16 WSDOT agrees to allow Design-Builder and Surety 15 days notice and opportunity to cure any
17 breach before declaring an Event of Default, provided that no such notice and opportunity to cure
18 is required for any breach which by its nature cannot be cured. If a breach is curable but by its
19 nature cannot be cured within 15 days, as determined by WSDOT, WSDOT agrees not to declare
20 an Event of Default provided that Design-Builder commences such cure within such 15-day period
21 and thereafter diligently prosecutes such cure to completion; provided, however, that in no event
22 will such cure period exceed 60 days in total. Design-Builder hereby acknowledges and agrees
23 that the events described in subsections 16.1.1(n) and (o) are not curable. With regard to the
24 events described in subsection 16.1.1(m), WSDOT will not declare an Event of Default if, within the
25 15-day cure period, Design-Builder provides satisfactory assurance to WSDOT that such event will
26 not adversely impact Design-Builder's performance of all of its obligations under the Contract
27 Documents. Notwithstanding the foregoing, if WSDOT believes a condition affecting the Project
28 poses an immediate and imminent danger to public health or safety, WSDOT may, without notice
29 and without awaiting lapse of any cure period, rectify the condition at Design-Builder's cost, and so
30 long as WSDOT undertakes such action in good faith, such action shall not expose WSDOT to
31 liability to Design-Builder and shall not entitle Design-Builder to any other remedy, it being
32 acknowledged that WSDOT has a paramount public interest in providing and maintaining safe
33 public use of and access to the Project. WSDOT shall be deemed to have acted in good faith
34 regarding the existence of such danger in the absence of clear and convincing evidence that the
35 danger did not exist.

36 **16.2 Remedies**

37 **16.2.1 Rights of WSDOT**

38 If an Event of Default occurs, then, in addition to all other rights and remedies provided by Law or
39 equity or available under the Contract or otherwise, including the rights to recover Liquidated
40 Damages and to seek recourse against the Contract Bonds required hereby and/or other
41 performance security, WSDOT shall have the following rights and remedies, without further notice,
42 and without prejudice to any of its other rights or remedies and without waiving or releasing
43 Design-Builder from any obligations, and Design-Builder shall have the following obligations (as
44 applicable):

- 1 (a) WSDOT may order Design-Builder to suspend or discontinue the Work or any
2 portion of the Work;
- 3 (b) WSDOT may terminate the Contract or a portion thereof, in which case, the
4 provisions of Sections 15.3 and 15.4 shall apply;
- 5 (c) If and as directed by WSDOT, Design-Builder shall withdraw from the Site; and shall
6 remove such materials, equipment, tools and instruments used by, and any debris
7 or waste materials generated by, any DB-Related Entity in the performance of the
8 Work;
- 9 (d) Design-Builder shall deliver to WSDOT possession of any or all facilities of Design-
10 Builder located on the Site as well as any or all Design Documents, Working
11 Drawings and all other completed or partially completed drawings (including plans,
12 elevations, sections, details and diagrams), specifications, records, information,
13 schedules, samples, shop drawings and other documents, that WSDOT deems
14 necessary for completion of the Work;
- 15 (e) Design-Builder shall confirm the assignment to WSDOT of the Subcontracts
16 requested by WSDOT, and Design-Builder shall terminate, at its cost, all other
17 Subcontracts;
- 18 (f) WSDOT may deduct from any amounts payable by WSDOT to Design-Builder such
19 amounts payable by Design-Builder to WSDOT, including Liquidated Damages or
20 other damages payable to WSDOT under the Contract Documents;
- 21 (g) WSDOT shall have the right, but not the obligation, to pay such amount and/or
22 perform such act as may then be required;
- 23 (h) WSDOT, without incurring any liability to Design-Builder, shall have the rights (i) to
24 take the performance of all or a portion of the Work from Design-Builder (either with
25 or without the use of Design-Builder's materials, equipment, tools and instruments)
26 and enter into an agreement with another Person for the completion of such Work;
27 or (ii) to use such other methods, as in the opinion of WSDOT, will be required for
28 the completion of the Project; and/or
- 29 (i) WSDOT shall have the right, but is not obligated to, perform any obligations of
30 Design-Builder, including: (i) perform or attempt to perform, or cause to be
31 performed, such work; (ii) spend such sums as WSDOT deems necessary and
32 reasonable to employ and pay such architects, engineers, consultants and
33 contractors and obtain materials and equipment as may be required for the purpose
34 of completing such work; (iii) execute all applications, certificates and other
35 documents as may be required for completing the work; (iv) modify or terminate any
36 contractual arrangements; (v) take any and all other actions which it may in its sole
37 discretion consider necessary to complete the Work; and (vi) prosecute and defend
38 any action or proceeding incident to the Work.

39 **16.2.2 Liability of Design-Builder**

40 **16.2.2.1 Occurrence of an Event of Default**

41 Subject to Section 16.2.2.8, if an Event of Default has occurred, Design-Builder shall be liable to
42 WSDOT (in addition to any other damages under the Contract Documents other than those costs
43 intended to be covered by Liquidated Damages payable hereunder) for all costs reasonably
44 incurred by WSDOT or any party acting on WSDOT's behalf in completing the Work or having the
45 Work completed by another Person (including any re-procurement costs, throwaway costs for

1 unused portions of the completed Work and increased financing costs). Upon the occurrence of an
2 Event of Default, WSDOT shall be entitled to withhold all or any portion of further payments to
3 Design-Builder until such time as WSDOT is able to determine how much (if any) remains owing to
4 Design-Builder. Promptly upon such determination, WSDOT shall notify Design-Builder in writing
5 of the amount, if any, that Design-Builder shall pay WSDOT or that WSDOT shall pay Design-
6 Builder with respect thereto. All costs and charges incurred by WSDOT, including attorneys',
7 accountants' and expert witness fees and costs, together with the cost of completing the Work
8 under the Contract Documents, will be deducted from any moneys due or which may become due
9 to Design-Builder. If such expense exceeds the sum which would have been payable under the
10 Contract, then Design-Builder shall pay to WSDOT the amount of such excess.

11 **16.2.2.2 Assurance of Future Performance**

12 It is recognized that if a default under Section 16.1.1(k) or (l) occurs, such event could impair or
13 frustrate Design-Builder's performance of the Work. Accordingly, it is agreed that upon the
14 occurrence of any such event, WSDOT shall be entitled to request of Design-Builder, or its
15 successor in interest, adequate assurance of future performance in accordance with the terms and
16 conditions hereof. Failure to comply with such request within 10 days of delivery of the request
17 shall entitle WSDOT to terminate the Contract and to the accompanying rights set forth above.
18 Pending receipt of adequate assurance of performance and actual performance in accordance
19 therewith, WSDOT shall be entitled to proceed with the Work with its own forces or with other
20 contractors on a time and material or other appropriate basis, the cost of which will be credited
21 against and deducted from WSDOT's payment obligations hereunder. The foregoing shall be in
22 addition to all other rights and remedies provided by Law or equity and such rights and remedies
23 as are otherwise available under the Contract Documents and Contract Bonds.

24 **16.2.2.3 Alternative to Terminating the Contract and Completing the Work**

25 In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work,
26 WSDOT may pay Design-Builder for the parts already done according to the provisions of the
27 Contract Documents and may treat the parts remaining undone as if they had never been included
28 or contemplated by the Contract Documents. No claim under this provision will be allowed Design-
29 Builder for prospective profits on, or any other compensation relating to, Work uncompleted by
30 Design-Builder.

31 **16.2.2.4 Termination Deemed to Constitute a Termination for Convenience**

32 If the Contract is terminated for grounds which are later determined not to justify a termination for
33 default, such termination shall be deemed to constitute a termination for convenience pursuant to
34 Article 15.

35 **16.2.2.5 Damages Resulting From Design-Builder's Breach or Failure to Perform**

36 If WSDOT suffers damages as a result of Design-Builder's breach or failure to perform an
37 obligation under the Contract Documents, then WSDOT shall be entitled to recovery of such
38 damages from Design-Builder regardless of whether the breach or failure that gives rise to the
39 damages ripens into an Event of Default.

1 **16.2.2.6 Cumulative Remedies**

2 The exercise or beginning of the exercise by WSDOT of any one or more rights or remedies under
3 this Section 16.2 shall not preclude the simultaneous or later exercise by WSDOT of any or all
4 other rights or remedies, each of which shall be cumulative.

5 **16.2.2.7 Continued Liability of Design-Builder and Surety**

6 Design-Builder and Surety shall not be relieved of liability for continuing Liquidated Damages on
7 account of a default by Design-Builder hereunder or by WSDOT's declaration of an Event of
8 Default, or by actions taken by WSDOT under this Section 16.2.

9 **16.2.2.8 Consequential Damages**

10 Under no circumstances will either party be entitled to consequential damages arising out of the
11 other's performance of (or failure to perform) under the Contract Documents, and each party
12 hereby releases the other from such liability, provided that this limitation shall not excuse liability for
13 fraud, gross negligence, intentional misconduct, or criminal acts and shall not limit the parties'
14 ability to obtain recovery for liabilities, costs and losses covered by the insurance required
15 hereunder. The term "consequential damages" shall mean those special, indirect or incidental
16 damages that do not flow directly and immediately from an injurious act but that result indirectly
17 from an action or failure to act, such as revenue losses, loss of use, cost of capital, debt service,
18 loss of profit on related contracts, administrative costs, loss of bonding capacity, lost opportunity,
19 claims of taxpayers and other indirect damage. Liabilities, costs and losses incurred by either
20 party due to failure by the other to procure and maintain insurance policies required hereunder, as
21 well as any amounts that this Contract expressly states are to be reimbursed from one party to the
22 other (including interest, late charges, fees, penalties, and similar charges), shall be considered
23 direct damages. This provision shall apply to limit liability under actions brought under any theory
24 of law, including actions in tort (including negligence) as well as in contract.

25 **16.3 Right to Stop Work If Undisputed Payment Is Not Made**

26 Design-Builder shall have the right to stop Work if WSDOT fails to make an undisputed payment
27 when due under Section 10.2 within seven days after receipt of notice of nonpayment. Any such
28 Work stoppage shall be considered a suspension under Section 14.1. Design-Builder shall not
29 have the right to terminate the Contract for default as the result of any failure by WSDOT to make
30 an undisputed payment due hereunder, but Design-Builder shall have the right to declare a
31 termination for convenience under Article 15 upon meeting the requirements of Section 15.15.

1 **17. LIQUIDATED DAMAGES**

2 Delays in completion of the Work and lane closures at times and in locations not consistent with
3 the requirements of the Contract Documents result in inconvenience to the traveling public,
4 obstruct traffic, interfere with and delay commerce, and increase risk to highway users. In addition,
5 delays in meeting Contract milestones cause additional delays to other WSDOT contractors whose
6 work interfaces with the Project. Delays and lane closures cost taxpayers and the City of Seattle
7 undue sums of money, adding time needed for administration, engineering, inspection, and
8 supervision. Accordingly, the parties agree to liquidate damages for delays in completion of the
9 Work, delays in opening lanes, ramps or streets, and failure to meet certain Contract milestones,
10 as specified herein. WSDOT acknowledges and agrees that the sole damages owing by Design-
11 Builder to WSDOT for such delays shall be the liquidated amounts specified herein.

12 **17.1 Damages for Late Completion**

13 In the event that Design-Builder fails to meet the Completion Deadlines specified herein, Design-
14 Builder agrees to pay WSDOT Liquidated Damages in the following amounts:

- 15 (a) For Design-Builder's failure to achieve Substantial Completion by the applicable
16 deadline: \$50,000 per day until 1,905 days after the effective date of NTP 2, plus
17 \$100,000 per day if Substantial Completion is not achieved on or before 1,905 days
18 after the effective date of NTP 2, for each day of delay thereafter, until the earlier to
19 occur of the date Substantial Completion is achieved or two years after the deadline;
- 20 (b) For failure to achieve Physical Completion by the applicable deadline: \$7,600.00
21 per day until the date Physical Completion is achieved; and
- 22 (c) For failure to achieve Final Completion by the applicable deadline: \$3,800.00 per
23 day until the date Final Completion is achieved.

24 WSDOT is authorized to deduct these Liquidated Damages from any money due or coming to
25 Design-Builder.

26 Liquidated Damages will not be assessed for any days for which an extension of time is granted.
27 No deduction or payment of Liquidated Damages will, in any degree, release Design-Builder from
28 its obligations and liabilities pursuant to the Contract Documents, other than the obligation to pay
29 damages for delay.

30 **17.2 Liquidated Damages for Failure to Open Lanes**

31 In addition to any Liquidated Damages that may be payable by Design-Builder under Section 17.1,
32 Design-Builder agrees to pay WSDOT Liquidated Damages in the following amounts in the event
33 of any failure of Design-Builder to open any lane, ramp or street by the scheduled opening times
34 specified in TR Section 2.22:

- 35 (a) For lanes on SR 99: \$900.00 for each lane for each 5 minutes (or fraction thereof)
36 that the lane is closed beyond the scheduled opening time
- 37 (b) For full northbound or southbound lanes on SR 99: \$1,000.00 for each lane for
38 each 15 minutes (or fraction thereof) that the lane is closed beyond the scheduled
39 opening time;
- 40 (c) For ramps: for each ramp for each 15 minutes of delay (or fraction thereof) that the
41 ramp is closed beyond the scheduled opening time; and

1 (d) For streets identified in TR Section 2.22 (that is, local principal arterials, 1st Avenue,
 2 3rd Avenue, 5th Avenue, and Virginia Street) : \$350.00 for each street for each 15
 3 minutes of delay (or fraction thereof) that any portion of the street is closed beyond
 4 the scheduled opening time.

5 Design-Builder authorizes WSDOT to deduct these liquidated damages from any money due or
 6 coming due to Design-Builder.

7 **17.3 Liquidated Damages for Failure to Meet Contract Milestones**

8 In addition to any Liquidated Damages that may be payable by Design-Builder under Sections 17.1
 9 and 17.2, Design-Builder agrees to pay WSDOT Liquidated Damages in the event that Design-
 10 Builder fails to meet certain Contract milestones, as follows:
 11

Milestone Description	Amount
North Construction Area	
Failure to coordinate and finalize design concept with North Access Contractor by October 1, 2012	\$1,300.00 per day from October 1, 2012 until the date design concept is finalized
For failure to achieve Stage II Handback (completion of support of excavation walls) and relinquish the Seattle maintenance yard staging area to the North Access Contractor by December 1, 2014	\$1,000.00 per day from December 1, 2014 until the date Handback is achieved and staging area is relinquished
For failure to allow others access to tunnel operations buildings and/or cut-and-cover structures (to pull wire and install equipment upon completion of North Access Contractor's work) by January 1, 2016	\$1,000.00 per day for each tunnel operation building and cut-and-cover structure for which access is not provided, from January 1, 2016 until the date access is provided
South Construction Area	
For failure to coordinate and finalize design concept for interface with the South Access Contractor by January 1, 2013	\$1,600.00 per day from January 1, 2013 until the date design concept is finalized
For failure to achieve Stage I Handback and relinquish the south end of the WOSCA Site staging area to others by August 1, 2013	\$1,300.00 per day from August 1, 2013 until the date Handback is achieved and staging area is relinquished
For failure to achieve Stage II Handback and relinquish the WOSCA Site staging area (south of Dearborn Street) to the South Access Contractor by January 1, 2016	\$1,200.00 per day from January 1, 2016 until the date Handback is achieved and staging area is relinquished

Milestone Description	Amount
For failure to allow others access to tunnel operations buildings and/or cut-and-cover structures (to pull wire and install equipment) by January 1, 2016	\$1,200.00 per day for each tunnel operation building and/or cut-and-cover structure for which access is not provided, from January 1, 2016 until the date access is provided
For failure to achieve Stage III Handback and relinquish the remainder of the WOSCA Site staging area to the South Access Contractor by May 1, 2016	\$1,200.00 per day from May 1, 2016 until the date Handback is achieved and staging area is relinquished
For failure to achieve Stage IV Handback and turn over the remainder of the surface work area to the South Access Contractor (to tie the roadway with the tunnel) by November 1, 2016	\$100,000.00 per day from November 1, 2016 until the date Handback is achieved and staging area is relinquished

1

1 **18. INDEMNIFICATION**

2 **18.1 Indemnifications by Design-Builder**

3 **18.1.1 General Indemnities**

4 Subject to Section 18.1.3, Design-Builder shall release, indemnify, defend and hold harmless the
5 State, WSDOT, the City, Governor, Commission, Secretary, and all officers and employees of the
6 State and the City, the State's and the City's agents, consultants, and their respective successors
7 and assigns and their respective shareholders, officers, directors, agents and employees
8 (collectively referred to as the "Indemnified Parties") from and against any and all claims, causes of
9 action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines,
10 damages, losses, liabilities, costs and expenses, including any injury to or death of persons or
11 damage to or loss of property (including damage to utility facilities), and including attorneys',
12 accountants' and expert witness fees and costs, arising out of, relating to or resulting from:

- 13 (a) The breach or alleged breach of the Contract Documents by any DB-Related Entity;
- 14 (b) The failure or alleged failure by any DB-Related Entity to comply with any applicable
15 Environmental Laws or other Laws (including Laws regarding handling, generation,
16 treatment, storage, transportation and disposal of Hazardous Materials) or
17 Governmental Approvals in performing the Work;
- 18 (c) Any alleged patent or copyright infringement or other allegedly improper
19 appropriation or use of trade secrets, patents, proprietary information, know-how,
20 copyright rights or inventions in performance of the Work, or arising out of any use
21 in connection with the Project of methods, processes, designs, information or other
22 items furnished or communicated to WSDOT or another Indemnified Party pursuant
23 to the Contract Documents; provided that this indemnity shall not apply to any
24 infringement resulting from WSDOT's failure to comply with specific written
25 instructions regarding use provided to WSDOT by Design-Builder;
- 26 (d) The alleged negligent act or omission or willful misconduct of any DB-Related Entity;
- 27 (e) Any and all claims by any governmental or taxing authority claiming taxes based on
28 gross receipts, purchases or sales, or the use of any property or income of Design-
29 Builder or any of its Subcontractors or suppliers or any of their respective agents,
30 officers or employees with respect to any payment for the Work made to or earned
31 by any DB-Related Entity;
- 32 (f) Any and all stop notices and/or Liens filed in connection with the Work, including all
33 expenses and attorneys', accountants' and expert witness fees and costs incurred in
34 discharging any stop notice or Lien, provided that WSDOT is not in default in
35 payments owing to Design-Builder with respect to such Work;
- 36 (g) Any spill or release or threatened spill or release of a Hazardous Material
37 (i) attributable to the negligence, willful misconduct or breach of contract by any DB-
38 Related Entity, or (ii) which was brought onto the Site by any DB-Related Entity;
39 and/or
- 40 (h) The claim or assertion by any contractor of inconvenience, disruption, delay or loss
41 caused by interference by any DB-Related Entity with or hindering the progress or
42 completion of work being performed by other contractors as described in Article 6,
43 or failure of any DB-Related Entity to cooperate reasonably with other contractors in
44 accordance therewith.

1 **18.1.2 Design Defects**

2 Subject to Section 18.1.3, Design-Builder shall release, indemnify, defend and hold harmless the
3 Indemnified Parties from and against any and all claims, causes of action, suits, judgments,
4 investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities,
5 costs and expenses, including any injury to or death of persons or damage to or loss of property
6 (including damage to utility facilities), and including attorneys', accountants' and expert witness
7 fees and costs, arising out of, relating to or resulting from errors, omissions, deficiencies or defects
8 in the Design Documents, regardless of whether such errors, omissions, deficiencies or defects
9 were also included in the Basic Configuration, Conceptual Design or Reference Documents.
10 Design-Builder agrees that, because the Basic Configuration, Conceptual Design and Reference
11 Documents are necessarily subject to validation, review and modification by Design-Builder, it is
12 appropriate for Design-Builder to assume liability for errors, omissions, deficiencies or defects in
13 the completed Project even though they may be related to errors, omissions, deficiencies or
14 defects in the Basic Configuration, Conceptual Design or Reference Documents.

15 **18.1.3 Losses Due to Negligence of Indemnified Parties**

16 Design-Builder's obligation to indemnify, defend, or save harmless an Indemnified Party under
17 Sections 18.1.1 and 18.1.2 shall not extend to any loss, damage or cost to the extent that such
18 loss, damage or cost was caused by the sole negligence or willful misconduct of such Indemnified
19 Party or its agents, servants or independent contractors who are directly responsible to such
20 Indemnified Party.

21 **18.1.4 Claims by Employees**

22 In claims by an employee of Design-Builder, a Subcontractor, a supplier, anyone directly or
23 indirectly employed by them or anyone for whose acts they may be liable, the indemnification
24 obligation under this Section 18.1 shall not be limited by any limitation on the amount or type of
25 damages, compensation or benefits payable by or for Design-Builder or a Subcontractor or
26 supplier under the Washington State Industrial Insurance Act, Title 51 RCW, workers'
27 compensation, disability benefit or any other employee benefits laws. In addition, for purposes of
28 indemnification only, Design-Builder specifically and expressly waives any immunity that may be
29 granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Design-Builder's
30 waiver of immunity by the provisions of this Section 18 does not extend to claims by Design-
31 Builder's employees directly against Design-Builder.

32 **18.2 Responsibility of WSDOT for Certain Hazardous Materials**

33 **18.2.1 Pre-Existing Site Contamination**

34 Except with respect to Design-Builder's responsibilities regarding Hazardous Materials pursuant to
35 Section 18.1.1(g), WSDOT shall indemnify, protect, defend and hold harmless DB-Related Entities
36 from all third party claims (including claims for response and remediation costs, administrative
37 costs, fines, charges, penalties, attorney fees and cost recovery or similar actions brought by a
38 governmental or private party, including third party tort liability) arising, directly or indirectly, from
39 any presence or release of any Hazardous Materials within the Project Right of Way. Except for
40 Hazardous Materials for which Design-Builder is responsible as described in Section 18.1.1(g),
41 without contradiction of any assertion by WSDOT of third party liability, and for purposes of this
42 Contract only, (a) Design-Builder shall not be required to execute any hazardous waste manifests
43 as a "generator", and (b) Hazardous Materials encountered in the performance of the Work shall

1 be disposed of, if at all, utilizing an EPA identification number or other appropriate legal device
2 obtained by, and carried in the name of, WSDOT or another Person designated by WSDOT.

3 **18.2.2 Temporary Water Pollution / Erosion Control**

4 In an effort to prevent, control, and stop water pollution and erosion within the Project, thereby
5 protecting the Work, nearby land, streams, and other bodies of water, Design-Builder shall perform
6 all Work in strict accordance with all applicable Laws governing waters of the State, as well as
7 permits acquired for the Project.

8 Design-Builder shall perform all temporary water pollution/erosion control measures shown in the
9 Contract Documents, Released For Construction Documents, or as ordered by WSDOT as Work
10 proceeds.

11 **18.3 No Effect on Other Rights**

12 The obligations described in this Article 18 shall not be construed to limit rights and obligations
13 provided by law or equity which would otherwise exist in favor of a party indemnified hereunder.

14 **18.4 CERCLA Agreement**

15 Without limiting their generality, the indemnities set forth in Section 18.1.1(g) are intended to
16 operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental
17 Response, Compensation and Liability Act, 42 U. S. C. Section 9607(e), to insure, protect, hold
18 harmless and indemnify the Indemnified Parties.

19 **18.5 Intent of Indemnity for Breach of Contract**

20 The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(a) is
21 intended to provide protection to WSDOT with respect to third party claims associated with such
22 breach. It is not intended to provide WSDOT with an alternative cause of action for damages
23 incurred directly by WSDOT with respect to such breach.

24

1 **19. SURETY BONDS**

2 Design-Builder shall provide a Performance Bond and a Payment Bond, each in the amount of
3 \$500,000,000. Said bonds shall be in the forms attached hereto as Appendices 10-A and 10-B.
4 Each bond required hereunder shall be provided by a Surety:

- 5 (a) registered with the Washington State Insurance Commissioner,
- 6 (b) appearing on the current Authorized Insurance List in the State of Washington
7 published by the Office of the Insurance Commissioner, and
- 8 (c) with an A.M. Best and Company rating level of A- or better and Class IX or better, or
9 as otherwise approved by WSDOT in its sole discretion.

10 WSDOT may require any Sureties to appear and qualify themselves at any time. If WSDOT
11 determines that a Surety is not qualified, WSDOT may, upon written demand, require Design-
12 Builder to furnish a replacement bond or bonds from a qualified Surety. Until the replacement
13 bond or bonds are furnished, payments on the Contract will stop.

1 **20. INSURANCE**

2 **20.1 Public Liability and Property Damage Insurance**

3 Design-Builder shall procure and maintain insurance as specified in this Article 20. The insurance
4 provided hereunder shall be available for the benefit of the Indemnified Parties and Design-Builder
5 with respect to covered claims, but shall not be interpreted to relieve Design-Builder of any
6 obligations hereunder. Unless otherwise specified in the Contract, all insurance required
7 hereunder shall be procured from insurance or indemnity companies with an A.M. Best and
8 Company rating level of A- or better, Class VIII or better, or as otherwise approved by WSDOT and
9 with companies or through sources approved by the State Insurance Commissioner pursuant to
10 Chapter 48.05 RCW. If an insurer is not an admitted carrier (unauthorized insurer), the insurance
11 policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW
12 and 284-15 WAC. Unless otherwise indicated below, the policies shall be kept in force from the
13 Effective Date until the date of Final Acceptance, as determined pursuant to Section 21.5.

14 **20.2 Minimum Insurance Requirements**

15 **20.2.1 Workers' Compensation**

16 Design-Builder shall provide industrial insurance and medical aid as required under Title 51 RCW.
17 Design-Builder shall also provide coverage for claims asserted under the Longshore and Harbor
18 Workers Compensation Act (LHWCA) and the Jones Act, as required. Design-Builder shall
19 maintain such insurance through the expiration of the Warranty periods described in Article 22.
20 Design-Builder shall be the named insured on these policies. If Design-Builder is self-insured
21 under Title 51 RCW, it shall also provide an endorsement extending coverage to all State
22 operations on an "if any" basis.

23 **20.2.2 Commercial General Liability**

24 Design-Builder shall provide commercial general liability coverage, on a primary basis, for bodily
25 injury, property damage, personal injury and advertising injury liability written on an occurrence
26 form that shall be no less comprehensive and no more restrictive than the coverage provided by
27 Insurance Services Office (ISO) form CG 00 01 12 04. Design-Builder shall maintain such
28 insurance through the expiration of the Warranty periods described in Article 22, unless otherwise
29 specified herein.

30 The commercial general liability insurance shall include, but not be limited to, coverage for liability
31 arising out of: (i) fire legal liability (not less than the replacement value of the portion of the
32 premises occupied); (ii) blanket contractual; (iii) independent contractors; (iv) premises operations;
33 (v) products and completed operations for a minimum of six years following Final Completion; and
34 (vi) the acts, errors and omissions in the rendering or failure to render professional services under
35 the Contract Documents or in the performance of the Work. This coverage shall have an annual
36 minimum limit of \$2,000,000 per occurrence, \$4,000,000 general annual aggregate and
37 \$4,000,000 products/completed operations aggregate. If commercial general liability insurance
38 with a general aggregate limit and products and completed operations aggregate limit is used, then
39 both the general liability and products/completed operations aggregate limits shall apply separately
40 and exclusively to the Project, or Design-Builder may obtain separate insurance to provide the
41 required limit which shall not be subject to depletion because of claims arising out of any other
42 project or activity of Design-Builder.

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

5 Design-Builder shall be the named insured and each of the Indemnified Parties shall be additional
6 insureds with respect to liability arising out of the Project or any acts, errors or omissions of any
7 DB-Related Entity, whether occurring on or off of the Site.

8 **20.2.3 Automobile Liability**

9 Design-Builder shall provide comprehensive automobile liability insurance covering the ownership,
10 maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of
11 the Work, both on and off the Site, including loading and unloading, with limits of not less than
12 \$1,000,000 per accident, combined single limit for bodily injury and property damage liability.
13 Design-Builder shall maintain such insurance through Final Completion; provided, however, that
14 such coverage shall be maintained for vehicles used in the performance of Warranty Work until the
15 expiration of the Warranty periods described in Article 22. Coverage shall be provided on
16 Insurance Services Office form number CA 0001 or an equivalent and shall include endorsement
17 CA9948 (in transit pollution risks coverage). Design-Builder shall be the named insured and the
18 Indemnified Parties shall be additional insureds with respect to liability arising out of the Project or
19 any acts, errors, or omissions of any DB-Related Entity. The required limits can be satisfied by a
20 combination of a primary policy and an excess policy.

21 **20.2.4 Environmental Liability**

22 Design-Builder shall provide environmental liability coverage on a claims made basis with limits of
23 not less than \$100,000,000 per claim and aggregate. The policy shall include as insureds
24 WSDOT, Design-Builder and any of its Subcontractors (including design subconsultants) at any tier
25 performing Work for which such coverage is appropriate. The remaining Indemnified Parties shall
26 be additional insureds with respect to liability arising out of the Project or any acts, errors or
27 omissions of any DB-Related Entity, whether occurring on or off of the Site. The policy shall have
28 a five year extended reporting period and cover claims made on and prior to Final Completion and
29 claims made after Final Completion but within the extended reporting period. The required limits
30 shall be satisfied by a combination of a primary policy and an excess policy.

31 **20.2.5 Excess Liability Insurance**

32 Design-Builder shall provide excess liability insurance with limits not less than \$200,000,000 which
33 will provide coverage at least as broad as the primary coverages set forth herein, including
34 Workers’ Compensation, Commercial General Liability, Automobile Liability, and Aircraft Liability, in
35 excess of the amounts set forth in Sections 20.2.1 (for Jones Act and LHWCA liability), 20.2.2,
36 20.2.3 and 20.2.9, respectively. The Indemnified Parties shall be additional insureds with respect
37 to liability arising out of the Project or any acts, errors or omissions of any DB-Related Entity,
38 whether occurring on or off the Site.

39 **20.2.6 Professional Liability Insurance**

40 Design-Builder shall provide professional liability coverage with limits not less than \$25,000,000
41 per claim and aggregate. The professional liability coverage shall protect against any negligent
42 act, error or omission arising out of design or engineering activities with respect to the Project. The
43 policy shall be a Project-specific policy, shall have a retroactive date no later than February 26,

2010, and shall remain in place through the date of Final Acceptance, as determined pursuant to Section 21.5. The policy shall have an extended reporting period of not less than ten years from the date of binding of coverage. The coverage shall include design subconsultants at any tier. This policy may be in excess of the coverage provided for claims which may also be covered pursuant to the commercial general liability policy required in Section 20.2.2 above. The coverage shall also include an indemnity endorsement to provide coverage for the Indemnified Parties for liability arising out of the activities or any act, error, or omission of any DB-Related Entity providing professional services hereunder.

20.2.7 Builder's Risk

Design-Builder shall procure and maintain builder's risk insurance to include the interests of Design-Builder, all Subcontractors (excluding those solely responsible for design Work) at any tier, WSDOT and the Indemnified Parties, as their interests may appear. The insurance shall be maintained until the date of Final Completion; provided that Design-Builder shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to WSDOT.

(a) Minimum Scope

The policy shall be written by insurers authorized to conduct business in the State of Washington with a minimum A.M. Best's Rating of A-, Class X and be written on a builder's risk "all risk" form for the entire Project including: (i) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, materials, omission or deficiency in design or specifications; (ii) coverage against damage or loss caused by earth movement, flood, fire, theft, vandalism and malicious mischief and accidental breakdown of machinery; (iii) coverage during operational testing; (iv) coverage for removal of debris; (v) coverage for buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (vi) transit coverage, including ocean marine coverage (unless insured by the supplier); and (vii) sub-limits sufficient to insure the full replacement value of any key equipment item, including the TBM.

(b) Minimum Policy Limits

The policy shall have a minimum policy limit of \$500,000,000, except for earth movement and flood coverage shall be insured to the probable maximum loss of the Project and the components thereof, plus "soft cost expense cover" (including additional construction financing interest, construction loan fees, engineering/architectural expenses/fees, insurance premiums, accounting fees, project administration expenses, attorneys' fees and fees and other costs associated with such damage or loss and with any Governmental Approvals). The earth movement probable maximum loss shall be determined by a consultant acceptable to the Design-Builder and WSDOT but shall not be less than \$100 million in aggregate limit for the project term.

Such insurance shall be in a form acceptable to WSDOT.

In satisfaction of the requirements of subsection (vi) above concerning "ocean marine coverage," Design-Builder may obtain separate ocean marine insurance on an "all risk" basis known as "Institute Cargo Clauses (A)," including war, riots and strikes, covering all materials and equipment associated with the Work at full replacement value while in transit, shipment and/or moorage until the date of Final Completion.

In any policies procured pursuant to this subsection, deductibles or self-insured retentions shall be no greater than (i) \$100,000 for earth movement and flood perils and (ii) 2 percent of the total value of each insured unit at the time of loss for all other perils.

1 (c) Contractor's Equipment

2 Contractor shall maintain All Risk Equipment Insurance covering all risk of physical damage to
3 equipment provided for use at the Project site by Design-Builder and/or Subcontractors of any tier,
4 including the TBM, whether owned, leased, rented, borrowed or used at the Project site. Design-
5 Builder agrees to waive and does hereby waive its rights of recovery against the Indemnified
6 Parties and each of their officers, employees, consultants, agencies and agents, as to any damage
7 or loss which may occur to its equipment. Design-Builder will have the insurance company along
8 with any DB-Related Entity specifically agree to this waiver. Design-Builder shall have the
9 insurance company specifically agree to this waiver. If uninsured, Design-Builder shall defend and
10 hold harmless the Indemnified Parties and each of its officers, employees, consultants, agencies
11 and agents for loss or damage to its tools and equipment.

12 **20.2.8 Railroad Protective**

13 Design-Builder shall provide any coverage as may be required by any railroad as a condition of the
14 railroad's consent for entry onto railroad facilities or property. Said policy shall be effective during
15 the period any Work is being performed within 50 feet of any railroad right of way.

16 **20.2.9 Aircraft Liability**

17 Design-Builder shall provide insurance, with a limit of not less than \$5,000,000 per occurrence, in
18 all cases where any aircraft is used on the Project that is owned, leased or chartered by any DB-
19 Related Entity, protecting against claims for damages resulting from such use. Any aircraft
20 intended for use in performance of the Work, the aircraft crew, flight path and altitude, including
21 landing of any aircraft on the Site or on any property owned by WSDOT shall be subject to review
22 and written acceptance by WSDOT prior to occurrence of any such usage. If any aircraft are
23 leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be
24 acceptable but must be provided prior to use of the aircraft. The Indemnified Parties shall be
25 additional insureds with respect to liability arising out of the Project or any acts, errors or omissions
26 of any DB-Related Entity, whether occurring on or off the Site.

27 **20.2.10 Marine Liability**

28 Design-Builder shall provide marine protection and indemnity (P&I) insurance for all liabilities
29 arising out of the operation of a watercraft or vessel used on the Project that is owned, leased or
30 chartered by any DB-Related Entity. In the event that marine related activities are to be performed
31 exclusively by Subcontractors, Design-Builder shall require such Subcontractors to satisfy the
32 requirements of this Section 20.2.10. The policy shall include, among other things, coverage for
33 bodily injury, illness and/or loss of life to any person or crew member (including any and all claims
34 arising pursuant to the Jones Act and claims for maintenance and cure), damage to cargo while
35 loading, carrying or unloading cargo, damage to piers and docks, pollution liability, and removal of
36 wreckage as required by law. Such coverage shall have primary limits of not less than \$5,000,000
37 per occurrence, and excess limits of not less than \$10,000,000 and shall be required in all cases
38 where any watercraft or vessel is used on the Project that is owned, leased or chartered by any
39 DB-Related Entity. If any watercraft or vessels are leased or chartered with crew, evidence of non-
40 owned watercraft liability ("Charterer's Liability") insurance complying with the requirements of this
41 Section 20.2.10 will be acceptable but must be provided to WSDOT prior to use of the watercraft or
42 vessel. The Indemnified Parties shall be additional insureds with respect to liability arising out of
43 the Project or any acts, errors or omissions of any DB-Related Entity, whether occurring on or off
44 the Site.

1 **20.2.11 Owners and Contractors Protective (OCP) Liability Insurance**

2 Design-Builder shall provide owners and contractors protective (OCP) liability insurance, with a
3 limit of not less than \$10,000,000 per occurrence and in the aggregate on an annual basis,
4 providing bodily injury and property damage liability coverage until the Final Acceptance date, as
5 determined pursuant to Section 21.5, under Insurance Services Office form CG 0009, together with
6 WSDOT Amendatory Endorsement No. CG 29 08, specifying the State of Washington as named
7 insured.

8 **20.3 General Insurance Requirements**

9 **20.3.1 Premiums, Deductibles and Self-Insured Retentions**

10 Design-Builder shall be responsible for payment of premiums for all insurance required under this
11 Article 20. Design-Builder further agrees that for each claim, suit or action made against insurance
12 provided hereunder, with respect to all matters for which Design-Builder is responsible hereunder,
13 Design-Builder shall be solely responsible for all deductibles, self-insured retentions and amounts
14 in excess of the coverage provided. Any deductibles or self-insured retentions shall not exceed
15 \$100,000, unless otherwise provided in this Article 20. Any deductibles or self insured retentions
16 shall not apply to WSDOT or the Indemnified Parties. Design-Builder shall procure a bond
17 acceptable to WSDOT guaranteeing payment of losses and related investigations, claims
18 administration and defense expenses.

19 **20.3.2 Verification of Coverage**

20 Design-Builder shall file with WSDOT, Contract Payment Section, P.O. Box 47420, Olympia, WA
21 98504-7420, certified copies of all policies required hereunder evidencing the minimum insurance
22 coverages required to be provided, at least 30 days prior to the date such insurance is required to
23 be provided hereunder. WSDOT shall have no duty to pay or perform under the Contract
24 Documents until such policies, in compliance with all requirements of this Article 20, have been
25 provided. By accepting the policies as required hereunder, WSDOT does not acknowledge or
26 represent that the insurance requirements of Article 20 have been satisfied. WSDOT expressly
27 reserves all rights against the Design-Builder to assert claims for breach of the terms and
28 conditions of this Article 20 at any time in the future. Design-Builder shall promptly deliver to
29 WSDOT a certificate of insurance with respect to each renewal policy, as necessary to
30 demonstrate the maintenance of the required insurance coverages for the terms specified herein.
31 Such certificates shall be delivered to WSDOT not less than 45 days prior to the expiration date of
32 any policy and bear a notation evidencing payment of the premium therefore. If requested by
33 WSDOT from time to time, certified duplicate copies of any renewal policy shall also be provided.

34 **20.3.3 Subcontractor Insurance Requirements**

35 Design-Builder shall cause each Subcontractor to provide and maintain insurance that complies
36 with the requirements for Design-Builder-provided insurance set forth in this Article 20 in
37 circumstances where the Subcontractor is not covered by Design-Builder-provided insurance;
38 provided that Design-Builder shall have sole responsibility for determining the limits of coverage
39 required to be obtained by Subcontractors (if any), which determination shall be made in
40 accordance with reasonable and prudent business practices. Design-Builder shall cause each
41 such Subcontractor to include each of the Indemnified Parties as additional insureds under such
42 Subcontractors' insurance policies obtained pursuant to Sections 20.2.2, 20.2.3, 20.2.4, 20.2.5,
43 20.2.8, 20.2.9 and 20.2.10 above. Design-Builder shall require each such Subcontractor to require
44 that its insurer agree to waive any subrogation rights the insurers may have against the

1 Indemnified Parties. If requested by WSDOT, Design-Builder shall promptly provide certificates of
2 insurance evidencing coverage for each Subcontractor. WSDOT shall have the right to contact the
3 Subcontractors directly in order to verify the above coverage.

4 **20.3.4 Endorsements and Waivers**

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

- 8 (a) For claims covered by the insurance specified herein, all insurance coverage shall
9 be primary insurance and non-contributory with respect to the named insureds,
10 additional insureds, and their respective members, directors, officers, employees,
11 agents and consultants, and shall specify that coverage continues notwithstanding
12 the fact that Design-Builder has left the Site. Any insurance or self-insurance
13 beyond that specified in this Contract that is maintained by an insured, additional
14 Indemnified Party, or their members, directors, officers, employees, agents and
15 consultants shall be in excess of, and shall not contribute with, the insurance
16 required herein.
- 17 (b) Any liability failure on the part of a named insured to comply with reporting
18 provisions or other conditions of the policies, any breach of warranty, any action or
19 inaction of a named insured or others, any foreclosure relating to the Project or any
20 change in ownership of all or any portion of the Project shall not affect coverage
21 provided to the other insureds or additional insureds (and their respective members,
22 directors, officers, employees, agents and consultants).
- 23 (c) All insurance to be provided herein shall include a "separation of insureds" clause
24 and shall apply separately to each insured and additional insured against whom a
25 claim is made or suit is brought, except with respect to the limits of the insurer's
26 liability. No policy shall contain any provision or exclusion (including a "cross-
27 liability" or similar exclusion) that in effect would prevent, bar, or otherwise preclude
28 any insured or additional insured under the policy from making a claim that would
29 otherwise be covered by such policy on the grounds that the claim is brought by an
30 insured or additional insured against an insured or additional insured under the
31 policy. The requirements of this subsection do not apply to claims by Design-
32 Builder against any of its Subcontractors or suppliers or to claims between
33 Subcontractors and/or suppliers.
- 34 (d) Each policy shall be endorsed to state that coverage shall not be suspended,
35 voided, canceled, modified or reduced in coverage or in limits except after 45 days
36 (ten days for non-payment of premium) prior written notice by certified mail, return
37 receipt requested, has been given to WSDOT. Such endorsement shall not include
38 any limitation of liability of the insurer for failure to provide such notice.
- 39 (e) All endorsements adding additional insureds to required policies shall be on form
40 CG-20-10 (1985 edition) or an equivalent form and shall contain no limitations or
41 exclusions with respect to "products/completed operations" coverage. The
42 coverage shall be primary and non contributory with respect to any other insurance
43 maintained by the additional insured. Any insurance or self-insurance that is
44 maintained by an additional insured, or their members, directors, officers,
45 employees, agents and consultants shall be in excess of, and shall not contribute
46 with, the insurance required herein.

- 1 (f) The automobile liability insurance policy shall be endorsed to include Motor Carrier
2 Act Endorsement-Hazardous materials clean up (MCS-90) or its equivalent.
- 3 (g) Each policy shall provide coverage on an "occurrence" basis and not a "claims
4 made" basis (with the exception of professional liability and earth movement
5 policies).

6 **20.3.5 Waivers of Subrogation**

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

18 **20.3.6 Changes in Requirements**

19 WSDOT shall notify Design-Builder in writing of any changes in the requirements applicable to
20 insurance required to be provided by Design-Builder. Except as set forth in this Section 20.3, any
21 additional cost from such change shall be paid by WSDOT and any reduction in cost shall reduce
22 the Lump Sum Amount pursuant to a Change Order.

23 **20.3.7 No Recourse**

24 All costs for insurance shall be considered incidental to and included in compensation allowed
25 hereunder and no additional payment will be made by WSDOT unless expressly specified in this
26 Section 20.3.

27 **20.3.8 Support of Indemnifications**

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

30 **20.3.9 Commercial Unavailability of Required Coverages**

31 If, through no fault of Design-Builder, any of the coverages required in this Article 20 (or any of the
32 required terms of such coverages, including policy limits) become unavailable or are available only
33 with commercially unreasonable premiums, WSDOT will consider in good faith alternative
34 insurance packages and programs proposed by Design-Builder, with the goal of reaching
35 agreement on a package providing coverage equivalent to that specified herein. Design-Builder
36 must demonstrate to WSDOT's reasonable satisfaction that it has used diligent efforts in the global
37 insurance markets to obtain the required insurance coverages, and shall advise WSDOT of the
38 specific results of those efforts. Design-Builder shall not be entitled to any increase in its
39 compensation for increased costs resulting from the unavailability of coverage and the requirement
40 to provide acceptable alternatives. WSDOT shall be entitled to a reduction in the Lump Sum
41 Amount if WSDOT agrees to accept alternative policies providing less than equivalent coverage,
42 with the amount to be determined by extrapolation using the insurance quotes included in the

1 Escrowed Proposal Documents escrowed pursuant to Section 25.1 (or based on other evidence of
2 insurance premiums as of the Proposal Date if the Escrowed Proposal Documents do not provide
3 adequate information).

4 **20.4 WSDOT's Right to Remedy Breach by Design-Builder**

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

11 **20.5 Insurance Proceeds and Prosecution of Claims**

12 Under certain circumstances, insurance policies required to be provided by WSDOT hereunder are
13 intended to provide compensation to Design-Builder for costs incurred by Design-Builder. Design-
14 Builder shall be responsible for processing all such claims and shall not be entitled to receive a
15 Change Order for any costs, which it could have recovered from the insurer. Design-Builder
16 agrees to report timely to the insurer(s) any and all matters, which may give rise to an insurance
17 claim and to promptly and diligently pursue any and all insurance claims on behalf of WSDOT,
18 whether for defense or indemnity or both. WSDOT agrees to promptly notify Design-Builder of
19 WSDOT's incidents, potential claims, and matters which may give rise to an insurance claim by
20 WSDOT, to tender its defense or the claim to Design-Builder, and to cooperate with Design-Builder
21 as necessary for Design-Builder to fulfill its duties hereunder.

22 **20.6 Commencement of Work**

23 Design-Builder shall not commence Work under this Contract until it has obtained the insurance
24 required under this Article 20, has furnished original policies of insurance evidencing the required
25 coverage as required hereunder, nor shall Design-Builder allow any Subcontractor to commence
26 Work under any Subcontract until the insurance required of the Subcontractor has been obtained
27 and approved by Design-Builder.

28 *[Specific coverage requirements for the NTP 1 Work will be addressed by Addendum.]*

29 **20.7 Disclaimer**

30 Design-Builder and each Subcontractor shall have the responsibility to make sure that their
31 insurance programs fit their particular needs, and it is their responsibility to arrange for and secure
32 any insurance coverage which they deem advisable, whether or not specified herein. Nothing in
33 this Contract shall be construed as limiting in any way the extent to which Design-Builder may be
34 held responsible for any claims resulting from its performance of the work hereunder. Design-
35 Builder's obligations to procure insurance are separate and independent of its contractual defense
36 and indemnity obligations. The coverage limits set forth in Article 20 are minimum requirements
37 and WSDOT does not represent that the minimum coverages and limits required hereunder will
38 necessarily be adequate to protect Design-Builder.

39

1 **21. ACCEPTANCE OF PROJECT**

2 **21.1 Substantial Completion**

3 **21.1.1 Notice by Design-Builder**

4 As a pre-requisite to Substantial Completion, Design-Builder shall provide written notice to WSDOT
5 when all of the following have occurred with respect to the Project:

- 6 (a) Design-Builder has completed all Site Work such that WSDOT and the traveling
7 public have full and unrestricted use and benefit of the facilities from both the
8 operational and safety standpoint, and only minor incidental Work, replacement of
9 temporary substitute facilities, or correction or repair remains for the Physical
10 Completion;
- 11 (b) Design-Builder has ensured that all Work completed to achieve Substantial
12 Completion has been performed in accordance with the requirements of the
13 Contract Documents;
- 14 (c) Design-Builder has ensured that the facilities may be operated without damage to
15 the Project or any other property on or off the Project Site, and without injury to any
16 Person;
- 17 (d) Design-Builder has ensured that the Project is ready to be opened for traffic and that
18 remaining Work can be completed within single lane or shoulder closures in
19 accordance with the TR Section 2.22.

20 **21.1.2 Response by WSDOT**

21 Promptly after receipt of the notice required by Section 21.1.1, and in no event later than 30 days
22 thereafter, WSDOT shall advise Design-Builder in writing of any of the following of which WSDOT
23 has knowledge:

- 24 (a) Defects in the Work, and/or
25 (b) Deficiencies in the Project relating to the items described in clauses (a) through (d)
26 of Section 21.1.1, and/or
27 (c) Deviations of any installed equipment, materials and workmanship from the
28 requirements of the Contract Documents.

29 Design-Builder shall, at its own cost and expense, promptly correct such defects, deficiencies and
30 deviations.

31 **21.1.3 Notice of Substantial Completion**

32 Upon full compliance with items (a) through (d) listed above in this Section 21.1, WSDOT will issue
33 a Notice of Substantial Completion at such time as:

- 34 (a) Design-Builder has corrected, pursuant to the provisions of Section 21.1.2 all
35 defects, deficiencies and deviations with respect to the Project and WSDOT has
36 notified Design-Builder in writing of its acceptance (or waiver pending Final
37 Completion) of such corrections; provided that the items described in Section 21.1
38 shall not be required to be performed as a condition to Substantial Completion;

- 1 (b) Design-Builder has received all applicable Governmental Approvals required to be
2 obtained by Design-Builder pursuant to the Contract Documents; and
- 3 (c) A Punch List for the Project to be performed after Substantial Completion, has been
4 mutually agreed to by WSDOT and Design-Builder.

5 **21.2 Physical Completion**

6 Design-Builder shall achieve Physical Completion by the Physical Completion Deadline. Physical
7 Completion shall be deemed to have occurred when:

- 8 (a) Design-Builder has completed all Work required by the Contract Documents,
9 including all Punch List items, initial planting, and correction of any defects,
10 deficiencies and deviations with respect to the Project which were waived pending
11 Physical Completion;
- 12 (b) Design-Builder has satisfied all conditions to acceptance and has obtained all
13 design and construction approvals by Utility Owners; and
- 14 (c) Design-Builder has satisfied all requirements regarding Final Cleanup.

15 Design-Builder shall provide notice to WSDOT when all of the above referenced conditions have
16 been met. Upon receipt of the notice, WSDOT will perform Final Inspection pursuant to
17 Section 21.3. Should WSDOT identify any defects or deficiencies in the Work, Design-Builder shall
18 immediately remedy such defects or deficiencies at no additional cost. Upon full compliance with
19 items (a) through (d) listed above in this Section 21.2, WSDOT will give Design-Builder written
20 notice of the date of Physical Completion.

21 **21.3 Final Inspection**

22 WSDOT will not make the final inspection until the physical Work required by the Contract,
23 including Final Cleanup and all extra Work ordered by WSDOT, has been completed. The date of
24 Physical Completion will be determined as provided in Section 21.2.

25 **21.4 Final Completion**

26 WSDOT will give Design-Builder written notice of the date of Final Completion after all of Design-
27 Builder's obligations under the Contract (with the exception of Warranty work, if applicable) have
28 been performed by Design-Builder. The following events must occur before the date of Final
29 Completion can be established:

- 30 (a) The Work on the Project has been completed pursuant to the Contract Documents;
31 and
- 32 (b) Design-Builder has furnished all documentation required by the Contract Documents
33 and required by Law.

34 **21.5 Final Acceptance**

35 Design-Builder must perform all the obligations under the Contract before Final Acceptance can
36 occur. Failure of Design-Builder to achieve Final Acceptance shall not bar WSDOT from
37 unilaterally accepting the Contract as provided in Section 10.5.2. The Secretary accepts the
38 Project as complete and acknowledges the final amount due to Design-Builder by signature on the
39 Final Contract Voucher Certification. The date of that signature is the date of Final Acceptance.

1 Design-Builder agrees that neither Final Completion nor Final Acceptance shall relieve Design-
2 Builder of the responsibility to indemnify, defend, and protect WSDOT, its agents, their respective
3 successors and assigns and their respective shareholders, officers, directors, agents and
4 employees against any claim or loss resulting from the failure of Design-Builder (or any
5 Subcontractors) to pay all laborers, mechanics, suppliers, or any other Person who provides labor,
6 supplies, or provisions for carrying out the Work or for any payments required for unemployment
7 compensation under Title 50 RCW or for industrial insurance and medical aid required under Title
8 51 RCW.

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

15 **21.6 Overpayments; No Relief from Continuing Obligations**

16 Final Acceptance will not prevent WSDOT from correcting any measurement, estimate or
17 certificate made before or after completion of the Work, or from recovering from Design-Builder
18 and/or the Surety(ies) the amount of any overpayment sustained due to failure of Design-Builder to
19 fulfill the obligations under the Contract Documents. A waiver on the part of WSDOT of any breach
20 by Design-Builder shall not be held to be a waiver of any other or subsequent breach. Final
21 Acceptance shall not relieve Design-Builder from any of its continuing obligations hereunder, or
22 constitute any assumption of liability by WSDOT.

23 **21.7 Assignment of Causes of Action**

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

29

1 **22. WARRANTIES**

2 **22.1 Warranties by Design-Builder**

3 **22.1.1 Project Warranties**

4 Design-Builder warrants that:

- 5 (a) all design Work performed pursuant to the Contract Documents shall conform to all
6 professional engineering principles generally accepted as standards of the industry
7 in the State;
- 8 (b) the Project shall be free of defects, including design defects, deficiencies, errors and
9 omissions, except to the extent that such defects are inherent in prescriptive
10 specifications included in the Technical Requirements;
- 11 (c) materials and equipment incorporated into the Work shall be of good quality and,
12 when installed, shall be new;
- 13 (d) Equipment provided by Design-Builder shall be of modern design and in good
14 working condition;
- 15 (e) the Work shall meet all of the requirements of the Contract Documents;
- 16 (f) the specifications and/or drawings selected or prepared for use during construction
17 are appropriate for their intended use; and
- 18 (g) the Project shall be fit for use for the intended function.

19 **22.1.2 Project Warranty Term**

20 Warranties shall commence on the date that Physical Completion occurs. Subject to extension
21 under Section 22.2, the Warranties for the tunnel structure, the tunnel approach structure and all
22 systems, equipment, fixtures and other appurtenances of the tunnel structure and tunnel approach
23 structure shall remain in effect for a two-year period. Subject to Section 22.2, the Warranties for all
24 other Work shall remain in effect until the later of (a) one year from the date of Physical Completion
25 or (b) the Final Completion date. If any of the Work fails to meet the standards set forth in this
26 Section 22.1 at any time within the applicable warranty period, then Design-Builder shall correct
27 such Work in accordance with Section 22.1.3 below, even if the performance of such corrective
28 work extends beyond the stated warranty period.

29 **22.1.3 Corrective Work**

30 WSDOT, as the owner of the Project, shall have full authority to undertake enforcement of the
31 Warranties. Within seven days of receipt by Design-Builder of notice from WSDOT specifying a
32 failure of any of the Work to satisfy Design-Builder's Warranties, or of any Subcontractor warranty,
33 guarantee or obligation which Design-Builder is responsible to enforce, Design-Builder and
34 WSDOT shall mutually agree when and how Design-Builder shall remedy such violation; provided,
35 however, that in case of an emergency requiring immediate curative action, Design-Builder shall
36 implement such action as it deems necessary and shall notify WSDOT on an expedited decision.
37 Design-Builder and WSDOT shall agree on such remedy (or an alternative remedy, if necessary)
38 as soon as reasonably practicable. If Design-Builder does not use its best efforts to proceed to
39 effectuate such remedy within the agreed time, or if Design-Builder and WSDOT fail to reach such
40 an agreement within such seven-day period (or immediately, in the case of emergency conditions),
41 then WSDOT, after notice to Design-Builder, shall have the right to perform or have performed by

1 third parties the necessary remedy, and the costs thereof shall be borne by Design-Builder.
2 WSDOT may agree to accept Nonconforming Work in accordance with Section 5.6.2.

3 **22.1.4 Costs of Correction of Work**

4 Design-Builder shall be responsible for obtaining any required approvals from WSDOT in
5 connection with any such corrective Work. Design-Builder shall bear all costs of correcting any
6 rejected Work, including additional testing and inspections, and shall reimburse WSDOT and pay
7 WSDOT's expenses made necessary thereby within 10 days after Design-Builder's receipt of
8 invoices therefor. If WSDOT agrees to accept any Nonconforming Work without requiring it to be
9 fully corrected, Design-Builder shall be responsible for obtaining any required Governmental
10 Approvals or other consents from any other Person in connection with the Warranty Work.

11 **22.2 Warranty of Corrected Work**

12 The Warranties shall apply to all Work redone, repaired, corrected or replaced pursuant to the
13 terms of the Contract. The Warranties as to each redone, repaired, corrected or replaced element
14 of the Work shall extend beyond the original warranty period if necessary to provide at least one-
15 year warranty period for any re-done Work.

16 **22.3 Subcontractor Warranties**

17 **22.3.1 Assignment**

18 Design-Builder shall obtain from all Subcontractors and suppliers and cause to be extended to
19 WSDOT, appropriate representations, warranties (for period at least co-extensive in duration with
20 Design-Builder's Warranties for such Work), guarantees and obligations with respect to the design,
21 materials, workmanship, equipment, tools and supplies furnished by such Subcontractors and
22 suppliers, including all such representations, warranties, guarantees and obligations required to be
23 furnished by Subcontractors and suppliers under their Subcontracts or supply agreements. These
24 representations and warranties shall supplement the representations and warranties of Design-
25 Builder hereunder. All representations, warranties, guarantees and obligations of Subcontractors
26 and suppliers (a) shall be written so as to survive all WSDOT and Design-Builder inspections, tests
27 and approvals hereunder, and (b) shall run directly to and be jointly and severally enforceable by
28 Design-Builder and/or WSDOT and their respective successors and assigns. Design-Builder
29 hereby assigns to WSDOT all of Design-Builder's rights and interest in all extended warranties for
30 periods exceeding the applicable Warranty period which are received by Design-Builder from any
31 Subcontractors or suppliers.

32 **22.3.2 Enforcement**

33 Upon receipt from WSDOT of notice of a failure of any of the Work to satisfy any Subcontractor or
34 supplier warranty, representation, guarantee, or obligation, Design-Builder shall enforce or perform
35 any such representation, warranty, guarantee or obligation, in addition to Design-Builder's other
36 obligations hereunder. WSDOT's rights under this Section 22.3.2 shall commence at the time such
37 representation, warranty, guarantee or obligation is furnished, and shall continue until the
38 expiration of Design-Builder's relevant Warranty (including extensions thereof under Section 22.2).
39 Until such expiration, Design-Builder shall be responsible for the cost of any equipment, material,
40 labor (including re-engineering) or shipping, and Design-Builder shall be required to replace or
41 repair defective equipment, material or workmanship furnished by any Subcontractor or supplier.

1 **22.4 No Limitation of Liability**

2 The foregoing warranties are in addition to all rights and remedies available under the Contract
3 Documents or applicable Law, and shall not limit Design-Builder’s liability or responsibility imposed
4 by the Contract Documents or applicable Law with respect to the Work, including liability for design
5 defects, latent construction defects, strict liability, negligence or fraud.

6 **22.5 Assignment of Warranties**

7 Design-Builder’s Warranties (including extensions thereof under Section 22.2) and all
8 Subcontractor and supplier warranties shall be assignable by WSDOT without approval by Design-
9 Builder or any Subcontractor or supplier, which assignment shall be effective upon delivery of
10 notice to Design-Builder of the assignment.

11 **22.6 Disputes**

12 Any disagreement between WSDOT and Design-Builder relating to this Article 22 shall be subject
13 to the dispute resolution provisions contained in Article 24, provided that Design-Builder shall
14 proceed as directed by WSDOT pending resolution of the dispute.

15

1 **23. COLLABORATIVE PARTNERING PRINCIPALS**

2 WSDOT expects a collaborative partnering work relationship among WSDOT, Design-Builder, its
3 Subcontractors and the City's representatives. The collaborative partnering process (hereinafter
4 referred to as "collaborative") is intended to draw on the strengths of each organization to help
5 identify and achieve mutual and reciprocal goals, including achieving completion of the Work on
6 time, within budget and in accordance with its intended purpose. A primary consideration in the
7 collaborative process is the prompt and equitable resolution of issues affecting the conduct of the
8 Work, consistent with the rights and responsibilities of the respective Parties under the Contract.
9 WSDOT believes that Project objectives can be best achieved through a collaboration that
10 promotes and facilitates strategic planning, design, construction and commissioning of the Project.
11 The goal of the collaborative process is to better manage overall risk to the Project and to each
12 Party to the Contract.

13 This collaborative process recognizes that each Party's success is tied directly to the success of all
14 other members of the Project team and requires the Parties to: (1) organize and integrate their
15 respective roles, responsibilities and expertise; (2) identify and align their respective expectations
16 and objectives; (3) commit to open communications, transparent decision making, proactive and
17 non-adversarial interaction, problem-solving, and the sharing of ideas; (4) continuously seek to
18 improve the project planning, design, and construction processes; and (5) reasonably share both
19 the risks and rewards associated with achieving the Project objectives.

20 To assist the teams in developing and maintaining a collaborative work relationship, the Parties
21 agree that within 30 calendar days of NTP 1, WSDOT and Design-Builder will mutually select a
22 third-party facilitator to conduct a team building workshop, consistent with these collaborative
23 principles. Unless agreed otherwise by the Parties, the initial workshop should be held within 60
24 calendar days of the NTP 1. The Parties agree to jointly develop an agenda that will help the
25 members of the team agree to adhere to the principles of collaboration based on mutual trust,
26 confidence, good faith and fair dealing. Design-Builder's and the major Subcontractor's key staff
27 as well as WSDOT's key staff responsible for the management and administration of the Contract
28 must attend the workshop.

29 During this initial workshop, a program for the continuation and maintenance of the collaborative
30 process will be developed for use throughout the duration of the Project. Follow-up sessions may
31 be held periodically as agreed to by WSDOT and Design-Builder. These sessions may be used to
32 address specific subjects or concerns. Any cost associated with this collaborative process will be
33 agreed to by both Parties and will be shared equally between WSDOT and Design-Builder, except
34 for travel expenses, which will be borne by each Party.

35 While the establishment of the collaborative process and any charter document that is developed
36 as a result of the process will not change the legal relationship of the Parties, nor relieve either
37 Party from any terms of the Contract, it is WSDOT's expectation that the Parties will cooperate and
38 exercise their skill and judgment in furthering the interests of the Project and will promote an
39 environment of mutual trust, confidence, good faith, and fair dealing with each other. Within the
40 scope of their respective expertise, the Parties shall together actively and continually pursue
41 collaboration in the best interest of the Project. The Parties shall endeavor to promote harmony
42 and collaboration among all Project participants.

43 The Parties agree that the language of this Article 23, and any statements made or documents
44 prepared by the facilitator, shall not be admissible or discoverable in any judicial or other dispute
45 resolution proceeding.

1 **24. PROTEST AND DISPUTE RESOLUTION**

2 **24.1 Procedure and Protest by Design-Builder**

3 If Design-Builder disagrees with anything required in a Change Order or any written order,
4 direction, instruction, interpretation or any other determination by the WSDOT Engineer either
5 written or oral, Design-Builder shall:

6 (a) Immediately give a signed written notice of protest to WSDOT before doing the
7 Work. Said notice shall be delivered to WSDOT within seven days of the
8 occurrence of the event giving rise to the protest. For purposes of this Article 24,
9 “occurrence” means when Design-Builder knows, or in its diligent prosecution of the
10 Work should have known, of the event giving rise to the protest. Design-Builder
11 shall not be entitled to any adjustment in its compensation or any Completion
12 Deadline for any occurrence of events or costs that occurred more than seven days
13 before Design-Builder’s written notice to WSDOT.

14 (b) The written notice of protest shall contain the following information:

15 (1) The date of the protested action; and

16 (2) The general nature and circumstances which caused the protest.

17 (c) Design-Builder shall supplement the written notice of protest within 30 days with a
18 written statement providing the following:

19 (1) A full discussion of the circumstances which caused the protest, including,
20 names of persons involved, time, duration and nature of the work involved,
21 and a review of the Contract Documents referenced to support the protest;

22 (2) The estimated dollar cost broken down by the cost components allowed
23 under Article 11, including such costs for Subcontractors, if any, of the
24 protested work and how that estimate was determined; and

25 (3) An analysis of the progress schedule showing the schedule change or
26 disruption if Design-Builder is asserting a schedule change or disruption.

27 Throughout any protested Work, Design-Builder shall keep complete, detailed and
28 contemporaneous records of costs incurred and schedule impacts in the performance of the
29 protested Work. Design-Builder shall permit WSDOT access to these and any other records
30 needed for evaluating the protest, at any time.

31 WSDOT will evaluate all protests submitted in accordance with this Section 24.1. If WSDOT
32 determines that a protest is valid, WSDOT will make an equitable adjustment in the Design-
33 Builder’s compensation or the Completion Deadlines in accordance with Article 11. No adjustment
34 will be made for an invalid protest.

35 If WSDOT determines that the protest is invalid, that determination, with an explanation, shall be
36 provided in writing to Design-Builder. If Design-Builder does not accept WSDOT’s determination,
37 either Party may refer the dispute to the Disputes Review Board pursuant to Section 24.2 below. If
38 the Parties mutually agree, the protest may be defaulted to Section 24.3, bypassing the Disputes
39 Review Board process. Otherwise, submittal of the dispute to the Disputes Review Board is a
40 **CONDITION PRECEDENT** to any further right to pursue the protest.

41 Notwithstanding any protest and appeal, Design-Builder shall proceed promptly with the Work as
42 directed by WSDOT.

1 The failure of Design-Builder to initiate, pursue, and evidence its protest in accordance with the
2 terms of this Section 24.1 (including Design-Builder's duty to maintain records and disclose all
3 relevant information to WSDOT) shall be deemed a waiver of its right to any equitable adjustment
4 in the Design-Builder's compensation or Completion Deadlines.

5 **24.2 Disputes Review Board**

6 The Disputes Review Board ("DRB") is hereby created as part of the dispute resolution process to
7 be utilized when WSDOT and Design-Builder are unable to resolve the dispute through
8 negotiations and prior to the filing of a claim pursuant to Section 24.3. The DRB will consider
9 disputes referred to it and furnish recommendations to WSDOT and Design-Builder to assist in the
10 resolution of the differences between them. The purpose of the DRB response to such issues is to
11 provide nonbinding findings and recommendations designed to expose the disputing parties to an
12 independent view of the merits of the dispute.

13 The DRB members shall have extensive experience (technical or managerial) in a senior capacity
14 in the construction industry, with substantial experience in tunneling projects, the interpretation of
15 construction contract documents and the analysis and resolution of construction issues. It is
16 desirable that each DRB member have demonstrated experience in design-build contracting on
17 major public infrastructure projects, and in particular on tunneling projects. The DRB chairperson
18 shall have administrative and disputes resolution experience and the ability to facilitate the DRB's
19 proceedings. It is also desirable for the DRB chairperson to have substantial experience in
20 construction disputes resolution, adjudication or arbitration, the interpretation of construction
21 contract documents, and the analysis and resolution of construction claims. The DRB members
22 shall discharge their responsibilities impartially and independently considering the facts and
23 conditions related to the matters under consideration and the provisions of the Contract
24 Documents.

25 No DRB member shall have a financial interest in the Project of any nature, except for payments
26 for services on the DRB. No member shall have been employed by either Party or an affiliate of
27 either Party within a period of two years prior to award of this Contract or during the term of this
28 Contract; except that, service as a member of other disputes review boards on other contracts will
29 not preclude a member from serving on the DRB.

30 Design-Builder will compensate directly the fees and travel expense for all three members, plus
31 pay all of the operating and administrative expenses of the DRB. Design-Builder shall then invoice
32 all of these costs to WSDOT, which shall reimburse Design-Builder for 50 percent of these costs on
33 the next progress payment.

34 **24.2.1 Selection of DRB Members**

35 WSDOT and Design-Builder shall each nominate four candidates to the DRB member pool. After
36 reviewing the candidates, WSDOT and Design-Builder shall (1) agree on three members to serve
37 on the DRB and (2) determine who is best capable of serving as the DRB chairperson. All DRB
38 members shall be neutrals and shall not be advocates for either WSDOT or Design-Builder. In the
39 event that all three members were not selected from the initial pool of nominees, the process shall
40 be repeated.

41 In case a member of the DRB needs to be replaced, the replacement member will be appointed in
42 the same manner as the replaced member was appointed. The appointment of a replacement
43 DRB member will begin promptly upon determination of the need for replacement and shall be
44 completed within 30 days.

1 **24.2.2 Termination of DRB Members**

2 Service of a DRB member may be terminated at any time with not less than 30 days' notice by
3 (a) mutual agreement between WSDOT and Design-Builder or (b) resignation of the member.

4 Termination of a member will be followed by appointment of a substitute as specified in
5 Section 24.2.1.

6 **24.2.3 Disputes Review Board Procedures**

7 Promptly upon approval of the DRB members and within the first 60 days after the issuance of
8 NTP 1, WSDOT, Design-Builder and the individual DRB members shall enter into an agreement
9 ("DRB Agreement") that sets forth the DRB's rules of operation and procedures to be followed for
10 the Project. The agreement shall include the frequency of the DRB's visits to the Project and its
11 interactions with WSDOT and Design-Builder to keep abreast of the construction development and
12 potential disputes.

13 In developing the DRB Agreement, the parties shall take into consideration their respective duties
14 and responsibilities set forth in the "Scope of Work" included in Appendix 11.

15 The parties may also consider the "Suggested Administrative Procedures" for the DRB's rules of
16 operation included in the Appendix 11. These procedures express, in general terms, the policy for
17 the creation and operation of the DRB.

18 Disputes, as used in this Section 24.2, will refer only to protests properly submitted in accordance
19 with Section 24.1. If WSDOT has determined the protest to be invalid and either Design-Builder or
20 WSDOT has elected to refer the matter to the DRB, then the DRB shall consider the issue and
21 provide recommendations concerning:

- 22 (a) The interpretation of the Contract;
- 23 (b) Entitlement to additional compensation or time for performance;
- 24 (c) The amount of additional compensation or time for performance following a
25 recommendation of entitlement by the DRB provided that: (1) the parties were not
26 able to reach a resolution as to the amount of the equitable adjustment or time; (2)
27 the WSDOT Engineer has made a unilateral determination of the amount of
28 compensation for time; and (3) Design-Builder has protested WSDOT's unilateral
29 determination; and
- 30 (d) Other subjects mutually agreed by WSDOT and Design-Builder to be a DRB issue.

31 **24.2.4 Procedures for Consideration of Disputes**

32 The procedure for consideration of disputes shall be as follows:

- 33 (a) Once a determination has been made to submit a dispute to the DRB, the DRB
34 members will be contacted and advised of the existence of the dispute. A hearing
35 will be scheduled to be conducted at the next regular Project visit or at such other
36 time, as agreed to by the Parties;
- 37 (b) Design-Builder and WSDOT shall each be afforded an opportunity to be heard by
38 the DRB and to offer evidence. Either Party furnishing any written evidence or
39 documentation to the DRB must furnish copies of such information to the other Party
40 a minimum of 15 days prior to the date the DRB sets to convene the hearing for the

1 dispute. Either Party shall produce such additional evidence as the DRB may deem
2 necessary to an understanding and determination of the dispute and furnish copies
3 to the other Party;

4 (c) After the hearing is concluded, the DRB shall meet in private and reach a conclusion
5 supported by two or more members. Its findings and recommendations, together
6 with its reasons shall then be submitted as a written report to both Parties. The
7 recommendations shall be based on the pertinent provisions of the Contract
8 Documents and facts and circumstances involved in the dispute. The Contract
9 Documents shall be interpreted and construed in accordance with the laws of the
10 State of Washington. The DRB shall make every effort to reach a unanimous
11 decision. If this proves impossible, the dissenting member may prepare a minority
12 report; and

13 (e) Within 30 days of receiving the DRB's recommendations, both WSDOT and Design-
14 Builder shall respond to the other in writing signifying that the dispute is either
15 resolved or remains unresolved. Although both Parties should place weight upon
16 the DRB recommendations, the recommendations are not binding.

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

20 **24.2.5 Advisory Recommendation**

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

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

36 **24.2.6 DRB Process as Condition Precedent to Arbitration or Litigation**

37 Submittal of a dispute to the DRB will be a CONDITION PRECEDENT to the filing for arbitration or
38 litigation in a court of law unless WSDOT and Design-Builder have agreed to default the dispute to
39 Section 24.3. Furthermore, if the DRB's assistance does not lead to resolution of the dispute,
40 causing Design-Builder to file a claim pursuant to Section 24.3, or if the Parties default the dispute
41 to Section 24.3, full compliance by Design-Builder with the provisions of Section 24.3 is a
42 contractual CONDITION PRECEDENT to Design-Builder's right to commence arbitration or
43 litigation.

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

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

7 **24.2.7 Matters Ineligible for Disputes Review Board Procedures**

8 The dispute resolution procedures set forth in Section 24.2 shall not apply to the following
9 (collectively, "Ineligible Matters"):

- 10 (a) Any matters that the Contract Documents expressly state are final, binding or not
11 subject to dispute resolution;
- 12 (b) Any matters relating to the scope or applicability of indemnities provided under the
13 Contract Documents;
- 14 (c) Any claim for injunctive relief;
- 15 (d) Any claim against an insurance company, including any Subcontractor dispute that
16 is covered by insurance;
- 17 (e) Any claim arising solely in tort;
- 18 (f) Any claim between Design-Builder or WSDOT and a third party in which the third
19 party is a necessary or appropriate party to such dispute, including any related
20 claims between the Parties arising therefrom;
- 21 (g) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which
22 the procedures established in this Section 24.2 do not apply, including any effort to
23 interplead a Party into such a lawsuit in order to make the procedures established in
24 this Section 24.2 applicable;
- 25 (h) Any claim for, or dispute based on, remedies expressly created by statute; and
- 26 (i) Any dispute that is actionable only against a Surety.

27 **24.3 Claims**

28 **24.3.1 General**

29 When disputes occur during the Project, Design-Builder shall follow the procedures outlined in
30 Sections 24.1 and 24.2. If the procedures outlined therein fail to provide satisfactory resolution,
31 Design-Builder shall pursue the more formalized method outlined in this Section 24.3 for submitting
32 a claim.

33 If Design-Builder claims that it is entitled to an adjustment in its compensation and/or Completion
34 Deadlines, and provided that Design-Builder has pursued and exhausted all the means provided in
35 Sections 24.1 and 24.2 to resolve a dispute, Design-Builder may file a claim as provided in this
36 Section 24.3.

37 Design-Builder shall be deemed to have waived, released, and relinquished any claim for
38 additional compensation or performance time, or adjustment to its compensation and/or
39 Completion Deadlines, if Design-Builder fails: (1) to provide WSDOT timely written notifications or
40 other submissions required by Section 24.1; (2) to maintain complete records of actual cost and

1 additional time incurred, as required by Section 24.1, or provide for WSDOT access to same; (3) to
2 properly and timely submit a claim as required by this Section 24.3; or (4) to take such actions or
3 provide such notices as required by other provisions of the Contract Documents as a condition to
4 Design-Builder's right to seek any extension of the Completion Deadlines.

5 The fact that Design-Builder has provided a proper notification, provided a properly filed claim, or
6 provided WSDOT access to records of actual cost, shall not in any way be construed as proving or
7 substantiating the validity of the claim. If the claim, after consideration by WSDOT, is found to
8 have merit, WSDOT will make an equitable adjustment either in the amount of costs to be paid or
9 in the time required for the Work, or both. If WSDOT finds the claim to be without merit, no
10 adjustment will be made.

11 Failure to submit with the Final Contract Voucher Certification such information and details as
12 described in this Section 24.3 for any claim shall operate as a waiver of the claim by Design-
13 Builder as provided in Section 10.5. Claims submitted with the Final Contract Voucher Certification
14 shall be resolved pursuant to this Article 24.

15 **24.3.2 Claims Content**

16 All claims filed by Design-Builder shall be in writing, submitted to the WSDOT as soon as possible,
17 and in no event later than the date WSDOT executes the Final Contract Voucher Certification as
18 addressed in Section 10.5. All claims shall be in sufficient detail to enable WSDOT to ascertain the
19 basis and amount of the claim. As a minimum, the following information must accompany each
20 claim submitted:

- 21 (a) A detailed factual statement of the claim providing all necessary dates, locations,
22 and items of Work affected by the claim;
- 23 (b) The date on which facts arose that gave rise to the claim;
- 24 (c) The name of each WSDOT individual, official, or employee and each Design-Builder
25 or Subcontractor employee or agent involved in, or knowledgeable about the claim;
- 26 (d) The specific provision of the Contract Documents which support the claim and a
27 statement of the reasons why such provisions support the claim;
- 28 (e) If the claim relates to a decision of WSDOT which the Contract leaves to WSDOT's
29 discretion or as to which the Contract provides that WSDOT's decision is final,
30 Design-Builder shall set out in detail all facts supporting its position relating to the
31 decision of WSDOT;
- 32 (f) The identification of any documents and the substance of any oral communications
33 that support the claim;
- 34 (g) Copies of any identified documents, other than WSDOT documents and documents
35 previously furnished to WSDOT by Design-Builder, that support the claim (manuals
36 which are standard to the industry, used by Design-Builder, may be included by
37 reference);
- 38 (h) If an adjustment in the Completion Deadlines is sought:
 - 39 (1) The specific days and dates for which it is sought;
 - 40 (2) The specific reasons Design-Builder believes a time adjustment should be
41 granted;
 - 42 (3) The specific provisions of the Contract under which it is sought; and

(4) Design-Builder's analysis of the impact of the event(s) upon Design-Builder's schedule to demonstrate the reason and entitlement for such adjustment.

(i) If additional compensation is sought, the exact amount of the claims and a breakdown of that amount into the specific cost components allowed under Article 11. Subcontractor's claims shall be set forth in the same detail; and

(j) A notarized statement shall be submitted to WSDOT containing the following language:

Under the penalty of law for perjury or falsification, the undersigned,

_____ ,

(Name)

_____ of

(Title)

_____ ,

(Design-Builder)

Hereby certifies that the claim for extra compensation and time, if any made herein for Work on this Contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between the parties, and reflects an adjustment to which Design-Builder in good faith believes it is entitled under the Contract.

24.3.3 Claims Documentation

It shall be the responsibility of Design-Builder to keep full and complete records of the costs and additional time incurred for any alleged claim. Design-Builder shall permit WSDOT to have access at all reasonable times to those records and any other records as may be required by WSDOT to determine the facts or contentions involved in the claim. Design-Builder shall retain those records in accordance with the provisions of Section 25.5. All claims filed against WSDOT shall be subject to audit in accordance with the provisions of Section 24.4. Failure of Design-Builder, Subcontractors, or lower tier Subcontractors to maintain and retain sufficient records to allow WSDOT to verify all or a portion of the claim or to permit WSDOT access to the books and records of Design-Builder, Subcontractors, or lower tier Subcontractors shall constitute a waiver of the claim(s) and shall bar any recovery for that claim(s).

24.3.4 WSDOT Response

Design-Builder shall pursue administrative resolution of any claim with WSDOT or the designee of WSDOT. Provided that Design-Builder is in full compliance with all the provisions of this Section 24.3, and after the formal claim document has been submitted, WSDOT will respond in writing to Design-Builder as follows:

(a) Within 60 days from the date the claim is received by WSDOT, subject to the provisions of Section 24.3.4(b) below.

- 1 (b) If, in the opinion of WSDOT, the above time period is unreasonable due to the
2 complexity of the claim under consideration, WSDOT will notify Design-Builder
3 within 30 days from the date the claim is received by WSDOT as to the amount of
4 time which will be necessary for WSDOT to prepare its response.

5 **24.3.5 Claims Condition Precedent to Arbitration or Litigation**

6 The failure of Design-Builder to initiate, pursue and evidence its claim in accordance with the terms
7 of this Section 24.3 (including Design-Builder's duty to disclose all relevant information to WSDOT)
8 shall be deemed a waiver of its right to any adjustment in its compensation and/or the Completion
9 Deadlines. Full compliance by Design-Builder with the provisions of this Section 24.3 is a
10 contractual CONDITION PRECEDENT to Design-Builder's right to seek judicial relief or demand
11 arbitration.

12 **24.4 Audit**

13 Audits may be conducted by WSDOT pursuant to Sections 25.4.3 and 25.4.4 for purposes of
14 validating Design-Builder claims, including to verify Design-Builder labor rates, overhead costs,
15 berth vessel costs, temporary services costs, and any other costs pertaining to Design-Builder
16 pricing.

17 **24.5 Claims Resolution**

18 **24.5.1 General**

19 Prior to seeking claims resolution through nonbinding alternative dispute resolution processes,
20 binding arbitration, or litigation, pursuant to this Section 24.5, Design-Builder shall proceed under
21 the administrative procedures in Sections 24.1, 24.2, 24.3 and any other provisions provided in the
22 Contract for resolution of disputes. The provisions of these Sections must be complied with in full,
23 as a CONDITION PRECEDENT, to Design-Builder's right to seek claims resolution through any
24 nonbinding alternative dispute resolution process, binding arbitration or litigation, as provided in
25 this Section 24.5.

26 **24.5.2 Nonbinding Alternative Disputes Resolution(ADR)**

27 Nonbinding ADR processes are encouraged and available upon mutual agreement of Design-
28 Builder and WSDOT for all claims submitted in accordance with Section 24.3, provided that:

- 29 (a) All the administrative remedies provided for in the Contract have been exhausted;
30 (b) WSDOT has been given the time and opportunity to respond to Design-Builder as
31 provided in Section 24.3; and
32 (c) WSDOT has determined that it has sufficient information concerning Design-
33 Builder's claims to participate in a nonbinding ADR process.

34 WSDOT and Design-Builder mutually agree that the cost of the nonbinding ADR process shall be
35 shared equally by both Parties with each Party bearing its own preparation costs.

36 The type of nonbinding ADR process shall be agreed upon by the Parties and shall be conducted
37 within the State of Washington at a location mutually acceptable to the Parties.

1 Design-Builder agrees that the participation in a nonbinding ADR process does not in any way
2 waive the requirement that binding arbitration or litigation proceedings must commence within 180
3 calendar days of the date of Final Acceptance, the same as any other claim or causes of action as
4 provided in the Contract.

5 **24.5.3 Claims of \$1,000,000 or Less**

6 Design-Builder and WSDOT mutually agree that those claims which total \$1,000,000 or less,
7 submitted in accordance with Section 24.3 and not resolved by nonbinding ADR processes, shall
8 be resolved through mandatory and binding arbitration as described herein.

9 **24.5.4 Administration of Arbitration**

10 Arbitration shall be as agreed by the Parties or, if the Parties cannot agree, arbitration shall be
11 administered through the American Arbitration Association (AAA) using the following arbitration
12 methods:

- 13 (a) The current version of the Northwest Region Expedited Commercial Arbitration
14 Rules shall be used for claims with an amount less than \$25,000;
- 15 (b) The current version of the Expedited Procedures of the Construction Industry
16 Arbitration Rules shall be used for claims with an amount equal to or greater than
17 \$25,000 and less than \$50,000; or
- 18 (c) The current version of the standard procedures of the Construction Industry
19 Arbitration Rules shall be used for claims with an amount equal to or greater than
20 \$50,000 and not greater than \$1,000,000.

21 WSDOT and Design-Builder mutually agree the venue of any arbitration hearing shall be within the
22 State of Washington and any such hearing shall be conducted within the State of Washington.

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

27 **24.5.5 Arbitration Procedures**

28 If the dispute cannot be resolved through administrative procedures provided in Sections 24.1,
29 24.2, 24.3 and any other provision provided in the Contract for resolution of disputes or through a
30 mutually agreed upon nonbinding ADR process, Design-Builder shall advise WSDOT, in writing,
31 that mandatory and binding arbitration is desired. The Parties may agree on an arbitration
32 process, or, if the Parties cannot agree a demand for arbitration shall be filed by Design-Builder, in
33 accordance with the AAA rules, with WSDOT, and with the AAA. Selection of the arbitrator and the
34 administration of the arbitration shall proceed in accordance with AAA rules using arbitrators from
35 the list developed by the AAA, except that, for claims under \$25,000 using the Northwest Region
36 Expedited Commercial Arbitration Rules, arbitration selection shall proceed pursuant to Section 55
37 of the Expedited Procedure of the Construction Industry Arbitration Rules. Arbitration shall
38 proceed utilizing the appropriate rule of the AAA as determined by the dollar amount of the claim
39 as provided in Section 24.5.4.

40 Unresolved disputes which do not involve delays or impacts to unchanged Work may be brought to
41 binding arbitration prior to the Physical Completion Deadline, provided that:

- 1 (a) All the administrative remedies provided for in the Contract have been exhausted;
2 (b) The dispute has been pursued to the claim status as provided in Section 24.3; and
3 (c) Design-Builder certifies in writing that claims for delays or impacts to the Work will
4 not result from the dispute.

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

9 In addition, Design-Builder agrees arbitration proceedings must commence, by filing of the
10 aforementioned demand for arbitration, within 180 calendar days of the date of Final Acceptance,
11 the same as any other claim or causes of action as provided in Section 24.5.7.

12 The scope and extent of discovery shall be determined by the arbitrator in accordance with AAA
13 rules. In addition, each Party for claims greater than \$25,000 shall serve upon the other Party a
14 "statement of proof." The statement of proof shall be served, with a copy to the AAA, no less than
15 20 calendar days prior to the arbitration hearing and shall include:

- 16 (a) The identity, current business address, and residential address of each witness who
17 will testify at the hearing;
18 (b) The identity of any expert witness to be called, a statement as to the subject matter
19 and the substance of the facts and opinions on which the expert is expected to
20 testify, a summary of the grounds for each opinion, and a resume of the expert's
21 qualifications; and
22 (c) A list of each document that the Party intends to offer in evidence at the arbitration
23 hearing. Either Party may request from the other Party a copy of any document
24 listed. If such a request is made, a copy of the document shall be provided within
25 five calendar days from the date the request is received.

26 The arbitrator may permit a Party to call a witness or offer a document not shown or included in the
27 statement of proof only upon a showing of good cause.

28 **24.5.6 Claims in Excess of \$1,000,000**

29 Design-Builder and WSDOT mutually agree that those claims in excess of \$1,000,000, submitted
30 in accordance with Section 24.3 and not resolved by nonbinding ADR processes, shall be resolved
31 through litigation unless the Parties mutually agree to resolve the claim through binding arbitration.

32 **24.5.7 Time Limitation and Jurisdiction**

33 Any claim or cause of action of Design-Builder against WSDOT shall be forever barred, released
34 and waived unless, in addition to complying with Section 10.5, Design-Builder shall have first
35 satisfied the conditions precedent to commencing arbitration or litigation set forth in this Article 24,
36 as applicable, and either shall have commenced arbitration or shall have filed a complaint in the
37 Superior Court of Washington for Thurston County no later than 180 calendar days from the date
38 of Final Acceptance. The Parties understand and agree that Design-Builder's failure to bring an
39 action in the proper forum within the time period provided, shall be a complete bar to any such
40 claims or causes of action.

1 If after Final Payment is made, it is determined through the dispute resolution process set forth in
2 Article 24 that either Party is entitled to payment from the other (1) with respect to claims that were
3 identified in the Final Contract Voucher Certification pursuant to Section 10.5; (2) which Design-
4 Builder may be entitled to assert against WSDOT with respect to indemnities under the Contract or
5 with respect to WSDOT's breach of obligations under the Contract which may occur after Final
6 Payment, or (3) which WSDOT may be entitled to assert against Design-Builder with respect to
7 Design-Builder's continuing obligations under the Contract Documents, such Party shall pay the
8 amounts determined to be owing to the other Party within ten Business Days after determination
9 thereof or entry of judgment if required, whichever is later.

10 **24.5.8 Continuation of Work**

11 At all times during this dispute resolution process or any subsequent administrative or court
12 proceeding, and at all times during the pendency of any dispute with any other project contractor,
13 Design-Builder and all Subcontractors shall proceed with the Project Work diligently, without delay,
14 in accordance with all provisions of the Contract Documents.

1 **25. DOCUMENTS AND RECORDS**

2 **25.1 Escrowed Proposal Documents (EPDs)**

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

5 **25.1.1 Data to be Escrowed**

6 The EPDs shall include any writings, working papers, computer printouts, charts, and any other
7 data compilations of any nature which contain or reflect all information, data, and calculations used
8 by Design-Builder to develop the Proposal for the Project. Design-Builder shall submit its EPD in
9 hard copy and whenever possible shall also provide electronic copies. The EPD shall include
10 equipment rates, overhead rates, labor rates, efficiency and/or productivity factors, and arithmetic
11 extensions. The EPD shall also include detailed information provided to Design-Builder by
12 Subcontractors identified in the Proposal and any other potential Subcontractors that provided data
13 upon which the Proposal was based. The EPD shall identify any standard industry manuals used
14 by Design-Builder in developing its Proposal. The EPD shall not include documents provided by
15 WSDOT for use by Design-Builder in developing the Proposal.

16 **25.1.2 Submittal of EPD**

17 The EPD documentation shall be submitted to the designated escrow company within seven
18 calendar days after the Contract has been executed by WSDOT. The EPD documents shall be
19 submitted in a sealed container. The container shall be clearly marked “EPD Documents” and shall
20 also show on the face of the container the Design-Builder’s name, the date of submittal, the Project
21 title, and the Contract number.

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

26 **25.1.3 Affidavit**

27 The sealed container shall contain, in addition to the Proposal documentation, an affidavit signed
28 under oath by an individual authorized by Design-Builder to execute the Proposal. The affidavit
29 shall list each document included in the EPD with sufficient specificity so a comparison can be
30 made between the list and the documents supplied, to ensure that all the EPD documents listed in
31 the affidavit have been enclosed in the sealed container. The affidavit shall show that the affiant
32 has personally examined the EPD Documents and that the affidavit lists all of the documents used
33 by Design-Builder to determine its Proposal for the Project and that all such documentation has
34 been enclosed in the sealed container. This duty shall flow down to all Subcontractors and
35 suppliers.

36 **25.1.4 Verification**

37 The escrow company, upon receipt of the sealed container, shall place the container in a safety
38 deposit box, vault, or other secure place, and immediately notify WSDOT in writing that the
39 container has been received. Upon receipt of such notice, WSDOT will promptly notify Design-
40 Builder in writing that WSDOT will open the sealed container to verify that the affidavit has been
41 enclosed and to compare the EPD documents listed in the affidavit with the actual documentation

1 enclosed in the container to ensure that all of the EPD documents have been submitted and that
2 the copies are legible. The notification will advise Design-Builder of the date and time the
3 container will be opened and the name of the WSDOT employee who will verify the contents of the
4 container. The WSDOT employee verifying the contents of the escrow container will not be
5 involved or connected with the review, evaluation, or resolution of any claim or dispute by Design-
6 Builder made to WSDOT in connection with the Contract for which the verification was made.
7 Design-Builder may have representatives present at the opening.

8 The EPD documents listed in the affidavit but not enclosed in the sealed container through error or
9 oversight shall be submitted in a sealed container within five days after the opening of the original
10 container. Any EPD document that is illegible shall be replaced with legible copies and furnished
11 within five days after the opening of the original container. The face of the container shall be
12 marked "Supplemental." The same procedure used in verifying the contents of the original
13 container shall be used in verifying the contents of the supplemental submittal.

14 **25.1.5 Subcontractor / Supplier Information**

15 Design-Builder shall require each Subcontractor / Supplier performing Work or supplying materials
16 with a projected value greater than \$5 million to submit to escrow a copy of all documentary
17 information used in determining its price (or the price included in any Contract Modification),
18 immediately prior to executing the Subcontract or purchase agreement and each Contract
19 Modification and Subcontract or purchase agreement amendment, to be held in the same manner
20 as Design-Builder's EPD and which shall be accessible by WSDOT in accordance with this
21 Section 25.1. Each such Subcontract or purchase agreement shall include a representation and
22 warranty from the Subcontractor / Supplier, for the benefit of Design-Builder and WSDOT, stating
23 that its EPD constitutes all the documentary information used in establishing its price, and agreeing
24 to provide a sworn certification in favor of Design-Builder and WSDOT together with each
25 supplemental EPD, stating that the information contained therein is complete, accurate and
26 current. Each Subcontract or purchase agreement that is not subject to the foregoing requirement
27 shall include a provision requiring the Subcontractor / Supplier to preserve all documentary
28 information used in establishing its Subcontract or purchase agreement price and to provide such
29 documentation to WSDOT in connection with any claim made by such Subcontractor / Supplier.

30 **25.1.6 Review of EPD**

31 The EPD shall be available for review by WSDOT (a) in connection with (i) negotiation of any
32 Change Orders, (ii) resolution of disputes and claims, and (iii) audit under Section 24.4 (if the EPD
33 are relevant to the subject of the audit), and (b) as described in Section 25.1.4. Subject to
34 Section 25.1.9, WSDOT shall be entitled to review all or any part of the EPD in order to satisfy itself
35 regarding the applicability of the individual documents to the matter at issue and shall be entitled to
36 make and retain copies of such documents as it deems appropriate in connection with any such
37 matters. The foregoing shall in no way be deemed a limitation on WSDOT's discovery rights with
38 respect to such documents. Design-Builder may have representatives physically present at all
39 times during WSDOT's review of EPD.

40 **25.1.7 Duration of Escrow and Release of EPD**

41 The EPD shall remain in escrow during the life of the Contract and will be returned to Design-
42 Builder by the escrow company once all of the following have occurred: (a) 180 days have elapsed
43 after expiration or earlier termination of the Warranties, (b) all disputes regarding the Contract have
44 been settled, and (c) Design-Builder has signed the Final Contract Voucher Certification and has
45 not reserved any claims on the Final Contract Voucher Certification against WSDOT arising out of

1 the Contract. In the event that claims against WSDOT are reserved on the Final Contract Voucher
2 Certification, the EPD shall remain in escrow. If efforts to resolve claims are unsuccessful,
3 WSDOT may serve a request upon Design-Builder to authorize the escrow company, in writing, to
4 release the EPD to WSDOT. Design-Builder shall respond to the request within 20 days after
5 service of the request. If Design-Builder objects or does not respond to the request within 20 days
6 after service of the request, WSDOT may file a motion requesting the court to enter an order
7 directing the escrow company to deliver the EPD to WSDOT. The escrow company shall release
8 the EPD for review as follows:

- 9 (a) To WSDOT upon receipt of a letter from Design-Builder authorizing the release;
- 10 (b) To WSDOT upon receipt of a certified copy of a court order directing the release of
11 the documents;
- 12 (c) To the court for an in camera examination pursuant to a certified copy of a court
13 order; and
- 14 (d) The EPD and affidavit shall be returned to Design-Builder if litigation is not
15 commenced within the time period prescribed by Law.

16 **25.1.8 Representation and Warranty**

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

22 **25.1.9 Confidentiality of EPD**

23 The EPD are and will remain the property of Design-Builder. WSDOT has no interest in or right to
24 the EPD other than the rights specified herein. In the event litigation ensues between WSDOT and
25 Design-Builder with respect to the Contract, the EPD may become the property of WSDOT for use
26 in the litigation as may be appropriate subject to the provisions of any court order limiting or
27 restricting the use or dissemination of the EPD as provided in Section 25.1.7(c).

28 **25.2 Remedies for Refusal or Failure to Provide EPD**

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

33 **25.3 Cost and Escrow Instructions**

34 The cost of the escrow will be borne by WSDOT. WSDOT will provide escrow instructions to the
35 escrow company consistent with this Article 25.

36 **25.4 Project Records**

37 **25.4.1 Maintenance of Records**

38 Design-Builder shall maintain a complete set of all books, records and documents prepared or
39 employed by Design-Builder with respect to the Project.

1 **25.4.2 Audit and Inspection Rights**

2 WSDOT shall have such rights to audit and inspect Design-Builder, its Subcontractors and their
3 respective books and records (including all tax returns and supporting documentation filed with any
4 Governmental Bodies) in connection with the issuance of Change Orders, the resolution of
5 disputes, and such other matters WSDOT deems necessary for purposes of complying or verifying
6 compliance with the Contract and Laws. WSDOT's audit rights include the right to observe
7 business operations of Design-Builder and its Subcontractors to confirm the accuracy of books and
8 records. Refer to Appendix 5 for a description of federal government audit rights.

9 Design-Builder represents and warrants the completeness and accuracy of all information it or its
10 agents provides in connection with audits by WSDOT or the federal government, and shall cause
11 all Subcontractors to warrant the completeness and accuracy of all information such
12 Subcontractors provide in connection with such audits.

13 **25.4.3 Claims Audits**

14 All claims filed against WSDOT shall be subject to audit at any time following the filing of the claim.
15 The audit may be performed by employees of WSDOT or by an auditor under contract with
16 WSDOT. No notice is required before commencing any audit before 60 days after Final
17 Acceptance. If an audit is to be commenced more than 60 days after the date of Final Acceptance,
18 Design-Builder will be given 20 calendar days notice of the time when the audit is to begin.
19 Design-Builder, Subcontractors or their agents shall provide adequate facilities, acceptable to
20 WSDOT, for the audit during normal business hours. Design-Builder, Subcontractors and their
21 agents shall cooperate with the auditors. Failure of Design-Builder, Subcontractors or their agents
22 to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or
23 to permit the auditors access to the books and records of Design-Builder, Subcontractors or their
24 agents shall constitute a waiver of the claim and shall bar any recovery thereunder.

25 **25.4.4 Required Documents for Audits**

26 At a minimum, the auditors shall have available to them the following documents, including both
27 hard and electronic copies as applicable:

- 28 (a) Daily time sheets and supervisor's daily reports;
- 29 (b) Collective bargaining agreements and/or union agreements;
- 30 (c) Insurance, welfare and benefits records;
- 31 (d) Payroll registers;
- 32 (e) Earnings records;
- 33 (f) Payroll tax forms;
- 34 (g) Material invoices and requisitions;
- 35 (h) Material cost distribution worksheet;
- 36 (i) Equipment records (list of company equipment, rates, etc.);
- 37 (j) Subcontractors' and suppliers' and agents' invoices and payment certificates;
- 38 (k) Canceled checks (payroll and suppliers);
- 39 (l) Job cost report;
- 40 (m) Job payroll ledger;

- 1 (n) General ledger;
- 2 (o) Cash disbursements journal;
- 3 (p) E-mail, letters and correspondence;
- 4 (q) Network servers, data storage devices, backup media;
- 5 (r) All documents that relate to each and every claim together with all documents that
- 6 support the amount of damages as to each claim; and
- 7 (s) Work sheets used to prepare the claim establishing (a) the cost components for
- 8 items of the claim including labor, benefits and insurance, materials, equipment,
- 9 Subcontractors, all documents that establish the time periods, individuals involved,
- 10 the hours for the individuals and the rates for the individuals, and (b) the lost
- 11 revenue components of the claim.

12 Full compliance by Design-Builder with the provisions of this Section 25.4.4 is a contractual
13 condition precedent to Design-Builder's right to seek relief under Article 24. Design-Builder
14 represents and warrants the completeness and accuracy of all information it or its agents provides
15 in connection with this Section 25.4.

16 **25.5 Retention of Records**

17 Design-Builder shall maintain all records and documents relating to the Project, the Contract or
18 Work (including copies of all original documents delivered to WSDOT) at Design-Builder's office in
19 the State until three years after the earlier to occur of (a) the date of Final Acceptance or (b) the
20 termination date. If approved by WSDOT, photographs, microphotographs or other authentic
21 reproductions may be maintained instead of original records and documents. Design-Builder shall
22 notify WSDOT where such records and documents are kept.

23 Notwithstanding the foregoing, all records which relate to claims being processed or actions
24 brought under the dispute resolution provisions hereof shall be retained and made available until
25 such actions and claims have been finally resolved. Records to be retained include all books and
26 other evidence bearing on Design-Builder's costs and expenses under the Contract Documents.
27 Design-Builder shall make these records and documents available for audit and inspection to
28 WSDOT, at Design-Builder's office, at all reasonable times, without charge, and shall allow such
29 Persons to make copies of such documents (at no expense to Design-Builder).

30 **25.6 Washington Public Records Act**

31 **25.6.1 Applicability of Act**

32 Design-Builder acknowledges and agrees that all records, documents, drawings, plans,
33 specifications and other materials in WSDOT's possession or those to which WSDOT is entitled to
34 access, including materials submitted by Design-Builder, may be determined to be public records
35 under the Washington Public Records Act, Chapter 42.56 RCW, and as such may be subject to
36 public disclosure.

37 **25.6.2 Proprietary, Trade Secret or Confidential Information**

38 WSDOT recognizes that certain Work product provided by Design-Builder to WSDOT or that
39 WSDOT owns pursuant to the Contract, or documents containing financial and marketing
40 information or intellectual property, or Pricing Documents of which WSDOT obtains a copy
41 pursuant to the Contract Documents may be exempt from disclosure under Chapter 42.56 RCW,

1 may constitute trade secrets as defined in RCW 19.108.010(4) and may include confidential
2 information which is otherwise subject to protection from misappropriation or disclosure. Should
3 such records become the subject of a request for public disclosure, the following provisions shall
4 apply:

- 5 (a) WSDOT shall immediately notify Design-Builder upon receipt of notice from WSDOT
6 of such a request and the date by which it anticipates producing the requested
7 records;
- 8 (b) Design-Builder must then assert in writing to WSDOT any claim that such records
9 contain proprietary or confidential information that it believes is exempt from
10 disclosure under Chapter 42.56 RCW or is subject to protection pursuant to Chapter
11 19.108 RCW or other state law so that WSDOT may consider such assertion in
12 responding to the requester;
- 13 (c) If Design-Builder fails to make such assertion within eight days after the date
14 WSDOT notifies Design-Builder of its intended response, WSDOT may make such
15 disclosure;
- 16 (d) If Design-Builder timely asserts that the requested records contain proprietary or
17 confidential information or trade secrets, Design-Builder will be permitted an
18 additional eight days to seek judicial protection of the records pursuant to RCW
19 42.56.540. Such an action shall be at Design-Builder's expense. If Design-Builder
20 does not seek judicial protection of the records within such eight-day period, such
21 records will be released;
- 22 (e) If Design-Builder's assertion that records contain proprietary or confidential
23 information or trade secrets is challenged in court by the requester, Design-Builder
24 shall assist WSDOT in its defense and shall indemnify WSDOT for any and all fines
25 assessed and costs (including the fees and costs of WSDOT's attorneys) WSDOT
26 incurs in such defense, including any attorneys' fees assessed against WSDOT
27 under RCW 42.56.550(4); and
- 28 (f) If prior to judicial consideration of a challenge by a requester WSDOT in its sole
29 discretion believes Design-Builder does not have a valid claim, WSDOT shall notify
30 Design-Builder no less than three days prior to the date WSDOT intends to make
31 the disclosure to allow Design-Builder to take such action as it deems appropriate
32 prior to disclosure. WSDOT shall not make such a disclosure while an action to
33 enjoin disclosure is pending under RCW 42.56.540; and
- 34 (g) If WSDOT denies a request for public records solely for reasons other than Design-
35 Builder's assertion of proprietary or confidential information contained in records,
36 Design-Builder has no responsibility for payment of any attorneys' fees or fines that
37 may be imposed on WSDOT, nor for payment of WSDOT's attorneys' fees.

38 **25.6.3 Design-Builder Designation of Documents.**

39 In the event Design-Builder believes that any work product subject to transmittal to or review by
40 WSDOT under the terms of this Contract, and any work product WSDOT owns pursuant to
41 Section 3.2.4, contains proprietary or confidential information or trade secrets that are exempt or
42 protectable from disclosure pursuant to State law, Design-Builder shall use its diligent efforts to
43 identify such information prior to such transmittal or review, and WSDOT shall confer with Design-
44 Builder on appropriate means of ensuring compliance with applicable Law prior to transmittal or
45 review. Design-Builder's failure to so identify any such information shall not relieve WSDOT of its
46 obligation to notify Design-Builder of any request for disclosure of records described in this

1 Section 25.6 or otherwise affect Design-Builder's right to protect proprietary and confidential
2 information under applicable Law or as set forth in Section 25.6.2. All copies and abstracts of
3 Design-Builder's books and records that WSDOT obtains or prepares from an audit pursuant to
4 Section 25.4 shall be presumed to contain proprietary or confidential information or trade secrets
5 except to the extent (i) Design-Builder otherwise indicates in writing to WSDOT or (ii) WSDOT
6 duplicates materials WSDOT previously obtained by other means. Upon the written request of
7 either Party, Design-Builder and WSDOT shall mutually develop a protocol for the transmittal,
8 review and disclosure of Work Product or other information secured by Design-Builder so as to
9 avoid violations of Chapters 42.56, 19.108 and 42.52 RCW.

10

1 **26. MISCELLANEOUS PROVISIONS**

2 **26.1 Amendments**

3 The Contract may be amended only by a written instrument duly executed by the Parties or their
4 respective successors or assigns.

5 **26.2 Waiver**

6 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or
7 other provisions of the Contract Documents at any time (including any agreement by WSDOT to
8 accept Nonconforming Work under Section 5.6.2) shall not in any way limit or waive that Party's
9 right thereafter to enforce or compel strict compliance with every term, covenant, condition or other
10 provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties
11 make and implement any interpretation of the Contract Documents without documenting such
12 interpretation by an instrument in writing signed by both Parties, such interpretation and
13 implementation thereof will not be binding in the event of any future disputes. The consent by one
14 Party to any act by the other Party requiring such consent shall not be deemed to render
15 unnecessary the obtaining of consent to any subsequent act for which consent is required,
16 regardless of whether similar to the act for which consent is given.

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

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

25 **26.3 Independent Contractor**

26 Design-Builder is an independent contractor, and nothing contained in the Contract Documents
27 shall be construed as constituting any relationship with WSDOT other than that of Project owner
28 and independent contractor. In no event shall the relationship between WSDOT and Design-
29 Builder be construed as creating any relationship whatsoever between WSDOT and any of Design-
30 Builder's employees. Neither Design-Builder nor any of its employees is or shall be deemed to be
31 an employee of WSDOT. Except as otherwise specified in the Contract Documents, Design-
32 Builder has sole authority and responsibility to employ, discharge and otherwise control its
33 employees and has complete and sole responsibility as a principal for its agents, for all
34 Subcontractors and for all other Persons that Design-Builder or any Subcontractor hires or
35 engages to perform or assist in performing the Work.

36 **26.4 Successors and Assigns**

37 The Contract Documents shall be binding upon and inure to the benefit of WSDOT and Design-
38 Builder and their permitted successors, assigns and legal representatives.

39 Design-Builder may collaterally assign its rights to receive payment under the Contract Documents
40 and may subcontract Work in compliance with the requirements of the Contract Documents.
41 Design-Builder shall not otherwise sublet, transfer, assign or dispose of any portion of the Contract

1 Documents, or delegate any of its duties hereunder, except with WSDOT's prior approval. Design-
2 Builder's assignment or delegation of any of its Work under the Contract Documents shall be
3 ineffective to relieve Design-Builder of its responsibility for the Work assigned or delegated, unless
4 WSDOT, in its sole discretion, has approved such relief from responsibility. Any assignment of
5 money shall be subject to all proper set-offs and withholdings in favor of WSDOT and to all
6 deductions provided for in the Contract Documents. No partner, joint venturer, member or
7 shareholder of Design-Builder may assign, convey, transfer, pledge, mortgage or otherwise
8 encumber its ownership interest in Design-Builder without the prior approval of WSDOT, in
9 WSDOT's sole discretion.

10 **26.5 Designation of and Cooperation with Representatives**

11 WSDOT and Design-Builder shall each designate an individual or individuals who shall be
12 authorized to make decisions and bind the Parties on matters relating to the Contract Documents.
13 Appendix 12 provides the initial designations. Such designations may be changed by a
14 subsequent writing delivered to the other Party in accordance with Section 26.6. The Parties may
15 also designate technical representatives who shall be authorized to investigate and report on
16 matters relating to the construction of the Project and negotiate on behalf of each of the Parties but
17 who do not have authority to bind WSDOT or Design-Builder.

18 Design-Builder shall cooperate with WSDOT and all representatives of WSDOT designated as
19 described above.

20 **26.6 Notices and Communications**

21 **26.6.1 Delivery of Notices**

22 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by
23 certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service,
24 with delivery receipt requested, or (d) sent by facsimile communication followed by a hardcopy or
25 with receipt confirmed by telephone, to the following addresses (or to such other address as may
26 from time to time be specified in writing by such Person):

27 All correspondence with Design-Builder shall be sent to Design-Builder's Project Manager or as
28 otherwise directed by such Project Manager. The address for such communications shall be *[to be*
29 *added in the execution documents]*:

30 _____
31 _____
32 _____
33 Attn.: _____
34 Telephone: _____
35 FAX: _____

36 In addition, copies of all notices to proceed and suspension, termination and default notices shall
37 be delivered to the following persons:

38 _____
39 _____
40 Attn.: _____
41 Telephone: _____
42 FAX: _____

1 All communications to WSDOT shall be marked with WSDOT's project identification number and
2 shall be delivered to WSDOT's Project Manager, with copies to such additional Persons as may be
3 designated by WSDOT's Project Manager, at the address set forth below [*to be added in the*
4 *execution documents*]:

5 _____
6 _____
7 Attn.: _____
8 Telephone: _____
9 FAX: _____

10 In addition, copies of all notices regarding disputes, termination and default notices shall be
11 delivered to the following persons:

12 _____
13 _____
14 Attn.: _____
15 Telephone: _____
16 FAX: _____

17 **26.6.2 Receipt of Notices**

18 Notices shall be deemed received when actually received in the office of the addressee (or by the
19 addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S.
20 Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing,
21 notices sent by facsimile after 4:00 p.m. Pacific Time and all other notices received after 5:00 p.m.
22 Pacific Time shall be deemed received on the first Business Day following delivery (that is, in order
23 for a fax to be deemed received on the same day, at least the first page of the fax must have been
24 received before 4:00 p.m.).

25 **26.6.3 Copies of Correspondence to WSDOT**

26 Design-Builder shall copy WSDOT on all written correspondence pertaining to the Contract
27 between Design-Builder and any Person other than Design-Builder's Subcontractors, consultants
28 and attorneys.

29 **26.7 Interpretation of Contract Documents**

30 In the Contract Documents, where appropriate: the singular includes the plural and vice versa;
31 references to statutes or regulations include all statutory or regulatory provisions consolidating,
32 amending, or replacing the statute or regulation referred to; the words "including," "included,"
33 "includes," and "include" are deemed to be followed by the words "without limitation;" unless the
34 context requires otherwise, in phrases involving performance by a Person, the word "shall"
35 indicates a requirement imposed on the Person; unless otherwise indicated, references to
36 sections, appendices and exhibits are to the document which contains such references; words
37 such as "herein," "hereof," and "hereunder" refer to the entire document in which they are
38 contained and not to any particular provision or section; words not otherwise defined that have
39 well-known technical or construction industry meanings are used in accordance with such
40 recognized meanings; references to Persons include their respective permitted successors and
41 assigns and, in the case of Governmental Bodies, Persons succeeding to their respective functions
42 and capacities; and words of any gender used herein include each other gender where

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

3 References to “plan(s)” in the Mandatory Standards shall be deemed to refer to the Design
4 Documents. References to the project owner shall mean WSDOT, or, where Work is being
5 performed on facilities owned by a Governmental Body other than WSDOT, such Governmental
6 Body. References to “bid,” “proposal” or “bid proposal” shall be deemed to refer to the Proposal.
7 References to the “Contractor” shall be deemed to refer to Design-Builder. References to the
8 Engineer in the context of provider of compliance judgment may mean Design Manager, Quality
9 Assurance Manager or other appropriate representative of Design-Builder, or it may mean a
10 WSDOT representative, depending on the context, as determined by WSDOT in its sole discretion.

11 Design-Builder acknowledges and agrees that it had the opportunity and obligation, prior to the
12 Proposal Date, to review the Contract Documents and to bring to WSDOT’s attention any conflicts
13 or ambiguities contained therein. Design-Builder further acknowledges and agrees that it has
14 independently reviewed the Contract Documents with legal counsel, and that it has the requisite
15 experience and sophistication to understand, interpret and agree to the particular language of the
16 Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the
17 interpretation of the Contract Documents, the Contract Documents shall not be construed against
18 the Person that prepared them, and instead other rules of interpretation shall be used. WSDOT's
19 answers to any questions posed during the proposal process for the Project shall in no event be
20 deemed part of the Contract Documents and shall not be relevant in interpreting the Contract
21 Documents except as they may clarify provisions otherwise considered ambiguous.

22 **26.8 Officials Not to Benefit**

23 Without prior written consent of State, Design-Builder must not employ any professional or
24 technical personnel to provide services under the Contract Documents who are or have been at
25 any time during the time period of the Contract in the employ of State, except retired State
26 employees, without written consent from State.

27 Design-Builder warrants that it has not employed or retained any company or person, other than a
28 bona fide employee working solely for Design-Builder, to solicit or secure the Contract, and that
29 Design-Builder has not paid or agreed to pay any company or person, other than a bona fide
30 employee working for Design-Builder, any fee, commissions, percentage, brokerage fee, gifts, or
31 any other consideration, contingent upon or resulting from the award of making of the Contract.

32 The rights and remedies of WSDOT specified in this Section 26.8 are not exclusive and are in
33 addition to any other rights and remedies allowed by Law.

34 **26.9 Limitation on Third Party Beneficiaries**

35 It is not intended by any of the provisions of the Contract Documents to create any third party
36 beneficiary hereunder, other than the City, or to authorize anyone not a party hereto to maintain a
37 suit for personal injury or property damage pursuant to the terms or provisions hereof, except to
38 the extent that specific provisions (such as the warranty and indemnity provisions) identify third
39 parties (such as Utility Owners) and state that they are entitled to benefits hereunder. Except as
40 otherwise provided in this Section 26.9, the duties, obligations and responsibilities of the Parties to
41 the Contract Documents with respect to third parties shall remain as imposed by Law. The
42 Contract Documents shall not be construed to create a contractual relationship of any kind
43 between WSDOT and a Subcontractor or any other Person except Design-Builder. Any

1 indemnified Party shall have the right to enforce the indemnification and insurance obligations set
2 forth in Articles 18 and 20.

3 **26.10 No Personal Liability**

4 WSDOT's authorized representatives are acting solely as agents and representatives of WSDOT
5 when carrying out the provisions of or exercising the power or authority granted to them under the
6 Contract Documents. They shall not be liable either personally or as employees of WSDOT for
7 actions in their ordinary course of employment. No agent, consultant, officer or employee of
8 WSDOT shall be personally responsible for any liability arising under the Contract.

9 **26.11 Authorization**

10 The execution, delivery and performance of the Contract have been duly authorized by all
11 necessary actions of Design-Builder, and, if applicable, Design-Builder's members, and will not
12 result in a breach or a default under the organizational documents of any such Person or any
13 indenture, loan, credit agreement, or other material agreement or instrument to which any such
14 Person is a party or by which their properties and assets may be bound or affected.

15 **26.12 Further Assurances**

16 Design-Builder shall promptly execute and deliver to WSDOT all such instruments and other
17 documents and assurances as are reasonably requested by WSDOT to further evidence the
18 obligations of Design-Builder hereunder, including assurances regarding assignments of
19 Subcontract and supply agreements contained herein.

20 **26.13 Survival**

21 Design-Builder's representations and warranties, the dispute resolution provisions contained in
22 Article 24, and all other provisions which by their inherent character should survive termination of
23 the Contract, shall survive the termination of the Contract.

24 **26.14 Severability**

25 If any clause, provision, section or part of the Contract is ruled invalid under Article 24 or otherwise
26 by a court of competent jurisdiction, then the Parties shall: (a) promptly meet and negotiate a
27 substitute for such clause, provision, section or part, which shall, to the greatest extent legally
28 permissible, effect the original intent of the Parties, including an equitable adjustment to the
29 Design-Builder's compensation to account for any change in the Work resulting from such
30 invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as
31 applicable) which declared such invalidity for an interpretation of the invalidated portion to guide
32 the negotiations. The invalidity or unenforceability of any such clause, provision, section or part
33 shall not affect the validity or enforceability of the balance of the Contract, which shall be construed
34 and enforced as if the Contract did not contain such invalid or unenforceable clause, provision,
35 section or part.

36 **26.15 Headings**

37 The captions of the sections of the Contract Documents are for convenience only and shall not be
38 deemed part of the Contract Documents or considered in construing the Contract Documents.

1 **26.16 Governing Law**

2 The Contract Documents shall be governed by and construed in accordance with the law of the
3 State, without regard to conflict of law principles.

4 **26.17 Entire Contract**

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

8 **26.18 Counterparts**

9 This instrument may be executed in two or more counterparts, each of which shall be deemed an
10 original, but all of which together shall constitute one and the same instrument.

1 **IN WITNESS WHEREOF**, the Parties have executed the Contract as of the last date set forth next
2 to signatures of the Parties, below.

3

[Design-Builder]

Washington Department of Transportation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____, 201__

Date: _____, 201__

[Design-Builder]

a _____

By: _____

Name: _____

Title: _____

Contractor's License No.: _____

4

1

ADDENDUM

2 [Joint Venture Members] agree that they shall be jointly and severally liable for the obligations of
3 Design-Builder under the Contract Documents. [Joint Venture Members] agree that WSDOT and
4 its successors and assignees shall be entitled to enforce any claim or judgment against Design-
5 Builder arising out of the Contract Documents directly against Design-Builder, [Joint Venture
6 Members] in any order.

7 Date: _____, 201__

8 [Joint Venture Members]

9 By: _____

10 Name: _____

11 Title: _____

1
2
3
4

APPENDIX 1

PRICE PROPOSAL FORM

[to be inserted prior to execution]

1 **APPENDIX 2**

2 **ABBREVIATIONS AND DEFINITIONS**

3 As used in the Contract to which this Appendix is attached and in the other Contract Documents
4 (unless otherwise specified therein), the following abbreviations and terms shall have the
5 meanings set forth below (unless the context requires otherwise). Unless otherwise specified,
6 references to Articles, Sections and Appendices shall mean Articles and Sections of the
7 Contract and Appendices attached to the Contract.

8 **1. Abbreviations**

AAA	American Arbitration Association
AADT	Annual average daily traffic
AAN	American Association of Nurserymen
AAP	AASHTO Accreditation Program
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
AC	Alternating Current
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM	Asbestos-containing Materials
ADA	Americans with Disabilities Act
ADR	Alternative Dispute Resolution
ADT	average daily traffic
AEIC	Association of Edison Illuminating Companies
AES	Audio Engineering Society
AGA	American Gas Association
AGC	Associated General Contractors of America
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMRL	AASHTO Materials Reference Laboratory
AMS	Aerospace Material Specification
ANSI	American National Standards Institute
APA	American Plywood Association
APE	Area of Potential Effect
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
AREMA	American Railway Engineering & Maintenance-of-Way Association
ARTBA	American Road & Transportation Builders Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASCII	American Standard Code for Information Interchange
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing

ASTM	American Society for Testing and Materials
ATC	Alternative Technical Concept
ATMS	advanced traffic management system
ATR	Automatic Traffic Recorder
ATSSA	American Traffic Safety Services Association
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BAFO	Best and Final Offer
BLSF	Bordering Land Subject to Flooding
BMP	Best Management Practice
CADD	computer-assisted drafting and design
CCTV	Closed Circuit Television
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, <i>et seq.</i>
CFR	Code of Federal Regulations
CLI	Chain Link Institute
CMP	Communications Plenum Cable or Corrugated Metal Pipe
CMS	Changeable Message Sign
COA	Condition of Award
COAX	Radio Frequency Transmission Cable (Coaxial Cable)
COE	(U.S.) Army Corps of Engineers
COM	Communications
CPM	Critical Path Method
CRAB	County Road Administration Board
CRSI	Concrete Reinforcing Steel Institute
CRT	Console Monitor (Cathode Ray Tube)
CSI	Construction Specifications Institute
CUF	Commercially Useful Function
CV	Compacted Volume
dB	Decibels
D-B	Design-build
DBE	Disadvantaged Business Enterprise
DIPRA	Ductile Iron Pipe Research Association
DOIT	Seattle Department of Information Technology
DRB	Dispute Review Board
DTM	digital terrain model
DWG	Drawing
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECP	Environmental Compliance Plan
EEL	Edison Electric Institute
EEO	Equal Employment Opportunity
EIA	Electronic Industries Alliance
EIP	Environmental Investigation Plan
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EPD	Escrowed Proposal Documents
EQPT	Equipment
ESAL	Equivalent Single Axle Loads

EV	Excavated Volume
EVP	Emergency Vehicle Pre-Emption
F	Fahrenheit
FAR	Federal Acquisition Regulation
FCC	Federal Communications Commission
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FICA	Federal Insurance Compensation Act
FOP	Field Operating Procedure
FSS	Federal Specifications and Standards, General Services Administration
FUTA	Federal Unemployment Tax Act
GAAP	Generally Accepted Accounting Principles
GEC	General Engineering Consultant
GFI	Ground Fault Interrupter
HAC	High Accident Corridor
HAL	High Accident Location
HH	Handhole
HOV	High Occupancy Vehicle
HUD	United States Department of Housing and Urban Development
ICEA	Insulated Cable Engineers Association
IDF	Intensity, duration, and frequency
IEEE	Institute of Electrical and Electronics Engineers
IES	Illumination Engineering Society
IIMS	Incident Information Management System
IMC	Intermediate Metal Conduit
IMSA	International Municipal Signal Association
IPS	Iron Pipe Size
IRI	International Roughness Index
ISA	Initial Site Assessment
ISDN	Integrated services digital network
ISO	International Organization for Standardization
ISP	Information or Internet Service Providers
ITC	Information Transmission Capacity
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
JEDEC	Joint Electronic Device Engineering Council
JIC	Joint Industrial Council
JMF	Job Mix Formula used in the Bituminous Specifications
KC-WTD	King County Wastewater Treatment Division
Kph	Kilometers per hour
KV	Kilovolt
KVA	Kilovolt Ampere
KW	Kilowatt
LAN	Local Area Network
LAPB	Link Access Protocol, Balanced
Lc	Length of Simple Curve
LED	Light Emitting Diode
LGU	Local Government Unit
LHWCA	Longshore and Harbor Workers Compensation Act

LID	Local Improvement District
LLRU	Lowest Level Replaceable Unit
LPI	Lighting Protection Institute
Ls	Length of Spiral Curve
LS	Line Section
LV	Loose Volume for Measurements, or Leveling Course for Bituminous
MACM	Maximum Achievable Control Measures
Mb	Megabit
Mbps	megabits per Second
MBTA	Migratory Bird Treaty Act
MCBF	Mean Cycles Between Failures
MCCP	Maintenance Catenary Control Panel
MIS	Management Information System
MMIS	Maintenance Management Information System
MMP	Materials Management Plan
MMU	Malfunction Management Unit
MOA	Memorandum of Agreement
MOT	maintenance of traffic
mph	miles per hour
MSE	Mechanically Stabilized Earth
MSHA	Mine Safety and Health Act
MUTCD	Manual on Uniform Traffic Control Devices
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NFPA	National Fire Protection Association
NHS	National Highway System
NICET	National Institute for Certification in Engineering Technologies
NIST	National Institute of Standards and Technology
NMC	Non-Metallic Conduit
No.	When reference is to wire, it is the AWG Gauge number
NPDES	National Pollution Discharge Elimination System
NRMCA	National Ready Mix Concrete Association
NTP	Notice to Proceed
NTS	Not to Scale
OEM	Original Equipment Manufacturer
OEO	Office of Equal Opportunity
OMWBE	Office of Minority and Women's Business Enterprises
OPX	Off-Premises Extension
OSHA	Occupational Safety and Health Administration
OSM	Office of Surface Mining
P/PCI	Precast/Prestressed Concrete Institute
PAL	Pedestrian Accident Location
PCA	Portland Cement Association
PCB	Polychlorinated biphenyls

PCCP	Portland Cement Concrete Pavement
PDA	pile-driving analyzer
PE	Professional Engineer
PG	performance grade
PIV	Peak Invert Voltage
PLS	Pure Live Seed
PM	Project Manager
PPI	Plastic Pipe Institute
PQCI	process quality control inspection
PQCT	process quality control testing
PQI	Pavement Quality Index
PRI	Pavement Rutting Index
PSI	Pavement Serviceability Index
PSR	Pavement Serviceability Rating
Pvc	Point of Vertical Curvature
PVC	Polyvinyl Chloride
PVI	Point of Vertical Intersection
Pvt	Point of Vertical Tangency
PWR	Power
QA	Quality Assurance
QC	Quality Control
QCP	Quality Checkpoint
QMP	Quality Management Plan
QPL	Qualified Products List
R	Radius
RACM	Reasonable Achievable Control Measures
RAM	Request for Approval of Material
RCRA	Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 <i>et seq.</i>
RCS	Ramp Control Signal
RCW	Revised Code of Washington (Laws of the State)
REA	Rural Electrification Association
RECs	Recognized Environmental Conditions
RF	Radio Frequency
RFP	Request for Proposals
RFQ	Request for Qualifications
RGS	Rigid Galvanized Steel Conduit
RHW	Moisture and Heat Resistant or Cross Linked Synthetic Polymer
RID	Road Improvement District
RMS	Root Mean Square
ROD	Record of Decision
ROW	Right of Way
RSC	Rigid Steel Conduit
RWIS	Roadway and Weather Information System
SAE	Society of Automotive Engineers
SAP	Sampling Analysis Plan
SBA	Small Business Administration
SCL	Seattle City Light
SEPA	State Environmental Policy Act
SHPO	State Historic Preservation Officer
SI	International System of Units (The Modernized Metric System)
SI&A	Structural Inventory and Appraisal

SIC	Standard Industrial Code, U.S. Department of Labor
SMP	Stormwater Management Plan
SMS	Stormwater Management Standards
SOP	Standard Operating Procedure
SOQ	Statement of Qualifications
SP	State Project
SPCS	State Plane Coordinate System
SPDT	Single Pole Double Throw
SPST	Single Pole Single Throw
SPU	Seattle Public Utilities
SPUI	Single Point Urban Interchange
SSPC	Steel Structures Painting Council
SUTA	State Unemployment Tax Act
SV	Stockpiled Volume
SWPPP	Stormwater Pollution Prevention Plan
TBM	Tunnel Boring Machine
TCP	Traffic Control Plan
TDM	Transportation Demand Management
TESC	Temporary Erosion and Sediment Control
THHN	Heat Resistant Thermoplastic
THW	Moisture and Heat Resistant Thermoplastic
THWN	Moisture and Heat Resistant Thermoplastic
TIA	Telecommunications Industry Association
TIB	Transportation Improvement Board
TIMP	Traffic Incident Management Plan
TMS	Traffic Management System
TMSRs	Traffic Management Strategy Reports
TRB	Transportation Research Board
TSM	Traffic System Management
TR	Technical Requirements
U.S.C.	United States Code
UBC	Uniform Building Code
UDS	Utility Design Sheet
UIS	Utility Information Sheet
UL	Underwriters Laboratory
ULID	Utility Local Improvement District
UMTA	Urban Mass Transit Administration
UPS	Uninterruptible Power Supply
USCG	United States Coast Guard
USCS	Unified Soil Classification System
USDOT	United States Department of Transportation
USFWS	U.S. Fish and Wildlife Service
USGS	United States Geological Survey
UV	Ultra Violet
VAC	Volt Alternating Current (60 Hz)
VC	Vertical Curve
VDC	Volt Direct Current
WAC	Washington Administrative Code
WAQTC	Western Alliance for Quality Transportation Construction
WCLIB	West Coast Lumber Inspection Bureau
WISHA	Washington Industrial Safety and Health Administration

WRI	Wire Reinforcement Institute
WSDOE	Washington State Department of Ecology
WSDOT	Washington State Department of Transportation
WWPA	Western Wood Products Association
XHHW	Moisture and Heat Resistant Cross Linked Synthetic Polymer

1 **2. Items of Work**

Agg.	Aggregate
Al.	Aluminum
ATB	Asphalt Treated Base
BST	Bituminous Surface Treatment
CCTV	Closed Circuit Television
Cl.	Class
Cfm	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Comb.	Combination
Conc.	Concrete
CPF	Composite Pay Factor
Crib.	Cribbing
Culv.	Culvert
cy or cu yd.	Cubic Yard
Diam.	Diameter
ESAL	Equivalent Single Axle Loads
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
Gph	Gallon per Hour
Gpm	Gallon per Minute
Hund.	Hundred
HMA	Hot Mix Asphalt
In.	Inch
Incl.	Including
ITS	Intelligent Transportation System
JMCIF	Job Mix Compliance Incentive Factor
JMF	Job Mix Formula
Lb	Pound(s)
LED	Light Emitting Diode
LF or Lin. Ft.	Linear Foot (Feet)
LS	Lump Sum
M	Thousand
MBM	Thousand Feet Board Measure
MUTS	Minimum Ultimate Tensile Strength
PCPS	Precast/Prestressed
Pres.	Pressure
PSI	Pounds per Square Inch
PVC	Polyvinyl Chloride
RAP	Recycled Asphalt Pavement
Reg.	Regulator
Reinf.	Reinforced, Reinforcing
Sec.	Section
St.	Steel

Str.	Structural
Sy or sq. yd.	Square Yard(s)
Th.	Thick or Thickness
Tr.	Treatment
Va	Air Voids
VC	Vitrified Clay
VFA	Voids Filled with Asphalt
VMA	Voids in Mineral Aggregate
VMS	Variable Message Sign

1 **3. Definitions**

2 **90 Day Look-Ahead Schedule** has the meaning set forth in TR Section 2.1.6.

3 **Acceleration Costs** means those fully documented increased costs reasonably incurred by
4 Design-Builder (i.e., costs over and above what Design-Builder would otherwise have incurred)
5 which are directly attributable to increasing the performance level of the Work in an attempt to
6 complete necessary activities of the Work earlier than otherwise anticipated, such as for
7 additional equipment, additional crews, lost productivity, overtime and shift premiums, increased
8 supervision, and any unexpected movement of materials, equipment, or crews necessary for
9 resequencing in connection with acceleration efforts.

10 **Actual Start** has the meaning set forth in TR Section 2.1.6.

11 **Actual Finish** has the meaning set forth in TR Section 2.1.6.

12 **Additional Deformation Work** means deformation mitigation measures or repair work
13 undertaken to avoid, minimize or repair damage to Structures or Utilities resulting from
14 deformation within the allowable deformation tolerance for a Structure or Utility as set forth in
15 Section 5.9.2, regardless of who performs the work.

16 **Adjustment / Adjust** means each removal, relocation, reconstruction, abandonment,
17 Temporary Adjustment, provision of temporary services, or Protection in Place (whether
18 permanent or temporary) of any existing Utility facility that is necessary in order to
19 accommodate or permit construction of the Project, including backfilling and pavement
20 restoration, deformation mitigation measures (for Group A Utilities) to be performed in advance
21 of the tunneling work for the Project, and any other work with respect to such a Utility described
22 in Section 7.2 or in TR Section 2.10.

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

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

33 **Adjustment Work** has the meaning set forth in Section 7.2.1.

1 **Affiliate** means:

2 (a) Any Person that directly or indirectly through one or more intermediaries
3 controls, or is controlled by, or is under common control with, Design-Builder or any
4 Major Participant; and

5 (b) Any Person for which 10 percent or more of the equity interest in such Person is
6 held directly or indirectly, beneficially, or of record by, (i) Design-Builder, (ii) any Major
7 Participant, or (iii) any Affiliate of Design-Builder under clause (a) of this definition.

8 For purposes of this definition, the term “control” means the possession directly or indirectly, of
9 the power to cause the direction of the management of a Person, whether through voting
10 securities, by contract, family relation, or otherwise.

11 **Alternative Technical Concept (ATC)** means the concepts proposed by Design-Builder and
12 approved by WSDOT pursuant to the ITP which modify the Basic Configuration or other
13 requirements of the Contract Documents.

14 **Apprentice** is a person enrolled in a State-Approved Apprenticeship Training
15 Program. **Apprentice Utilization Requirement** is expressed as a percentage of the project
16 Labor Hours performed by Apprentices.

17 **As-Built Plans** means the as-built documents furnished by Design-Builder, documenting the
18 details and dimensions of the completed Work, as described in TR Section 2.12.

19 **As-Built Contract Schedule** has the meaning set forth in TR Section 2.1.6.

20 **Baseline Candidate** has the meaning set forth in TR Section 2.1.6.

21 **Baseline Contract Schedule or Baseline Schedule** has the meaning set forth in TR
22 Section 2.1.6.

23 **Basic Configuration** means the following elements of the Project described or shown in
24 Technical Requirements Appendices M1 and R1, as such elements may have been modified
25 (with WSDOT’s permission) in the Proposal:

- 26 • Location of tunnel portals
- 27 • Horizontal and vertical alignments
- 28 • Number of highway lanes
- 29 • Lane and shoulder widths
- 30 • Minimum vertical clearances
- 31 • Approximate project limits
- 32 • Project Right of Way limits
- 33 • Underground tunnel easements
- 34 • Location and number of tunnel operations buildings

35 **Betterment** means, with respect to a given Utility facility, any upgrading of such facility that is
36 not attributable solely to the construction of the Project, and is made solely for the benefit of

1 and at the election of the Utility Owner, including an increase in the capacity, capability, level of
2 service, efficiency, duration, or function of the relocated or replaced or new facility over that
3 which was provided by the existing facility; provided, however, that the following are not
4 considered Betterments:

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

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

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

10 (d) Any upgrading required by applicable Laws.

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

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

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

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

21 **Business Days** means days on which WSDOT's Olympia headquarters office is officially open
22 for business.

23 **Calendar Days** means (whether capitalized or not) any day, or portion of a day, on the calendar
24 including Saturdays, Sundays, and legal holidays, beginning and ending at midnight.

25 **Category #1 Utility** has the meaning set forth in Section 7.2.

26 **Category #2 Utility** has the meaning set forth in Section 7.2.

27 **Change Notice** has the meaning set forth in Section 11.5.1.

28 **Change Order** has the meaning set forth in Section 11.1.1.

29 **City** means the City of Seattle.

30 **Completion Deadline** means the Substantial Completion Deadline, Physical Completion
31 Deadline, and/or Final Completion Deadline, depending on the context.

32 **Conceptual Design (or Conceptual Plans)** means the design concept presented in TR
33 Appendix M2.

34 **Contract** means that certain Design-Build Contract, SR-99 Bored Tunnel Alternative Design-
35 Build Project, to which this Appendix 2 is attached, executed by WSDOT and Design-Builder,
36 including any and all Appendices and amendments thereto.

- 1 **Contract Bonds** means the Payment Bond, the Performance Bond furnished by Design-
2 Builder pursuant to Section 19.1.
- 3 **Contract Documents** means the documents identified in Section 1.2, including all
4 amendments to the foregoing and all issued Change Orders and amendments to the Contract.
- 5 **Contract Schedule** means the price-loaded critical path method schedule setting forth the plan
6 for performance of the Work as described in TR Section 2.1.6 including the Baseline Contract
7 Schedule and Monthly Contract Schedule Update.
- 8 **Contract Time** means the designated duration, as set forth in Section 4.2, from NTP 2 through
9 Substantial Completion.
- 10 **Cost Responsibility** means a legal or contractual obligation requiring a Utility Owner to pay for
11 Adjustment Costs.
- 12 **Critical Path** means each critical path on the Contract Schedule which ends on the contractual
13 deadline for Substantial Completion (i.e. the term shall apply only following consumption of all
14 available float in the schedule for Substantial Completion). The lower case term “critical path”
15 shall generally mean the sequence of activities that shows the shortest time path for completion
16 of the Project.
- 17 **DBE Performance Plan** means the plan submitted by Design-Builder with its Proposal.
- 18 **DBE Progress Reports** has the meaning set forth in Section 9 of Appendix 6.
- 19 **DB-Related Entities** means Design-Builder, Major Participants, Subcontractors, suppliers, their
20 employees, agents and officers and all other Persons for whom Design-Builder may be legally
21 or contractually responsible.
- 22 **Department or WSDOT** means the Washington State Department of Transportation, or the
23 political subdivision, governmental body, board, commission, office, department, division, or
24 agency constituted for administration of the Work within its jurisdiction.
- 25 **Design-Builder** has the meaning set forth in the first page of the Contract.
- 26 **Design-Builder Initiated Change Proposal** has the meaning set forth in Article 12.
- 27 **Design-Builder Proposal Commitments and Clarifications** means those commitments and
28 clarifications made by Design-Builder in its Proposal to exceed a requirement included in the
29 Contract Documents and described in Appendix 3. For example, a Design-Builder Proposal
30 Commitment may be associated with schedule, management, organization, and/or design
31 details.
- 32 **Design-Builder’s Project Manager** means the person designated by Design-Builder to
33 supervise the Project and to receive delivery of notices to Design-Builder per Section 26.6.1.
- 34 **Design Deviation** means a documented decision by WSDOT granting approval to Design-
35 Builder at project-specific locations to differ from design requirements specified in the WSDOT
36 Design Manual (see Section 300.03).
- 37 **Design Documents** means those documents that manifest the design for the Project
38 developed by Design-Builder or any portion, component or element thereof.

- 1 **Design Manager** means Design-Builder’s principal engineer in charge of the Project. The
2 Design Manager shall initially be the individual designated in the Proposal and is considered a
3 Key Personnel for the Project.
- 4 **Differing Site Conditions** (except with respect to ATCs) means (1) actual subsurface or latent
5 physical conditions at the Site that are substantially or materially different from the conditions
6 identified in the Geotechnical Baseline Report, the Environmental Baseline Report, or the
7 Geotechnical & Environmental Data Report as set forth in Section 5.7.2 or a foundation type for
8 a Structure that is substantially or materially different from the foundation type identified in TR
9 Appendix S for said Structure, or (2) unknown physical conditions at the Site that are of an
10 unusual nature, differing materially from those ordinarily encountered and generally recognized
11 as inherent in the type of Work provided for in the Contract and the Work site characteristics
12 and that could not have been reasonably anticipated as potentially present by an experienced
13 civil works contractor. The foregoing definition shall not apply to Utilities.
- 14 **Differing Site Condition** relating to an ATC, means (1) subsurface conditions or latent physical
15 condition at the Site that are substantially or materially different from the conditions indicated in
16 Design-Builder’s geotechnical investigation conducted for purposes of the ATC prior to the
17 Proposal Date (to the extent said investigation complies with the WSDOT Geotechnical Design
18 Manual), and which are not discoverable from a reasonable investigation and analysis of the
19 site, or (2) unknown physical conditions at the Site that are of an unusual nature, differing
20 materially from those ordinarily encountered and generally recognized as inherent in the type of
21 Work provided for in the Contract and the worksite characteristics and that could not have been
22 reasonably anticipated as potentially present by an experienced civil works contractor.
- 23 **Directive Letter** means a letter from WSDOT directing performance of Work issued in
24 accordance with Section 11.1.2.
- 25 **Disadvantaged Business Enterprise (DBE)** has the meaning set forth in Section 2 of
26 Appendix 6.
- 27 **Disputes Review Board (“DRB”)** means the three-member board created as part of the
28 dispute resolution process pursuant to Section 24.2.
- 29 **DRB Agreement** means the agreement among WSDOT, Design-Builder and the members of
30 the Dispute Review Board described in Section 24.2.3.
- 31 **Effective Date** means the date of execution of the Contract by WSDOT, as set forth on the first
32 page of the Contract.
- 33 **Environmental Approvals** means the Governmental Approvals listed in TR Section 2.8.4.1.1
34 that are identified as being WSDOT’s responsibility to obtain, including any revision,
35 modification or amendment thereto.
- 36 **Environmental Baseline Report** means the Contract Document set forth in TR Appendix E6.
- 37 **Environmental Compliance Plan** means the environmental compliance plan provided by
38 Design-Builder and approved by WSDOT as described in TR Section 2.8.
- 39 **Environmental Laws** means all Laws now or hereafter in effect regulating, relating to, or
40 imposing liability or standards of conduct concerning the environment or to emissions,
41 discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutant,

1 contaminant, substance, or material into the environment including into the air, surface water,
2 or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-
3 use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous
4 waste, pollutant, contaminant, substance, or material, or otherwise relating to the protection of
5 public health, public welfare, public safety or the environment (including protection of nonhuman
6 forms of life, land, surface water, groundwater, and air), including but not limited to the
7 Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et
8 seq. (“CERCLA”), as amended by the Superfund Amendment and Reauthorization Act of 1986;
9 the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (“RCRA”), as amended
10 by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15
11 U.S.C. §2601 et seq.; the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; the
12 Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Hazardous Materials
13 Transportation Act, 49 U.S.C. §1801 et seq.; the Hazardous Materials Transportation Uniform
14 Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. §1531 et seq.;
15 the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. §1251 et seq.; the
16 Clean Air Act, 42 U.S.C. §7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.;
17 the Migratory Bird Treaty Act, 16 U.S.C. §703 et seq.; Fish and Game Code §1600 et seq.; the
18 Washington Model Toxics Control Act, 70.105D RCW; and the Washington Hazardous Waste
19 Management Act, 70.105 RCW; the Washington Water Pollution Control Act; the Clean Air
20 Washington Act; the Washington Solid Waste Management laws; the Washington Underground
21 Petroleum Storage Tanks Act, the Washington Industrial Safety and Health Act; the
22 Washington Worker and Community Right to Know Act, and the Washington Oil and
23 Hazardous Substance Spill Prevention and Response Act, all as amended and supplemented
24 previously or in the future.

25 **Escrowed Proposal Documents (EPD)** means the documentary information required to be
26 placed in escrow as provided in Section 25.1.

27 **Event of Default** means a default as described in Section 16.1.1, following notice and
28 opportunity to cure to the extent permitted by Section 16.1.2 and issuance by WSDOT of notice
29 to Design-Builder and Surety that an Event of Default has occurred.

30 **Excusable Delay** has the meaning set forth in Section 11.3.1.

31 **Extraordinary Intervention Work** means any Intervention Work that occurs after the first 1440
32 cumulative hours of Intervention Work included in the Contract as described in Section 5.7.1,
33 provided that the term specifically excludes any Intervention Work necessitated by Design-
34 Builder’s breach of its obligations under the Contract Documents. If Intervention Work starts
35 during the 1440 hour “deductible” period required to be included in the Contract under Section
36 5.7.1.1 and extends beyond the end of such period, such Intervention Work performed after the
37 1440th hour shall be considered Extraordinary Intervention Work.

38 **Final Acceptance** means acceptance of the Project and Work following Final Completion in
39 accordance with Section 21.5.

40 **Final Cleanup** means the work described in TR Section 2.29.10.

41 **Final Completion** means completion of all Work under the Contract, including satisfaction of all
42 of the obligations of Design-Builder set forth in Section 21.4.

43 **Final Completion Deadline** means the deadline for achieving Final Completion specified in
44 Section 4.2, as such deadline may be extended hereunder.

- 1 **Final Contract Voucher Certification** means DOT Form 134-146 EF available from WSDOT.
- 2 **Final Design**, as defined at 23 CFR 636.103, means any design activities following completion
3 of Preliminary Design and expressly includes the preparation of final construction plans and
4 detailed specifications for the performance of construction Work. Final Design shall only take
5 place after the effective date of NTP 2.
- 6 **Final Inspection** means inspection by WSDOT of the construction Work to determine whether
7 the Work conforms to the requirements of the Contract Documents and is complete. Final
8 Inspection of warranted Work will be made at the end of the warranty term.
- 9 **Final Payment** means the payment due to Design-Builder under Section 10.5 following Final
10 Completion and Final Inspection of the Work.
- 11 **Float** has the meaning set forth in TR Section 2.1.6.
- 12 **Frontage Road** means a local street or road usually next to an arterial highway that serves
13 abutting property and adjacent areas and controls access.
- 14 **Geotechnical Baseline Report (GBR)** means the Contract Document set forth in TR Appendix
15 G1 identifying the geotechnical conditions that Design-Builder should expect to encounter
16 during underground and subsurface construction.
- 17 **Geotechnical and Environmental Data Report (GEDR)** means the written summary set forth
18 in TR Appendix G2 of geotechnical surveying and testing and contamination screening
19 performed by WSDOT upon which WSDOT developed the Geotechnical Baseline Report.
- 20 **Geotechnical Memoranda for Design** means the Reference Document(s) identified as such,
21 providing an interpretation of available geologic data, that shall not be used to determine
22 differing site conditions, resolve contractual disputes, or in any way interpret the contract,
23 intents, or obligations of the parties.
- 24 **Good Faith Effort** as applied to Apprentice utilization is a demonstration that Design-Builder
25 has strived to meet the Apprentice Utilization Requirement including the specific steps as
26 described in Section 8.5.4.
- 27 **Governmental Approvals** means any approval, authorization, certification, consent,
28 exemption, filing, lease, license, permit, registration or ruling, required by or with any
29 Governmental Body in order to perform the Work or any Adjustment Work being performed by
30 a Utility Owner, including any modification or supplement to any of the foregoing, but excluding
31 (a) any such approvals relating to the work to be performed by other contractors as specifically
32 described in the Contract Documents and (b) any such approvals required by or with a
33 Governmental Body in its capacity as a Utility Owner.
- 34 **Governmental Body** means any federal, state, local or foreign government and any political
35 subdivision or any governmental, quasi-governmental, judicial, public or statutory
36 instrumentality, administrative agency, authority, body or entity other than WSDOT.
- 37 **Group A** means those Structures and Utilities listed in TR 2.52.
- 38 **Group B** means those Structures and Utilities listed in TR 2.52.
- 39 **Handback** *[Definition to be added by Addendum]*.

1 **Hazardous Materials** means any Hazardous Waste and any materials that contain any of the
2 following:

3 (a) any substance, product, waste, pollutant, contaminant or other material of any
4 nature whatsoever that exceeds maximum allowable concentrations for elemental
5 metals, organic compounds or inorganic compounds, as defined by any Environmental
6 Law;

7 (b) any substance, product, waste, pollutant, contaminant or other material of any
8 nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any
9 Environmental Law;

10 (c) any substance, product, waste, pollutant, contaminant or other material of any
11 nature whatsoever which may give rise to liability under clause (a) or (b) or under any
12 statutory or common law theory based on negligence, trespass, intentional tort,
13 nuisance, or strict liability or under any reported decisions of a state or federal court;

14 (d) petroleum hydrocarbons excluding de minimus amounts and excluding
15 petroleum hydrocarbon products contained within regularly operated motor vehicles; and

16 (e) hazardous building materials including but not limited to asbestos or asbestos-
17 containing materials, lead or PCBs in structures and/or other improvements on or in the
18 Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the
19 ground).

20 (f) lead or lead-containing materials in Structures and/or other improvements on or
21 in the Site.

22 **Hazardous Waste** means waste as defined in 40 C.F.R. Part 261.

23 **Hold Point** has the meaning set forth in TR Section 2.28.5.4.

24 **Incidental Utility Work** means all of the following work necessary for the construction of the
25 Project:

26 (a) Service Line Adjustments.

27 (b) The adjustment of Utility appurtenances (e.g., manholes, valve boxes, and
28 vaults) for line and grade upon completion of roadway work.

29 (c) All work necessary to remove any Utilities (whether or not in use as of the
30 Proposal Date) in situations for which leaving the Utilities in place is not feasible or not
31 permitted, or for facilities which are to be removed to accommodate or permit
32 construction of the Project, regardless of whether replacements for such Utilities are
33 being or have been installed in other locations.

34 (d) All work necessary to abandon in place any Utility in accordance with applicable
35 Law and proper Utility Owner and/or industry procedures (e.g., flushing, capping, slurry
36 backfill, etc.) regardless of whether replacements for such Utilities are being or have
37 been installed in other locations.

38 **Incremental Costs** means those costs, if any, which Design-Builder incurs as a result of a
39 particular circumstance which Design-Builder would not have incurred but for the circumstance.
40 In determining such costs, one would determine the total cost which Design-Builder would have
41 incurred had the circumstance not occurred, and subtract such amount from the costs actually

1 incurred; the difference is the “increment.” (For example, if Design-Builder originally has to
2 relocate three water lines, and a fourth water line is discovered in the same general area which
3 can be relocated by the same crew, then if Design-Builder is entitled to a Change Order
4 increasing the Contract Price on account of such newly discovered water line, WSDOT will be
5 charged with only the costs of keeping the crew working the additional time to relocate the
6 fourth water line, and will not be charged any portion of the expense of moving the crew to the
7 site in the first place.)

8 **Indemnified Parties** has the meaning set forth in Section 18.1.1.

9 **Independent Assurance Inspection (IAI)** means an unbiased and independent inspection by
10 WSDOT of Design-Builder’s Quality Assurance systems used to verify the reliability of the tests
11 results obtained in the regular Quality Assurance sampling and testing activities. This may
12 include observations, audits, and or split sample testing to check the calibration of the testing
13 equipment and processes being used.

14 **Instructions to Proposers (ITP)** means the document included in the RFP that is identified as
15 Instructions to Proposers.

16 **Intelligent Transportation Systems (ITS)** means the equipment and systems described in TR
17 Sections 2.18.

18 **Intergovernmental Agreements** means an agreement between WSDOT and a Governmental
19 Body (including task orders issued pursuant thereto) addressing the development and
20 construction of the Project and/or of Utility Adjustments necessary for the Project, as the same
21 may be amended from time to time.

22 **Intervention Work** has the meaning set forth in Section 5.7.1.

23 **Key Personnel** means the persons listed on Appendix 7, as such list may be revised from time
24 to time in accordance with the Contract.

25 **Labor Hours** are the total hours performed by all workers receiving an hourly wage who are
26 directly employed on the project site including hours performed by workers employed by
27 Design-Builder and all Subcontractors. Labor Hours do not include hours performed by
28 foremen, superintendents, owners, and workers who are not subject to prevailing wage
29 requirements.

30 **Law** or **Laws** means all applicable federal, state and local laws, codes, ordinances, rules,
31 regulations, judgments, decrees, directives, guidelines, policy requirements, orders and
32 decrees of any Governmental Body having jurisdiction over the Project or Site, the practices
33 involved in the Project or Site, any Work, or any Utility Work being performed by a Utility
34 Owner. The term “Law” does not include Governmental Approvals.

35 **Lien** means any pledge, lien, security interest, mortgage, deed of trust or other charge or
36 encumbrance of any kind, or any other type of preferential arrangement (including any
37 agreement to give any of the foregoing, any conditional sale or other title retention agreement,
38 any lease in the nature of a security instrument, and the filing of or agreement to file any
39 financing statement or other instrument intended to perfect a security interest).

40 **Liquidated Damages** means the damages described in Article 17.

41 **Lump Sum Amount** has the meaning set forth in Section 10.1.

- 1 **Maintenance of Traffic Plan (MOT Plan)** has the meaning set force in TR Section 2.22.
- 2 **Major Participant** means each of the following entities: the lead engineering/design firm(s)
3 (such as the designer of record for the tunnel, the designer of record for tunnel systems, and
4 the designer of record for interior structures); each of the general partners or joint venture
5 members of the lead engineering/design/firm; each engineering/design subconsultant that will
6 perform 30% or more of the design Work; and each Subcontractor that will perform 20% or
7 more of the construction Work.
- 8 **Major Underground Utility** means any Utility that is buried or placed below ground within the
9 Project Right of Way or in the vicinity of any Project work outside the Project Right of Way,
10 other than Service Lines, any street lighting, traffic signals, or irrigation facilities.
- 11 **Mandatory Standards** means the standards and specifications identified as such in the
12 Technical Requirements.
- 13 **Materials** means items incorporated into the Force Account Work, supplies used during Force
14 Account Work and items consumed during Force Account Work.
- 15 **Monthly Contract Schedule Updates** has the meaning set forth in TR Section 2.1.6.
- 16 **Necessary Basic Configuration Change** means any change in the Basic Configuration which
17 is necessary to meet the requirements of the Contract Documents as the result of an error,
18 omission, deficiency or defect in the Basic Configuration (with the understanding that a change
19 shall be deemed “necessary” only if the error, omission, deficiency or defect creates a problem
20 in which Design-Builder is unable to meet the requirements of the Contract Documents without
21 a material change in the Basic Configuration).
- 22 **North and South Access Contractors** *[Definition to be added by Addendum]*.
- 23 **Nonconforming Work** means Work performed that does not meet requirements of the
24 Contract Documents.
- 25 **Notice of Substantial Completion** means the written notice issued by WSDOT to Design-
26 Builder under Section 21.1.3.
- 27 **Notice of (Partial) Termination** means a written notice issued by WSDOT to terminate the
28 Contract and the performance of the Work by Design-Builder, either in whole or in part,
29 pursuant to Article 15.
- 30 **NTP 1** means the written authorization issued by WSDOT to Design-Builder to commence
31 performance of the NTP 1 Work.
- 32 **NTP 1 Work** consists of:
- 33 • Preliminary Design activities;
- 34 • Design supporting environmental regulatory compliance and early permit
35 coordination; and
- 36 • Design supporting the development of environmental mitigation plans.

- 1 **NTP 2** means the written authorization issued by WSDOT to Design-Builder to commence
2 performance of the NTP 2 Work.
- 3 **NTP 2 Work** means all Work not performed during the NTP 1 period, including completion of
4 Work authorized by NTP 1 as well as Final Design and physical construction.
- 5 **Party** means Design-Builder or WSDOT, as the context may require and “**Parties**” means
6 Design-Builder and WSDOT, collectively.
- 7 **Payment Bond** means the payment bond required by Section 19.1.
- 8 **Performance Bond** means the performance bond required by Section 19.1.
- 9 **Person** means any individual, corporation, company, voluntary association, partnership, trust,
10 unincorporated organization or Governmental Body, including WSDOT.
- 11 **Physical Completion** means completion of all physical Work on the Project, including all
12 Punch List Work and Final Cleanup.
- 13 **Physical Completion Deadline** means the deadline for achieving Physical Completion
14 specified in Section 4.2, as such deadline may be extended hereunder.
- 15 **Preferred Alternative** means the alternative identified as such in the environmental documents
16 prepared pursuant to NEPA.
- 17 **Preliminary 90 Day Look-Ahead Schedule** has the meaning set forth in TR Section 2.1.6.
- 18 **Preliminary Design**, as defined at 23 CFR 636.103, defines the general project location and
19 design concepts. It includes, but is not limited to, preliminary engineering and other activities
20 and analyses, such as environmental assessments, topographic surveys, metes and bounds
21 surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering,
22 traffic studies, financial plans, revenue estimates, hazardous materials assessments, general
23 estimates of the types and quantities of materials, and other work needed to establish
24 parameters for the final design. Prior to completion of the NEPA review process, any such
25 preliminary engineering and other activities and analyses must not materially affect the
26 objective consideration of alternatives in the NEPA review process.
- 27 **Preliminary Schedule** has the meaning set forth in TR Section 2.1.6.
- 28 **Prescheduled Adjustment** means a Utility Adjustment identified as such in TR Section 2.10 or
29 a Utility subject to such an Adjustment, depending on the context.
- 30 **Private Utility** means a Utility that is owned or operated by a Private Utility Owner.
- 31 **Private Utility Owner** means a Utility Owner that is not a Governmental Body.
- 32 **Progress Meeting** has the meaning set forth in Section 10.2.1.
- 33 **Progress Payments** has the meaning set forth in Section 10.2.
- 34 **Project** means the SR-99 Tunnel Design-Build Project, as more specifically described in TR
35 Section 2.1, and all other work product to be provided by Design-Builder as a condition to Final
36 Completion in accordance with the Contract Documents.

- 1 **Project Labor List** has the meaning set forth in Section 11.9.1.
- 2 **Project Right of Way** means the real property (including all estates, easements, leases and
3 other interests in real property) within the access control line for WSDOT-owned transportation
4 facilities included in the Project. Portions of the Work will be performed outside of the Project
5 Right of Way, including Work on Structures and certain Utilities. Design-Builder may also deem
6 it necessary or advisable to obtain temporary rights in other real property outside of the Right of
7 Way.
- 8 **Property Acquisition Schedule** has the meaning set forth in Section 7.1.
- 9 **Proposal** means those documents constituting Design-Builder's response to the RFP, including
10 any supplements to proposals as may have been requested by WSDOT.
- 11 **Proposal Date** means the date the Proposal was due as specified in the Instructions to
12 Proposers.
- 13 **Protection in Place or Protect in Place** means any action taken to avoid damaging a Utility
14 which does not involve removing or reinstalling it in a new location, including staking the
15 location of the Utility, avoidance of a Utility's location by construction equipment, installing steel
16 plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and
17 installing physical barriers. For example, temporarily lifting power lines without cutting them
18 would be considered Protection in Place; whereas temporarily moving power lines to another
19 location after cutting them would be considered a Temporary Adjustment. The term includes
20 both temporary measures and permanent installations meeting the foregoing definition.
21 Without limiting the generality of the foregoing, Protection in Place includes the deformation
22 mitigation measures with respect to Group A Utilities to be undertaken by Design-Builder in
23 advance of the tunneling work for the Project.
- 24 **Public Information Plan** means the public information plan provided by Design-Builder and
25 approved by WSDOT as described in TR Section 2.9.
- 26 **Public Records Act** means the Washington Public Records Act, Chapter 42.56 RCW, as
27 amended from time to time.
- 28 **Public Utility** means a Utility that is owned or operated by (a) a Public Utility Owner or
29 (b) Seattle Steam Company.
- 30 **Public Utility Owner** means a Utility Owner that is a Governmental Body and a party to an
31 Intergovernmental Agreement. **Punch List** means the list of Work that remains to be completed
32 after achievement of Substantial Completion as a condition precedent to achievement of
33 Physical Completion, limited to minor incidental items of Work necessary to correct
34 imperfections which have no adverse effect on the safety, use or operability of the Project.
- 35 **Quality Assurance (QA)** means all those planned and systematic actions performed by
36 Design-Builder to demonstrate to WSDOT that the Work complies with the Contract Documents
37 and that all elements of the Work will perform satisfactorily for the purpose(s) intended.
- 38 **Quality Control (QC)** means the total of all activities performed by Design-Builder to assess
39 design, production and construction processes so as to control the level of quality being
40 produced in the end product. Components may include design reviews and checks,
41 establishing procedures, calibrations and maintenance of equipment, shop drawing review,

- 1 document control, production process control, and any sampling, testing, and inspection done
2 for these purposes.
- 3 **Quality Management Plan** means the quality management plan provided by Design-Builder
4 and approved by WSDOT as described in TR Section 2.28.
- 5 **Quality Verification** means the inspections, independent sampling and testing performed by
6 WSDOT, or its agent, on a random basis to validate that Design-Builder is following the
7 approved Quality Assurance procedures and that such procedures appear to be effective in
8 assuring quality.
- 9 **Reasonable Accuracy** has the meaning set forth in Section 7.2.9.3.
- 10 **Reference Documents** means the documents designated as such by WSDOT in TR Appendix
11 A1.
- 12 **Released for Construction (RFC) Documents** means the Design Documents that are
13 stamped "Released for Construction" by Design-Builder in accordance with TR Section 2.28.
- 14 **Remediation Work** means investigating, monitoring, characterizing, testing, sampling, stock-
15 piling, storage, backfilling in place, recycling, treatment, and/or off-Site disposal of Hazardous
16 Materials, as approved by WSDOT and in accordance with the Environmental Compliance Plan
17 and TR Section 2.8.
- 18 **Request for Change Proposal** means a proposal issued by WSDOT under Section 11.2.1.
- 19 **Request for Proposals** means the Request for Proposals for the Project issued by WSDOT on
20 May 26, 2010, including all addenda and clarifications thereto.
- 21 **Rights-of-Way** means Project Right of Way.
- 22 **Routine Maintenance** means the inspection, maintenance and repair of the TBM that occurs
23 outside the plenum, under free air.
- 24 **Secretary, Secretary of Transportation** means the chief executive officer of the Department.
- 25 **Selected Alternative** means the alternative selected in the final environmental documents
26 prepared pursuant to NEPA.
- 27 **Service Line** (also referred to as a service lateral or lateral) means a line, the function of which
28 is to connect directly the improvement(s) on an individual property, either public or private, to a
29 Utility that is part of a larger line, facility or system. Unless noted otherwise in the Technical
30 Requirements, the term Service Line excludes any cable, conduit or other line that connects a
31 Traffic Control/Illumination System to a Utility that is part of a larger line, facility or system. Such
32 a cable, conduit or other line shall be considered to be part of the applicable Traffic
33 Control/Illumination System.
- 34 **Shared Contingency** means that contingency fund established by WSDOT to pay for both
35 Extraordinary Intervention Work under Section 5.7.2 and Additional Deformation Work under
36 Section 5.9.
- 37 **Site** means those areas designated in writing by WSDOT for performance of the Work and
38 such additional areas as may, from time to time, be designated in writing by WSDOT for

1 Design-Builder's use in performance of the Work. For purposes of Contract requirements
2 relating to site conditions, the term "Site" shall also include property adjoining the work area that
3 affects or is affected by the Work. For purposes of insurance (subject to any notification and
4 other requirements imposed by the insurer(s) for approval), indemnification, safety and security
5 requirements and prevailing wage requirements, the term "Site" shall also include (a) the field
6 office sites, (b) any property used for storage of material for the Project approved by WSDOT
7 under Section 10.4.2, (c) staging areas dedicated to the Project, and (d) areas where activities
8 incidental to the Project are being performed by DB-Related Entities covered by worker's
9 compensation insurance required by the Contract, but excluding any permanent locations of
10 such DB-Related Entities.

11 **Special Provisions** means supplemental specifications and modifications to the Standard
12 Specifications noted in TR Appendix B.

13 **Stage** *[Definition to be added by Addendum]*.

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

17 **Standard Specifications** means Chapters 2 through 9 of the Standard Specifications for Road,
18 Bridge and Municipal Construction 2010 (M41-10) published by WSDOT, as modified by the
19 Technical Requirements and Special Provisions. Chapter 1 of said publication is not part of the
20 Contract Documents. As a result, all cross-references within the Standard Specifications to
21 provisions in Chapter 1 shall be deemed references to the provisions of the Contract
22 Documents which have superseded said cross-referenced provisions. For example, cross-
23 references in the Standard Specifications to Section 1-09 (to the extent that such references
24 relate to Design-Builder's payment rights under the Contract) shall be deemed references to
25 Article 10 of the Contract.

26 **State / State of Washington** means the State of Washington acting through its elected officials
27 and their authorized representatives, including WSDOT, or the State of Washington in the
28 geographic sense, depending on the context.

29 **State-Approved Apprenticeship Training Program** is an apprenticeship training program
30 approved by the Washington State Apprenticeship Council.

31 **Structures** means the buildings, areaways, sidewalks, streets and ancillary facilities that are
32 subject to the deformation mitigation provisions in TR Section 2.52.

33 **Subcontract** means an agreement between Design-Builder and one or more third parties
34 providing for such third party to perform any part of the Work or any such agreement between
35 any Subcontractor and its lower tier Subcontractor, at any tier.

36 **Subcontractor** means any Person with whom Design-Builder has entered into any Subcontract
37 and any other Person with whom any Subcontractor (at any tier) has entered into a lower tier
38 Subcontract. Suppliers and materialmen are excluded from the term.

39 **Substantial Completion** means satisfaction of the criteria set forth in Section 21.1.

40 **Substantial Completion Deadline** means the deadline for achieving Substantial Completion
41 specified in Section 4.2, as such deadline may be extended hereunder.

- 1 **Surety** means each properly licensed surety company approved by WSDOT which has issued
2 the Contract Bonds.
- 3 **Technical Proposal** means the part of Design-Builder's Proposal designated as such in the
4 Instructions to Proposers.
- 5 **Technical Requirements (TR)** means the technical requirements and mandatory standards
6 contained in TR Sections 2.1 through 2.60, together with such documents as may be
7 incorporated by reference therein.
- 8 **Temporary Relocation** means (a) any interim relocation of a Utility (i.e., the installation,
9 removal, and disposal of the interim facility) pending installation of the permanent facility in the
10 same or a new location, and (b) any removal and reinstallation of a Utility in the same place with
11 or without an interim relocation.
- 12 **Traffic Control / Illumination System** means *[Definition to be added by Addendum]*
- 13 **Traffic Management Plan** means the plan provided by Design-Builder and approved by
14 WSDOT as described in TR Section 2.22.
- 15 **Tunnel Boring Machine (TBM)** has the meaning set forth in TR Section 2.32.5.1.1
- 16 **Utility** means a privately, publicly, or cooperatively owned line, facility or system (including
17 municipal and/or government lines, facilities and systems but excluding WSDOT owned lines,
18 facilities or systems) for transmitting or distributing communications, cable television, power,
19 electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity,
20 including any irrigation system. The necessary appurtenances to each Utility facility shall be
21 considered part of such Utility. However, unless noted otherwise in the Technical
22 Requirements, the term "Utility" or "utility" excludes (a) storm water facilities that provide
23 drainage solely for the Project Right of Way, (b) Traffic Control/Illumination Systems and (c)
24 Intelligent Transportation Systems. Without limitation, any Service Line shall be considered a
25 Utility even if it is not owned by a Utility Owner.
- 26 **Utility Agreement** means a Utility MOU, an Adjustment Agreement and/or an
27 Intergovernmental Agreement (to the extent it relates to Utilities) as the context may require
28 and as the same may be amended from time to time. A document is a "Utility Agreement" if it
29 meets the definition set forth herein, without regard to the title of the document.
- 30 **Utility Delay** has the meanings set forth in Section 7.2.12.
- 31 **Utility Information** means the information regarding Utilities included in TR Appendix U and
32 any other information WSDOT includes in the RFP with regard to identification of Utilities. In
33 the event of any conflict within the various components of the Utility Information, the more
34 accurate information will prevail.
- 35 **Utility MOU** means a non-binding agreement or memorandum of understanding (as the same
36 may be amended) between WSDOT and a Utility Owner establishing certain understandings as
37 to the Adjustment of such Utility Owner's Utilities as necessary for the Project and included in
38 TR Appendix U-12. A document is a "Utility MOU" if it meets the definition set forth herein,
39 without regard to the title of the document.
- 40 **Utility Owner** means the owner or operator of any Utility.

- 1 **Utility Owner Project** means the design and construction by or at the direction of a Utility
2 Owner of a new Utility other than (a) as part of an Adjustment or (b) to provide service to the
3 Project. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.
- 4 **Utility Standards** means the standard specifications, standards of practice, and construction
5 methods that a Utility Owner customarily applies to facilities constructed by the Utility Owner (or
6 for the Utility Owner by its contractors) at its own expense and that are comparable to the
7 Utilities being Adjusted for the Project.
- 8 **Utility Work** has the meaning set forth in Section 7.2.
- 9 **Warranty** means any warranty made by Design-Builder pursuant to Article 22.
- 10 **Work** means all duties and services to be furnished and provided by Design-Builder as required
11 by the Contract Documents, including the administrative, design, engineering, quality control,
12 quality assurance, Relocation, procurement, legal, professional, manufacturing, supply,
13 installation, construction, supervision, management, testing, verification, labor, materials,
14 equipment, documentation and all other efforts necessary or appropriate to achieve Final
15 Completion except for those efforts which the Contract Documents specify will be performed by
16 WSDOT or other Persons. In certain cases, the term is also used to mean the products of the
17 Work.
- 18 **Work Area** means all property under control of Design-Builder for performance of the Work at a
19 particular time.
- 20 **Work Breakdown Structure** means a deliverable-oriented grouping of Project components
21 that organizes and defines the total scope of the Project.
- 22 **Working Drawings** means stress sheets, shop drawings, erection plans, falsework plans,
23 framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other
24 supplementary plans or similar data which illustrate the construction of the Work.
- 25 **Working Schedule** has the meaning set forth in TR Section 2.1.6.
- 26 **WOSCA Site** *[Definition to be added by Addendum]*
- 27 **WSDOT-Caused Delays** means unavoidable delays, to the extent that they affect the Critical
28 Path, arising from the following matters and no others:
- 29 (a) A suspension order pursuant to Section 14.1, to the extent provided therein;
30 (b) WSDOT-Directed Changes;
31 (c) Failure or inability of WSDOT to provide Design-Builder with access to the Site
32 by the applicable date specified on the Property Acquisition Schedule;
33 (d) WSDOT direction to uncover, remove, and restore Work, to the extent provided
34 in Section 5.4.3, or a stop work order issued by WSDOT under Section 5.8;
35 (e) Issuance of a temporary restraining order or other form of injunction by a court
36 that prohibits prosecution of a material portion of the Work, except if arising out of,
37 related to, or caused by the delay, act, omission, negligence, willful misconduct,
38 recklessness, breach of contract or violation of Law by any DB-Related Entity; or

1 (f) Delays in obtaining Environmental Approvals by the dates specified in TR
2 Section 2.8.4.1.1.

3 **WSDOT-Directed Change** means any change in the Work or extra Work ordered by WSDOT
4 under Section 11.2, including any change in the Work or extra Work authorized by Directive
5 Letter and later determined to constitute change directed by WSDOT.

6 **WSDOT Engineer** means the WSDOT representative responsible for making decisions on
7 behalf of WSDOT as outlined in the Contract Documents.

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APPENDIX 3

Design-Builder's Proposal Commitments and Clarifications

[to be inserted prior to execution]

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APPENDIX 4

Property Acquisition Schedule

WSDOT shall undertake and complete the acquisition of certain properties for the Project in accordance with the acquisition schedule (“Property Acquisition Schedule”) set forth in this Appendix 4. For each such property, the Property Acquisition Schedule provides the building identification number, WSDOT parcel number, tax parcel number, and the expected availability date (month and year). Refer to TR Section 2.24 for more specific information regarding these properties to be acquired.

Property Acquisition Schedule

For Parcel No. See TR Appendix R1

TUNNEL RIGHTS				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
T214	1-23287	6094670000	Four Seasons Hotel	October 2012
T214	1-23287	6094680000	Four Seasons Hotel	October 2012
T215	1-23286	1976200060	Lusty Lady	October 2012
T216	1-23285	1976200075	Harbor Steps (Northeast Tower)	October 2012
T222	1-23285	1976200076	Harbor Steps Plaza	October 2012
T223	1-23285	1976200076	Harbor Steps (Southeast Tower)	October 2012
T230	1-23284	1697500000	Colonial/Grand Pacific Building	October 2012
T231	1-23283	9197200000	Watermark Tower	October 2012
T234	1-23281	7666202515	National Building	October 2012
T235	1-23282	1974600025	Arlington North	October 2012
T236	1-23282	1974600025	Arlington South	October 2012
T237	1-23282	1974600035	Alexis	October 2012
T243	1-23278	7666202530	Federal Office Building	October 2012
T251	1-23275	7666202565	Polson Building	October 2012
T252	1-23274	7666202570	Western Building	October 2012
T055	1-23344	1991200790	Law Office/Lakeside Deli	October 2012
T057	1-23342	1991200765	Travelodge	October 2012
T077	1-23335	0697000064	6th & Wall Building	October 2012
T086	1-23329	0696000160	Seattle City of FFD	October 2012
T087	1-23328	0696000155	Retail Store	October 2012
T090	1-23330	0696000175	5th & Bell Building	October 2012
T107	1-23324	0694000115	Security House	October 2012
T124	1-23309	1977201165	Saito's Japanese Café & Bar	October 2012
T125	1-23308	1977201181	Belltown Center	October 2012
T126	1-23313	1977201150	Markham Building	October 2012
T127	1-23312	1977201155	Langdon & Anne Simons Senior Apts	October 2012
T144	1-23303	6391350000	One Pacific Towers Condominium	October 2012
T146	1-23306	1843050000	Cristalla Condominium	October 2012
T151	1-23301	1977200920	Terminal Sales Office Building	October 2012
T153	1-23300	1977200935	1924 1st Ave	October 2012
T154	1-23299	1977200940	Oxford Apartments	October 2012
T167	1-23297	1977200435	JP Jones Bldg	October 2012
T168	1-23297	1977200435	Fairmount Apts	October 2012
	1-23291	7877100000	South Arcade Condo (Air Rights)	October 2012
T205	1-23291	6094500000	98 Union Condo	October 2012
T206	1-23291	6094500000	98 Union Condo	October 2012
A106	1-23341	1991200520	Space Needle Corporate Office	October 2012
A108	1-23337	1991200580	Retail/Service	October 2012
A110	1-23336	0697000025	Archstone Belltown Apartments	October 2012
A114	1-23331	0696000250	Fountain Court Apartments	October 2012

Property Acquisition Schedule

For Parcel No. See TR Appendix R1

TUNNEL RIGHTS				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
A119	1-23327	0656000605	Two Bells Tavern	October 2012
A120	1-23326	0656000615	314 Bell	October 2012
A123	1-23325	0656000540	The Adams Apts	October 2012
A126	1-23323	0694000110	Kelly's Restaurant & Mom's Teriyaki	October 2012
A128	1-23322	0694000105	PBJS	October 2012
A130	1-23317	2867400000	Grandview Condominium	October 2012
A138	1-23311	1977201145	Castle Apts	October 2012
A139	1-23310	1977201160	DWW Associates LLC	October 2012
A166	1-23338	1991200600	BRE Apartments	October 2012
A167	1-23336	0697000025	Archstone Belltown Apartments (Garage)	October 2012
A159	1-23276	7666202545	Commuter Center Building	October 2012
A161	1-23276	7666202560	Commuter Parking Garage	October 2012
NA	1-23343	1991200785	Parking	October 2012
NA	1-23321	0694000100	Parking	October 2012
NA	1-23320	0694000090	Parking	October 2012
NA	1-23318	0694000055	Vacant (Commercial)	October 2012
NA	1-23305	1977200885	Vacant (Commercial)	October 2012
NA	1-23304	1977200900	Parking	October 2012
NA	1-23312	1977201170	City of Seattle (Apts-Subsidized)	October 2012
NA	1-23307	1977201200	Parking (DNR)	October 2012
NA	1-23298	1977200955	Subsurface Parking Lot	October 2012
NA	1-22302	1977200960	Subsurface Parking Lot	October 2012
NA	1-23277	7666202540	Colman Towers Parking Lot	October 2012
NA	1-23273	7666202575	Trust Parking Lot	October 2012
NA	1-23274	7666202566	Parking (RR ROW)	October 2012

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Property Acquisition Schedule

For Parcel No. See TR Appendix R1

NORTH PORTAL PROPERTIES				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
NA	1-22312	1991200845	Cedarstrand Prop., LLC	April 1, 2012
NA	1-22308	1988201090	SDOT Maintenance yard	June 2012
T53	1-22310	1991200815	ARE	April 1, 2012

SOUTH PORTAL PROPERTIES				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
NA	1-22290	7666207695	<i>Optional</i> Port T-46 - optional; for barging - Proposers must identify their interest in leasing this property, and negotiate lease terms directly with Port of Seattle. Details of the property are contained in TR Appendices N1, N2 and N3.	July 2011

TEMPORARY TIEBACKS				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
NA	1-22290	7666207695	Terminal 46	July 2011
NA		1991200405	SCL Substation	June 2012
T55	1-23344	1991200790	Law Office/Lakeside Deli	June 2012
T52	1-22309	1991200800	Seattle Pacific Hotel	June 2012

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Property Acquisition Schedule

For Parcel No. See TR Appendix R1

PRE-CONSTRUCTION SURVEY and SETTLEMENT MONITORING				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
T169		1977200020	First & Stewart Building	March 2012
T170		1977200030	Atwood Hotel	March 2012
T171		1977200015	MJA Building	March 2012
T172		1977200040	Broadacres Building	March 2012
T173		2694800000	Garden Center Bldg Condos	March 2012
T174		1977200050	Inn at the Market - North	March 2012
T175		1977200050	Inn at the Market - South	March 2012
T177		1976200165	Triangle Building	March 2012
T178		1976200190	Triangle Building #2 & #3	March 2012
T180		5160500000	Market House Apartments	March 2012
T182		1976200210	Sanitary Market	March 2012
T183		1976200230	Corner Market	March 2012
T186		1975700640	déjà vu Showgirls	March 2012
T187		1975700655	Broderick Building	March 2012
T188		1975700605	Doyle Building	March 2012
T189		2538830000	1521 2nd Avenue	March 2012
T190		1975700646	Liberty Building	March 2012
T191		1975700645	Eitel Building	March 2012
T192		1976200185	Pike Place Market - North	March 2012
T193		1976200205	Pike Place Market - South	March 2012
T194		4193800000	The Lasalle	March 2012
T198		4193800000	The Lasalle	March 2012
T199		7442700000	Ross Manor	March 2012
T202		1976200140	Post Alley Court	March 2012
T203		1976200160	Marketside Flats	March 2012
T204		1976200105	Economy Market	March 2012
T205	1-23291	6094500000	South Arcade Condos	March 2012
T207		1975700540	Hahn Building - Elliott Apts	March 2012
T208		1975700560	Showbox Building	March 2012
T209		1975700580	Poll Building	March 2012
T210		6065000000	Newmark Building	March 2012
T212		1976200030	City Light Substation	March 2012
T213		1976200070	Harbor Steps (Northwest Tower)	March 2012
T214	1-23287	6094670000	Four Seasons Hotel	March 2012
T214	1-23287	6094680000	Four Seasons Hotel	March 2012
T217		9184500000	Chase Center / SAM	March 2012
T218		1974700010	Seattle Art Museum	March 2012
T220		7666202465	Harbor Steps (Southwest Tower)	March 2012
T225		1974700170	Hotel Diller	March 2012
T226		1974700190	Freedman Building	March 2012

Property Acquisition Schedule

For Parcel No. See TR Appendix R1

PRE-CONSTRUCTION SURVEY and SETTLEMENT MONITORING				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
T227		1974700175	Galland Building	March 2012
T228		1974700175	Seneca Building	March 2012
T232		0942000030	Second and Seneca Building	March 2012
T233		0942000025	SDL Office Building	March 2012
T238		0939000515	Holyoke Building	March 2012
T239		0939000530	Schoenfeld Furniture Store Bldg	March 2012
T240		3470000000, 5017300000	Hotel 1000	March 2012
T247		8591400005	Colman Building	March 2012
T253		7666202580	DJC Building	March 2012
T086	1-23329	0696000160	Seattle City of - FFD	March 2012
T087	1-23328	0696000155	2316 4th Ave	March 2012
T088		0696000145	2306 4th Ave	March 2012
T089		0696000140	Franklin Apartments	March 2012
T095		0696000095	Charlesgate Apts	March 2012
T106	1-23319	0694000080	Cornelius Apts	March 2012
T107	1-23324	0694000115	Security House	March 2012
T108		0694000125	Spitfire	March 2012
T109		0694000130	Shelby Apts	March 2012
T116		0694000195	Mexican Consulate	March 2012
T117		8727450000	2124 Third Avenue Condo	March 2012
T119		0694000180	2118 3rd Ave	March 2012
T120		8727310000	2112 Third Ave Bldg	March 2012
T121		7457200000	Royal Crest Condo	March 2012
T123		0694000205	Fourth & Blanchard Building	March 2012
T124	1-23309	1977201165	Saito's Japanese Café & Bar	March 2012
T125	1-23308	1977201181	Belltown Center	March 2012
T126	1-23313	1977201150	Markham Building	March 2012
T127	1-23312	1977201155	Langdon & Anne Simons Senior Apartments	March 2012
T128		1977201190	Brasa Building	March 2012
T129		1977201195	Sig's Barber Shop w/Surface Parking Lot	March 2012
T133		1977201090	The Lenora Apts	March 2012
T134		1977201125	Trust Parking	March 2012
T135		1977201130	2006 2nd Ave	March 2012
T136		1977201140	Padillian Apartments	March 2012
T137		1977201095	2031 3rd Ave	March 2012
T138		1977201105	Pathe Building	March 2012
T139		1977201115	Denny Hill Building	March 2012
T140		1977201120	OFC	March 2012
T141		1977201121	Family & Adult Service Center	March 2012
T142		1977201135	Swiftly Printing	March 2012

Property Acquisition Schedule

For Parcel No. See TR Appendix R1

PRE-CONSTRUCTION SURVEY and SETTLEMENT MONITORING				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
T143		1977200890	Vogue Hotel	March 2012
T144	1-23303	6391350000	One Pacific Towers Condominium	March 2012
T146	1-23306	1843050000	Cristalla Condominium	March 2012
T147		1977201035	The Moore Motel	March 2012
T148		1977201060	Josephinum	March 2012
T151	1-23301	1977200920	Terminal Sales Office Building	March 2012
T153	1-23300	1977200935	1924 1st Ave	March 2012
T154	1-23299	1977200940	Oxford Apartments	March 2012
T155	1-22303	1977200926	Terminal Sales Annex Building (also 0925 & 0930)	March 2012
T156		1977200945	Great Jones Home	March 2012
T157		1977200946	1919 2nd Ave	March 2012
T158		1977200950	Parking Garage	March 2012
T159		1977200970	Plymouth on Stewart Apts	March 2012
T160		1977200425	Dunn Building	March 2012
T161		8008550000	Stewart House	March 2012
T162		1977200395	Livingston Baker Mixed Use	March 2012
T164		1977200415	Smith Block Building/Coupe Rokei	March 2012
T165		1977200416	Butterworth building/"Starlight Lounge"	March 2012
T166		1977200420	Alaska Trade Building	March 2012
T167	1-23297	1977200435	Fairmount Apartments LLC	March 2012
A104		1991200495	233 6th Ave N	March 2012
A106	1-23341	1991200520	Space Needle Corporate Office	March 2012
A108	1-23337	1991200580	Walgreens	March 2012
A112		0696000290	Devonshire Apts	March 2012
A114	1-23331	0696000250	Fountain Court Apts	March 2012
A116		0656000596	Stole Building	March 2012
A118		0656000600	Fleming Apartments	March 2012
A119	1-23327	0656000605	Two Bell S Tavern	March 2012
A120	1-23326	0656000615	314 Bell	March 2012
A122		0656000550	Nida /aots	March 2012
A123	1-23325	0656000540	The Adams Apts	March 2012
A126	1-23323	0694000110	Kelly's Restaurant & Mom's Teriyaki	March 2012
A128	1-23322	0694000105	PBJS	March 2012
A129		0694000050	Del-Market	March 2012
A130	1-23317	2867400000	Grandview Condominium	March 2012
A133		0694000020	2216 2nd Ave	March 2012
A134		0694000015	Tula's Restaurant & Lounge	March 2012
A135		0698800000	Senior Services	March 2012
A136		0694000005	Former Crocodile Café	March 2012
A138	1-23311	1977201145	Castle Apts	March 2012
A139	1-23310	1977201160	DWW Associates LLC	March 2012

Property Acquisition Schedule

For Parcel No. See TR Appendix R1

PRE-CONSTRUCTION SURVEY and SETTLEMENT MONITORING				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
A141		1977200695	Rivoli Apts	March 2012
A142		1977200720	El Rey Apts	March 2012
A143		1977200725	D.W. Close	March 2012
A144		1977200740	PNWB Telecommunications	March 2012
A146		1977200735	Patagonia Retail Store	March 2012
A147		1977200855	1st & Lenora Building	March 2012
A149		5160650000	Market Place North Phase I Condominium (Tower)	March 2012
A149		5160650000	Market Place North Phase I Condominium (Low-Rise)	March 2012
A105		1991200515	Biosports Building	March 2012
A158		7666202525	Maritime Building	March 2012
T276		5247800005	Best Western Pioneer Square Hotel	March 2012
T277		5247800025	Prudential Building	March 2012
T090	1-23330	0696000175	5th & Bell Building	March 2012

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Property Acquisition Schedule

For Parcel No. See TR Appendix R1

SETTLEMENT MITIGATION				
Bldg ID:	WSDOT Parcel No.	Tax Parcel No.	Bldg Name	Available
T216	1-23285	1976200075	Harbor Steps (Northeast Tower)	March 2012
T222	1-23285	1976200076	Harbor Steps Plaza	March 2012
T223	1-23285	1976200076	Harbor Steps (Southeast Tower)	March 2012
T230	1-23284	1697500000	Colonial/Grand Pacific Building	March 2012
T231	1-23283	9197200000	Watermark Tower	March 2012
T234	1-23281	7666202515	National Building	March 2012
T235	1-23282	1974600025	Arlington North	March 2012
T236	1-23282	1974600025	Arlington South	March 2012
T237	1-23282	1974600035	Alexis	March 2012
T243	1-23278	7666202530	Federal Office Building	March 2012
T251	1-23275	7666202565	Polson Building	March 2012
T252	1-23274	7666202570	Western Building	March 2012
T077	1-23335	0697000064	6th & Wall Building	March 2012
A110	1-23336	0697000025	Archstone Belltown Apartments	March 2012
T55	1-23344	1991200790	Law Office/Lakeside Deli	March 2012
A166	1-23338	1991200600	BRE Apartments	March 2012
A167	1-23336	0697000025	Archstone Belltown Apartments (Garage)	March 2012
A159	1-23276	7666202545	Commuter Center Building	March 2012
A161	1-23276	7666202560	Commuter Parking Garage	March 2012
NA	1-23274	7666202566	Parking (RR ROW)	March 2012
NA	1-23273	7666202575	Trust Parking Lot	March 2012
NA	1-23277	7666202540	Colman Towers Parking Lot	March 2012

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APPENDIX 5

Prevailing Wage Requirements and Additional Federal Requirements

- Appendix 5-A Prevailing Wage Requirements
- Appendix 5-B Federal Provisions
- Appendix 5-C FHWA Form 1273
- Appendix 5-D Federal Prevailing Wage Rates
- Appendix 5-E State Prevailing Wage Rates

1 **Appendix 5-A**

2 **Prevailing Wage Requirements**

3 **1. General**

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

10 Design-Builder, any Subcontractor, and all individuals or firms required by RCW 39.12, WAC
11 296-127, or the Federal Davis-Bacon and Related Acts (DBRA) to pay minimum prevailing
12 wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits
13 required by RCW 39.12 or the DBRA. Higher wages and benefits may be paid.

14 By including the hourly minimum rates for wages and fringe benefits in the Contract
15 Documents, WSDOT does not imply that Design-Builder will find labor available at those rates.
16 Design-Builder shall be responsible for any amounts above the minimums that will actually have
17 to be paid. Design-Builder shall bear the cost of paying wages above those shown in the
18 Contract Documents.

19 When the Project is subject to both State and Federal hourly minimum rates for wages and
20 fringe benefits and when the two rates differ for similar kinds of labor, Design-Builder shall not
21 pay less than the higher rate unless the State rates are specifically preempted by Federal law.
22 When the Project involves both highway work and building work, the Contract Documents may
23 list a Federal wage and fringe benefit rate for the highway work and a separate Federal wage
24 and fringe benefit rate for the building work. The area in which the worker is physically
25 employed shall determine which Federal wage and fringe benefit rate shall be used to compare
26 against the State wage and fringe benefit rate.

27 If employing labor in a class not listed in the Contract Documents on state funded projects only,
28 Design-Builder shall request a determination of the correct wage and benefits rate for that class
29 and locality from the Industrial Statistician, Washington State Department of Labor and
30 Industries (State L&I), and provide a copy of those determinations to WSDOT.

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

35 Design-Builder shall ensure that any firm (Supplier, Manufacturer, or Fabricator) that falls under
36 the provisions of RCW 39.12 because of the definition "Contractor" in WAC 296-127-010
37 complies with all the requirements of RCW 39.12.

38 Design-Builder shall be responsible for compliance with the requirements of the DBRA and
39 RCW 39.12 by all firms (Subcontractors, lower tier subcontractors, suppliers, manufacturers, or
40 fabricators) engaged in any part of the Work necessary to complete this Contract. Therefore,

1 should a violation of this subsection occur by any firm that is providing work or materials for
2 completion of this Contract whether directly or indirectly responsible to Design-Builder, WSDOT
3 will take action against Design-Builder, as provided by the provisions of the Contract, to achieve
4 compliance, including but not limited to, withholding payment on the Contract until compliance is
5 achieved.

6 In the event WSDOT made an error (omissions are not errors) in the listing of the hourly
7 minimum rates for wages and fringe benefits in the Contract Documents, Design-Builder, any
8 Subcontractors, any lower tier subcontractors, or any other firm that is required to pay prevailing
9 wages, shall be required to pay the rates as determined to be correct by State L&I (or by the
10 U.S. Department of Labor when that agency sets the rates). A Change Order will be prepared
11 to ensure that this occurs. WSDOT will reimburse Design-Builder for the actual cost to pay the
12 difference between the correct rates and the rates included in the Contract Documents, subject
13 to the following conditions:

- 14 1. The affected firm relied upon the rates included in the Contract Documents to
15 prepare its Proposal and certifies that it did so;
- 16 2. The allowable amount of reimbursement will be the difference between the rates
17 listed and rates later determined to be correct plus only appropriate payroll markup
18 the employer must pay, such as, social security and other payments the employer
19 must make to the Federal or State Government;
- 20 3. The allowable amount of reimbursement may also include some overhead cost,
21 such as, the cost for bond, insurance, and making supplemental payrolls and new
22 checks to the employees because of underpayment for previously performed Work;
23 and
- 24 4. Profit will not be an allowable markup.

25 Firms that anticipated when they prepared their Proposals, paying a rate equal to or higher
26 than, the correct rate as finally determined, will not be eligible for any additional payment under
27 this subsection.

28 **2. Posting Notices**

29 In a location acceptable to State L&I, Design-Builder shall ensure the following is posted:

- 30 1. One copy of the approved "Statement of Intent to Pay Prevailing Wages" for Design-
31 Builder, each Subcontractor, each lower tier subcontractor, and any other firm
32 (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12
33 because of the definition of "Contractor" in WAC 296-127-010;
- 34 2. One copy of the prevailing wage rates for the Project;
- 35 3. The address and telephone number of the Industrial Statistician for State L&I (along
36 with notice that complaints or questions about wage rates may be directed there);
37 and
- 38 4. FHWA 1495/1495A "Wage Rate Information" poster if the Project is funded with
39 Federal-aid.

1 **3. Apprentices**

2 If employing apprentices, Design-Builder shall submit to the WSDOT Project Manager written
3 evidence showing:

- 4 1. Each apprentice is enrolled in a program approved by the Washington State
5 Apprenticeship and Training Council;
- 6 2. The progression schedule for each apprentice; and
- 7 3. The established apprentice-journey level ratios and wage rates in the Project locality
8 upon which Design-Builder will base such ratios and rates under the Contract. Any
9 worker for whom an apprenticeship agreement has not been registered and
10 approved by the Washington State Apprenticeship and Training Council shall be
11 paid at the prevailing hourly journey level rate as provided in RCW 39.12.021.

12 **4. Disputes**

13 If labor and management cannot agree in a dispute over the proper prevailing wage rates,
14 Design-Builder shall refer the matter to the Director of State L&I (or to the U.S. Secretary of
15 Labor when that agency sets the rates). The Director's (or Secretary's) decision shall be final,
16 conclusive, and binding on all parties.

17 **5. Required Documents**

18 On forms provided by the Industrial Statistician of State L&I, Design-Builder shall submit to
19 WSDOT the following for itself and for each firm covered under RCW 39.12 that provided Work
20 and materials for the Contract:

- 21 1. A copy of an approved "Statement of Intent to Pay Prevailing Wages" State L&I's
22 form number F700-029-000. WSDOT will make no payment under this Contract
23 for the Work performed until this statement has been approved by State L&I and
24 a copy of the approved form has been submitted to WSDOT.
- 25 2. A copy of an approved "Affidavit of Prevailing Wages Paid," State L&I's form
26 number F700-007-000. WSDOT will not release to Design-Builder any funds
27 retained under RCW 60.28.011 until all of the "Affidavit of Prevailing Wages
28 Paid" forms have been approved by State L&I and a copy of all the approved
29 forms have been submitted to WSDOT.

30 Design-Builder shall be responsible for requesting these forms from State L&I and for paying
31 any approval fees required by State L&I.

32 Certified payrolls are required to be submitted by Design-Builder to WSDOT, for Design-Builder
33 and all Subcontractors or lower tier subcontractors, on all Federal-aid projects and, when
34 requested in writing by WSDOT, on projects funded with only WSDOT funds. If these payrolls
35 are not supplied within 10 calendar days of the end of the preceding weekly payroll period for
36 Federal-aid projects or within 10 calendar days from the date of the written request on projects
37 with only WSDOT funds, any or all payments may be withheld until compliance is achieved.
38 Failure to provide these payrolls could result in other sanctions as provided by State laws (RCW
39 39.12.050) and/or Federal regulations (29 CFR 5.12). All certified payrolls shall be complete

1 and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with
2 the labor descriptions listed on the minimum wage schedule in the Contract unless WSDOT
3 approves an alternate method to identify the labor used by Design-Builder to compare with the
4 labor listed in the Contract Documents. When an apprentice is shown on the certified payroll at
5 a rate less than the minimum prevailing journey wage rate, the apprenticeship registration
6 number for that employee from the State Apprenticeship and Training Council shall be shown
7 along with the correct employee classification code.

8 **6. Audits**

9 WSDOT may inspect or audit Design-Builder's wage and payroll records as provided in
10 Section 24.4 of the Contract.

11 **7. Application of Wage Rates For The Occupation Of Landscape Construction**

12 State prevailing wage rates for public works contracts are included in this contract and show a
13 separate listing for the occupation.

14 Landscape Construction includes several different occupation descriptions such as: Irrigation
15 and Landscape Plumbers, Irrigation and Landscape Power Equipment Operators, and
16 Landscaping or Planting Laborers.

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

- 20 (1) Laborers with the occupation description, Landscaping or Planting, or
- 21 (2) Power Equipment Operators with the occupation description, Mulch Seeding
22 Operator.

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

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

36 **8. Worker's Benefits**

37 Design-Builder shall make all payments required for unemployment compensation under Title
38 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If any
39 payment required by Title 50 or Title 51 is not made when due, WSDOT may retain such

1 payments from any money due Design-Builder and pay the same into the appropriate fund.
2 Such payment will be made only after giving Design-Builder 15 calendar days prior written
3 notice of WSDOT's intent to disburse the funds to the Washington State Department of Labor
4 and Industries or Washington State Employment Security Department as applicable. The
5 payment will be made upon expiration of the 15 calendar day period if no legal action has been
6 commenced to resolve the validity of the claim. If legal action is instituted to determine the
7 validity of the claim prior to the expiration of the 15 day period, WSDOT will hold the funds until
8 determination of the action or written settlement agreement of the appropriate parties.

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

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

18 The Public Works Contract Division of the Washington State Department of Labor and
19 Industries will provide Design-Builder with applicable industrial insurance and medical aid
20 classification and premium rates. After receipt of *Revenue Release* from the Washington State
21 Department of Revenue, the contracting agency will verify through the Department of Labor and
22 Industries that Design-Builder is current with respect to the payments of industrial insurance
23 and medical aid premiums.
24

1 **Appendix 5-B**

2 **Federal Provisions**

3 REQUIRED CONTRACT PROVISIONS. — The Required Contract Provisions Federal
4 Aid Construction Contracts (FHWA 1273) and the amendments thereto are made a part of this
5 Contract and supersede any conflicting provisions of the Contract Documents; provided,
6 however, that if any of the provisions of FHWA 1273, as amended, are less restrictive than
7 Washington State Law, then the Washington State Law shall prevail.

8 The provisions of FHWA 1273, as amended, included in this contract require that
9 Design-Builder insert the FHWA 1273 and amendments thereto in each subcontract, together
10 with the wage rates which are part of the FHWA 1273, as amended. FHWA 1273 and
11 amendments thereto are included in Appendix 5-C. Also, a clause shall be included in each
12 subcontract requiring the subcontractors to insert the FHWA 1273 and amendments thereto in
13 any lower tier subcontracts, together with the wage rates. Design-Builder shall also ensure that
14 this section, REQUIRED FEDERAL AID PROVISIONS, is inserted in each subcontract for
15 subcontractors and lower tier subcontractors. For this purpose, upon request to the WSDOT
16 Engineer, Design-Builder will be provided with extra copies of the FHWA 1273, the
17 amendments thereto, the applicable wage rates, and this Appendix 5-B.

18 FEDERAL AGENCY INSPECTION – Federal laws, rules, and regulations shall be
19 observed by Design-Builder on Federal-aid projects. This work is subject to inspection by the
20 appropriate Federal agency. Design-Builder shall cooperate with the Federal agencies in these
21 inspections. These inspections shall not make the Federal Government a party to the Contract
22 and shall not constitute an interference with the rights of WSDOT or Design-Builder.

23 FHWA FORM 1273 SECTIONS VII.1 AND VII.2 INAPPLICABLE – Pursuant to 23 CFR
24 635.116(d), the requirements of Sections VII.1 and VII.2 of FHWA Form 1273 (Appendix 5-C to
25 the Contract) are inapplicable to the Contract.

26
27

Appendix 5-C

FHWA Form 1273

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ATTACHMENTS

17 A Not applicable

18

1

2 **I. GENERAL**

3 1. These contract provisions shall apply to all work performed on the contract by the
4 contractor's own organization and with the assistance of workers under the
5 contractor's immediate superintendence and to all work performed on the contract
6 by piecework, station work, or by subcontract.

7 2. Except as otherwise provided for in each section, the contractor shall insert in each
8 subcontract all of the stipulations contained in these Required Contract Provisions,
9 and further require their inclusion in any lower tier subcontract or purchase order
10 that may in turn be made. The Required Contract Provisions shall not be
11 incorporated by reference in any case. The prime contractor shall be responsible for
12 compliance by any subcontractor or lower tier subcontractor with these Required
13 Contract Provisions.

14 3. A breach of any of the stipulations contained in these Required Contract Provisions
15 shall be sufficient grounds for termination of the contract.

16 4. A breach of the following clauses of the Required Contract Provisions may also be
17 grounds for debarment as provided in 29 CFR 5.12:

18 Section I, paragraph 2;

19 Section IV, paragraphs 1, 2, 3, 4, and 7;

20 Section V, paragraphs 1 and 2a through 2g.

21 5. Disputes arising out of the labor standards provisions of Section IV (except
22 paragraph 5) and Section V of these Required Contract Provisions shall not be
23 subject to the general disputes clause of this contract. Such disputes shall be
24 resolved in accordance with the procedures of the U.S. Department of Labor (DOL)
25 as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause
26 include disputes between the contractor (or any of its subcontractors) and the
27 contracting agency, the DOL, or the contractor's employees or their representatives.

28 6. **Selection of Labor:** During the performance of this contract, the contractor shall
29 not:

30 a. discriminate against labor from any other State, possession, or territory of
31 the United States (except for employment preference for Appalachian
32 contracts, when applicable, as specified in Attachment A), or

33 b. employ convict labor for any purpose within the limits of the project unless it
34 is labor performed by convicts who are on parole, supervised release, or
35 probation.

1 **II. NONDISCRIMINATION**

2 (Applicable to all Federal-aid construction contracts and to all related subcontracts of
3 \$10,000 or more.)

4 1. **Equal Employment Opportunity:** Equal employment opportunity (EEO)
5 requirements not to discriminate and to take affirmative action to assure equal
6 opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35,
7 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by
8 the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall
9 constitute the EEO and specific affirmative action standards for the contractor's
10 project activities under this contract. The Equal Opportunity Construction Contract
11 Specifications set forth under 41 CFR 60-4.3 and the provisions of the American
12 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29
13 CFR 1630 are incorporated by reference in this contract. In the execution of this
14 contract, the contractor agrees to comply with the following minimum specific
15 requirement activities of EEO:

16 a. The contractor will work with the State highway agency (SHA) and the
17 Federal Government in carrying out EEO obligations and in their review of
18 his/her activities under the contract.

19 b. The contractor will accept as his operating policy the following statement:

20 "It is the policy of this Company to assure that applicants are employed, and
21 that employees are treated during employment, without regard to their race,
22 religion, sex, color, national origin, age or disability. Such action shall
23 include: employment, upgrading, demotion, or transfer; recruitment or
24 recruitment advertising; layoff or termination; rates of pay or other forms of
25 compensation; and selection for training, including apprenticeship,
26 preapprenticeship, and/or on-the-job training."

27 2. **EEO Officer:** The contractor will designate and make known to the SHA contracting
28 officers an EEO Officer who will have the responsibility for and must be capable of
29 effectively administering and promoting an active contractor program of EEO and
30 who must be assigned adequate authority and responsibility to do so.

31 3. **Dissemination of Policy:** All members of the contractor's staff who are authorized
32 to hire, supervise, promote, and discharge employees, or who recommend such
33 action, or who are substantially involved in such action, will be made fully cognizant
34 of, and will implement, the contractor's EEO policy and contractual responsibilities
35 to provide EEO in each grade and classification of employment. To ensure that the
36 above agreement will be met, the following actions will be taken as a minimum:

37 a. Periodic meetings of supervisory and personnel office employees will be
38 conducted before the start of work and then not less often than once every
39 six months, at which time the contractor's EEO policy and its implementation
40 will be reviewed and explained. The meetings will be conducted by the EEO
41 Officer.

42 b. All new supervisory or personnel office employees will be given a thorough
43 indoctrination by the EEO Officer, covering all major aspects of the

- 1 contractor's EEO obligations within thirty days following their reporting for
2 duty with the contractor.
- 3 c. All personnel who are engaged in direct recruitment for the project will be
4 instructed by the EEO Officer in the contractor's procedures for locating and
5 hiring minority group employees.
- 6 d. Notices and posters setting forth the contractor's EEO policy will be placed
7 in areas readily accessible to employees, applicants for employment and
8 potential employees.
- 9 e. The contractor's EEO policy and the procedures to implement such policy
10 will be brought to the attention of employees by means of meetings,
11 employee handbooks, or other appropriate means.
- 12 4. **Recruitment:** When advertising for employees, the contractor will include in all
13 advertisements for employees the notation: "An Equal Opportunity Employer." All
14 such advertisements will be placed in publications having a large circulation among
15 minority groups in the area from which the project work force would normally be
16 derived.
- 17 a. The contractor will, unless precluded by a valid bargaining agreement,
18 conduct systematic and direct recruitment through public and private
19 employee referral sources likely to yield qualified minority group applicants.
20 To meet this requirement, the contractor will identify sources of potential
21 minority group employees, and establish with such identified sources
22 procedures whereby minority group applicants may be referred to the
23 contractor for employment consideration.
- 24 b. In the event the contractor has a valid bargaining agreement providing for
25 exclusive hiring hall referrals, he is expected to observe the provisions of
26 that agreement to the extent that the system permits the contractor's
27 compliance with EEO contract provisions. (The DOL has held that where
28 implementation of such agreements has the effect of discriminating against
29 minorities or women, or obligates the contractor to do the same, such
30 implementation violates Executive Order 11246, as amended.)
- 31 c. The contractor will encourage his present employees to refer minority group
32 applicants for employment. Information and procedures with regard to
33 referring minority group applicants will be discussed with employees.
- 34 5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be
35 established and administered, and personnel actions of every type, including hiring,
36 upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken
37 without regard to race, color, religion, sex, national origin, age or disability. The
38 following procedures shall be followed:
- 39 a. The contractor will conduct periodic inspections of project sites to insure that
40 working conditions and employee facilities do not indicate discriminatory
41 treatment of project site personnel.

- 1 b. The contractor will periodically evaluate the spread of wages paid within
2 each classification to determine any evidence of discriminatory wage
3 practices.
- 4 c. The contractor will periodically review selected personnel actions in depth to
5 determine whether there is evidence of discrimination. Where evidence is
6 found, the contractor will promptly take corrective action. If the review
7 indicates that the discrimination may extend beyond the actions reviewed,
8 such corrective action shall include all affected persons.
- 9 d. The contractor will promptly investigate all complaints of alleged
10 discrimination made to the contractor in connection with his obligations
11 under this contract, will attempt to resolve such complaints, and will take
12 appropriate corrective action within a reasonable time. If the investigation
13 indicates that the discrimination may affect persons other than the
14 complainant, such corrective action shall include such other persons. Upon
15 completion of each investigation, the contractor will inform every
16 complainant of all of his avenues of appeal.

17 **6. Training and Promotion:**

- 18 a. The contractor will assist in locating, qualifying, and increasing the skills of
19 minority group and women employees, and applicants for employment.
- 20 b. Consistent with the contractor's work force requirements and as permissible
21 under Federal and State regulations, the contractor shall make full use of
22 training programs, i.e., apprenticeship, and on-the-job training programs for
23 the geographical area of contract performance. Where feasible, 25 percent
24 of apprentices or trainees in each occupation shall be in their first year of
25 apprenticeship or training. In the event a special provision for training is
26 provided under this contract, this subparagraph will be superseded as
27 indicated in the special provision.
- 28 c. The contractor will advise employees and applicants for employment of
29 available training programs and entrance requirements for each.
- 30 d. The contractor will periodically review the training and promotion potential of
31 minority group and women employees and will encourage eligible
32 employees to apply for such training and promotion.

33 **7. Unions:** If the contractor relies in whole or in part upon unions as a source of
34 employees, the contractor will use his/her best efforts to obtain the cooperation of
35 such unions to increase opportunities for minority groups and women within the
36 unions, and to effect referrals by such unions of minority and female employees.
37 Actions by the contractor either directly or through a contractor's association acting
38 as agent will include the procedures set forth below:

- 39 a. The contractor will use best efforts to develop, in cooperation with the
40 unions, joint training programs aimed toward qualifying more minority group
41 members and women for membership in the unions and increasing the skills
42 of minority group employees and women so that they may qualify for higher
43 paying employment.

- 1 b. The contractor will use best efforts to incorporate an EEO clause into each
2 union agreement to the end that such union will be contractually bound to
3 refer applicants without regard to their race, color, religion, sex, national
4 origin, age or disability.
- 5 c. The contractor is to obtain information as to the referral practices and
6 policies of the labor union except that to the extent such information is within
7 the exclusive possession of the labor union and such labor union refuses to
8 furnish such information to the contractor, the contractor shall so certify to
9 the SHA and shall set forth what efforts have been made to obtain such
10 information.
- 11 d. In the event the union is unable to provide the contractor with a reasonable
12 flow of minority and women referrals within the time limit set forth in the
13 collective bargaining agreement, the contractor will, through independent
14 recruitment efforts, fill the employment vacancies without regard to race,
15 color, religion, sex, national origin, age or disability; making full efforts to
16 obtain qualified and/or qualifiable minority group persons and women. (The
17 DOL has held that it shall be no excuse that the union with which the
18 contractor has a collective bargaining agreement providing for exclusive
19 referral failed to refer minority employees.) In the event the union referral
20 practice prevents the contractor from meeting the obligations pursuant to
21 Executive Order 11246, as amended, and these special provisions, such
22 contractor shall immediately notify the SHA.
- 23 8. **Selection of Subcontractors, Procurement of Materials and Leasing of**
24 **Equipment:** The contractor shall not discriminate on the grounds of race, color,
25 religion, sex, national origin, age or disability in the selection and retention of
26 subcontractors, including procurement of materials and leases of equipment.
- 27 a. The contractor shall notify all potential subcontractors and suppliers of
28 his/her EEO obligations under this contract.
- 29 b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall
30 have equal opportunity to compete for and perform subcontracts which the
31 contractor enters into pursuant to this contract. The contractor will use his
32 best efforts to solicit bids from and to utilize DBE subcontractors or
33 subcontractors with meaningful minority group and female representation
34 among their employees. Contractors shall obtain lists of DBE construction
35 firms from SHA personnel.
- 36 c. The contractor will use his best efforts to ensure subcontractor compliance
37 with their EEO obligations.
- 38 9. **Records and Reports:** The contractor shall keep such records as necessary to
39 document compliance with the EEO requirements. Such records shall be retained
40 for a period of three years following completion of the contract work and shall be
41 available at reasonable times and places for inspection by authorized
42 representatives of the SHA and the FHWA.

- 1 a. The records kept by the contractor shall document the following:
- 2 (1) The number of minority and non-minority group members and
3 women employed in each work classification on the project;
- 4 (2) The progress and efforts being made in cooperation with unions,
5 when applicable, to increase employment opportunities for
6 minorities and women;
- 7 (3) The progress and efforts being made in locating, hiring, training,
8 qualifying, and upgrading minority and female employees; and
- 9 (4) The progress and efforts being made in securing the services of
10 DBE subcontractors or subcontractors with meaningful minority and
11 female representation among their employees.
- 12 b. The contractors will submit an annual report to the SHA each July for the
13 duration of the project, indicating the number of minority, women, and non-
14 minority group employees currently engaged in each work classification
15 required by the contract work. This information is to be reported on Form
16 FHWA-1391. If on-the job training is being required by special provision, the
17 contractor will be required to collect and report training data.

18 **III. NONSEGREGATED FACILITIES**

19 (Applicable to all Federal-aid construction contracts and to all related subcontracts of
20 \$10,000 or more.)

- 21 a. By submission of this bid, the execution of this contract or subcontract, or the
22 consummation of this material supply agreement or purchase order, as appropriate,
23 the bidder, Federal-aid construction contractor, subcontractor, material supplier, or
24 vendor, as appropriate, certifies that the firm does not maintain or provide for its
25 employees any segregated facilities at any of its establishments, and that the firm
26 does not permit its employees to perform their services at any location, under its
27 control, where segregated facilities are maintained. The firm agrees that a breach of
28 this certification is a violation of the EEO provisions of this contract. The firm further
29 certifies that no employee will be denied access to adequate facilities on the basis
30 of sex or disability.
- 31 b. As used in this certification, the term "segregated facilities" means any waiting
32 rooms, work areas, restrooms and washrooms, restaurants and other eating areas,
33 timeclocks, locker rooms, and other storage or dressing areas, parking lots,
34 drinking fountains, recreation or entertainment areas, transportation, and housing
35 facilities provided for employees which are segregated by explicit directive, or are,
36 in fact, segregated on the basis of race, color, religion, national origin, age or
37 disability, because of habit, local custom, or otherwise. The only exception will be
38 for the disabled when the demands for accessibility override (e.g. disabled parking).
- 39 c. The contractor agrees that it has obtained or will obtain identical certification from
40 proposed subcontractors or material suppliers prior to award of subcontracts or
41 consummation of material supply agreements of \$10,000 or more and that it will
42 retain such certifications in its files.

1 **IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

2 (Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related
3 subcontracts, except for projects located on roadways classified as local roads or rural
4 minor collectors, which are exempt.)

5 **1. General:**

6 a. All mechanics and laborers employed or working upon the site of the work
7 will be paid unconditionally and not less often than once a week and without
8 subsequent deduction or rebate on any account [except such payroll
9 deductions as are permitted by regulations (29 CFR 3) issued by the
10 Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full
11 amounts of wages and bona fide fringe benefits (or cash equivalents
12 thereof) due at time of payment. The payment shall be computed at wage
13 rates not less than those contained in the wage determination of the
14 Secretary of Labor (hereinafter "the wage determination") which is attached
15 hereto and made a part hereof, regardless of any contractual relationship
16 which may be alleged to exist between the contractor or its subcontractors
17 and such laborers and mechanics. The wage determination (including any
18 additional classifications and wage rates conformed under paragraph 2 of
19 this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall
20 be posted at all times by the contractor and its subcontractors at the site of
21 the work in a prominent and accessible place where it can be easily seen by
22 the workers. For the purpose of this Section, contributions made or costs
23 reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of
24 the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics
25 are considered wages paid to such laborers or mechanics, subject to the
26 provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this
27 Section, regular contributions made or costs incurred for more than a weekly
28 period (but not less often than quarterly) under plans, funds, or programs,
29 which cover the particular weekly period, are deemed to be constructively
30 made or incurred during such weekly period. Such laborers and mechanics
31 shall be paid the appropriate wage rate and fringe benefits on the wage
32 determination for the classification of work actually performed, without
33 regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

34 b. Laborers or mechanics performing work in more than one classification may
35 be compensated at the rate specified for each classification for the time
36 actually worked therein, provided, that the employer's payroll records
37 accurately set forth the time spent in each classification in which work is
38 performed.

39 c. All rulings and interpretations of the Davis-Bacon Act and related acts
40 contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this
41 contract.

42 **2. Classification:**

43 a. The SHA contracting officer shall require that any class of laborers or
44 mechanics employed under the contract, which is not listed in the wage

- 1 determination, shall be classified in conformance with the wage
2 determination.
- 3 b. The contracting officer shall approve an additional classification, wage rate
4 and fringe benefits only when the following criteria have been met:
- 5 (1) the work to be performed by the additional classification requested
6 is not performed by a classification in the wage determination;
- 7 (2) the additional classification is utilized in the area by the construction
8 industry;
- 9 (3) the proposed wage rate, including any bona fide fringe benefits,
10 bears a reasonable relationship to the wage rates contained in the
11 wage determination; and
- 12 (4) with respect to helpers, when such a classification prevails in the
13 area in which the work is performed.
- 14 c. If the contractor or subcontractors, as appropriate, the laborers and
15 mechanics (if known) to be employed in the additional classification or their
16 representatives, and the contracting officer agree on the classification and
17 wage rate (including the amount designated for fringe benefits where
18 appropriate), a report of the action taken shall be sent by the contracting
19 officer to the DOL, Administrator of the Wage and Hour Division,
20 Employment Standards Administration, Washington, D.C. 20210. The Wage
21 and Hour Administrator, or an authorized representative, will approve,
22 modify, or disapprove every additional classification action within 30 days of
23 receipt and so advise the contracting officer or will notify the contracting
24 officer within the 30-day period that additional time is necessary.
- 25 d. In the event the contractor or subcontractors, as appropriate, the laborers or
26 mechanics to be employed in the additional classification or their
27 representatives, and the contracting officer do not agree on the proposed
28 classification and wage rate (including the amount designated for fringe
29 benefits, where appropriate), the contracting officer shall refer the questions,
30 including the views of all interested parties and the recommendation of the
31 contracting officer, to the Wage and Hour Administrator for determination.
32 Said Administrator, or an authorized representative, will issue a
33 determination within 30 days of receipt and so advise the contracting officer
34 or will notify the contracting officer within the 30-day period that additional
35 time is necessary
- 36 e. The wage rate (including fringe benefits where appropriate) determined
37 pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers
38 performing work in the additional classification from the first day on which
39 work is performed in the classification.
- 40 **3. Payment of Fringe Benefits:**
- 41 a. Whenever the minimum wage rate prescribed in the contract for a class of
42 laborers or mechanics includes a fringe benefit which is not expressed as an

1 hourly rate, the contractor or subcontractors, as appropriate, shall either pay
2 the benefit as stated in the wage determination or shall pay another bona
3 fide fringe benefit or an hourly case equivalent thereof.

4 b. If the contractor or subcontractor, as appropriate, does not make payments
5 to a trustee or other third person, he/she may consider as a part of the
6 wages of any laborer or mechanic the amount of any costs reasonably
7 anticipated in providing bona fide fringe benefits under a plan or program,
8 provided, that the Secretary of Labor has found, upon the written request of
9 the contractor, that the applicable standards of the Davis-Bacon Act have
10 been met. The Secretary of Labor may require the contractor to set aside in
11 a separate account assets for the meeting of obligations under the plan or
12 program.

13 4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

14 a. Apprentices:

15 (1) Apprentices will be permitted to work at less than the predetermined
16 rate for the work they performed when they are employed pursuant
17 to and individually registered in a bona fide apprenticeship program
18 registered with the DOL, Employment and Training Administration,
19 Bureau of Apprenticeship and Training, or with a State
20 apprenticeship agency recognized by the Bureau, or if a person is
21 employed in his/her first 90 days of probationary employment as an
22 apprentice in such an apprenticeship program, who is not
23 individually registered in the program, but who has been certified by
24 the Bureau of Apprenticeship and Training or a State apprenticeship
25 agency (where appropriate) to be eligible for probationary
26 employment as an apprentice.

27 (2) The allowable ratio of apprentices to journeyman-level employees
28 on the job site in any craft classification shall not be greater than the
29 ratio permitted to the contractor as to the entire work force under
30 the registered program. Any employee listed on a payroll at an
31 apprentice wage rate, who is not registered or otherwise employed
32 as stated above, shall be paid not less than the applicable wage
33 rate listed in the wage determination for the classification of work
34 actually performed. In addition, any apprentice performing work on
35 the job site in excess of the ratio permitted under the registered
36 program shall be paid not less than the applicable wage rate on the
37 wage determination for the work actually performed. Where a
38 contractor or subcontractor is performing construction on a project
39 in a locality other than that in which its program is registered, the
40 ratios and wage rates (expressed in percentages of the
41 journeyman-level hourly rate) specified in the contractor's or
42 subcontractor's registered program shall be observed.

43 (3) Every apprentice must be paid at not less than the rate specified in
44 the registered program for the apprentice's level of progress,
45 expressed as a percentage of the journeyman-level hourly rate
46 specified in the applicable wage determination. Apprentices shall be

1 paid fringe benefits in accordance with the provisions of the
2 apprenticeship program. If the apprenticeship program does not
3 specify fringe benefits, apprentices must be paid the full amount of
4 fringe benefits listed on the wage determination for the applicable
5 classification. If the Administrator for the Wage and Hour Division
6 determines that a different practice prevails for the applicable
7 apprentice classification, fringes shall be paid in accordance with
8 that determination.

9 (4) In the event the Bureau of Apprenticeship and Training, or a State
10 apprenticeship agency recognized by the Bureau, withdraws
11 approval of an apprenticeship program, the contractor or
12 subcontractor will no longer be permitted to utilize apprentices at
13 less than the applicable predetermined rate for the comparable work
14 performed by regular employees until an acceptable program is
15 approved.

16 b. Trainees:

17 (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to
18 work at less than the predetermined rate for the work performed
19 unless they are employed pursuant to and individually registered in
20 a program which has received prior approval, evidenced by formal
21 certification by the DOL, Employment and Training Administration.

22 (2) The ratio of trainees to journeyman-level employees on the job site
23 shall not be greater than permitted under the plan approved by the
24 Employment and Training Administration. Any employee listed on
25 the payroll at a trainee rate who is not registered and participating in
26 a training plan approved by the Employment and Training
27 Administration shall be paid not less than the applicable wage rate
28 on the wage determination for the classification of work actually
29 performed. In addition, any trainee performing work on the job site
30 in excess of the ratio permitted under the registered program shall
31 be paid not less than the applicable wage rate on the wage
32 determination for the work actually performed.

33 (3) Every trainee must be paid at not less than the rate specified in the
34 approved program for his/her level of progress, expressed as a
35 percentage of the journeyman-level hourly rate specified in the
36 applicable wage determination. Trainees shall be paid fringe
37 benefits in accordance with the provisions of the trainee program. If
38 the trainee program does not mention fringe benefits, trainees shall
39 be paid the full amount of fringe benefits listed on the wage
40 determination unless the Administrator of the Wage and Hour
41 Division determines that there is an apprenticeship program
42 associated with the corresponding journeyman-level wage rate on
43 the wage determination which provides for less than full fringe
44 benefits for apprentices, in which case such trainees shall receive
45 the same fringe benefits as apprentices.

1 (4) In the event the Employment and Training Administration withdraws
2 approval of a training program, the contractor or subcontractor will
3 no longer be permitted to utilize trainees at less than the applicable
4 predetermined rate for the work performed until an acceptable
5 program is approved.

6 c. Helpers:

7 Helpers will be permitted to work on a project if the helper
8 classification is specified and defined on the applicable wage
9 determination or is approved pursuant to the conformance
10 procedure set forth in Section IV.2. Any worker listed on a payroll at
11 a helper wage rate, who is not a helper under an approved
12 definition, shall be paid not less than the applicable wage rate on
13 the wage determination for the classification of work actually
14 performed.

15 **5. Apprentices and Trainees (Programs of the U.S. DOT):**

16 Apprentices and trainees working under apprenticeship and skill training programs
17 which have been certified by the Secretary of Transportation as promoting EEO in
18 connection with Federal-aid highway construction programs are not subject to the
19 requirements of paragraph 4 of this Section IV. The straight time hourly wage rates
20 for apprentices and trainees under such programs will be established by the
21 particular programs. The ratio of apprentices and trainees to journeymen shall not
22 be greater than permitted by the terms of the particular program.

23 **6. Withholding:**

24 The SHA shall upon its own action or upon written request of an authorized
25 representative of the DOL withhold, or cause to be withheld, from the contractor or
26 subcontractor under this contract or any other Federal contract with the same prime
27 contractor, or any other Federally-assisted contract subject to Davis-Bacon
28 prevailing wage requirements which is held by the same prime contractor, as much
29 of the accrued payments or advances as may be considered necessary to pay
30 laborers and mechanics, including apprentices, trainees, and helpers, employed by
31 the contractor or any subcontractor the full amount of wages required by the
32 contract. In the event of failure to pay any laborer or mechanic, including any
33 apprentice, trainee, or helper, employed or working on the site of the work, all or
34 part of the wages required by the contract, the SHA contracting officer may, after
35 written notice to the contractor, take such action as may be necessary to cause the
36 suspension of any further payment, advance, or guarantee of funds until such
37 violations have ceased.

38 **7. Overtime Requirements:**

39 No contractor or subcontractor contracting for any part of the contract work which
40 may require or involve the employment of laborers, mechanics, watchmen, or
41 guards (including apprentices, trainees, and helpers described in paragraphs 4 and
42 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any
43 workweek in which he/she is employed on such work, to work in excess of 40 hours
44 in such workweek unless such laborer, mechanic, watchman, or guard receives

1 compensation at a rate not less than one-and-one-half times his/her basic rate of
2 pay for all hours worked in excess of 40 hours in such workweek.

3 **8. Violation:**

4 Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the
5 clause set forth in paragraph 7 above, the contractor and any subcontractor
6 responsible thereof shall be liable to the affected employee for his/her unpaid
7 wages. In addition, such contractor and subcontractor shall be liable to the United
8 States (in the case of work done under contract for the District of Columbia or a
9 territory, to such District or to such territory) for liquidated damages. Such liquidated
10 damages shall be computed with respect to each individual laborer, mechanic,
11 watchman, or guard employed in violation of the clause set forth in paragraph 7, in
12 the sum of \$10 for each calendar day on which such employee was required or
13 permitted to work in excess of the standard work week of 40 hours without payment
14 of the overtime wages required by the clause set forth in paragraph 7.

15 **9. Withholding for Unpaid Wages and Liquidated Damages:**

16 The SHA shall upon its own action or upon written request of any authorized
17 representative of the DOL withhold, or cause to be withheld, from any monies
18 payable on account of work performed by the contractor or subcontractor under any
19 such contract or any other Federal contract with the same prime contractor, or any
20 other Federally-assisted contract subject to the Contract Work Hours and Safety
21 Standards Act, which is held by the same prime contractor, such sums as may be
22 determined to be necessary to satisfy any liabilities of such contractor or
23 subcontractor for unpaid wages and liquidated damages as provided in the clause
24 set forth in paragraph 8 above.

25 **V. STATEMENTS AND PAYROLLS**

26 (Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related
27 subcontracts, except for projects located on roadways classified as local roads or rural
28 collectors, which are exempt.)

29 **1. Compliance with Copeland Regulations (29 CFR 3):**

30 The contractor shall comply with the Copeland Regulations of the Secretary of
31 Labor which are herein incorporated by reference.

32 **2. Payrolls and Payroll Records:**

33 a. Payrolls and basic records relating thereto shall be maintained by the
34 contractor and each subcontractor during the course of the work and
35 preserved for a period of 3 years from the date of completion of the contract
36 for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and
37 guards working at the site of the work.

38 b. The payroll records shall contain the name, social security number, and
39 address of each such employee; his or her correct classification; hourly
40 rates of wages paid (including rates of contributions or costs anticipated for
41 bona fide fringe benefits or cash equivalent thereof the types described in

1 Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of
2 hours worked; deductions made; and actual wages paid. In addition, for
3 Appalachian contracts, the payroll records shall contain a notation indicating
4 whether the employee does, or does not, normally reside in the labor area
5 as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor,
6 pursuant to Section IV, paragraph 3b, has found that the wages of any
7 laborer or mechanic include the amount of any costs reasonably anticipated
8 in providing benefits under a plan or program described in Section 1(b)(2)(B)
9 of the Davis Bacon Act, the contractor and each subcontractor shall
10 maintain records which show that the commitment to provide such benefits
11 is enforceable, that the plan or program is financially responsible, that the
12 plan or program has been communicated in writing to the laborers or
13 mechanics affected, and show the cost anticipated or the actual cost
14 incurred in providing benefits. Contractors or subcontractors employing
15 apprentices or trainees under approved programs shall maintain written
16 evidence of the registration of apprentices and trainees, and ratios and
17 wage rates prescribed in the applicable programs.

18 c. Each contractor and subcontractor shall furnish, each week in which any
19 contract work is performed, to the SHA resident engineer a payroll of wages
20 paid each of its employees (including apprentices, trainees, and helpers,
21 described in Section IV, paragraphs 4 and 5, and watchmen and guards
22 engaged on work during the preceding weekly payroll period). The payroll
23 submitted shall set out accurately and completely all of the information
24 required to be maintained under paragraph 2b of this Section V. This
25 information may be submitted in any form desired. Optional Form WH-347 is
26 available for this purpose and may be purchased from the Superintendent of
27 Documents (Federal stock number 029-005-0014-1), U.S. Government
28 Printing Office, Washington, D.C. 20402. The prime contractor is
29 responsible for the submission of copies of payrolls by all subcontractors.

30 d. Each payroll submitted shall be accompanied by a "Statement of
31 Compliance," signed by the contractor or subcontractor or his/her agent who
32 pays or supervises the payment of the persons employed under the contract
33 and shall certify the following:

34 (1) that the payroll for the payroll period contains the information
35 required to be maintained under paragraph 2b of this Section V and
36 that such information is correct and complete;

37 (2) that such laborer or mechanic (including each helper, apprentice,
38 and trainee) employed on the contract during the payroll period has
39 been paid the full weekly wages earned, without rebate, either
40 directly or indirectly, and that no deductions have been made either
41 directly or indirectly from the full wages earned, other than
42 permissible deductions as set forth in the Regulations, 29 CFR 3;

43 (3) that each laborer or mechanic has been paid not less than the
44 applicable wage rate and fringe benefits or cash equivalent for the
45 classification of work performed, as specified in the applicable
46 wage determination incorporated into the contract.

- 1 e. The weekly submission of a properly executed certification set forth on the
2 reverse side of Optional Form WH-347 shall satisfy the requirement for
3 submission of the "Statement of Compliance" required by paragraph 2d of
4 this Section V.
- 5 f. The falsification of any of the above certifications may subject the contractor
6 to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- 7 g. The contractor or subcontractor shall make the records required under
8 paragraph 2b of this Section V available for inspection, copying, or
9 transcription by authorized representatives of the SHA, the FHWA, or the
10 DOL, and shall permit such representatives to interview employees during
11 working hours on the job. If the contractor or subcontractor fails to submit
12 the required records or to make them available, the SHA, the FHWA, the
13 DOL, or all may, after written notice to the contractor, sponsor, applicant, or
14 owner, take such actions as may be necessary to cause the suspension of
15 any further payment, advance, or guarantee of funds. Furthermore, failure to
16 submit the required records upon request or to make such records available
17 may be grounds for debarment action pursuant to 29 CFR 5.12.

18 **VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

- 19 1. On all Federal-aid contracts on the National Highway System, except those which
20 provide solely for the installation of protective devices at railroad grade crossings,
21 those which are constructed on a force account or direct labor basis, highway
22 beautification contracts, and contracts for which the total final construction cost for
23 roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
- 24 a. Become familiar with the list of specific materials and supplies contained in
25 Form FHWA-47, "Statement of Materials and Labor Used by Contractor of
26 Highway Construction Involving Federal Funds," prior to the commencement
27 of work under this contract.
- 28 b. Maintain a record of the total cost of all materials and supplies purchased for
29 and incorporated in the work, and also of the quantities of those specific
30 materials and supplies listed on Form FHWA-47, and in the units shown on
31 Form FHWA-47.
- 32 c. Furnish, upon the completion of the contract, to the SHA resident engineer
33 on Form FHWA-47 together with the data required in paragraph 1b relative
34 to materials and supplies, a final labor summary of all contract work
35 indicating the total hours worked and the total amount earned.
- 36 2. At the prime contractor's option, either a single report covering all contract work or
37 separate reports for the contractor and for each subcontract shall be submitted.

38 **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

- 39 1. The contractor shall perform with its own organization contract work amounting to
40 not less than 30 percent (or a greater percentage if specified elsewhere in the
41 contract) of the total original contract price, excluding any specialty items
42 designated by the State. Specialty items may be performed by subcontract and the

1 amount of any such specialty items performed may be deducted from the total
2 original contract price before computing the amount of work required to be
3 performed by the contractor's own organization (23 CFR 635).

4 a. "Its own organization" shall be construed to include only workers employed
5 and paid directly by the prime contractor and equipment owned or rented by
6 the prime contractor, with or without operators. Such term does not include
7 employees or equipment of a subcontractor, assignee, or agent of the prime
8 contractor.

9 b. "Specialty Items" shall be construed to be limited to work that requires highly
10 specialized knowledge, abilities, or equipment not ordinarily available in the
11 type of contracting organizations qualified and expected to bid on the
12 contract as a whole and in general are to be limited to minor components of
13 the overall contract.

14 2. The contract amount upon which the requirements set forth in paragraph 1 of
15 Section VII is computed includes the cost of material and manufactured products
16 which are to be purchased or produced by the contractor under the contract
17 provisions.

18 3. The contractor shall furnish (a) a competent superintendent or supervisor who is
19 employed by the firm, has full authority to direct performance of the work in
20 accordance with the contract requirements, and is in charge of all construction
21 operations (regardless of who performs the work) and (b) such other of its own
22 organizational resources (supervision, management, and engineering services) as
23 the SHA contracting officer determines is necessary to assure the performance of
24 the contract.

25 4. No portion of the contract shall be sublet, assigned or otherwise disposed of except
26 with the written consent of the SHA contracting officer, or authorized representative,
27 and such consent when given shall not be construed to relieve the contractor of any
28 responsibility for the fulfillment of the contract. Written consent will be given only
29 after the SHA has assured that each subcontract is evidenced in writing and that it
30 contains all pertinent provisions and requirements of the prime contract.

31 **VIII. SAFETY: ACCIDENT PREVENTION**

32 1. In the performance of this contract the contractor shall comply with all applicable
33 Federal, State, and local laws governing safety, health, and sanitation (23 CFR
34 635). The contractor shall provide all safeguards, safety devices and protective
35 equipment and take any other needed actions as it determines, or as the SHA
36 contracting officer may determine, to be reasonably necessary to protect the life
37 and health of employees on the job and the safety of the public and to protect
38 property in connection with the performance of the work covered by the contract.

39 2. It is a condition of this contract, and shall be made a condition of each subcontract,
40 which the contractor enters into pursuant to this contract, that the contractor and
41 any subcontractor shall not permit any employee, in performance of the contract, to
42 work in surroundings or under conditions which are unsanitary, hazardous or
43 dangerous to his/her health or safety, as determined under construction safety and
44 health standards (29 CFR 1926) promulgated by the Secretary of Labor, in

1 accordance with Section 107 of the Contract Work Hours and Safety Standards Act
2 (40 U.S.C. 333).

3 3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of
4 Labor or authorized representative thereof, shall have right of entry to any site of
5 contract performance to inspect or investigate the matter of compliance with the
6 construction safety and health standards and to carry out the duties of the
7 Secretary under Section 107 of the Contract Work Hours and Safety Standards Act
8 (40 U.S.C. 333).

9 **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

10 In order to assure high quality and durable construction in conformity with approved plans
11 and specifications and a high degree of reliability on statements and representations made
12 by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is
13 essential that all persons concerned with the project perform their functions as carefully,
14 thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation
15 with respect to any facts related to the project is a violation of Federal law. To prevent any
16 misunderstanding regarding the seriousness of these and similar acts, the following notice
17 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places
18 where it is readily available to all persons concerned with the project:

19 **NOTICE TO ALL PERSONNEL ENGAGED ON**
20 **FEDERAL-AID HIGHWAY PROJECTS**

21 18 U.S.C. 1020 reads as follows:

22 *"Whoever, being an officer, agent, or employee of the United States, or of any State or*
23 *Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes*
24 *any false statement, false representation, or false report as to the character, quality,*
25 *quantity, or cost of the material used or to be used, or the quantity or quality of the work*
26 *performed or to be performed, or the cost thereof in connection with the submission of*
27 *plans, maps, specifications, contracts, or costs of construction on any highway or related*
28 *project submitted for approval to the Secretary of Transportation; or*

29 *Whoever knowingly makes any false statement, false representation, false report or false*
30 *claim with respect to the character, quality, quantity, or cost of any work performed or to be*
31 *performed, or materials furnished or to be furnished, in connection with the construction of*
32 *any highway or related project approved by the Secretary of Transportation; or*

33 *Whoever knowingly makes any false statement or false representation as to material fact in*
34 *any statement, certificate, or report submitted pursuant to provisions of the Federal-aid*
35 *Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

36 *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

37 **X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION**
38 **CONTROL ACT**

39 (Applicable to all Federal-aid construction contracts and to all related subcontracts of
40 \$100,000 or more.)

1 By submission of this bid or the execution of this contract, or subcontract, as appropriate,
2 the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be
3 deemed to have stipulated as follows:

4 1. That any facility that is or will be utilized in the performance of this contract, unless
5 such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et
6 seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution
7 Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500),
8 Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is
9 not listed, on the date of contract award, on the U.S. Environmental Protection
10 Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

11 2. That the firm agrees to comply and remain in compliance with all the requirements
12 of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution
13 Control Act and all regulations and guidelines listed thereunder.

14 3. That the firm shall promptly notify the SHA of the receipt of any communication from
15 the Director, Office of Federal Activities, EPA, indicating that a facility that is or will
16 be utilized for the contract is under consideration to be listed on the EPA List of
17 Violating Facilities.

18 4. That the firm agrees to include or cause to be included the requirements of
19 paragraph 1 through 4 of this Section X in every nonexempt subcontract, and
20 further agrees to take such action as the government may direct as a means of
21 enforcing such requirements.

22 **XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND**
23 **VOLUNTARY EXCLUSION**

24 1. **Instructions for Certification - Primary Covered Transactions**

25 (Applicable to all Federal-aid contracts - 49 CFR 29)

26 a. By signing and submitting this proposal, the prospective primary participant
27 is providing the certification set out below.

28 b. The inability of a person to provide the certification set out below will not
29 necessarily result in denial of participation in this covered transaction. The
30 prospective participant shall submit an explanation of why it cannot provide
31 the certification set out below. The certification or explanation will be
32 considered in connection with the department or agency's determination
33 whether to enter into this transaction. However, failure of the prospective
34 primary participant to furnish a certification or an explanation shall disqualify
35 such a person from participation in this transaction.

36 c. The certification in this clause is a material representation of fact upon which
37 reliance was placed when the department or agency determined to enter
38 into this transaction. If it is later determined that the prospective primary
39 participant knowingly rendered an erroneous certification, in addition to other
40 remedies available to the Federal Government, the department or agency
41 may terminate this transaction for cause of default.

- 1 d. The prospective primary participant shall provide immediate written notice to
2 the department or agency to whom this proposal is submitted if at any time
3 the prospective primary participant learns that its certification was erroneous
4 when submitted or has become erroneous by reason of changed
5 circumstances.
- 6 e. The terms "covered transaction," "debarred," "suspended," "ineligible,"
7 "lower tier covered transaction," "participant," "person," "primary covered
8 transaction," "principal," "proposal," and "voluntarily excluded," as used in
9 this clause, have the meanings set out in the Definitions and Coverage
10 sections of rules implementing Executive Order 12549. You may contact the
11 department or agency to which this proposal is submitted for assistance in
12 obtaining a copy of those regulations.
- 13 f. The prospective primary participant agrees by submitting this proposal that,
14 should the proposed covered transaction be entered into, it shall not
15 knowingly enter into any lower tier covered transaction with a person who is
16 debarred, suspended, declared ineligible, or voluntarily excluded from
17 participation in this covered transaction, unless authorized by the
18 department or agency entering into this transaction.
- 19 g. The prospective primary participant further agrees by submitting this
20 proposal that it will include the clause titled "Certification Regarding
21 Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier
22 Covered Transaction," provided by the department or agency entering into
23 this covered transaction, without modification, in all lower tier covered
24 transactions and in all solicitations for lower tier covered transactions.
- 25 h. A participant in a covered transaction may rely upon a certification of a
26 prospective participant in a lower tier covered transaction that is not
27 debarred, suspended, ineligible, or voluntarily excluded from the covered
28 transaction, unless it knows that the certification is erroneous. A participant
29 may decide the method and frequency by which it determines the eligibility
30 of its principals. Each participant may, but is not required to, check the
31 nonprocurement portion of the "Lists of Parties Excluded From Federal
32 Procurement or Nonprocurement Programs" (Nonprocurement List) which is
33 compiled by the General Services Administration.
- 34 i. Nothing contained in the foregoing shall be construed to require
35 establishment of a system of records in order to render in good faith the
36 certification required by this clause. The knowledge and information of
37 participant is not required to exceed that which is normally possessed by a
38 prudent person in the ordinary course of business dealings.
- 39 j. Except for transactions authorized under paragraph f of these instructions, if
40 a participant in a covered transaction knowingly enters into a lower tier
41 covered transaction with a person who is suspended, debarred, ineligible, or
42 voluntarily excluded from participation in this transaction, in addition to other
43 remedies available to the Federal Government, the department or agency
44 may terminate this transaction for cause or default.

45 * * * * *

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--
Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

- 1 d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary
2 covered transaction," "participant," "person," "principal," "proposal," and "voluntarily
3 excluded," as used in this clause, have the meanings set out in the Definitions and
4 Coverage sections of rules implementing Executive Order 12549. You may contact
5 the person to which this proposal is submitted for assistance in obtaining a copy of
6 those regulations.
- 7 e. The prospective lower tier participant agrees by submitting this proposal that,
8 should the proposed covered transaction be entered into, it shall not knowingly
9 enter into any lower tier covered transaction with a person who is debarred,
10 suspended, declared ineligible, or voluntarily excluded from participation in this
11 covered transaction, unless authorized by the department or agency with which this
12 transaction originated.
- 13 f. The prospective lower tier participant further agrees by submitting this proposal that
14 it will include this clause titled "Certification Regarding Debarment, Suspension,
15 Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without
16 modification, in all lower tier covered transactions and in all solicitations for lower
17 tier covered transactions.
- 18 g. A participant in a covered transaction may rely upon a certification of a prospective
19 participant in a lower tier covered transaction that is not debarred, suspended,
20 ineligible, or voluntarily excluded from the covered transaction, unless it knows that
21 the certification is erroneous. A participant may decide the method and frequency
22 by which it determines the eligibility of its principals. Each participant may, but is not
23 required to, check the Nonprocurement List.
- 24 h. Nothing contained in the foregoing shall be construed to require establishment of a
25 system of records in order to render in good faith the certification required by this
26 clause. The knowledge and information of participant is not required to exceed that
27 which is normally possessed by a prudent person in the ordinary course of business
28 dealings.
- 29 i. Except for transactions authorized under paragraph e of these instructions, if a
30 participant in a covered transaction knowingly enters into a lower tier covered
31 transaction with a person who is suspended, debarred, ineligible, or voluntarily
32 excluded from participation in this transaction, in addition to other remedies
33 available to the Federal Government, the department or agency with which this
34 transaction originated may pursue available remedies, including suspension and/or
35 debarment.

36 * * * * *

37 **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--**
38 **Lower Tier Covered Transactions:**

- 39 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it
40 nor its principals is presently debarred, suspended, proposed for debarment, declared
41 ineligible, or voluntarily excluded from participation in this transaction by any Federal
42 department or agency.

1 2. Where the prospective lower tier participant is unable to certify to any of the statements in
2 this certification, such prospective participant shall attach an explanation to this proposal.

3 * * * * *

4 **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

5 (Applicable to all Federal-aid construction contracts and to all related subcontracts which
6 exceed \$100,000 - 49 CFR 20)

7 1. The prospective participant certifies, by signing and submitting this bid or proposal,
8 to the best of his or her knowledge and belief, that:

9 a. No Federal appropriated funds have been paid or will be paid, by or on
10 behalf of the undersigned, to any person for influencing or attempting to
11 influence an officer or employee of any Federal agency, a Member of
12 Congress, an officer or employee of Congress, or an employee of a Member
13 of Congress in connection with the awarding of any Federal contract, the
14 making of any Federal grant, the making of any Federal loan, the entering
15 into of any cooperative agreement, and the extension, continuation, renewal,
16 amendment, or modification of any Federal contract, grant, loan, or
17 cooperative agreement.

18 b. If any funds other than Federal appropriated funds have been paid or will be
19 paid to any person for influencing or attempting to influence an officer or
20 employee of any Federal agency, a Member of Congress, an officer or
21 employee of Congress, or an employee of a Member of Congress in
22 connection with this Federal contract, grant, loan, or cooperative agreement,
23 the undersigned shall complete and submit Standard Form-LLL, "Disclosure
24 Form to Report Lobbying," in accordance with its instructions.

25 2. This certification is a material representation of fact upon which reliance was placed
26 when this transaction was made or entered into. Submission of this certification is a
27 prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.
28 Any person who fails to file the required certification shall be subject to a civil
29 penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30 3. The prospective participant also agrees by submitting his or her bid or proposal that
31 he or she shall require that the language of this certification be included in all lower
32 tier subcontracts, which exceed \$100,000 and that all such recipients shall certify
33 and disclose accordingly.
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Appendix 5-D

Federal Prevailing Wage Rates

The prevailing wage rates for the Project shall comply with General Decision Number WA100001 (04/16/2010), which sets forth the federal prevailing wage rates for highway projects in all counties in the State of Washington. General Decision Number WA100001 is attached as Appendix 5-D.

General Decision Number: WA100001 04/16/2010 WA1

Superseded General Decision Number: WA20080001

State: Washington

Construction Type: Highway

Counties: Washington Statewide.

HIGHWAY (Excludes D.O.E. Hanford Site in Benton and Franklin Counties)

Modification Number	Publication Date
0	03/12/2010
1	03/19/2010
2	04/16/2010

CARP0001-008 09/01/2009

	Rates	Fringes
Carpenters:		
COLUMBIA RIVER AREA -		
ADAMS, BENTON, COLUMBIA,		
DOUGLAS (EAST OF THE 120TH		
MERIDIAN), FERRY,		
FRANKLIN, GRANT, OKANOGAN		
(EAST OF THE 120TH		
MERIDIAN) AND WALLA WALLA		
COUNTIES		
GROUP 1:.....	\$ 27.73	10.56
GROUP 2:.....	\$ 29.73	10.56
GROUP 3:.....	\$ 28.00	10.56
GROUP 4:.....	\$ 27.73	10.56
GROUP 5:.....	\$ 63.50	10.56
GROUP 6:.....	\$ 30.75	10.56
GROUP 7:.....	\$ 31.75	10.56
GROUP 8:.....	\$ 28.00	10.56
GROUP 9:.....	\$ 33.75	10.56

SPOKANE AREA: ASOTIN,
 GARFIELD, LINCOLN, PEND
 OREILLE, SPOKANE, STEVENS
 AND WHITMAN COUNTIES

GROUP 1:.....	\$ 26.06	10.56
GROUP 2:.....	\$ 28.06	10.56
GROUP 3:.....	\$ 26.32	10.56
GROUP 4:.....	\$ 26.06	10.56
GROUP 5:.....	\$ 60.14	10.56
GROUP 6:.....	\$ 29.07	10.56
GROUP 7.....	\$ 30.07	10.56
GROUP 8.....	\$ 27.32	10.56
GROUP 9.....	\$ 33.07	10.56

CARPENTER & DIVER CLASSIFICATIONS:

GROUP 1: Carpenter

GROUP 2: Millwright, machine erector

GROUP 3: Piledriver - includes driving, pulling, cutting,
 placing collars, setting, welding, or creosote treated
 material, on all piling

GROUP 4: Bridge carpenters

GROUP 5: Diver Wet

GROUP 6: Diver Tender, Manifold Operator, ROV Operator

GROUP 7: Diver Standby, Bell/Vehicle or Submersible operator
 Not Under Pressure

GROUP 8: Assistant Tender, ROV Tender/Technician

GROUP 9: Manifold Operator-Mixed Gas

ZONE PAY:

ZONE 1	0-40 MILES	FREE
ZONE 2	41-65 MILES	\$2.25/PER HOUR
ZONE 3	66-100 MILES	\$3.25/PER HOUR
ZONE 4	OVER 100 MILES	\$4.75/PER HOUR

DISPATCH POINTS:

CARPENTERS/MILLWRIGHTS: PASCO (515 N Neel Street) or Main
 Post Office of established residence of employee (Whichever
 is closest to the worksite).

CARPENTERS/PILEDRIVER: SPOKANE (127 E. AUGUSTA AVE.) or Main
 Post Office of established residence of employee (Whichever
 is closest to the worksite).

CARPENTERS: WENATCHEE (27 N. CHELAN) or Main Post Office of
 established residence of employee (Whichever is closest to
 the worksite).

CARPENTERS: COEUR D' ALENE (1839 N. GOVERNMENT WAY) or Main Post Office of established residence of employee (Whichever is closest to the worksite).

CARPENTERS: MOSCOW (302 N. JACKSON) or Main Post Office of established residence of employee (Whichever is closest to the worksite).

DEPTH PAY FOR DIVERS BELOW WATER SURFACE:

50-100 feet \$2.00 per foot
101-150 feet \$3.00 per foot
151-220 feet \$4.00 per foot
221 feet and deeper \$5.00 per foot

PREMIUM PAY FOR DIVING IN ENCLOSURES WITH NO VERTICAL ASCENT:

0-25 feet Free
26-300 feet \$1.00 per Foot

SATURATION DIVING:

The standby rate applies until saturation starts. The saturation diving rate applies when divers are under pressure continuously until work task and decompression are complete. the diver rate shall be paid for all saturation hours.

WORK IN COMBINATION OF CLASSIFICATIONS:

Employees working in any combination of classifications within the diving crew (except dive supervisor) in a shift are paid in the classification with the highest rate for that shift.

HAZMAT PROJECTS:

Anyone working on a HAZMAT job (task), where HAZMAT certification is required, shall be compensated at a premium, in addition to the classification working in as follows:

LEVEL D + \$.25 per hour - This is the lowest level of protection. No respirator is used and skin protection is minimal.

LEVEL C + \$.50 per hour - This level uses an air purifying respirator or additional protective clothing.

LEVEL B + \$.75 per hour - Uses same respirator protection as Level A. Supplied air line is provided in conjunction with a chemical "splash suit".

LEVEL A +\$1.00 per hour - This level utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line.

CARP0003-006 06/01/2007

SOUTHWEST WASHINGTON: CLARK, COWLITZ, KLICKITAT, LEWIS (Piledriver only), PACIFIC (South of a straight line made by extending the north boundary line of Wahkiakum County west to Willapa Bay to the Pacific Ocean), SKAMANIA AND WAHAKIUM COUNTIES and INCLUDES THE ENTIRE PENINSULA WEST OF WILLAPA BAY

SEE ZONE DESCRIPTION FOR CITIES BASE POINTS

ZONE 1:

	Rates	Fringes
Carpenters:		
CARPENTERS.....	\$ 27.56	13.30
DIVERS TENDERS.....	\$ 30.28	13.30
DIVERS.....	\$ 68.84	13.30
DRYWALL.....	\$ 27.56	13.30
MILLWRIGHTS.....	\$ 28.04	13.30
PILEDRIVERS.....	\$ 28.04	13.30

DEPTH PAY:

50 TO 100 FEET \$1.00 PER FOOT OVER 50 FEET
101 TO 150 FEET \$1.50 PER FOOT OVER 101 FEET
151 TO 200 FEET \$2.00 PER FOOT OVER 151 FEET

Zone Differential (Add up Zone 1 rates):

Zone 2 - \$0.85
Zone 3 - 1.25
Zone 4 - 1.70
Zone 5 - 2.00
Zone 6 - 3.00

BASEPOINTS: ASTORIA, LONGVIEW, PORTLAND, THE DALLES, AND VANCOUVER, (NOTE: All dispatches for Washington State Counties: Cowlitz, Wahkiakum and Pacific shall be from Longview Local #1707 and mileage shall be computed from that point.)

ZONE 1: Projects located within 30 miles of the respective city hall of the above mentioned cities

ZONE 2: Projects located more than 30 miles and less than 40 miles of the respective city of the above mentioned cities

ZONE 3: Projects located more than 40 miles and less than 50 miles of the respective city of the above mentioned cities

ZONE 4: Projects located more than 50 miles and less than 60 miles of the respective city of the above mentioned cities.

ZONE 5: Projects located more than 60 miles and less than 70 miles of the respective city of the above mentioned cities

ZONE 6: Projects located more than 70 miles of the respected city of the above mentioned cities

 CARP0770-003 06/01/2009

	Rates	Fringes
Carpenters:		
CENTRAL WASHINGTON:		
CHELAN, DOUGLAS (WEST OF THE 120TH MERIDIAN),		
KITTTITAS, OKANOGAN (WEST OF THE 120TH MERIDIAN) AND		
YAKIMA COUNTIES		
CARPENTERS ON CREOSOTE		
MATERIAL.....	\$ 25.25	11.97
CARPENTERS.....	\$ 35.39	11.97
DIVERS TENDER.....	\$ 39.15	13.08
DIVERS.....	\$ 87.20	13.08
MILLWRIGHT AND MACHINE		
ERECTORS.....	\$ 36.39	11.97
PILED RIVER, DRIVING, PULLING, CUTTING, PLACING COLLARS, SETTING, WELDING OR CREOSOTE TREATED		
MATERIAL, ALL PILING.....	\$ 35.59	11.97

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - ALL CLASSIFICATIONS EXCEPT MILLWRIGHTS AND PILEDRIVERS

Hourly Zone Pay shall be paid on jobs located outside of the free zone computed from the city center of the following listed cities:

Seattle	Olympia	Bellingham
Auburn	Bremerton	Anacortes
Renton	Shelton	Yakima
Aberdeen-Hoquiam	Tacoma	Wenatchee
Ellensburg	Everett	Port Angeles
Centralia	Mount Vernon	Sunnyside
Chelan	Pt. Townsend	

Zone Pay:

0 -25 radius miles	Free
26-35 radius miles	\$1.00/hour
36-45 radius miles	\$1.15/hour
46-55 radius miles	\$1.35/hour
Over 55 radius miles	\$1.55/hour

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - MILLWRIGHT AND PILEDRIVER ONLY)

Hourly Zone Pay shall be computed from Seattle Union Hall, Tacoma City center, and Everett City center

Zone Pay:

0 -25 radius miles	Free
26-45 radius miles	\$.70/hour
Over 45 radius miles	\$1.50/hour

	Rates	Fringes
Carpenters:		
WESTERN WASHINGTON:		
CLALLAM, GRAYS HARBOR,		
ISLAND, JEFFERSON, KING,		
KITSAP, LEWIS (excludes		
piledrivers only), MASON,		
PACIFIC (North of a		
straight line made by		
extending the north		
boundary line of Wahkiakum		
County west to the Pacific		
Ocean), PIERCE, SAN JUAN,		
SKAGIT, SNOHOMISH,		
THURSTON AND WHATCOM		
COUNTIES		
BRIDGE CARPENTERS.....	\$ 35.39	13.08
CARPENTERS ON CREOSOTE		
MATERIAL.....	\$ 35.49	13.08
CARPENTERS.....	\$ 35.39	13.08
DIVERS TENDER.....	\$ 39.15	13.08
DIVERS.....	\$ 87.20	13.08
MILLWRIGHT AND MACHINE		
ERECTORS.....	\$ 36.39	13.08
PILEDRIVER, DRIVING,		
PULLING, CUTTING, PLACING		
COLLARS, SETTING, WELDING		
OR CRESOTE TREATED		
MATERIAL, ALL PILING.....	\$ 35.59	13.08

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - ALL CLASSIFICATIONS EXCEPT MILLWRIGHTS AND PILEDRIERS)

Hourly Zone Pay shall be paid on jobs located outside of the free zone computed from the city center of the following listed cities:

Seattle	Olympia	Bellingham
Auburn	Bremerton	Anacortes
Renton	Shelton	Yakima
Aberdeen-Hoquiam	Tacoma	Wenatchee
Ellensburg	Everett	Port Angeles
Centralia	Mount Vernon	Sunnyside
Chelan	Pt. Townsend	

Zone Pay:
 0 -25 radius miles Free
 26-35 radius miles \$1.00/hour
 36-45 radius miles \$1.15/hour
 46-55 radius miles \$1.35/hour
 Over 55 radius miles \$1.55/hour

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - MILLWRIGHT AND PILEDRIVER ONLY)

Hourly Zone Pay shall be computed from Seattle Union Hall, Tacoma City center, and Everett City center

Zone Pay:
 0 -25 radius miles Free
 26-45 radius miles \$.70/hour
 Over 45 radius miles \$1.50/hour

 ELEC0046-001 06/01/2009

CALLAM, JEFFERSON, KING AND KITSAP COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 44.89	3%+15.71
ELECTRICIAN.....	\$ 40.81	3%+15.71

 * ELEC0048-003 01/01/2010

CLARK, KLICKITAT AND SKAMANIA COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 39.66	\$16.58
ELECTRICIAN.....	\$ 36.05	\$16.58

HOURLY ZONE PAY:

Hourly Zone Pay shall be paid on jobs located outside of the free zone computed from the city center of the following listed cities:

Portland, The Dalles, Hood River, Tillamook, Seaside and Astoria

Zone Pay:
 Zone 1: 31-50 miles \$1.50/hour
 Zone 2: 51-70 miles \$3.50/hour
 Zone 3: 71-90 miles \$5.50/hour
 Zone 4: Beyond 90 miles \$9.00/hour

*These are not miles driven. Zones are based on Delorme Street Atlas USA 2006 plus.

* ELEC0073-001 01/01/2010

ADAMS, FERRY, LINCOLN, PEND OREILLE, SPOKANE, STEVENS, WHITMAN
COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 28.62	3%+12.98
ELECTRICIAN.....	\$ 28.37	13.98

ELEC0076-002 09/01/2009

GRAYS HARBOR, LEWIS, MASON, PACIFIC, PIERCE, AND THURSTON
COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 38.32	3%+16.45
ELECTRICIAN.....	\$ 34.84	3%+16.40

ELEC0112-005 07/01/2009

ASOTIN, BENTON, COLUMBIA, FRANKLIN, GARFIELD, KITTITAS, WALLA
WALLA, YAKIMA COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 36.70	3%+13.73
ELECTRICIAN.....	\$ 34.95	3%+13.73

ELEC0191-003 03/01/2008

ISLAND, SAN JUAN, SNOHOMISH, SKAGIT AND WHATCOM COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 36.86	3%+12.98
ELECTRICIAN.....	\$ 33.51	3%+12.98

ELEC0191-004 03/01/2008

CHELAN, DOUGLAS, GRANT AND OKANOGAN COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 32.46	3%+12.81
ELECTRICIAN.....	\$ 29.51	3%+12.81

ELEC0970-001 01/01/2009

COWLITZ AND WAHAKIAKUM COUNTY

	Rates	Fringes
CABLE SPLICER.....	\$ 34.68	3%+9.59
ELECTRICIAN.....	\$ 31.53	3%+9.59

ENGI0302-003 06/01/2009

CHELAN (WEST OF THE 120TH MERIDIAN), CLALLAM, DOUGLAS (WEST OF THE 120TH MERIDIAN), GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, KITTITAS, MASON, OKANOGAN (WEST OF THE 120TH MERIDIAN), SAN JUNA, SKAGIT, SNOHOMISH, WHATCOM AND YAKIMA (WEST OF THE 120TH MERIDIAN) COUNTIES

PROJECTS: CATEGORY A PROJECTS (EXCLUDES CATEGORY B PROJECTS, AS SHOWN BELOW)

Zone 1 (0-25 radius miles):

	Rates	Fringes
Power equipment operators:		
Group 1A.....	\$ 35.79	15.15
Group 1AA.....	\$ 36.36	15.15
Group 1AAA.....	\$ 36.92	15.15
Group 1.....	\$ 35.24	15.15
Group 2.....	\$ 34.75	15.15
Group 3.....	\$ 34.33	15.15
Group 4.....	\$ 31.97	15.15

Zone Differential (Add to Zone 1 rates):

Zone 2 (26-45 radius miles) - \$1.00
Zone 3 (Over 45 radius miles) - \$1.30

BASEPOINTS: Aberdeen, Bellingham, Bremerton, Everett, Kent, Mount Vernon, Port Angeles, Port Townsend, Seattle, Shelton, Wenatchee, Yakima

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1AAA - Cranes-over 300 tons, or 300 ft of boom (including jib with attachments)

GROUP 1AA - Cranes 200 to 300 tons, or 250 ft of boom (including jib with attachments); Tower crane over 175 ft in height, base to boom

GROUP 1A - Cranes, 100 tons thru 199 tons, or 150 ft of boom (including jib with attachments); Crane-overhead, bridge type, 100 tons and over; Tower crane up to 175 ft in height base to boom; Loaders-overhead, 8 yards and over; Shovels, excavator, backhoes-6 yards and over with attachments

GROUP 1 - Cableway; Cranes 45 tons thru 99 tons, under 150 ft of boom (including jib with attachments); Crane-overhead, bridge type, 45 tons thru 99 tons; Derricks on building work; Excavator, shovel, backhoes over 3 yards and under 6 yards; Hard tail end dump articulating off-road equipment 45 yards and over; Loader- overhead 6 yards to, but not including 8 yards; Mucking machine, mole, tunnel, drill and/or shield; Quad 9, HD 41, D-10; Remote control operator on rubber tired earth moving equipment; Rollagon; Scrapers-self propelled 45 yards and over; Slipform pavers; Transporters, all truck or track type

GROUP 2 - Barrier machine (zipper); Batch Plant Operaor-Concrete; Bump Cutter; Cranes, 20 tons thru 44 tons with attachments; Crane-overhead, bridge type-20 tons through 44 tons; Chipper; Concrete Pump-truck mount with boom attachment; Crusher; Deck Engineer/Deck Winches (power); Drilling machine; Excavator, shovel, backhoe-3yards and under; Finishing Machine, Bidwell, Gamaco and similar equipment; Guardrail punch; Horizontal/directional drill operator; Loaders-overhead under 6 yards; Loaders-plant feed; Locomotives-all; Mechanics-all; Mixers-asphalt plant; Motor patrol graders-finishing; Piledriver (other than crane mount); Roto-mill, roto-grinder; Screedman, spreader, topside operator-Blaw Knox, Cedar Rapids, Jaeger, Caterpillar, Barbar Green; Scraper-self propelled, hard tail end dump, articulating off-road equipment-under 45 yards; Subgrade trimmer; Tractors, backhoes-over 75 hp; Transfer material service machine-shuttle buggy, blaw knox-roadtec; Truck crane oiler/driver-100 tons and over; Truck Mount portable conveyor; Yo Yo Pay dozer

GROUP 3 - Conveyors; Cranes-thru 19 tons with attachments; A-frame crane over 10 tons; Drill oilers-auger type, truck or crane mount; Dozers-D-9 and under; Forklift-3000 lbs. and over with attachments; Horizontal/directional drill locator; Outside hoists-(elevators and manlifts), air tuggers, strato tower bucket elevators; Hydralifts/boom trucks over 10 tons; Loader-elevating type, belt; Motor patrol grader-nonfinishing; Plant oiler- asphalt, crusher; Pumps-concrete; Roller, plant mix or multi-lift materials; Saws-concrete; Scrpers-concrete and carry-all; Service engineer-equipment; Trenching machines; Truck Crane Oiler/Driver under 100 tons; Tractors, backhoe 75 hp and under

GROUP 4 - Assistant Engineer; Bobcat; Brooms; Compressor; Concrete finish machine-laser screed; Cranes-A frame-10 tons and under; Elevator and Manlift-permanent or shaft type; Gradechecker, Stakehop; Forklifts under 3000 lbs. with attachments; Hydralifts/boom trucks, 10 tons and under; Oil distributors, blower distribution and mulch seeding operator; Pavement breaker; Posthole digger, mechanical; Power plant; Pumps, water; Rigger and Bellman; Roller-other than plant mix; Wheel Tractors, farmall type; Shotcrete/gunite equipment operator

Category B Projects: 95% of the basic hourly reate for each group plus full fringe benefits applicable to category A projects shall apply to the following projects. A Reduced rates may be paid on the following:

1. Projects involving work on structures such as buildings and bridges whose total value is less than \$1.5 million excluding mechanical, electrical, and utility portions of the contract.
2. Projects of less than \$1 million where no building is involved. Surfacing and paving included, but utilities excluded.
3. Marine projects (docks, wharfs, etc.) less than \$150,000.

HANDLING OF HAZARDOUS WASTE MATERIALS:

Personnel in all craft classifications subject to working inside a federally designated hazardous perimeter shall be eligible for compensation in accordance with the following group schedule relative to the level of hazardous waste as outlined in the specific hazardous waste project site safety plan.

H-1 Base wage rate when on a hazardous waste site when not outfitted with protective clothing

H-2 Class "C" Suit - Base wage rate plus \$.25 per hour.

H-3 Class "B" Suit - Base wage rate plus \$.50 per hour.

H-4 Class "A" Suit - Base wage rate plus \$.75 per hour.

ADAMS, ASOTIN, BENTON, CHELAN (EAST OF THE 120TH MERIDIAN),
COLUMBIA, DOUGLAS (EAST OF THE 120TH MERIDIAN), FERRY,
FRANKLIN, GARFIELD, GRANT, LINCOLN, OKANOGAN (EAST OF THE 120TH
MERIDIAN), PEND OREILLE, SPOKANE, STEVENS, WALLA WALLA, WHITMAN
AND YAKIMA (EAST OF THE 120TH MERIDIAN) COUNTIES

ZONE 1:

	Rates	Fringes
Power equipment operators:		
GROUP 1A.....	\$ 23.21	11.05
GROUP 1.....	\$ 23.76	11.05
GROUP 2.....	\$ 24.08	11.05
GROUP 3.....	\$ 24.69	11.05
GROUP 4.....	\$ 24.85	11.05
GROUP 5.....	\$ 25.01	11.05
GROUP 6.....	\$ 25.29	11.05
GROUP 7.....	\$ 25.56	11.05
GROUP 8.....	\$ 26.66	11.05

ZONE DIFFERENTIAL (Add to Zone 1 rate): Zone 2 - \$2.00

Zone 1: Within 45 mile radius of Spokane, Pasco, Washington;
Lewiston, Idaho

Zone 2: Outside 45 mile radius of Spokane, Pasco,
Washington; Lewiston, Idaho

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1A: Boat Operator; Crush Feeder; Oiler; Steam Cleaner

GROUP 1: Bit Grinders; Bolt Threading Machine; Compressors
(under 2000 CFM, gas, diesel, or electric power); Deck
Hand; Drillers Helper (Assist driller in making drill rod
connections, service drill engine and air compressor,
repair drill rig and drill tools, drive drill support truck
to and on the job site, remove drill cuttings from around
bore hole and inspect drill rig while in operation);
Fireman & Heater Tender; Hydro-seeder, Mulcher, Nozzleman;
Oiler Driver, & Cable Tender, Mucking Machine; Pumpman;
Rollers, all types on subgrade, including seal and chip
coatings (farm type, Case, John Deere & similar, or
Compacting Vibrator), except when pulled by Dozer with
operable blade; Welding Machine; Crane Oiler-Driver (CLD
required) & Cable Tender, Mucking Machine

GROUP 2: A-frame Truck (single drum); Assistant Refrigeration Plant (under 1000 ton); Assistant Plant Operator, Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2000 CFM or over, 2 or more, gas diesel or electric power); Concrete Saw (multiple cut); Distributor Leverman; Ditch Witch or similar; Elevator Hoisting Materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker, hydra-lift & similar; Gin Trucks (pipeline); Hoist, single drum; Loaders (bucket elevators and conveyors); Longitudinal Float; Mixer (portable-concrete); Pavement Breaker, Hydra-Hammer & similar; Power Broom; Railroad Ballast Regulation Operator (self-propelled); Railroad Power Tamper Operator (self-propelled); Railroad Tamper Jack Operator (self-propelled); Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross & similar on construction job only); Tractor (Farm type R/T with attachment, except Backhoe); Tugger Operator

GROUP 3: A-frame Truck (2 or more drums); Assistant Refrigeration Plant & Chiller Operator (over 1000 ton); Backfillers (Cleveland & similar); Batch Plant & Wet Mix Operator, single unit (concrete); Belt-Crete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Bending Machine; Bob Cat (Skid Steer); Boring Machine (earth); Boring Machine (rock under 8 inch bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning & Doping Machine (pipeline); Deck Engineer; Elevating Belt-type Loader (Euclid, Barber Green & similar); Elevating Grader-type Loader (Dumor, Adams or similar); Generator Plant Engineers (diesel or electric); Gunnite Combination Mixer & Compressor; Locomotive Engineer; Mixermobile; Mucking Machine; Posthole Auger or Punch; Pump (grout or jet); Soil Stabilizer (P & H or similar); Spreader Machine; Dozer/Tractor (up to D-6 or equivalent) and Traxcavator; Traverse Finish Machine; Turnhead Operator

GROUP 4: Concrete Pumps (squeeze-crete, flow-crete, pump-crete, Whitman & similar); Curb Extruder (asphalt or concrete); Drills (churn, core, calyx or diamond); Equipment Serviceman; Greaser & Oiler; Hoist (2 or more drums or Tower Hoist); Loaders (overhead & front-end, under 4 yds. R/T); Refrigeration Plant Engineer (under 1000 ton); Rubber-tired Skidders (R/T with or without attachments); Surface Heater & Plant Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead (with re-screening); Vacuum Drill (reverse circulation drill under 8 inch bit)

GROUP 5: Backhoe (under 45,000 gw); Backhoe & Hoe Ram (under 3/4 yd.); Carrydeck & Boom Truck (under 25 tons); Cranes (25 tons & under), all attachments including clamshell, dragline; Derricks & Stifflegs (under 65 tons); Drilling Equipment (8 inch bit & over) (Robbins, reverse circulation & similar); Hoe Ram; Piledriving Engineers; Paving (dual drum); Railroad Track Liner Operator (self-propelled); Refrigeration Plant Engineer (1000 tons & over); Signalman (Whirleys, Highline Hammerheads or similar); Grade Checker

GROUP 6: Asphalt Plant Operator; Automatic Subgrader (Ditches & Trimmers) (Autograde, ABC, R.A. Hansen & similar on grade wire); Backhoe (45,000 gw and over to 110,000 gw); Backhoes & Hoe Ram (3/4 yd. to 3 yd.); Batch Plant (over 4 units); Batch & Wet Mix Operator (multiple units, 2 & incl. 4); Blade Operator (motor patrol & attachments); Cable Controller (dispatcher); Compactor (self-propelled with blade); Concrete Pump Boom Truck; Concrete Slip Form Paver; Cranes (over 25 tons, to and including 45 tons), all attachments including clamshell, dragline; Crusher, Grizzle & Screening Plant Operator; Dozer, 834 R/T & similar; Drill Doctor; Loader Operator (front-end & overhead, 4 yds. incl. 8 yds.); Multiple Dozer Units with single blade; Paving Machine (asphalt and concrete); Quad-Track or similar equipment; Roller (finishing asphalt pavement); Roto Mill (pavement grinder); Scrapers, all, rubber-tired; Screed Operator; Shovel (under 3 yds.); Trenching Machines (7 ft. depth & over); Tug Boat Operator Vector guzzler, super sucker; Lime Batch Tank Operator (REcycle Train); Lime Brain Operator (Recycle Train); Mobile Crusher Operator (Recycle Train)

GROUP 7: Backhoe (over 110,000 gw); Backhoes & Hoe Ram (3 yds & over); Blade (finish & bluetop) Automatic, CMI, ABC, Finish Athey & Huber & similar when used as automatic; Cableway Operators; Concrete Cleaning/Decontamination machine operator; Cranes (over 45 tons to but not including 85 tons), all attachments including clamshell and dragline; Derricks & Stifflegs (65 tons & over); Elevating Belt (Holland type); Heavy equipment robotics operator; Loader (360 degrees revolving Koehring Scooper or similar); Loaders (overhead & front-end, over 8 yds. to 10 yds.); Rubber-tired Scrapers (multiple engine with three or more scrapers); Shovels (3 yds. & over); Whirleys & Hammerheads, ALL; H.D. Mechanic; H.D. Welder; Hydraulic Platform Trailers (Goldhofer, Shaurerly and Similar); Ultra High Pressure Waterjet Cutting Tool System Operator (30,000 psi); Vacuum Blasting Machine Operator

GROUP 8: Cranes (85 tons and over, and all climbing, overhead, rail and tower), all attachments including clamshell, dragline; Loaders (overhead and front-end, 10 yards and over); Helicopter Pilot

BOOM PAY: (All Cranes, Including Tower)
180 ft to 250 ft \$.50 over scale
Over 250 ft \$.80 over scale

NOTE:

In computing the length of the boom on Tower Cranes, they shall be measured from the base of the Tower to the point of the boom.

HAZMAT:

Anyone working on HAZMAT jobs, working with supplied air shall receive \$1.00 an hour above classification.

ENGI0612-006 06/01/2009

LEWIS, PIERCE, PACIFIC (portion lying north of a parallel line extending west from the northern boundary of Wahkaikum County to the sea) AND THURSTON COUNTIES

ON PROJECTS DESCRIBED IN FOOTNOTE A BELOW, THE RATE FOR EACH GROUP SHALL BE 90% OF THE BASE RATE PLUS FULL FRINGE BENEFITS. ON ALL OTHER WORK, THE FOLLOWING RATES APPLY.

Zone 1 (0-25 radius miles):

	Rates	Fringes
Power equipment operators:		
GROUP 1A.....	\$ 35.79	15.15
GROUP 1AA.....	\$ 36.36	15.15
GROUP 1AAA.....	\$ 36.92	15.15
GROUP 1.....	\$ 35.24	15.15
GROUP 2.....	\$ 34.75	15.15
GROUP 3.....	\$ 34.33	15.15
GROUP 4.....	\$ 31.97	15.15

Zone Differential (Add to Zone 1 rates):

Zone 2 (26-45 radius miles) = \$.70

Zone 3 (Over 45 radius miles) - \$1.00

BASEPOINTS: CENTRALIA, OLYMPIA, TACOMA

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 AAA - Cranes-over 300 tons or 300 ft of boom
(including jib with attachments)

GROUP 1AA - Cranes- 200 tonsto 300 tons, or 250 ft of boom
(including jib with attachments; Tower crane over 175 ft in
height, bas to boom

GROUP 1A - Cranes, 100 tons thru 199 tons, or 150 ft of boom (including jib with attachments); Crane-overhead, bridge type, 100 tons and over; Tower crane up to 175 ft in height base to boom; Loaders-overhead, 8 yards and over; Shovels, excavator, backhoes-6 yards and over with attachments

GROUP 1 - Cableway; Cranes 45 tons thru 99 tons under 150 ft of boom (including jib with attachments); Crane-overhead, bridge type, 45 tons thru 99 tons; Derricks on building work; Excavator, shovel, backhoes over 3 yards and under 6 yards; Hard tail end dump articulating off-road equipment 45 yards and over; Loader- overhead, 6 yards to, but not including, 8 yards; Mucking machine, mole, tunnel, drill and/or shield; Quad 9 HD 41, D-10; Remote control operator on rubber tired earth moving equipment; Rollagon; Scrapers-self-propelled 45 yards and over; Slipform pavers; Transporters, all track or truck type

GROUP 2 - Barrier machine (zipper); Batch Plant Operator-concrete; Bump Cutter; Cranes, 20 tons thru 44 tons with attachments; Crane-Overhead, bridge type, 20 tons through 44 tons; Chipper; Concrete pump-truck mount with boom attachment; Crusher; Deck engineer/deck winches (power); Drilling machine; Excavator, shovel, backhoe-3 yards and under; Finishing machine, Bidwell, Gamaco and similar equipment; Guardrail punch; Loaders, overhead under 6 yards; Loaders-plant feed; Locomotives-all; Mechanics- all; Mixers, asphalt plant; Motor patrol graders, finishing; Piledriver (other than crane mount); Roto-mill, roto-grinder; Screedman, spreader, topside operator-Blaw Knox, Cedar Rapids, Jaeger, Caterpillar, Barbar Green; Scraper-self-propelled, hard tail end dump, articulating off-road equipment- under 45 yards; Subgrader trimmer; Tractors, backhoe over 75 hp; Transfer material service machine-shuttle buggy, Blaw Knox- Roadtec; Truck Crane oiler/driver-100 tons and over; Truck Mount Portable Conveyor; Yo Yo pay

GROUP 3 - Conveyors; Cranes through 19 tons with attachments; Crane-A-frame over 10 tons; Drill oilers-auger type, truck or crane mount; Dozer-D-9 and under; Forklift-3000 lbs. and over with attachments; Horizontal/directional drill locator; Outside Hoists-(elevators and manlifts), air tuggers, strato tower bucket elevators; Hydralifts/boom trucks over 10 tons; Loaders-elevating type, belt; Motor patrol grader-nonfinishing; Plant oiler- asphalt, crusher; Pump-Concrete; Roller, plant mix or multi-lfit materials; Saws-concrete; Scrapers, concrete and carry all; Service engineers-equipment; Trenching machines; Truck crane oiler/driver under 100 tons; Tractors, backhoe under 75 hp

GROUP 4 - Assistant Engineer; Bobcat; Brooms; Compressor; Concrete Finish Machine-laser screed; Cranes A-frame 10 tons and under; Elevator and manlift (permanent and shaft type); Forklifts-under 3000 lbs. with attachments; Gradechecker, stakehop; Hydralifts/boom trucks, 10 tons and under; Oil distributors, blower distribution and mulch seeding operator; Pavement breaker; Posthole digger-mechanical; Power plant; Pumps-water; Rigger and Bellman; Roller-other than plant mix; Wheel Tractors, farmall type; Shotcrete/gunite equipment operator

FOOTNOTE A- Reduced rates may be paid on the following:

1. Projects involving work on structures such as buildings and bridges whose total value is less than \$1.5 million excluding mechanical, electrical, and utility portions of the contract.
2. Projects of less than \$1 million where no building is involved. Surfacing and paving included, but utilities excluded.
3. Marine projects (docks, wharfs, etc.) less than \$150,000.

HANDLING OF HAZARDOUS WASTE MATERIALS: Personnel in all craft classifications subject to working inside a federally designated hazardous perimeter shall be eligible for compensation in accordance with the following group schedule relative to the level of hazardous waste as outlined in the specific hazardous waste project site safety plan.

H-1 Base wage rate when on a hazardous waste site when not outfitted with protective clothing

H-2 Class "C" Suit - Base wage rate plus \$.25 per hour.

H-3 Class "B" Suit - Base wage rate plus \$.50 per hour.

H-4 Class "A" Suit - Base wage rate plus \$.75 per hour.

 ENGI0701-002 01/01/2010

CLARK, COWLITZ, KLICKITAT, PACIFIC (SOUTH), SKAMANIA, AND WAHAKIYAKUM COUNTIES

POWER EQUIPMENT OPERATORS: ZONE 1

	Rates	Fringes
Power equipment operators:		
(See Footnote A)		
GROUP 1.....	\$ 37.27	11.50
GROUP 1A.....	\$ 39.13	11.50
GROUP 1B.....	\$ 41.00	11.50
GROUP 2.....	\$ 35.64	11.50
GROUP 3.....	\$ 34.64	11.50
GROUP 4.....	\$ 33.71	11.50
GROUP 5.....	\$ 32.60	11.50
GROUP 6.....	\$ 29.61	11.50

Zone Differential (add to Zone 1 rates):

Zone 2 - \$3.00

Zone 3 - \$6.00

For the following metropolitan counties: MULTNOMAH; CLACKAMAS; MARION; WASHINGTON; YAMHILL; AND COLUMBIA; CLARK; AND COWLITZ COUNTY, WASHINGTON WITH MODIFICATIONS AS INDICATED:

All jobs or projects located in Multnomah, Clackamas and Marion Counties, West of the western boundary of Mt. Hood National Forest and West of Mile Post 30 on Interstate 84 and West of Mile Post 30 on State Highway 26 and West of Mile Post 30 on Highway 22 and all jobs or projects located in Yamhill County, Washington County and Columbia County and all jobs or projects located in Clark & Cowlitz County, Washington except that portion of Cowlitz County in the Mt. St. Helens "Blast Zone" shall receive Zone I pay for all classifications.

All jobs or projects located in the area outside the identified boundary above, but less than 50 miles from the Portland City Hall shall receive Zone II pay for all classifications.

All jobs or projects located more than 50 miles from the Portland City Hall, but outside the identified border above, shall receive Zone III pay for all classifications.

For the following cities: ALBANY; BEND; COOS BAY; EUGENE; GRANTS PASS; KLAMATH FALLS; MEDFORD; ROSEBURG

All jobs or projects located within 30 miles of the respective city hall of the above mentioned cities shall receive Zone I pay for all classifications.

All jobs or projects located more than 30 miles and less than 50 miles from the respective city hall of the above mentioned cities shall receive Zone II pay for all classifications.

All jobs or projects located more than 50 miles from the respective city hall of the above mentioned cities shall receive Zone III pay for all classifications.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: CONCRETE: Batch Plant and/or Wet Mix Operator, three units or more; CRANE: Helicopter Operator, when used in erecting work; Whirley Operator, 90 ton and over; LATTICE BOOM CRANE: Operator 200 tons through 299 tons, and/or over 200 feet boom; HYDRAULIC CRANE: Hydraulic Crane Operator 90 tons through 199 tons with luffing or tower attachments; FLOATING EQUIPMENT: Floating Crane, 150 ton but less than 250 ton

GROUP 1A: HYDRAULIC CRANE: Hydraulic Operator, 200 tons and over (with luffing or tower attachment); LATTICE BOOM CRANE: Operator, 200 tons through 299 tons, with over 200 feet boom; FLOATING EQUIPMENT: Floating Crane 250 ton and over

GROUP 1B: LATTICE BOOM CRANE: Operator, 300 tons through 399 tons with over 200 feet boom; Operator 400 tons and over; FLOATING EQUIPMENT: Floating Crane 350 ton and over

GROUP 2: ASPHALT: Asphalt Plant Operator (any type); Roto Mill, pavement profiler, operator, 6 foot lateral cut and over; BLADE: Auto Grader or "Trimmer" (Grade Checker required); Blade Operator, Robotic; BULLDOZERS: Bulldozer operator over 120,000 lbs and above; Bulldozer operator, twin engine; Bulldozer Operator,tandem, quadnine, D10, D11, and similar type; Bulldozere Robotic Equipment (any type; CONCRETE: Batch Plant and/or Wet Mix Operator, one and two drum; Automatic Concrete Slip Form Paver Operator; Concrete Canal Line Operator; Concrete Profiler, Diamond Head; CRANE: Cableway Operator, 25 tons and over; HYDRAULIC CRANE: Hydraulic crane operator 90 tons through 199 tons (without luffing or tower attachment); TOWER/WHIRLEY OPERATOR: Tower Crane Operator; Whirley Operator, under 90 tons; LATTICE BOOM CRANE: 90 through 199 tons and/or 150 to 200 feet boom; CRUSHER: Crusher Plant Operator; FLOATING EQUIPMENT: Floating Clamshell, etc.operator, 3 cu. yds. and over; Floating Crane (derrick barge) Operator, 30 tons but less than 150 tons; LOADERS: Loader operator, 120,000 lbs. and above; REMOTE CONTROL: Remote controlled earth-moving equipment; RUBBER-TIRED SCRAPERS: Rubber-tired scraper operator, with tandem scrapers, multi-engine; SHOVEL, DRAGLINE, CLAMSHELL, SKOOPER OPERATOR: Shovel, Dragline, Clamshell, operator 5 cu. yds and over; TRENCHING MACHINE: Wheel Excavator, under 750 cu. yds. per hour (Grade Oiler required); Canal Trimmer (Grade Oiler required); Wheel Excavator, over 750 cu. yds. per hour; Band Wagon (in conjunction with wheel excavator); UNDERWATER EQUIPMENT: Underwater Equipment Operator, remote or otherwise; HYDRAULIC HOES-EXCAVATOR: Excavator over 130,000 lbs.; HYDRAULIC CRANE: Hydraulic crane operator, 50 tons through 89 tons (with luffing or tower attachment);

GROUP 3: BULLDOZERS: Bulldozer operator, over 70,000 lbs. up to and including 120,000 lbs.; HYDRAULIC CRANE: Hydraulic crane operator, 50 tons through 89 tons (without luffing or tower attachment); LATTICE BOOM CRANES: Lattice Boom Crane-50 through 89 tons (and less than 150 feet boom); FORKLIFT: Rock Hound Operator; HYDRAULIC HOES-EXCAVATOR: excavator over 80,000 lbs. through 130,000 lbs.; LOADERS: Loader operator 60,000 and less than 120,000; RUBBER-TIRED SCRAPERS: Scraper Operator, with tandem scrapers; Self-loading, paddle wheel, auger type, finish and/or 2 or more units; SHOVEL, DRAGLINE, CLAMSHELL,SKOOPER OPERATOR: Shovel, Dragline, Clamshell operators 3 cu. yds. but less than 5 cu yds.

GROUP 4: ASPHALT: Screed Operator; Asphalt Paver operator (screeman required); BLADE: Blade operator; Blade operator, finish; Blade operator, externally controlled by electronic, mechanical hydraulic means; Blade operator, multi-engine; BULLDOZERS: Bulldozer Operator over 20,000 lbs and more than 100 horse up to 70,000 lbs; Drill Cat Operator; Side-boom Operator; Cable-Plow Operator (any type); CLEARING: Log Skidders; Chippers; Incinerator; Stump Splitter (loader mounted or similar type); Stump Grinder (loader mounted or similar type; Tub Grinder; Land Clearing Machine (Track mounted forestry mowing & grinding machine); Hydro Axe (loader mounted or similar type); COMPACTORS SELF-PROPELLED: Compactor Operator, with blade; Compactor Operator, multi-engine; Compactor Operator, robotic; CONCRETE: Mixer Mobile Operator; Screed Operator; Concrete Cooling Machine Operator; Concrete Paving Road Mixer; Concrete Breaker; Reinforced Tank Banding Machine (K-17 or similar types); Laser Screed; CRANE: Chicago boom and similar types; Lift Slab Machine Operator; Boom type lifting device, 5 ton capacity or less; Hoist Operator, two (2) drum; Hoist Operator, three (3) or more drums; Derrick Operator, under 100 ton; Hoist Operator, stiff leg, guy derrick or similar type, 50 ton and over; Cableway Operator up to twenty (25) ton; Bridge Crane Operator, Locomotive, Gantry, Overhead; Cherry Picker or similar type crane; Carry Deck Operator; Hydraulic Crane Operator, under 50 tons; LATTICE BOOM CRANE OPERATOR: Lattice Boom Crane Operator, under 50 tons; CRUSHER: Generator Operator; Diesel-Electric Engineer; Grizzley Operator; Drill Doctor; Boring Machine Operator; Driller-Percussion, Diamond, Core, Cable, Rotary and similar type; Cat Drill (John Henry); Directional Drill Operator over 20,000 lbs pullback; FLOATING EQUIPMENT: Diesel-electric Engineer; Jack Operator, elevating barges, Barge Operator, self-unloading; Piledriver Operator (not crane type) (Deckhand required); Floating Clamshell, etc. Operator, under 3 cu. yds. (Fireman or Diesel-Electric Engineer required); Floating Crane (derrick barge) Operator, less than 30 tons; GENERATORS: Generator Operator; Diesel-electric Engineer; GUARDRAIL EQUIPMENT: Guardrail Punch Operator (all types); Guardrail Auger Operator (all types); Combination Guardrail machines, i.e., punch auger, etc.; HEATING PLANT: Surface Heater and Planer Operator; HYDRAULIC HOES EXCAVATOR: Robotic Hydraulic backhoe operator, track and wheel type up to and including 20,000 lbs. with any or all attachments; Excavator Operator over 20,000 lbs through 80,000 lbs.; LOADERS: Belt Loaders, Kolman and Ko Cal types; Loaders Operator, front end and overhead, 25,000 lbs and less than 60,000 lbs; Elevating Grader Operator by Tractor operator, Sierra, Euclid or similar types; PILEDRIVERS: Hammer Operator; Piledriver Operator (not crane type); PIPELINE, SEWER WATER: Pipe Cleaning Machine Operator; Pipe Doping Machine Operator; Pipe Bending Machine Operator; Pipe Wrapping Machine Operator; Boring Machine Operator; Back Filling Machine Operator; REMOTE CONTROL: Concrete Cleaning Decontamination Machine Operator; Ultra High Pressure Water Jet Cutting Tool System Operator/Mechanic; Vacuum Blasting

Machine Operator/mechanic; REPAIRMEN, HEAVY DUTY: Diesel Electric Engineer (Plant or Floating; Bolt Threading Machine operator; Drill Doctor (Bit Grinder); H.D. Mechanic; Machine Tool Operator; RUBBER-TIRED SCRAPERS: Rubber-tired Scraper Operator, single engine, single scraper; Self-loading, paddle wheel, auger type under 15 cu. yds.; Rubber-tired Scraper Operator, twin engine; Rubber-tired Scraper Operator, with push-ull attachments; Self Loading, paddle wheel, auger type 15 cu. yds. and over, single engine; Water pulls, water wagons; SHOVEL, DRAGLINE, CLAMSHELL, SKOOPER OPERATOR: Diesel Electric Engineer; Stationary Drag Scraper Operator; Shovel, Dragline, Clamshell, Operator under 3 cy yds.; Grade-all Operator; SURFACE (BASE) MATERIAL: Blade mounted spreaders, Ulrich and similar types; TRACTOR-RUBBERED TIRED: Tractor operator, rubber-tired, over 50 hp flywheel; Tractor operator, with boom attachment; Rubber-tired dozers and pushers (Michigan, Cat, Hough type); Skip Loader, Drag Box; TRENCHING MACHINE: Trenching Machine operator, digging capacity over 3 ft depth; Back filling machine operator; TUNNEL: Mucking machine operator

GROUP 5: ASPHALT: Extrusion Machine Operator; Roller Operator (any asphalt mix); Asphalt Burner and Reconditioner Operator (any type); Roto-Mill, pavement profiler, ground man; BULLDOZERS: Bulldozer operator, 20,000 lbs. or less or 100 horse or less; COMPRESSORS: Compressor Operator (any power), over 1,250 cu. ft. total capacity; COMPACTORS: Compactor Operator, including vibratory; Wagner Pactor Operator or similar type (without blade); CONCRETE: Combination mixer and Compressor Operator, gunite work; Concrete Batch Plant Quality Control Operator; Beltcrete Operator; Pumpcrete Operator (any type); Pavement Grinder and/or Grooving Machine Operator (riding type); Cement Pump Operator, Fuller-Kenyon and similar; Concrete Pump Operator; Grouting Machine Operator; Concrete mixer operator, single drum, under (5) bag capacity; Cast in place pipe laying machine; maginnis Internal Full slab vibrator operator; Concrete finishing machine operator, Clary, Johnson, Bidwell, Burgess Bridge deck or similar type; Curb Machine Operator, mechanical Berm, Curb and/or Curb and Gutter; Concrete Joint Machine Operator; Concrete Planer Operator; Tower Mobile Operator; Power Jumbo Operator setting slip forms in tunnels; Slip Form Pumps, power driven hydraulic lifting device for concrete forms; Concrete Paving Machine Operator; Concrete Finishing Machine Operator; Concrete Spreader Operator; CRANE: Helicopter Hoist Operator; Hoist Operator, single drum; Elevator Operator; A-frame Truck Operator, Double drum; Boom Truck Operator; HYDRAULIC CRANE OPERATOR: Hydraulic Boom Truck, Pittman; DRILLING: Churn Drill and Earth Boring Machine Operator; Vacuum Truck; Directional Drill Operator over 20,000 lbs pullback; FLOATING EQUIPMENT: Fireman; FORKLIFT: Fork Lift, over 10 ton and/or robotic; HYDRAULIC HOES EXCAVATORS: Hydraulic Backhoe Operator, wheel type (Ford, John Deere, Case type); Hydraulic Backhoe Operator track type up to and including

20,000 lbs.; LOADERS: Loaders, rubber-tired type, less than 25,000 lbs; Elevating Grader Operator, Tractor Towed requiring Operator or Grader; Elevating loader operator, Athey and similar types; OILERS: Service oiler (Greaser); PIPELINE-SEWER WATER: Hydra hammer or simialr types; Pavement Breaker Operator; PUMPS: Pump Operator, more than 5 (any size); Pot Rammer Operator; RAILROAD EQUIPMENT: Locomotive Operator, under 40 tons; Ballast Regulator Operator; Ballast Tamper Multi-Purpose Operator; Track Liner Operator; Tie Spacer Operator; Shuttle Car Operator; Locomotive Operator, 40 tons and over; MATERIAL HAULRS: Cat wagon DJBs Volvo similar types; Conveyored material hauler; SURFACING (BASE) MATERIAL: Rock Spreaders, self-propelled; Pulva-mixer or similar types; Chiip Spreading machine operator; Lime spreading operator, construction job siter; SWEEPERS: Sweeper operator (Wayne type) self-propelled construction job site; TRACTOR-RUBBER TIRED: Tractor operator, rubber-tired, 50 hp flywheel and under; Trenching machine operator, maximum digging capacity 3 ft depth; TUNNEL: Dinkey

GROUP 6: ASPHALT: Plant Oiler; Plant Fireman; Pugmill Operator (any type); Truck mounted asphalt spreader, with screed; COMPRESSORS: Compressor Operator (any power), under 1,250 cu. ft. total capacity; CONCRETE: Plant Oiler, Assistant Conveyor Operator; Conveyor Operator; Mixer Box Operator (C.T.B., dry batch, etc.); Cement Hog Operator; Concrete Saw Operator; Concrete Curing Machine Operator (riding type); Wire Mat or Brooming Machine Operator; CRANE: Oiler; Fireman, all equipment; Truck Crane Oiler Driver; A-frame Truck Operator, single drum; Tugger or Coffin Type Hoist Operator; CRUSHER: Crusher Oiler; Crusher Feederman; CRUSHER: Crusher oiler; Crusher feederman; DRILLING: Drill Tender; Auger Oiler; FLOATING EQUIPMENT: Deckhand; Boatman; FORKLIFT: Self-propelled Scaffolding Operator, construction job site (exclduing working platform); Fork Lift or Lumber Stacker Operator, construction job site; Ross Carrier Operator, construction job site; Lull Hi-Lift Operator or Similar Type; GUARDRAIL EQUIPMENT: Oiler; Auger Oiler; Oiler, combination guardrail machines; Guardrail Punch Oiler; HEATING PLANT: Temporary Heating Plant Operator; LOADERS: Bobcat, skid steer (less than 1 cu yd.); Bucket Elevator Loader Operator, BarberGreene and similar types; OILERS: Oiler; Guardrail Punch Oiler; Truck Crane Oiler-Driver; Auger Oiler; Grade Oiler, required to check grade; Grade Checker; Rigger; PIPELINE-SEWER WATER: Tar Pot Fireman; Tar Pot Fireman (power agitated); PUMPS: Pump Operator (any power); Hydrostatic Pump Operator; RAILROAD EQUIPMENT: Brakeman; Oiler; Switchman; Motorman; Ballast Jack Tamper Operator; SHOVEL, DRAGLINE, CLAMSHELL, SKOOPER, ETC. OPERATOR: Oiler, Grade Oiler (required to check grade); Grade Checker; Fireman; SWEEPER: Broom operator, self propelled, construction job site; SURFACING (BASE) MATERIAL: Roller Operator, grading of base rock (not asphalt); Tamping Machine operartor, mechanical, self-propelled; Hydrographic Seeder Machine Operator; TRENCHING MACHINE: Oiler; Grade Oiler; TUNNEL: Conveyor operator; Air filtration equipment operator

IRON0014-005 07/01/2009

ADAMS, ASOTIN, BENTON, COLUMBIA, DOUGLAS, FERRY, FRANKLIN,
GARFIELD, GRANT, LINCOLN, OKANOGAN, PEND ORIELLE, SPOKANE,
STEVENS, WALLA WALLA AND WHITMAN COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 30.79	17.40

IRON0029-002 07/01/2009

CLARK, COWLITZ, KLICKITAT, PACIFIC, SKAMANIA, AND WAHKAIKUM
COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 33.12	17.40

IRON0086-002 07/01/2009

YAKIMA, KITTITAS AND CHELAN COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 31.07	17.40

IRON0086-004 07/01/2009

CLALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS,
MASON, PIERCE, SKAGIT, SNOHOMISH, THURSTON, AND WHATCOM COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 36.62	17.40

ZONE 1:

	Rates	Fringes
Laborers:		
CALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC (NORTH OF STRAIGHT LINE MADE BY EXTENDING THE NORTH BOUNDARY WAHAKIACUM COUNTY WEST TO THE PACIFIC OCEAN), PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON AND WHATCOM COUNTIES		
GROUP 1.....	\$ 21.77	9.07
GROUP 2.....	\$ 24.86	9.07
GROUP 3.....	\$ 30.96	9.07
GROUP 4.....	\$ 31.70	9.07
GROUP 5.....	\$ 32.21	9.07
CHELAN, DOUGLAS (WEST OF THE 120TH MERIDIAN), KITTITAS AND YAKIMA COUNTIES		
GROUP 1.....	\$ 17.95	9.07
GROUP 2.....	\$ 20.58	9.07
GROUP 3.....	\$ 22.54	9.07
GROUP 4.....	\$ 23.09	9.07
GROUP 5.....	\$ 23.48	9.07

BASE POINTS: BELLINGHAM, MT. VERNON, EVERETT, SEATTLE, KENT,
TACOMA, OLYMPIA, CENTRALIA, ABERDEEN, SHELTON, PT.
TOWNSEND, PT. ANGELES, AND BREMERTON

ZONE 1 - Projects within 25 radius miles of the respective
city hall
ZONE 2 - More than 25 but less than 45 radius miles from the
respective city hall
ZONE 3 - More than 45 radius miles from the respective city
hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):
ZONE 2 - \$1.00
ZONE 3 - \$1.30

BASE POINTS: CHELAN, SUNNYSIDE, WENATCHEE, AND YAKIMA

ZONE 1 - Projects within 25 radius miles of the respective
city hall
ZONE 2 - More than 25 radius miles from the respective city
hall

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):
ZONE 2 - \$2.25

LABORERS CLASSIFICATIONS

GROUP 1: Landscaping and Planting; Watchman; Window Washer/Cleaner (detail clean-up, such as but not limited to cleaning floors, ceilings, walls, windows, etc., prior to final acceptance by the owner)

GROUP 2: Batch Weighman; Crusher Feeder; Fence Laborer; Flagman; Pilot Car

GROUP 3: General Laborer; Air, Gas, or Electric Vibrating Screed; Asbestos Abatement Laborer; Ballast Regulator Machine; Brush Cutter; Brush Hog Feeder; Burner; Carpenter Tender; Cement Finisher Tender; Change House or Dry Shack; Chipping Gun (under 30 lbs.); Choker Setter; Chuck Tender; Clean-up Laborer; Concrete Form Stripper; Curing Laborer; Demolition (wrecking and moving including charred material); Ditch Digger; Dump Person; Fine Graders; Firewatch; Form Setter; Gabian Basket Builders; Grout Machine Tender; Grinders; Guardrail Erector; Hazardous Waste Worker (Level C: uses a chemical "splash suit" and air purifying respirator); Maintenance Person; Material Yard Person; Pot Tender; Rip Rap Person; Riggers; Scale Person; Sloper Sprayer; Signal Person; Stock Piler; Stake Hopper; Toolroom Man (at job site); Topper-Tailer; Track Laborer; Truck Spotter; Vinyl Seamer

GROUP 4: Cement Dumper-Paving; Chipping Gun (over 30 lbs.); Clary Power Spreader; Concrete Dumper/Chute Operator; Concrete Saw Operator; Drill Operator (hydraulic, diamond, aiartrac); Faller and Bucker Chain Saw; Grade Checker and Transit Person; Groutmen (pressure) including post tension beams; Hazardous Waste Worker (Level B: uses same respirator protection as Level A. A supplied air line is provided in conjunction with a chemical "splash suit"); High Scaler; Jackhammer; Laserbeam Operator; Manhole Builder-Mudman; Nozzleman (concrete pump, green cutter when using combination of high pressure air and water on concrete and rock, sandblast, gunite, shotcrete, water blaster, vacuum blaster); Pavement Breaker; Pipe Layer and Caulker; Pipe Pot Tender; Pipe Reliner (not insert type); Pipe Wrapper; Power Jacks; Railroad Spike Puller-Power; Raker-Asphalt; Rivet Buster; Rodder; Sloper (over 20 ft); Spreader (concrete); Tamper and Similar electric, air and glas operated tool; Timber Person-sewer (lagger shorer and cribber); Track Liner Power; Tugger Operator; Vibrator; Well Point Laborer

GROUP 5: Caisson Worker; Miner; Mortarman and Hodcarrier; Powderman; Re-Timberman; Hazardous Waste Worker (Level A: utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line).

ADAMS, ASOTIN, BENTON, COLUMBIA, DOUGLAS (EAST OF THE 120TH MERIDIAN), FERRY, FRANKLIN, GARFIELD, GRANT, LINCOLN, OKANOGAN, PEND OREILLE, STEVENS, SPOKANE, WALLA WALLA AND WHITMAN COUNTIES

	Rates	Fringes
Laborers:		
ZONE 1:		
GROUP 1.....	\$ 20.56	8.75
GROUP 2.....	\$ 22.66	8.75
GROUP 3.....	\$ 22.93	8.75
GROUP 4.....	\$ 23.20	8.75
GROUP 5.....	\$ 23.48	8.75
GROUP 6.....	\$ 24.85	8.75

Zone Differential (Add to Zone 1 rate): \$2.00

BASE POINTS: Spokane, Pasco, Lewiston

Zone 1: 0-45 radius miles from the main post office.

Zone 2: 45 radius miles and over from the main post office.

LABORERS CLASSIFICATIONS

GROUP 1: Flagman; Landscape Laborer; Scaleman; Traffic Control Maintenance Laborer (to include erection and maintenance of barricades, signs and relief of flagperson); Window Washer/Cleaner (detail cleanup, such as, but not limited to cleaning floors, ceilings, walls, windows, etc. prior to final acceptance by the owner)

GROUP 2: Asbestos Abatement Worker; Brush Hog Feeder; Carpenter Tender; Cement Handler; Clean-up Laborer; Concrete Crewman (to include stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, pumpcrete machine, signaling, handling the nozzle of squeezecrete or similar machine, 6 inches and smaller); Confined Space Attendant; Concrete Signalman; Crusher Feeder; Demolition (to include clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector; Firewatch; Form Cleaning Machine Feeder, Stacker; General Laborer; Grout Machine Header Tender; Guard Rail (to include guard rails, guide and reference posts, sign posts, and right-of-way markers); Hazardous Waste Worker, Level D (no respirator is used and skin protection is minimal); Miner, Class "A" (to include all bull gang, concrete crewman, dumpman and pumpcrete crewman, including distributing pipe, assembly & dismantle, and nipper); Nipper; Riprap Man; Sandblast Tailhoseman; Scaffold Erector (wood or steel); Stake Jumper; Structural Mover (to include separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Track Laborer (RR); Truck Loader; Well-Point Man; All Other Work Classifications Not Specially Listed Shall Be Classified As General Laborer

GROUP 3: Asphalt Raker; Asphalt Roller, walking; Cement Finisher Tender; Concrete Saw, walking; Demolition Torch; Dope Pot Firemen, non-mechanical; Driller Tender (when required to move and position machine); Form Setter, Paving; Grade Checker using level; Hazardous Waste Worker, Level C (uses a chemical "splash suit" and air purifying respirator); Jackhammer Operator; Miner, Class "B" (to include brakeman, finisher, vibrator, form setter); Nozzleman (to include squeeze and flo-crete nozzle); Nozzleman, water, air or steam; Pavement Breaker (under 90 lbs.); Pipelayer, corrugated metal culvert; Pipelayer, multi-plate; Pot Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Railroad Equipment, power driven, except dual mobile power spiker or puller; Railroad Power Spiker or Puller, dual mobile; Rodder and Spreader; Tamper (to include operation of Barco, Essex and similar tampers); Trencher, Shawnee; Tugger Operator; Wagon Drills; Water Pipe Liner; Wheelbarrow (power driven)

GROUP 4: Air and Hydraulic Track Drill; Brush Machine (to include horizontal construction joint cleanup brush machine, power propelled); Caisson Worker, free air; Chain Saw Operator and Faller; Concrete Stack (to include laborers when laborers working on free standing concrete stacks for smoke or fume control above 40 feet high); Guniting (to include operation of machine and nozzle); Hazardous Waste Worker, Level B (uses same respirator protection as Level A. A supplied air line is provided in conjunction with a chemical "splash suit"); High Scaler; Laser Beam Operator (to include grade checker and elevation control); Miner, Class C (to include miner, nozzleman for concrete, laser beam operator and rigger on tunnels); Monitor Operator (air track or similar mounting); Mortar Mixer; Nozzleman (to include jet blasting nozzleman, over 1,200 lbs., jet blast machine power propelled, sandblast nozzle); Pavement Breaker (90 lbs. and over); Pipelayer (to include working topman, caulker, collarman, jointer, mortarman, rigger, jacker, shorer, valve or meter installer); Pipewriter; Plasterer Tender; Vibrators (all)

GROUP 5 - Drills with Dual Masts; Hazardous Waste Worker, Level A (utilizes a fully encapsulated suit with a self-contained breathing apparatus or a supplied air line); Miner Class "D", (to include raise and shaft miner, laser beam operator on riases and shafts)

GROUP 6 - Powderman

LABO0238-006 06/01/2009

COUNTIES EAST OF THE 120TH MERIDIAN: ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FERRY, FRANKLIN, GARFIELD, GRANT, LINCOLN, OKANOGAN, PEND OREILLE, STEVENS, SPOKANE, WALLA WALLA, WHITMAN

	Rates	Fringes
Hod Carrier.....	\$ 24.10	8.75

LABO0335-001 06/01/2008

CLARK, COWLITZ, KLUCKITAT, PACIFIC (SOUTH OF A STRAIGHT LINE MADE BY EXTENDING THE NORTH BOUNDARY LINE OF WAHKIAKUM COUNTY WEST TO THE PACIFIC OCEAN), SKAMANIA AND WAHKIAKUM COUNTIES

	Rates	Fringes
Laborers:		
ZONE 1:		
GROUP 1.....	\$ 27.46	8.40
GROUP 2.....	\$ 28.06	8.40
GROUP 3.....	\$ 28.50	8.40
GROUP 4.....	\$ 28.88	8.40
GROUP 5.....	\$ 24.96	8.40
GROUP 6.....	\$ 22.54	8.40
GROUP 7.....	\$ 19.34	8.40

Zone Differential (Add to Zone 1 rates):
 Zone 2 \$ 0.65
 Zone 3 - 1.15
 Zone 4 - 1.70
 Zone 5 - 2.75

BASE POINTS: GOLDENDALE, LONGVIEW, AND VANCOUVER

ZONE 1: Projects within 30 miles of the respective city all.
 ZONE 2: More than 30 miles but less than 40 miles from the respective city hall.
 ZONE 3: More than 40 miles but less than 50 miles from the respective city hall.
 ZONE 4: More than 50 miles but less than 80 miles from the respective city hall.
 ZONE 5: More than 80 miles from the respective city hall.

LABORERS CLASSIFICATIONS

GROUP 1: Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Car and Truck Loaders; Carpenter Tender; Change-House Man or Dry Shack Man; Choker Setter; Clean-up Laborers; Curing, Concrete; Demolition, Wrecking and Moving Laborers; Dumpers, road oiling crew; Dumpmen (for grading crew); Elevator Feeders; Guard Rail, Median Rail Reference Post, Guide Post, Right of Way Marker; Fine Graders; Fire Watch; Form Strippers (not swinging stages); General Laborers; Hazardous Waste Worker; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Pittsburgh Chipper Operator or Similar Types; Railroad Track Laborers; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Spraymen; Stake Chaser; Stockpiler; Tie Back Shoring; Timber Faller and Bucker (hand labor); Toolroom Man (at job site); Tunnel Bullgang (above ground); Weight-Man- Crusher (aggregate when used)

GROUP 2: Applicator (including pot power tender for same), applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary Power Spreader and similar types; Clean- up Nozzleman-Green Cutter (concrete, rock, etc.); Concrete Power Buggyman; Concrete Laborer; Crusher Feeder; Demolition and Wrecking Charred Materials; Gunite Nozzleman Tender; Gunite or Sand Blasting Pot Tender; Handlers or Mixers of all Materials of an irritating nature (including cement and lime); Tool Operators (includes but not limited to: Dry Pack Machine; Jackhammer; Chipping Guns; Paving Breakers); Pipe Doping and Wrapping; Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Sand Blasting (Wet); Stake-Setter; Tunnel-Muckers, Brakemen, Concrete Crew, Bullgang (underground)

GROUP 3: Asbestos Removal; Bit Grinder; Drill Doctor; Drill Operators, air tracks, cat drills, wagon drills, rubber-mounted drills, and other similar types including at crusher plants; Gunite Nozzleman; High Scalars, Strippers and Drillers (covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down, or sloping and stripping); Manhole Builder; Powdermen; Concrete Saw Operator; Pwdermen; Power Saw Operators (Bucking and Falling); Pumpcrete Nozzlemen; Sand Blasting (Dry); Sewer Timberman; Track Liners, Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks, Tugger Operator; Tunnel-Chuck Tenders, Nippers and Timbermen; Vibrator; Water Blaster

GROUP 4: Asphalt Raker; Concrete Saw Operator (walls);

Concrete Nozzelman; Grade Checker; Pipelayer; Laser Beam (pipelaying)-applicable when employee assigned to move, set up, align; Laser Beam; Tunnel Miners; Motorman-Dinky Locomotive-Tunnel; Powderman-Tunnel; Shield Operator-Tunnel

GROUP 5: Traffic Flaggers

GROUP 6: Fence Builders

GROUP 7: Landscaping or Planting Laborers

LABO0335-019 06/01/2008

	Rates	Fringes
Hod Carrier.....	\$ 29.58	8.40

PAIN0005-002 07/01/2009

STATEWIDE EXCEPT CLARK, COWLITZ, KLICKITAT, PACIFIC (SOUTH), SKAMANIA, AND WAHKIAKUM COUNTIES

	Rates	Fringes
Painters:		
STRIPERS.....	\$ 27.40	11.50

PAIN0005-004 03/01/2009

CLALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON AND WHATCOM COUNTIES

	Rates	Fringes
PAINTER.....	\$ 20.82	7.44

* PAIN0005-006 07/01/2009

ADAMS, ASOTIN; BENTON AND FRANKLIN (EXCEPT HANFORD SITE);
CHELAN, COLUMBIA, DOUGLAS, FERRY, GARFIELD, GRANT, KITTITAS,
LINCOLN, OKANOGAN, PEND OREILLE, SPOKANE, STEVENS, WALLA WALLA,
WHITMAN AND YAKIMA COUNTIES

	Rates	Fringes
Painters:		
Application of Cold Tar Products, Epoxies, Polyure thanes, Acids, Radiation Resistant Material, Water and Sandblasting.....	\$ 21.50	7.98
Over 30'/Swing Stage Work..	\$ 22.20	7.98
Brush, Roller, Striping, Steam-cleaning and Spray....	\$ 15.09	6.78
Lead Abatement, Asbestos Abatement.....	\$ 21.50	7.98

*\$.70 shall be paid over and above the basic wage rates
listed for work on swing stages and high work of over 30
feet.

PAIN0055-002 07/01/2009

CLARK, COWLITZ, KLICKITAT, PACIFIC, SKAMANIA, AND WAHAKIAKUM
COUNTIES

	Rates	Fringes
Painters:		
Brush & Roller.....	\$ 19.59	7.24
High work - All work 60 ft. or higher.....	\$ 20.34	7.24
Spray and Sandblasting.....	\$ 20.19	7.24

PAIN0055-007 08/13/2009

CLARK, COWLITZ, KLICKITAT, SKAMANIA and WAHAKIAKUM COUNTIES

	Rates	Fringes
Painters:		
HIGHWAY & PARKING LOT STRIPER.....	\$ 30.82	8.62

PLAS0072-004 06/01/2009

ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FERRY, FRANKLIN, GARFIELD, GRANT, KITTITAS, LINCOLN, OKANOGAN, PEND OREILLE, SPOKANE, STEVENS, WALLA WALLA, WHITMAN, AND YAKIMA COUNTIES

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER		
ZONE 1:.....	\$ 24.08	11.22

Zone Differential (Add to Zone 1 rate): Zone 2 - \$2.00

BASE POINTS: Spokane, Pasco, Lewiston; Wenatchee
Zone 1: 0 - 45 radius miles from the main post office
Zone 2: Over 45 radius miles from the main post office

PLAS0528-001 06/01/2009

CLALLAM, COWLITZ, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC, PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON, WAHKIAKUM AND WHATCOM COUNTIES

	Rates	Fringes
Cement Masons:		
CEMENT MASON.....	\$ 35.75	13.40
COMPOSITION, TROWEL MACHINE, GRINDER, POWER TOOLS, GUNNITE NOZZLE.....	\$ 36.25	13.40
TROWLING MACHINE OPERATOR ON COMPOSITION.....	\$ 37.25	13.40

PLAS0555-002 06/01/2009

CLARK, KLICKITAT AND SKAMANIA COUNTIES

ZONE 1:

	Rates	Fringes
Cement Masons:		
CEMENT MASONS DOING BOTH COMPOSITION/POWER MACHINERY AND SUSPENDED/HANGING SCAFFOLD..	\$ 29.94	15.59
CEMENT MASONS ON SUSPENDED, SWINGING AND/OR HANGING SCAFFOLD.....	\$ 29.41	15.59
CEMENT MASONS.....	\$ 28.87	15.59
COMPOSITION WORKERS AND POWER MACHINERY OPERATORS...	\$ 29.41	15.59

Zone Differential (Add To Zone 1 Rates):

- Zone 2 - \$0.65
- Zone 3 - 1.15
- Zone 4 - 1.70
- Zone 5 - 3.00

BASE POINTS: BEND, CORVALLIS, EUGENE, MEDFORD, PORTLAND, SALEM, THE DALLES, VANCOUVER

- ZONE 1: Projects within 30 miles of the respective city hall
- ZONE 2: More than 30 miles but less than 40 miles from the respective city hall.
- ZONE 3: More than 40 miles but less than 50 miles from the respective city hall.
- ZONE 4: More than 50 miles but less than 80 miles from the respective city hall.
- ZONE 5: More than 80 miles from the respective city hall

TEAM0037-002 06/01/2009

CLARK, COWLITZ, KLICKITAT, PACIFIC (South of a straight line made by extending the north boundary line of Wahkiakum County west to the Pacific Ocean), SKAMANIA, AND WAHAKIYAKUM COUNTIES

	Rates	Fringes
Truck drivers:		
ZONE 1		
GROUP 1.....	\$ 26.90	12.75
GROUP 2.....	\$ 27.02	12.75
GROUP 3.....	\$ 27.15	12.75
GROUP 4.....	\$ 27.41	12.75
GROUP 5.....	\$ 27.63	12.75
GROUP 6.....	\$ 27.79	12.75
GROUP 7.....	\$ 27.99	12.75

Zone Differential (Add to Zone 1 Rates):

- Zone 2 - \$0.65
- Zone 3 - 1.15
- Zone 4 - 1.70
- Zone 5 - 2.75

BASE POINTS: ASTORIA, THE DALLES, LONGVIEW AND VANCOUVER

- ZONE 1: Projects within 30 miles of the respective city hall.
- ZONE 2: More than 30 miles but less than 40 miles from the respective city hall.
- ZONE 3: More than 40 miles but less than 50 miles from the respective city hall.
- ZONE 4: More than 50 miles but less than 80 miles from the respective city hall.
- ZONE 5: More than 80 miles from the respective city hall.

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: A Frame or Hydra lift truck w/load bearing surface; Articulated Dump Truck; Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Concrete Pump Truck; Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations there of: up to and including 10 cu. yds.; Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on Concrete Dry Batch Plant (manually operated); Pilot Car; Pickup Truck; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Tender; Truck Mechanic Tender; Water Wagons (rated capacity) up to 3,000 gallons; Transit Mix and Wet or Dry Mix - 5 cu. yds. and under; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Driver; Slurry Truck Driver or Leverman; Tireman

GROUP 2: Boom Truck/Hydra-lift or Retracting Crane; Challenger; Dumpsters or similar equipment all sizes; Dump Trucks/Articulated Dumps 6 cu to 10 cu.; Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer or doubles transporting equipment or wet or dry materials; Lumber Carrier, Driver-Straddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Transit mix and wet or dry mix trucks: over 5 cu. yds. and including 7 cu. yds.; Vacuum Trucks; Water truck/Wagons (rated capacity) over 3,000 to 5,000 gallons

GROUP 3: Ammonia Nitrate Distributor Driver; Dump trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 10 cu. yds. and including 30 cu. yds. includes Articulated Dump Trucks; Self-Propelled Street Sweeper; Transit mix and wet or dry mix truck: over 7 cu yds. and including 11 cu yds.; Truck Mechanic-Welder-Body Repairman; Utility and Clean-up Truck; Water Wagons (rated capacity) over 5,000 to 10,000 gallons

GROUP 4: Asphalt Burner; Dump Trucks, side, end and bottom dumps, including Semi-Trucks and Trains or combinations thereof: over 30 cu. yds. and including 50 cu. yds. includes Articulated Dump Trucks; Fire Guard; Transit Mix and Wet or Dry Mix Trucks, over 11 cu. yds. and including 15 cu. yds.; Water Wagon (rated capacity) over 10,000 gallons to 15,000 gallons

GROUP 5: Composite Crewman; Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds. includes Articulated Dump Trucks

GROUP 6: Bulk Cement Spreader w/o Auger; Dry Pre-Batch concrete Mix Trucks; Dump trucks, side, end and bottom dumps, including Semi Trucks and Trains of combinations thereof: over 60 cu. yds. and including 80 cu. yds., and includes Articulated Dump Trucks; Skid Truck

GROUP 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu. yds. and including 100 cu. yds., includes Articulated Dump Trucks; Industrial Lift Truck (mechanical tailgate)

 * TEAM0174-001 06/01/2009

CLALLAM, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC (North of a straight line made by extending the north boundary line of Wahkiakum County west to the Pacific Ocean), PIERCE, SAN JUAN, SKAGIT, SNOHOMISH, THURSTON AND WHATCOM COUNTIES

	Rates	Fringes
Truck drivers:		
ZONE A:		
GROUP 1:.....	\$ 31.87	14.60
GROUP 2:.....	\$ 31.03	14.60
GROUP 3:.....	\$ 28.22	14.60
GROUP 4:.....	\$ 23.25	14.60
GROUP 5:.....	\$ 31.42	14.60

ZONE B (25-45 miles from center of listed cities*): Add \$.70 per hour to Zone A rates.

ZONE C (over 45 miles from centr of listed cities*): Add \$1.00 per hour to Zone A rates.

*Zone pay will be calculated from the city center of the following listed cities:

BELLINGHAM	CENTRALIA	RAYMOND	OLYMPIA
EVERETT	SHELTON	ANACORTES	BELLEVUE
SEATTLE	PORT ANGELES	MT. VERNON	KENT
TACOMA	PORT TOWNSEND	ABERDEEN	BREMERTON

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1 - "A-frame or Hydralift" trucks and Boom trucks or similar equipment when "A" frame or "Hydralift" and Boom truck or similar equipment is used; Buggymobile; Bulk Cement Tanker; Dumpsters and similar equipment, Tournorockers, Tournowagon, Tournotrailer, Cat DW series, Terra Cobra, Le Tourneau, Westinghouse, Athye Wagon, Euclid Two and Four-Wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump Trucks, side, end and bottom dump, including semi-trucks and trains or combinations thereof with 16 yards to 30 yards capacity: Over 30 yards \$.15 per hour additional for each 10 yard increment; Explosive Truck (field mix) and similar equipment; Hyster Operators (handling bulk loose aggregates); Lowbed and Heavy Duty Trailer; Road Oil Distributor Driver; Spreader, Flaherty Transit mix used exclusively in heavy construction; Water Wagon and Tank Truck-3,000 gallons and over capacity

GROUP 2 - Bulllifts, or similar equipment used in loading or

unloading trucks, transporting materials on job site; Dumpsters, and similar equipment, Tournorockers, Tournowagon, Turnotrailer, Cat. D.W. Series, Terra Cobra, Le Tourneau, Westinghouse, Athye wagon, Euclid two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump trucks, side, end and bottom dump, including semi-trucks and trains or combinations thereof with less than 16 yards capacity; Flatbed (Dual Rear Axle); Grease Truck, Fuel Truck, Greaser, Battery Service Man and/or Tire Service Man; Leverman and loader at bunkers and batch plants; Oil tank transport; Scissor truck; Slurry Truck; Sno-Go and similar equipment; Swampers; Straddler Carrier (Ross, Hyster) and similar equipment; Team Driver; Tractor (small, rubber-tired) (when used within Teamster jurisdiction); Vacuum truck; Water Wagon and Tank trucks-less than 3,000 gallons capacity; Winch Truck; Wrecker, Tow truck and similar equipment

GROUP 3 - Flatbed (single rear axle); Pickup Sweeper; Pickup Truck. (Adjust Group 3 upward by \$2.00 per hour for onsite work only)

GROUP 4 - Escort or Pilot Car

GROUP 5 - Mechanic

HAZMAT PROJECTS

Anyone working on a HAZMAT job, where HAZMAT certification is required, shall be compensated as a premium, in addition to the classification working in as follows:

LEVEL C: +\$.25 per hour - This level uses an air purifying respirator or additional protective clothing.

LEVEL B: +\$.50 per hour - Uses same respirator protection as Level A. Supplied air line is provided in conjunction with a chemical "splash suit."

LEVEL A: +\$.75 per hour - This level utilizes a fully-encapsulated suit with a self-contained breathing apparatus or a supplied air line.

ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FERRY, FRANKLIN, GARFIELD, GRANT KITTITAS, LINCOLN, OKANOGAN, PEND OREILLE, SPOKANE, STEVENS, WALLA WALLA, WHITMAN AND YAKIMA COUNTIES

	Rates	Fringes
Truck drivers: (ANYONE WORKING ON HAZMAT JOBS SEE FOOTNOTE A BELOW)		
ZONE 1:		
GROUP 1.....	\$ 20.02	10.86
GROUP 2.....	\$ 22.29	10.86
GROUP 3.....	\$ 22.79	10.86
GROUP 4.....	\$ 23.12	10.86
GROUP 5.....	\$ 23.23	10.86
GROUP 6.....	\$ 23.40	10.86
GROUP 7.....	\$ 23.93	10.86
GROUP 8.....	\$ 24.26	10.86

Zone Differential (Add to Zone 1 rate: Zone 2 - \$2.00)

BASE POINTS: Spokane, Moses Lake, Pasco, Lewiston
Zone 1: 0-45 radius miles from the main post office.
Zone 2: Outside 45 radius miles from the main post office

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Escort Driver or Pilot Car; Employee Haul; Power Boat Hauling Employees or Material

GROUP 2: Fish Truck; Flat Bed Truck; Fork Lift (3000 lbs. and under); Leverperson (loading trucks at bunkers); Trailer Mounted Hydro Seeder and Mulcher; Seeder & Mulcher; Stationary Fuel Operator; Tractor (small, rubber-tired, pulling trailer or similar equipment)

GROUP 3: Auto Crane (2000 lbs. capacity); Buggy Mobile & Similar; Bulk Cement Tanks & Spreader; Dumptor (6 yds. & under); Flat Bed Truck with Hydraulic System; Fork Lift (3001-16,000 lbs.); Fuel Truck Driver, Steamcleaner & Washer; Power Operated Sweeper; Rubber-tired Tunnel Jumbo; Scissors Truck; Slurry Truck Driver; Straddle Carrier (Ross, Hyster, & similar); Tireperson; Transit Mixers & Truck Hauling Concrete (3 yd. to & including 6 yds.); Trucks, side, end, bottom & articulated end dump (3 yards to and including 6 yds.); Warehouseperson (to include shipping & receiving); Wrecker & Tow Truck

GROUP 4: A-Frame; Burner, Cutter, & Welder; Service Greaser; Trucks, side, end, bottom & articulated end dump (over 6 yards to and including 12 yds.); Truck Mounted Hydro Seeder; Warehouseperson; Water Tank truck (0-8,000 gallons)

GROUP 5: Dumptor (over 6 yds.); Lowboy (50 tons & under); Self-loading Roll Off; Semi-Truck & Trailer; Tractor with Steer Trailer; Transit Mixers and Trucks Hauling Concrete (over 6 yds. to and including 10 yds.); Trucks, side, end, bottom and end dump (over 12 yds. to & including 20 yds.); Truck-Mounted Crane (with load bearing surface either mounted or pulled, up to 14 ton); Vacuum Truck (super sucker, guzzler, etc.)

GROUP 6: Flaherty Spreader Box Driver; Flowboys; Fork Lift (over 16,000 lbs.); Dumps (Semi-end); Mechanic (Field); Semi-end Dumps; Transfer Truck & Trailer; Transit Mixers & Trucks Hauling Concrete (over 10 yds. to & including 20 yds.); Trucks, side, end, bottom and articulated end dump (over 20 yds. to & including 40 yds.); Truck and Pup; Tournarocker, DWs & similar with 2 or more 4 wheel-power tractor with trailer, gallonage or yardage scale, whichever is greater Water Tank Truck (8,001- 14,000 gallons); Lowboy(over 50 tons)

GROUP 7: Oil Distributor Driver; Stringer Truck (cable operated trailer); Transit Mixers & Trucks Hauling Concrete (over 20 yds.); Truck, side, end, bottom end dump (over 40 yds. to & including 100 yds.); Truck Mounted Crane (with load bearing surface either mounted or pulled (16 through 25 tons);

GROUP 8: Prime Movers and Stinger Truck; Trucks, side, end, bottom and articulated end dump (over 100 yds.); Helicopter Pilot Hauling Employees or Materials

Footnote A - Anyone working on a HAZMAT job, where HAZMAT

certification is required, shall be compensated as a premium, in addition to the classification working in as follows:

LEVEL C-D: - \$.50 PER HOUR (This is the lowest level of protection. This level may use an air purifying respirator or additional protective clothing.

LEVEL A-B: - \$1.00 PER HOUR (Uses supplied air in conjunction with a chemical splash suit or fully encapsulated suit with a self-contained breathing apparatus.

Employees shall be paid Hazmat pay in increments of four(4) and eight(8) hours.

NOTE:

Trucks Pulling Equipment Trailers: shall receive \$.15/hour over applicable truck rate

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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Appendix 5-E

State Prevailing Wage Rates

In addition to the federal prevailing wage rates set forth in Appendix 5-D, the prevailing wage rates for the Project shall comply with Washington State Prevailing Wage Rates for Public Works Contracts, as published by the State of Washington Department of Labor and Industries and made effective March 3, 2010. Said State prevailing wage rates are attached as Appendix 5-E.

State of Washington
DEPARTMENT OF LABOR AND INDUSTRIES
 Prevailing Wage Section - Telephone (360) 902-5335
 PO Box 44540, Olympia, WA 98504-4540

Washington State Prevailing Wage Rates For Public Works Contracts

The PREVAILING WAGES listed here include both the hourly wage rate and the hourly rate of fringe benefits. On public works projects, workers' wage and benefit rates must add to not less than this total. A brief description of overtime calculation requirements is provided on the Benefit Code Key.

KING COUNTY
EFFECTIVE 3-03-2010

<u>Classification</u>	<u>PREVAILING</u> <u>WAGE</u>	<u>Over</u> <u>Time</u>	<u>Holiday</u> <u>Code</u>	<u>Note</u> <u>Code</u>
(See Benefit Code Key)				
ASBESTOS ABATEMENT WORKERS				
JOURNEY LEVEL	\$40.03	1H	5D	
BOILERMAKERS				
JOURNEY LEVEL	\$56.53	1C	5N	
BRICK MASON				
BRICK AND BLOCK FINISHER	\$39.49	1M	5A	
JOURNEY LEVEL	\$46.35	1M	5A	
BUILDING SERVICE EMPLOYEES				
JANITOR	\$17.98	2F	5S	
TRAVELING WAXER/SHAMPOOER	\$18.39	2F	5S	
WINDOW CLEANER (NON-SCAFFOLD)	\$22.65	2F	5S	
WINDOW CLEANER (SCAFFOLD)	\$23.51	2F	5S	
CABINET MAKERS (IN SHOP)				
JOURNEY LEVEL	\$16.67	1		
CARPENTERS				
ACOUSTICAL WORKER	\$48.60	1H	5D	
BRIDGE, DOCK AND WARF CARPENTERS	\$48.47	1H	5D	
CARPENTER	\$48.47	1H	5D	
CREOSOTED MATERIAL	\$48.57	1H	5D	
DRYWALL APPLICATOR	\$48.74	1H	5D	
FLOOR FINISHER	\$48.60	1H	5D	
FLOOR LAYER	\$48.60	1H	5D	
FLOOR SANDER	\$48.60	1H	5D	
MILLWRIGHT AND MACHINE ERECTORS	\$49.47	1H	5D	
PILEDRIVERS, DRIVING, PULLING, PLACING COLLARS AND WELDING	\$48.67	1H	5D	
SAWFILER	\$48.60	1H	5D	
SHINGLER	\$48.60	1H	5D	
STATIONARY POWER SAW OPERATOR	\$48.60	1H	5D	
STATIONARY WOODWORKING TOOLS	\$48.60	1H	5D	
CEMENT MASONS				
JOURNEY LEVEL	\$49.15	1M	5D	
DIVERS & TENDERS				
DIVER	\$100.28	1M	5D	8A
DIVER ON STANDBY	\$56.68	1M	5D	
DIVER TENDER	\$52.23	1M	5D	
SURFACE RCV & ROV OPERATOR	\$52.23	1M	5D	
SURFACE RCV & ROV OPERATOR TENDER	\$48.85	1B	5A	
DREDGE WORKERS				
ASSISTANT ENGINEER	\$49.57	1T	5D	8L
ASSISTANT MATE (DECKHAND)	\$49.06	1T	5D	8L
BOATMEN	\$49.57	1T	5D	8L
ENGINEER WELDER	\$49.62	1T	5D	8L

KING COUNTY
EFFECTIVE 3-03-2010

(See Benefit Code Key)

<u>Classification</u>	<u>PREVAILING WAGE</u>	<u>Over Time Code</u>	<u>Holiday Code</u>	<u>Note Code</u>
LEVERMAN, HYDRAULIC MAINTENANCE	\$51.19 \$49.06	1T 1T	5D 5D	8L 8L
MATES	\$49.57	1T	5D	8L
OILER	\$49.19	1T	5D	8L
DRYWALL TAPERS				
JOURNEY LEVEL	\$48.79	1E	5P	
ELECTRICAL FIXTURE MAINTENANCE WORKERS				
JOURNEY LEVEL	\$25.34	1E	5L	
ELECTRICIANS - INSIDE				
CABLE SPLICER	\$61.95	2W	5L	
CABLE SPLICER (TUNNEL)	\$66.57	2W	5L	
CERTIFIED WELDER	\$59.85	2W	5L	
CERTIFIED WELDER (TUNNEL)	\$64.25	2W	5L	
CONSTRUCTION STOCK PERSON JOURNEY LEVEL	\$31.83 \$57.74	2W 2W	5L 5L	
JOURNEY LEVEL (TUNNEL)	\$61.95	2W	5L	
ELECTRICIANS - MOTOR SHOP				
CRAFTSMAN	\$15.37	2A	6C	
JOURNEY LEVEL	\$14.69	2A	6C	
ELECTRICIANS - POWERLINE CONSTRUCTION				
CABLE SPLICER	\$59.79	4A	5A	
CERTIFIED LINE WELDER	\$54.59	4A	5A	
GROUNDPERSON	\$39.07	4A	5A	
HEAD GROUNDPERSON	\$41.22	4A	5A	
HEAVY LINE EQUIPMENT OPERATOR	\$54.59	4A	5A	
JACKHAMMER OPERATOR	\$41.22	4A	5A	
JOURNEY LEVEL LINEPERSON	\$54.59	4A	5A	
LINE EQUIPMENT OPERATOR	\$46.32	4A	5A	
POLE SPRAYER	\$54.59	4A	5A	
POWDERPERSON	\$41.22	4A	5A	
ELECTRONIC TECHNICIANS				
ELECTRONIC TECHNICIANS JOURNEY LEVEL	\$31.00	1		
ELEVATOR CONSTRUCTORS				
MECHANIC	\$67.91	4A	6Q	
MECHANIC IN CHARGE	\$73.87	4A	6Q	
FABRICATED PRECAST CONCRETE PRODUCTS				
ALL CLASSIFICATIONS	\$13.60	2K	5B	
FENCE ERECTORS				
FENCE ERECTOR	\$15.18	1		
FLAGGERS				
JOURNEY LEVEL	\$33.93	1H	5D	
GLAZIERS				
JOURNEY LEVEL	\$48.61	1Y	5G	
HEAT & FROST INSULATORS AND ASBESTOS WORKERS				
MECHANIC	\$50.28	1S	5J	
HEATING EQUIPMENT MECHANICS				
MECHANIC	\$59.32	1E	6L	
HOD CARRIERS & MASON TENDERS				
JOURNEY LEVEL	\$41.28	1H	5D	
INDUSTRIAL ENGINE AND MACHINE MECHANICS				
MECHANIC	\$15.65	1		

KING COUNTY
EFFECTIVE 3-03-2010

(See Benefit Code Key)

<u>Classification</u>	<u>PREVAILING WAGE</u>	<u>Over Time Code</u>	<u>Holiday Code</u>	<u>Note Code</u>
INDUSTRIAL POWER VACUUM CLEANER				
JOURNEY LEVEL	\$9.24	1		
INLAND BOATMEN				
CAPTAIN	\$48.39	1K	5B	
COOK	\$45.36	1K	5B	
DECKHAND	\$45.36	1K	5B	
ENGINEER/DECKHAND	\$46.25	1K	5B	
MATE, LAUNCH OPERATOR	\$47.35	1K	5B	
INSPECTION/CLEANING/SEALING OF SEWER & WATER SYSTEMS BY REMOTE CONTROL				
CLEANER OPERATOR, FOAMER OPERATOR	\$31.49	1		
GROUT TRUCK OPERATOR	\$11.48	1		
HEAD OPERATOR	\$24.91	1		
TECHNICIAN	\$19.33	1		
TV TRUCK OPERATOR	\$20.45	1		
INSULATION APPLICATORS				
JOURNEY LEVEL	\$48.47	1M	5D	
IRONWORKERS				
JOURNEY LEVEL	\$54.27	1O	5A	
LABORERS				
ASPHALT RAKER	\$41.28	1H	5D	
BALLAST REGULATOR MACHINE	\$40.03	1H	5D	
BATCH WEIGHMAN	\$33.93	1H	5D	
BRUSH CUTTER	\$40.03	1H	5D	
BRUSH HOG FEEDER	\$40.03	1H	5D	
BURNERS	\$40.03	1H	5D	
CARPENTER TENDER	\$40.03	1H	5D	
CASSION WORKER	\$41.28	1H	5D	
CEMENT DUMPER/PAVING	\$40.77	1H	5D	
CEMENT FINISHER TENDER	\$40.03	1H	5D	
CHANGE-HOUSE MAN OR DRY SHACKMAN	\$40.03	1H	5D	
CHIPPING GUN (OVER 30 LBS)	\$40.77	1H	5D	
CHIPPING GUN (UNDER 30 LBS)	\$40.03	1H	5D	
CHOKER SETTER	\$40.03	1H	5D	
CHUCK TENDER	\$40.03	1H	5D	
CLEAN-UP LABORER	\$40.03	1H	5D	
CONCRETE DUMPER/CHUTE OPERATOR	\$40.77	1H	5D	
CONCRETE FORM STRIPPER	\$40.03	1H	5D	
CONCRETE SAW OPERATOR	\$40.77	1H	5D	
CRUSHER FEEDER	\$33.93	1H	5D	
CURING LABORER	\$40.03	1H	5D	
DEMOLITION, WRECKING & MOVING (INCLUDING CHARRED MATERIALS)	\$40.03	1H	5D	
DITCH DIGGER	\$40.03	1H	5D	
DIVER	\$41.28	1H	5D	
DRILL OPERATOR (HYDRAULIC, DIAMOND)	\$40.77	1H	5D	
DRILL OPERATOR, AIRTRAC	\$41.28	1H	5D	
DUMPMAN	\$40.03	1H	5D	
EPOXY TECHNICIAN	\$40.03	1H	5D	
EROSION CONTROL WORKER	\$40.03	1H	5D	
FALLER/BUCKER, CHAIN SAW	\$40.77	1H	5D	
FINAL DETAIL CLEANUP (i.e., dusting, vacuuming, window cleaning; NOT construction debris cleanup)	\$30.84	1H	5D	

KING COUNTY
EFFECTIVE 3-03-2010

(See Benefit Code Key)

<u>Classification</u>	<u>PREVAILING</u> <u>WAGE</u>	<u>Over</u>		
		<u>Time</u> <u>Code</u>	<u>Holiday</u> <u>Code</u>	<u>Note</u> <u>Code</u>
FINE GRADERS	\$40.03	1H	5D	
FIRE WATCH	\$33.93	1H	5D	
FORM SETTER	\$40.03	1H	5D	
GABION BASKET BUILDER	\$40.03	1H	5D	
GENERAL LABORER	\$40.03	1H	5D	
GRADE CHECKER & TRANSIT PERSON	\$41.28	1H	5D	
GRINDERS	\$40.03	1H	5D	
GROUT MACHINE TENDER	\$40.03	1H	5D	
GUARDRAIL ERECTOR	\$40.03	1H	5D	
HAZARDOUS WASTE WORKER LEVEL A	\$41.28	1H	5D	
HAZARDOUS WASTE WORKER LEVEL B	\$40.77	1H	5D	
HAZARDOUS WASTE WORKER LEVEL C	\$40.03	1H	5D	
HIGH SCALER	\$41.28	1H	5D	
HOD CARRIER/MORTARMAN	\$41.28	1H	5D	
JACKHAMMER	\$40.77	1H	5D	
LASER BEAM OPERATOR	\$40.77	1H	5D	
MANHOLE BUILDER-MUDMAN	\$40.77	1H	5D	
MATERIAL YARDMAN	\$40.03	1H	5D	
MINER	\$41.28	1H	5D	
NOZZLEMAN, CONCRETE PUMP, GREEN CUTTER WHEN USING HIGH PRESSURE AIR & WATER ON CONCRETE & ROCK, SANDBLAST, GUNITE, SHOTCRETE, WATER BLASTER	\$40.77	1H	5D	
PAVEMENT BREAKER	\$40.77	1H	5D	
PILOT CAR	\$33.93	1H	5D	
PIPE POT TENDER	\$40.77	1H	5D	
PIPE RELINER (NOT INSERT TYPE)	\$40.77	1H	5D	
PIPELAYER & CAULKER	\$40.77	1H	5D	
PIPELAYER & CAULKER (LEAD)	\$41.28	1H	5D	
PIPEWRAPPER	\$40.77	1H	5D	
POT TENDER	\$40.03	1H	5D	
POWDERMAN	\$41.28	1H	5D	
POWDERMAN HELPER	\$40.03	1H	5D	
POWERJACKS	\$40.77	1H	5D	
RAILROAD SPIKE PULLER (POWER)	\$40.77	1H	5D	
RE-TIMBERMAN	\$41.28	1H	5D	
RIPRAP MAN	\$40.03	1H	5D	
RODDER	\$40.77	1H	5D	
SCAFFOLD ERECTOR	\$40.03	1H	5D	
SCALE PERSON	\$40.03	1H	5D	
SIGNALMAN	\$40.03	1H	5D	
SLOPER (OVER 20")	\$40.77	1H	5D	
SLOPER SPRAYMAN	\$40.03	1H	5D	
SPREADER (CLARY POWER OR SIMILAR TYPES)	\$40.77	1H	5D	
SPREADER (CONCRETE)	\$40.77	1H	5D	
STAKE HOPPER	\$40.03	1H	5D	
STOCKPILER	\$40.03	1H	5D	
TAMPER & SIMILAR ELECTRIC, AIR & GAS	\$40.77	1H	5D	
TAMPER (MULTIPLE & SELF PROPELLED)	\$40.77	1H	5D	
TOOLROOM MAN (AT JOB SITE)	\$40.03	1H	5D	
TOPPER-TAILER	\$40.03	1H	5D	
TRACK LABORER	\$40.03	1H	5D	
TRACK LINER (POWER)	\$40.77	1H	5D	

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TRUCK SPOTTER	\$40.03	1H	5D	
TUGGER OPERATOR	\$40.77	1H	5D	
VIBRATING SCREED (AIR, GAS, OR ELECTRIC)	\$40.03	1H	5D	
VIBRATOR	\$40.77	1H	5D	
VINYL SEAMER	\$40.03	1H	5D	
WELDER	\$40.03	1H	5D	
WELL-POINT LABORER	\$40.77	1H	5D	
LABORERS - UNDERGROUND SEWER & WATER				
GENERAL LABORER & TOPMAN	\$40.03	1H	5D	
PIPE LAYER	\$40.77	1H	5D	
LANDSCAPE CONSTRUCTION				
IRRIGATION OR LAWN SPRINKLER INSTALLERS	\$13.56	1		
LANDSCAPE EQUIPMENT OPERATORS OR TRUCK DRIVERS	\$28.17	1		
LANDSCAPING OR PLANTING LABORERS	\$17.87	1		
LATHERS				
JOURNEY LEVEL	\$48.74	1H	5D	
MARBLE SETTERS				
JOURNEY LEVEL	\$46.35	1M	5A	
METAL FABRICATION (IN SHOP)				
FITTER	\$15.86	1		
LABORER	\$9.78	1		
MACHINE OPERATOR	\$13.04	1		
PAINTER	\$11.10	1		
WELDER	\$15.48	1		
MODULAR BUILDINGS				
CABINET ASSEMBLY	\$11.56	1		
ELECTRICIAN	\$11.56	1		
EQUIPMENT MAINTENANCE	\$11.56	1		
PLUMBER	\$11.56	1		
PRODUCTION WORKER	\$9.40	1		
TOOL MAINTENANCE	\$11.56	1		
UTILITY PERSON	\$11.56	1		
WELDER	\$11.56	1		
PAINTERS				
JOURNEY LEVEL	\$34.87	2B	6Z	
PLASTERERS				
JOURNEY LEVEL	\$46.63	1R	5B	
PLAYGROUND & PARK EQUIPMENT INSTALLERS				
JOURNEY LEVEL	\$8.55	1		
PLUMBERS & PIPEFITTERS				
JOURNEY LEVEL	\$66.44	1G	5A	
POWER EQUIPMENT OPERATORS				
ASPHALT PLANT OPERATOR	\$50.39	1T	5D	8P
ASSISTANT ENGINEERS	\$47.12	1T	5D	8P
BACKHOE, EXCAVATOR SHOVEL, OVER 50 METRIC TONS TO 90 METRIC TONS	\$50.94	1T	5D	8P
BACKHOE, EXCAVATOR SHOVEL, OVER 90 METRIC TONS	\$51.51	1T	5D	8P
BACKHOE, EXCAVATOR, SHOVEL, OVER 30 METRIC TONS TO 50 METRIC TONS	\$50.39	1T	5D	8P
BACKHOE, EXCAVATOR, SHOVEL, TRACTORS UNDER 15 METRIC TONS	\$49.48	1T	5D	8P
BACKHOE, EXCAVATOR, SHOVEL, TRACTORS: 15 TO 30 METRIC TONS	\$49.90	1T	5D	8P
BARRIER MACHINE (ZIPPER)	\$49.90	1T	5D	8P

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BATCH PLANT OPERATOR, CONCRETE	\$49.90	1T	5D	8P
BELT LOADERS (ELEVATING TYPE)	\$49.48	1T	5D	8P
BOBCAT (SKID STEER)	\$47.12	1T	5D	8P
BROKK-REMOTE DEMOLITION EQUIPMENT	\$47.12	1T	5D	8P
BROOMS	\$47.12	1T	5D	8P
BUMP CUTTER	\$49.90	1T	5D	8P
CABLEWAYS	\$50.39	1T	5D	8P
CHIPPER	\$49.90	1T	5D	8P
COMPRESSORS	\$47.12	1T	5D	8P
CONCRETE FINISH MACHINE - LASER SCREED	\$47.12	1T	5D	8P
CONCRETE PUMPS	\$49.48	1T	5D	8P
CONCRETE PUMP-TRUCK MOUNT WITH BOOM ATTACHMENT	\$49.90	1T	5D	8P
CONCRETE PUMP-TRUCK MOUNT WITH BOOM ATTACHMENT OVER 42 METERS	\$50.39	1T	5D	8P
CONVEYORS	\$49.48	1T	5D	8P
CRANE, FRICTION 100 TONS THROUGH 199 TONS	\$51.51	1T	5D	8P
CRANE, FRICTION OVER 200 TONS	\$52.07	1T	5D	8P
CRANES, THRU 19 TONS, WITH ATTACHMENTS	\$49.48	1T	5D	8P
CRANES, 20 - 44 TONS, WITH ATTACHMENTS	\$49.90	1T	5D	8P
CRANES, 45 TONS - 99 TONS, UNDER 150 FT OF BOOM (INCLUDING JIB WITH ATTACHMENTS)	\$50.39	1T	5D	8P
CRANES, 100 TONS - 199 TONS, OR 150 FT OF BOOM (INCLUDING JIB WITH ATTACHMENTS)	\$50.94	1T	5D	8P
CRANES, 200 TONS TO 300 TONS, OR 250 FT OF BOOM (INCLUDING JIB WITH ATTACHMENTS)	\$51.51	1T	5D	8P
CRANES, A-FRAME, 10 TON AND UNDER	\$47.12	1T	5D	8P
CRANES, A-FRAME, OVER 10 TON	\$49.48	1T	5D	8P
CRANES, OVER 300 TONS, OR 300' OF BOOM INCLUDING JIB WITH ATTACHMENTS	\$52.07	1T	5D	8P
CRANES, OVERHEAD, BRIDGE TYPE (20 - 44 TONS)	\$49.90	1T	5D	8P
CRANES, OVERHEAD, BRIDGE TYPE (45 - 99 TONS)	\$50.39	1T	5D	8P
CRANES, OVERHEAD, BRIDGE TYPE (100 TONS & OVER)	\$50.94	1T	5D	8P
CRANES, TOWER CRANE UP TO 175' IN HEIGHT, BASE TO BOOM	\$50.94	1T	5D	8P
CRANES, TOWER CRANE OVER 175' IN HEIGHT, BASE TO BOOM	\$51.51	1T	5D	8P
CRUSHERS	\$49.90	1T	5D	8P
DECK ENGINEER/DECK WINCHES (POWER)	\$49.90	1T	5D	8P
DERRICK, BUILDING	\$50.39	1T	5D	8P
DOZER, QUAD 9, D-10, AND HD-41	\$50.39	1T	5D	8P
DOZERS, D-9 & UNDER	\$49.48	1T	5D	8P
DRILL OILERS - AUGER TYPE, TRUCK OR CRANE MOUNT	\$49.48	1T	5D	8P
DRILLING MACHINE	\$49.90	1T	5D	8P
ELEVATOR AND MANLIFT, PERMANENT AND SHAFT-TYPE	\$47.12	1T	5D	8P
EQUIPMENT SERVICE ENGINEER (OILER)	\$49.48	1T	5D	8P
FINISHING MACHINE/BIDWELL GAMACO AND SIMILAR EQUIP	\$49.90	1T	5D	8P
FORK LIFTS, (3000 LBS AND OVER)	\$49.48	1T	5D	8P
FORK LIFTS, (UNDER 3000 LBS)	\$47.12	1T	5D	8P
GRADE ENGINEER	\$49.90	1T	5D	8P
GRADECHECKER AND STAKEMAN	\$47.12	1T	5D	8P
GUARDRAIL PUNCH	\$49.90	1T	5D	8P
HOISTS, OUTSIDE (ELEVATORS AND MANLIFTS), AIR TUGGERS	\$49.48	1T	5D	8P
HORIZONTAL/DIRECTIONAL DRILL LOCATOR	\$49.48	1T	5D	8P
HORIZONTAL/DIRECTIONAL DRILL OPERATOR	\$49.90	1T	5D	8P
HYDRALIFTS/BOOM TRUCKS (10 TON & UNDER)	\$47.12	1T	5D	8P

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HYDRALIFTS/BOOM TRUCKS (OVER 10 TON)	\$49.48	1T	5D	8P
LOADERS, OVERHEAD (6 YD UP TO 8 YD)	\$50.39	1T	5D	8P
LOADERS, OVERHEAD (8 YD & OVER)	\$50.94	1T	5D	8P
LOADERS, OVERHEAD (UNDER 6 YD), PLANT FEED	\$49.90	1T	5D	8P
LOCOMOTIVES, ALL	\$49.90	1T	5D	8P
MECHANICS, ALL	\$50.94	1T	5D	8P
MIXERS, ASPHALT PLANT	\$49.90	1T	5D	8P
MOTOR PATROL GRADER (FINISHING)	\$50.39	1T	5D	8P
MOTOR PATROL GRADER (NON-FINISHING)	\$49.48	1T	5D	8P
MUCKING MACHINE, MOLE, TUNNEL DRILL AND/OR SHIELD	\$50.39	1T	5D	8P
OIL DISTRIBUTORS, BLOWER DISTRIBUTION AND MULCH SEEDING OPERATOR	\$47.12	1T	5D	8P
PAVEMENT BREAKER	\$47.12	1T	5D	8P
PILEDRIIVER (OTHER THAN CRANE MOUNT)	\$49.90	1T	5D	8P
PLANT OILER (ASPHALT, CRUSHER)	\$49.48	1T	5D	8P
POSTHOLE DIGGER, MECHANICAL	\$47.12	1T	5D	8P
POWER PLANT	\$47.12	1T	5D	8P
PUMPS, WATER	\$47.12	1T	5D	8P
QUICK TOWER-NO CAB, UNDER 100 FEET IN HEIGHT BASED TO BOOM	\$47.12	1T	5D	8P
REMOTE CONTROL OPERATOR ON RUBBER TIRED EARTH MOVING EQUIP	\$50.39	1T	5D	8P
RIGGER AND BELLMAN	\$47.12	1T	5D	8P
ROLLAGON	\$50.39	1T	5D	8P
ROLLER, OTHER THAN PLANT ROAD MIX	\$47.12	1T	5D	8P
ROLLERS, PLANTMIX OR MULTILIFT MATERIALS	\$49.48	1T	5D	8P
ROTO-MILL, ROTO-GRINDER	\$49.90	1T	5D	8P
SAWS, CONCRETE	\$49.48	1T	5D	8P
SCRAPERS - SELF PROPELLED, HARD TAIL END DUMP, ARTICULATING OFF-ROAD EQUIPMENT (45 YD AND OVER)	\$50.39	1T	5D	8P
SCRAPERS, CONCRETE AND CARRY ALL	\$49.48	1T	5D	8P
SCRAPER-SELF PROPELLED, HARD-TAIL END DUMP, ARTICULATING OFF-ROAD EQUIPMENT (UNDER 45 YARDS)	\$49.90	1T	5D	8P
SHOTCRETE GUNITE	\$47.12	1T	5D	8P
SLIPFORM PAVERS	\$50.39	1T	5D	8P
SPREADER, TOPSIDER & SCREEDMAN	\$50.39	1T	5D	8P
SUBGRADE TRIMMER	\$49.90	1T	5D	8P
TOWER BUCKET ELEVATORS	\$49.48	1T	5D	8P
TRACTORS, (75 HP & UNDER)	\$49.48	1T	5D	8P
TRACTORS, (OVER 75 HP)	\$49.90	1T	5D	8P
TRANSFER MATERIAL SERVICE MACHINE	\$49.90	1T	5D	8P
TRANSPORTERS, ALL TRACK OR TRUCK TYPE	\$50.39	1T	5D	8P
TRENCHING MACHINES	\$49.48	1T	5D	8P
TRUCK CRANE OILER/DRIVER (UNDER 100 TON)	\$49.48	1T	5D	8P
TRUCK CRANE OILER/DRIVER (100 TON & OVER)	\$49.90	1T	5D	8P
TRUCK MOUNT PORTABLE CONVEYER	\$49.90	1T	5D	8P
WELDER	\$50.39	1T	5D	8P
WHEEL TRACTORS, FARMALL TYPE	\$47.12	1T	5D	8P
YO YO PAY DOZER	\$49.90	1T	5D	8P
POWER LINE CLEARANCE TREE TRIMMERS				
JOURNEY LEVEL IN CHARGE	\$40.79	4A	5A	
SPRAY PERSON	\$38.73	4A	5A	
TREE EQUIPMENT OPERATOR	\$39.25	4A	5A	
TREE TRIMMER	\$36.50	4A	5A	

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TREE TRIMMER GROUNDPERSON	\$27.55	4A	5A	
REFRIGERATION & AIR CONDITIONING MECHANICS				
MECHANIC	\$37.91	1		
RESIDENTIAL BRICK MASON				
JOURNEY LEVEL	\$46.35	1M	5A	
RESIDENTIAL CARPENTERS				
JOURNEY LEVEL	\$23.47	1		
RESIDENTIAL CEMENT MASONS				
JOURNEY LEVEL	\$22.64	1		
RESIDENTIAL DRYWALL TAPERS				
JOURNEY LEVEL	\$48.79	1E	5P	
RESIDENTIAL ELECTRICIANS				
JOURNEY LEVEL	\$26.24	1		
RESIDENTIAL GLAZIERS				
JOURNEY LEVEL	\$34.54	1H	5G	
RESIDENTIAL INSULATION APPLICATORS				
JOURNEY LEVEL	\$17.60	1		
RESIDENTIAL LABORERS				
JOURNEY LEVEL	\$23.03	1		
RESIDENTIAL MARBLE SETTERS				
JOURNEY LEVEL	\$24.09	1		
RESIDENTIAL PAINTERS				
JOURNEY LEVEL	\$24.46	1		
RESIDENTIAL PLUMBERS & PIPEFITTERS				
JOURNEY LEVEL	\$34.69	1		
RESIDENTIAL REFRIGERATION & AIR CONDITIONING MECHANICS				
JOURNEY LEVEL	\$62.56	1G	5A	
RESIDENTIAL SHEET METAL WORKERS				
JOURNEY LEVEL (FIELD OR SHOP)	\$35.25	1R	6L	
RESIDENTIAL SOFT FLOOR LAYERS				
JOURNEY LEVEL	\$39.19	2X	5A	
RESIDENTIAL SPRINKLER FITTERS (FIRE PROTECTION)				
JOURNEY LEVEL	\$36.81	2R	5C	
RESIDENTIAL STONE MASONS				
JOURNEY LEVEL	\$46.35	1M	5A	
RESIDENTIAL TERRAZZO WORKERS				
JOURNEY LEVEL	\$45.26	1M	5A	
RESIDENTIAL TERRAZZO/TILE FINISHERS				
JOURNEY LEVEL	\$21.46	1		
RESIDENTIAL TILE SETTERS				
JOURNEY LEVEL	\$25.17	1		
ROOFERS				
JOURNEY LEVEL	\$40.05	1R	5A	
USING IRRITABLE BITUMINOUS MATERIALS	\$43.05	1R	5A	
SHEET METAL WORKERS				
JOURNEY LEVEL (FIELD OR SHOP)	\$59.32	1E	6L	
SHIPBUILDING & SHIP REPAIR				
BOILERMAKER	\$32.56	1H	6W	
CARPENTER	\$33.59	1B	6X	
ELECTRICIAN	\$33.45	1B	6X	
HEAT & FROST INSULATOR	\$50.28	1S	5J	
LABORER	\$32.17	1B	6X	

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MACHINIST	\$33.28	1B	6X	
OPERATOR	\$35.61	1B	6X	
PAINTER	\$33.21	1B	6X	
PIPEFITTER	\$33.18	1B	6X	
RIGGER	\$33.17	1B	6X	
SANDBLASTER	\$32.16	1B	6X	
SHEET METAL	\$33.19	1B	6X	
SHIPFITTER	\$33.17	1B	6X	
TRUCKER	\$33.04	1B	6X	
WAREHOUSE	\$33.09	1B	6X	
WELDER/BURNER	\$33.17	1B	6X	
SIGN MAKERS & INSTALLERS (ELECTRICAL)				
SIGN INSTALLER	\$22.92	1		
SIGN MAKER	\$21.36	1		
SIGN MAKERS & INSTALLERS (NON-ELECTRICAL)				
SIGN INSTALLER	\$27.28	1		
SIGN MAKER	\$33.25	1		
SOFT FLOOR LAYERS				
JOURNEY LEVEL	\$39.19	2X	5A	
SOLAR CONTROLS FOR WINDOWS				
JOURNEY LEVEL	\$12.44	1	5S	
SPRINKLER FITTERS (FIRE PROTECTION)				
JOURNEY LEVEL	\$64.29	1X	5C	
STAGE RIGGING MECHANICS (NON STRUCTURAL)				
JOURNEY LEVEL	\$13.23	1		
STONE MASONS				
JOURNEY LEVEL	\$46.35	1M	5A	
STREET AND PARKING LOT SWEEPER WORKERS				
JOURNEY LEVEL	\$19.09	1		
SURVEYORS				
CHAIN PERSON	\$9.35	1		
INSTRUMENT PERSON	\$11.40	1		
PARTY CHIEF	\$13.40	1		
TELECOMMUNICATION TECHNICIANS				
TELECOMMUNICATION TECHNICIANS JOURNEY LEVEL	\$22.76	1		
TELEPHONE LINE CONSTRUCTION - OUTSIDE				
CABLE SPLICER	\$32.27	2B	5A	
HOLE DIGGER/GROUND PERSON	\$18.10	2B	5A	
INSTALLER (REPAIRER)	\$30.94	2B	5A	
JOURNEY LEVEL TELEPHONE LINEPERSON	\$30.02	2B	5A	
SPECIAL APPARATUS INSTALLER I	\$32.27	2B	5A	
SPECIAL APPARATUS INSTALLER II	\$31.62	2B	5A	
TELEPHONE EQUIPMENT OPERATOR (HEAVY)	\$32.27	2B	5A	
TELEPHONE EQUIPMENT OPERATOR (LIGHT)	\$30.02	2B	5A	
TELEVISION GROUND PERSON	\$17.18	2B	5A	
TELEVISION LINEPERSON/INSTALLER	\$22.73	2B	5A	
TELEVISION SYSTEM TECHNICIAN	\$27.09	2B	5A	
TELEVISION TECHNICIAN	\$24.35	2B	5A	
TREE TRIMMER	\$30.02	2B	5A	
TERRAZZO WORKERS				
JOURNEY LEVEL	\$45.26	1M	5A	

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(See Benefit Code Key)				
TILE SETTERS				
JOURNEY LEVEL	\$21.65	1		
TILE, MARBLE & TERRAZZO FINISHERS				
FINISHER	\$39.09	1B	5A	
TRAFFIC CONTROL STRIPERS				
JOURNEY LEVEL	\$38.90	1K	5A	
TRUCK DRIVERS				
ASPHALT MIX (TO 16 YARDS)	\$45.63	1T	5D	8L
ASPHALT MIX (OVER 16 YARDS)	\$46.47	1T	5D	8L
DUMP TRUCK	\$45.63	1T	5D	8L
DUMP TRUCK & TRAILER	\$46.47	1T	5D	8L
OTHER TRUCKS	\$46.47	1T	5D	8L
TRANSIT MIXER	\$23.45	1		
WELL DRILLERS & IRRIGATION PUMP INSTALLERS				
IRRIGATION PUMP INSTALLER	\$17.71	1		
OILER	\$12.97	1		
WELL DRILLER	\$18.00	1		

1 **APPENDIX 6**

2 **Requirements for Nondiscrimination**

3 **1. General Application**

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

7 **1.1 Contractual Requirements**

8 During the performance of this Contract, Design-Builder, for itself and its assignees and
9 successors in interest (hereinafter referred to as "Design-Builder") agrees as follows:

10 (a) Design-Builder shall comply with all applicable nondiscrimination laws and
11 regulations, including but not limited to Title VI of the Civil Rights Act of 1964, as
12 amended; the Americans with Disabilities Act; and 49 Code of Federal Regulations,
13 Part 21;

14 (b) Design-Builder shall state, in all solicitations or advertisements for employees, that
15 all qualified applicants will be considered for employment, without regard to race,
16 color, national origin, sex, age, or disability;

17 (c) Design-Builder shall insert the following notification in all solicitations for bids for
18 work or material and all proposals for negotiated agreements:

19 "Design-Builder in accordance to Title VI of the Civil Rights Act of 1964, 78
20 Stat.252, 42 U.S. Code 2000d to 2000d-4, and Title 49 Code of Federal
21 Regulations, Part 21, hereby notifies all bidders that it will affirmatively ensure
22 that in any contract entered into pursuant to this advertisement, Disadvantaged
23 Business Enterprises will be afforded full opportunity to submit bids in response
24 to this invitation and will not be discriminated against on the grounds of race,
25 color national origin and sex in consideration for an award."

26 (d) Design-Builder shall not discriminate on the grounds of race, color, sex, or national
27 origin in the selection and retention of Subcontractors, including procurement of
28 materials and leases of equipment. Design-Builder shall not participate either
29 directly or indirectly in discrimination prohibited by law;

30 (e) Design-Builder shall send to each labor union, employment agency, or
31 representative of workers with which Design-Builder has a collective bargaining
32 agreement or other contract or understanding, a notice advising the labor union,
33 employment agency or worker's representative, of Design-Builder's commitments
34 under this Contract with regard to nondiscrimination;

35 (f) Design-Builder shall provide all information and reports required by the Regulations
36 or directives issued pursuant thereto, and shall permit access to its books, records,
37 accounts, other sources of information and its facilities as may be determined by
38 WSDOT or the Federal Highway Administration to ascertain compliance with such
39 Regulations, orders and instructions. Where any information required of Design-

1 Builder is in the exclusive possession of another who fails or refuses to furnish this
2 information, Design-Builder shall so certify to WSDOT or the Federal Highway
3 Administration as appropriate, and shall set forth what efforts it has made to obtain
4 the information;

- 5 (g) Design-Builder shall ensure that the following assurance is inserted in all
6 contracts/subcontracts:

7 "The contractor/subcontractor shall not discriminate on the basis of race, color,
8 national origin, or sex in the performance of this contract. The
9 contractor/subcontractor shall carry out applicable requirements of 49 CFR Part
10 26 in the award and administration of USDOT-assisted contracts. Failure by the
11 contractor/subcontractor to carry out these requirements is a material breach of
12 this contract, which may result in the termination of this contract or such other
13 remedy as deemed appropriate."

14 **2. Disadvantaged Business Enterprise Participation Requirements for Design-Build**
15 **Contracts**

16 The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to this
17 contract. A DBE Performance Plan showing how Design-Builder shall achieve DBE participation is
18 required.

19 **2.1 DBE Eligibility**

20 **Selection of DBEs**

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

29 **Counting DBE Participation Toward Meeting the Overall Design-Build contract Goal**

30 When a DBE firm participates in the Design-Build contract, only the value of the work actually
31 performed by the DBE will be counted towards the DBE goal.

- 32 (a) Count the entire amount of the portion of the contract that is performed by the
33 DBE's own forces. Include the cost of supplies and materials obtained by the DBE
34 for the work of the contract, including supplies purchased or equipment leased by
35 the DBE (except supplies, materials and equipment the DBE Subcontractor
36 purchases or leases from Design-Builder or its affiliates, unless Design-Builder is
37 also a DBE). Work performed by a DBE, utilizing resources of Design-Builder or its
38 affiliates will not be counted toward DBE goals. In very rare situations, a DBE firm
39 may utilize equipment and/or personnel from a non-DBE firm other than Design-
40 Builder or its affiliates. Should this situation arise, the arrangement must be short-

- 1 term and must have prior written approval from WSDOT. The arrangement must
2 not erode a DBE firm's ability to perform a Commercially Useful Function (CUF).
- 3 (b) Count the entire amount of fees or commissions charged by a DBE firm for
4 providing a bona fide service, such as professional, technical, consultant, or
5 managerial services, or for providing bonds or insurance.
- 6 (c) When a DBE subcontracts part of the work of its contract to another firm, the value
7 of the subcontracted work may be counted toward the DBE goal only if the DBE's
8 lower tier Subcontractor is also a DBE. Work that a DBE subcontracts to a non-
9 DBE firm does not count toward the DBE goal.
- 10 (d) When a non-DBE subcontractor further subcontracts to a lower-tier subcontractor or
11 supplier who is a certified DBE, then that portion of the work further subcontracted
12 may be counted toward the DBE goal, so long as it is a distinct clearly defined
13 portion of the work of the subcontract and that the DBE is performing a
14 commercially useful function with its own forces.
- 15 (e) Continue to count the work subcontracted to a decertified DBE after decertification,
16 provided Design-Builder had a subcontract in force before the decertification and
17 Design-Builder's actions did not influence the DBE's decertification.

18 **2.2 DBE Design-Builder**

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

29 **2.3 Joint Venture**

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

1 **3. Commercially Useful Function (CUF)**

2 Payments to a DBE will count toward DBE goals only if the DBE is performing a commercially
3 useful function under the Contract. WSDOT will conduct on-site reviews to ascertain CUF
4 performance.

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

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

15 **4. Trucking**

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

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

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

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

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

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

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

- 1 (g) The DBE can not lease trucks from Design-Builder or its affiliates.
- 2 (h) In any lease or owner-operator situation, as described in paragraphs (e) and (f)
- 3 above, the following rules shall apply:
- 4 • A written lease/rental agreement on all trucks leased or rented,
 - 5 showing the true ownership and the terms of the rental must be
 - 6 submitted and approved by WSDOT prior to the beginning of the
 - 7 work. The agreement must show the lessor's name, trucks to be
 - 8 leased, and agreed upon amount or method of payment (hour, ton,
 - 9 or per load). All lease agreements shall be for a long-term
 - 10 relationship, rather than for the individual project. Does not apply to
 - 11 owner-operator arrangements.
 - 12 • Only the vehicle, (not the operator) is leased or rented. Does not
 - 13 apply to owner-operator arrangements.
- 14 (i) In order for DBE project goals to be credited, DBE trucking firms must be covered
- 15 by a subcontract or a written agreement approved by WSDOT prior to performing
- 16 their portion of the work.

17 **5. Expenditures paid to other DBEs**

18 Expenditures paid to other DBEs for materials or supplies may be counted toward DBE goals as

19 provided below

20 **5.1 Manufacturer**

- 21 (a) Counting - If the materials or supplies are obtained from a DBE manufacturer, count
- 22 100 percent of the cost of the materials or supplies toward DBE goals.
- 23 (b) Definition - To be a manufacturer, the firm operates or maintains a factory or
- 24 establishment that produces, on the premises, the materials, supplies, articles, or
- 25 equipment required under the contract and of the general character described by
- 26 the specifications.
- 27 (c) In order to receive credit as a DBE manufacturer, the firm must have received an
- 28 "on-site" review and been approved by WSDOT-OEO to operate as a DBE
- 29 manufacturing firm 30 calendar days prior to obtaining materials or supplies. Use of
- 30 a DBE manufacturer that has not received an on-site review and approval by
- 31 WSDOT-OEO prior to obtaining materials or supplies will not be counted toward the
- 32 overall contract goal. To schedule a review, the manufacturing firm must submit a
- 33 written request to WSDOT-OEO and may not receive credit towards DBE
- 34 participation until the completion of the review. Once a firm's manufacturing
- 35 process has been approved in writing, it is not necessary to resubmit the firm for
- 36 approval unless the manufacturing process has substantially changed. Information
- 37 on approved manufacturers (per contract) may be obtained from WSDOT-OEO.

38 **5.2 Regular Dealer**

- 39 (a) Counting - If the materials or supplies are purchased from a DBE regular dealer, 60
- 40 percent of the cost of the materials or supplies will count toward DBE goals.

1 (b) Definition

- 2 • To be a regular dealer, the firm must own, operate or maintain a
3 store, warehouse, or other establishment in which the materials,
4 supplies, articles or equipment of the general character described by
5 the specifications and required under the contract are bought, kept in
6 stock, and regularly sold or leased to the public in the usual course
7 of business. It must also be an established, regular business that
8 engages, as its principal business and under its own name, in the
9 purchase and sale or lease of the products in question.
- 10 • A person may be a regular dealer in such bulk items as petroleum
11 products, steel, cement, gravel, stone, or asphalt without owning,
12 operating, or maintaining a place of business, as provided elsewhere
13 in this specification, if the person both owns and operates distribution
14 equipment for the products. Any supplementing of regular dealers'
15 own distribution equipment shall be by a long-term lease agreement
16 and not on an ad hoc or contract-by-contract basis.
- 17 • Packagers, brokers, manufacturers' representatives, or other
18 persons who arrange or expedite transactions are not regular
19 dealers.

20 (c) Regular dealer status is granted on a contract-by-contract basis. To obtain regular
21 dealer status, a formal written request must be made by the interested supplier
22 (potential regular dealer) to WSDOT/OEO. OEO must be in receipt of this request
23 at least 30 calendar days prior to obtaining materials or supplies. Included in the
24 request shall be a full description of the project, type of business operated by the
25 DBE, and the manner the DBE will operate as a regular dealer on the specific
26 contract. Rules applicable to regular dealer status are contained in 49 CFR Part
27 26.55.e.2. Once the request is reviewed by WSDOT-OEO, the DBE supplier
28 requesting it will be notified in writing whether regular dealer status was approved.
29 DBEs that are approved as regular dealers for a contract (whenever possible) will
30 be listed on the WSDOT Internet Homepage at: www.wsdot.wa.gov/biz/contaa/.
31 Confirmation of the DBE supplier's approval to operate as a regular dealer on a
32 specific contract may be obtained by writing the Office of Equal Opportunity,
33 Washington State Department of Transportation, P.O. Box 47314, Olympia, WA
34 98504-7314 or by phone at (360) 705-7085. Use of a supplier that has not received
35 approval as a regular dealer prior to obtaining materials or supplies will not be
36 counted toward the overall contract goal.

37 **6. Materials or Supplies Purchased from a DBE**

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

1 **7. Procedures after Execution**

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

4 As described in the Instructions to Proposers, each proposer for a WSDOT design-build contract
5 will be required to submit a DBE Performance Plan as part of a responsive proposal. Following
6 award of the Contract and during both the design and construction portions of the Project, Design-
7 Builder will be required to submit documentation, in the form of progress reports described
8 Section 9 of this Appendix 6 to show that Design-Builder is meeting the DBE goal for the Project,
9 or if the DBE goal is not being met, Design-Builder must submit satisfactory evidence that it has
10 made good faith efforts, in accordance with that Section 15 of this Appendix 6, to meet the goal.
11 Evidence of good faith efforts, as described in 49 CFR Part 26 Section 26.53, will be monitored by
12 WSDOT throughout the duration of the design-build project.

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

- 15 (a) Information for all utilized DBE's (Using the DBE Utilization Certification form, DOT
16 Form 272-056 EF):
- 17 • Correct business name, federal employee identification number (if
18 available), and mailing address.
 - 19 • List of all items and types of work assigned to each utilized DBE ,
20 including prices and/or amounts paid.
 - 21 • Description of partial items and types of work (if any) to be sublet to
22 each successful DBE specifying the distinct elements of work under
23 each item to be performed by the DBE and including the dollar value
24 of the DBE portion.
- 25 (b) As it occurs, names of DBEs that submit a bid or quote in an attempt to participate
26 in the Project whether they were successful or not. Include the correct business
27 name, federal employer identification number (optional) and a mailing address. The
28 firms identified by Design-Builder may be contacted by WSDOT to solicit general
29 information as follows:
- 30 • Age of the firm
 - 31 • Average of its gross annual receipts over the past three years

32 **8. Substitutions**

33 **8.1 De-Certification of Existing DBE**

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

1 **8.2 Miscellaneous**

2 If a DBE graduates from the DBE program during its performance of Work under the Contract, the
3 DBE is allowed to complete its Work and all Work performed by the DBE is counted toward the
4 goal.

5 **8.3 Damages for Noncompliance**

6 WSDOT may incur damages if Design-Builder violates the DBE provisions under the Contract.
7 These damages consist of additional administrative costs including, but not limited to, the
8 inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for
9 investigating, reporting, and correcting violations as well as loss of federal funding. Pursuant to
10 Section 10.3 of the Contract, damages attributable to Design Builder's violations of the DBE
11 provisions may be deducted from progress payments due to the design-builder or from retainage
12 withheld by WSDOT as allowed by RCW 60.28.021. Before any money is withheld, Design-
13 Builder will be provided with a notice of the basis of the violations and an opportunity to respond.

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

18 **8.4 Required Disadvantaged Business Enterprise Provisions**

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

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

37 **9. Reporting**

38 Design-Builder shall provide monthly DBE Progress Reports to WSDOT and shall also provide an
39 annual report on or before July 1 of each year. Each report shall also include a narrative and
40 payment summary stating whether Design-Builder is on target with respect to the established
41 schedule for DBE participation, whether the goal is being exceeded (stating the amount of

1 excess), or whether the goal is behind the target (stating the amount of the deficit), and what
2 adjustments are being made to accomplish the plan.

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

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

13 **10. Equal Employment Opportunity (EEO)**

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

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

21 Design-Builder shall officially designate and make known to the WSDOT Engineer during the
22 preconstruction meetings and discussions the firm's Equal Employment Opportunity Officer
23 (hereinafter referred to as the EEO Officer). The EEO Officer will also be responsible for making
24 him/herself known to each of Design-Builder's employees. The EEO Officer must possess the
25 responsibility, authority, and capability for administering and promoting an active and effective
26 program of equal employment opportunity.

27 Design-Builder shall maintain records with the name and address of each minority/female worker
28 referred to Design-Builder and what action was taken with respect to the referred worker.

29 Design-Builder shall notify WSDOT whenever the union with which Design-Builder has a collective
30 bargaining agreement has impeded Design-Builder's efforts to effect minority/female workforce
31 utilization. This being the case, Design-Builder shall show what relief it has sought under such
32 collective bargaining agreements.

33 **11. Dissemination of Policy**

34 **11.1 Supervisory Personnel**

35 All members of Design-Builder's staff who are authorized to hire, supervise, promote, and
36 discharge employees, or who recommend such action, or who are substantially involved in such
37 action, shall be made fully cognizant of, and shall implement Design-Builder's equal employment
38 opportunity policy and contractual responsibilities to provide equal employment opportunity in each
39 grade and classification of employment. To ensure that the above agreement will be met, the
40 following actions shall be taken as a minimum:

1 (a) **EEO Meetings** - Periodic meetings of supervisory and personnel office employees
2 shall be conducted before the start of work and then not less often than once every
3 6 months, at which time Design-Builder's equal employment opportunity policy and
4 its implementation shall be reviewed and explained. The meetings shall be
5 conducted by the EEO Officer or other knowledgeable company official;

6 (b) **EEO Indoctrination** - All new supervisory or personnel office employees shall be
7 given a thorough indoctrination by the EEO Officer or other knowledgeable
8 company official covering all major aspects of Design-Builder's equal employment
9 opportunity obligations within 30 days following their reporting for duty with Design-
10 Builder; and

11 (c) **Internal EEO Procedures** - All personnel who are engaged in direct recruitment for
12 the Project shall be instructed by the EEO Officer or appropriate company official in
13 Design-Builder's procedures for locating and hiring minority group and female
14 employees.

15 **11.2 Employees, Applicants, and Potential Employees**

16 In order to make Design-Builder's equal employment opportunity policy known to all employees,
17 prospective employees, and potential sources of employees, e.g., schools, employment agencies,
18 labor unions (where appropriate), college placement officers, community organizations, etc.,
19 Design-Builder shall take the following actions:

20 (a) **Notices and Posters** - Notices and posters setting forth Design-Builder's equal
21 employment opportunity policy shall be placed in areas readily accessible to
22 employees, applicants for employment, and potential employees; and

23 (b) **EEO Indoctrination** - Design-Builder's equal employment opportunity policy and
24 the procedures to implement such policy shall be brought to the attention of
25 employees by means of meetings, employee handbooks, or other appropriate
26 means.

27 **12. Special Training Provisions**

28 **12.1 General Requirements**

29 Design-Builder's equal employment opportunity, affirmative action program shall include the
30 requirements set forth below. The Contractor shall provide on-the-job training aimed at developing
31 trainees to journeyman status in the trades involved. The number of training hours shall be
32 50,000. Design-Builder may elect to accomplish training as part of the work of a subcontractor,
33 however, Design-Builder shall retain the responsibility for complying with these General Provisions.
34 Design-Builder shall also ensure that this training provision is made applicable to any subcontract
35 that includes training.

36 **12.2 Trainee Approval**

37 The Federal government requires WSDOT to include these training provisions as a condition
38 attached to the receipt of Federal highway funding. The Federal government has determined that
39 the training and promotion of members of certain minority groups and women is a primary
40 objective of this training provision. Design-Builder shall make every effort to enroll minority groups
41 and women trainees to the extent such persons are available within a reasonable recruitment area.

1 This training provision is not intended and shall not be used to discriminate against any applicant
2 for training, whether that person is a minority, woman or otherwise. A non-minority male trainee or
3 apprentice may be approved provided the following requirements are met:

4 (a) Design-Builder is otherwise in compliance with the contract's Equal Employment
5 Opportunity and On-the-Job Training requirements and provides documentation of
6 the efforts taken to fill the specific training position with either minorities or females;

7 (b) Or, if not otherwise in compliance, furnishes evidence of his/her systematic and
8 direct recruitment efforts in regard to the position in question and in promoting the
9 enrollment and/or employment of minorities and females in the craft which the
10 proposed trainee is to be trained;

11 (c) And Design-Builder has made a good faith effort towards recruiting of minorities
12 and women. As a minimum this good faith effort shall consist of the following:

13 (1) Distribution of written notices of available employment opportunities with
14 Design-Builder and enrollment opportunities with its unions. Distribution
15 should include but not be limited to; minority and female recruitment sources
16 and minority and female community organizations;

17 (2) Records documenting Design-Builder's efforts and the outcome of those
18 efforts, to employ minority and female applicants and/or refer them to
19 unions;

20 (3) Records reflecting Design-Builder's efforts in participating in developing
21 minority and female on-the-job training opportunities, including upgrading
22 programs and apprenticeship opportunities;

23 (4) Distribution of written notices to unions and training programs disseminating
24 Design-Builder's EEO policy and requesting cooperation in achieving EEO
25 and OJT obligations.

26 No employee shall be employed as a trainee in any classification in which the employee has
27 successfully completed a training course leading to journeyman status or in which the employee
28 has been employed as a journeyman. Design-Builder's records shall document the methods for
29 determining the trainee's status and findings in each case. When feasible, 25 percent of
30 apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

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

33 (a) Washington State Department of Labor & Industries — State Apprenticeship
34 Training Council (SATC) approved apprenticeship agreement:

35 (1) Pursuant to RCW 49.04.060, an apprenticeship agreement shall be;

36 i. an individual written agreement between an employer and apprentice

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

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

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

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

8 Or

- 9 (c) Trainees participating in a non-BAT/SATC program, which has been approved by
10 the contracting agency for the specific project.

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

14 **12.3 Obligation to Provide Information**

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

19 **12.4 Training Program Approval**

20 The Training Program shall meet the following requirements:

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

- 24 (b) The minimum length and type of training for each classification will be as
25 established in the training program as approved by WSDOT.

- 26 (c) The Training Program shall contain the trades proposed for training, the number of
27 trainees, the hours assigned to the trade and the estimated beginning work date for
28 each trainee.

- 29 (d) Unless otherwise specified, Training Programs will be approved if the proposed
30 number of training hours equals the training hours required by contract.

- 31 (e) After approval of the training program, information concerning each individual
32 trainee and good faith effort documentation shall be submitted on (DOT Form 272-
33 050).

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

- 1 (g) Flagging programs will not be approved. Other programs that include flagging
2 training will only be approved if the flagging portion is limited to an orientation of not
3 more than 20 hours.
- 4 (h) It is the intention of these provisions that training is to be provided in the
5 construction crafts rather than clerk-typists or secretarial-type positions. Training is
6 permissible in lower level management positions such as office engineers,
7 estimators, timekeepers, etc., where the training is oriented toward construction
8 applications. Some off-site training is permissible as long as the training is an
9 integral part of an approved training program.
- 10 (i) It is normally expected that a trainee will begin training on the project as soon as
11 feasible after start of work, utilizing the skill involved and remain on the project as
12 long as training opportunities exist in the work classification or upon completion of
13 the training program. It is not required that all trainees be on board for the entire
14 length of the contract. The number trained shall be determined on the basis of the
15 total number enrolled on the contract for a significant period.
- 16 (j) Wage Progressions: Trainees will be paid at least the applicable ratios or wage
17 progressions shown in the apprenticeship standards published by the Washington
18 State Department of Labor and Industries. In the event that no training program
19 has been established by the Department of Labor and Industries, the trainee shall
20 be paid in accordance with the provisions of RCW 39.12.021 which reads as
21 follows:
- 22 Apprentice workmen employed upon public works projects
23 for whom an apprenticeship agreement has been
24 registered and approved with the State Apprenticeship
25 Council pursuant to RCW 49.04, must be paid at least the
26 prevailing hourly rate for an apprentice of that trade. Any
27 workman for whom an apprenticeship agreement has not
28 been registered and approved by the State Apprenticeship
29 Council shall be considered to be a fully qualified
30 journeyman, and, therefore, shall be paid at the prevailing
31 hourly rate for journeymen.

32 **12.5 Compliance**

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

36 **12.6 Requirements for Non BAT/SATC Approved Training Programs**

37 Design-Builders who are not affiliated with a program approved by BAT or SATC may have their
38 training program approved provided that the program is submitted for approval on DOT Form 272-
39 049, and the following standards are addressed and incorporated in Design-Builder's program:

- 40 (a) The program establishes minimum qualifications for persons entering the training
41 program.

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

5 (c) The program shall include a numeric ratio of trainees to journeymen consistent with
6 proper supervision, training, safety, and continuity of employment. The ratio
7 language shall be specific and clear as to application in terms of job site and
8 workforce during normal operations (normally considered to fall between 1:10 and
9 1:4).

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

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

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22 (e) The method to be used for recording and reporting the training completed shall be
23 stated.

24 **13. Sanctions**

25 In the event that Design-Builder is found in noncompliance with the provisions of Contract Section
26 8.1 or 8.2, or the non-discrimination provisions of Appendix 5-C, WSDOT may impose such
27 sanctions as it or the Federal Highway Administration may determine necessary to gain
28 compliance including, but not limited to:

29 (a) Progress payment requests may not be honored until the noncompliance is
30 remedied to the satisfaction of WSDOT;

31 (b) The Contract may be suspended, in whole or in part, until such time as Design-
32 Builder is determined to be in compliance by WSDOT;

33 (c) Design-Builder's pre-qualification may be suspended or revoked pursuant to
34 WAC 468-16. WSDOT may refer the matter to the Federal Highway Administration
35 (FHWA) for possible federal sanctions; and/or

1 (d) The Contract may be terminated.

2 **14. Incorporation of Provisions**

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

6 Design-Builder shall include the provisions of Contract Sections 8.1 and 8.2, and the non-
7 discrimination provisions of Appendix 5-C, in every contract/subcontract including procurement of
8 materials and leases of equipment. Design-Builder shall take such action or enforce sanctions
9 with respect to a Subcontractor or supplier as WSDOT or the FHWA may direct as a means of
10 enforcing such provisions. In the event Design-Builder becomes involved in litigation with a
11 Subcontractor or supplier as a result of such direction, Design-Builder may request WSDOT enter
12 into such litigation to protect their interests and WSDOT may request the federal government to
13 enter into such litigation to protect the interests of the United States.

14 **15. Records and Reports**

15 **15.1 General**

16 Design-Builder shall keep such records as are necessary to determine compliance with Design-
17 Builder's equal employment opportunity obligations. The records kept by Design-Builder shall be
18 designated to indicate:

- 19 (a) Work Force Data - The number of minority and non-minority group members and
20 women employed in each work classification on the Project;
- 21 (b) Good Faith Efforts - Unions - The progress and efforts being made in cooperation
22 with unions to increase employment opportunities for minorities and women
23 (applicable only to Design-Builder who relies in whole or in part on unions as a
24 source of their work force);
- 25 (c) Good Faith Efforts - Recruitment - The progress and efforts being made in locating,
26 hiring, training, qualifying, and upgrading minority and female employees; and
- 27 (d) Subcontracting - The progress and efforts being made in securing the services of
28 disadvantaged, minority, and women Subcontractors or Subcontractors with
29 meaningful minority and female representation among their employees.

30 **15.2 Required Records and Retention**

31 All records must be retained by Design-Builder for a period of three years following Final
32 Acceptance. All records shall be available at reasonable times and places for inspection by
33 authorized representatives of either WSDOT or the Federal Highway Administration.

- 34 (a) **Federal-Aid Highway Construction Design-Builders Annual EEO Report**
35 **(FHWA #1391)** - This form is required for all federally assisted projects provided the
36 contract is equal to or greater than \$10,000 and for every associated subcontract
37 equal to or greater than \$10,000. Each contract requires separate reports filed for
38 Design-Builder and each Subcontractor (subject to the above noted criteria). These

1 forms are due by August 25th in every year during which work was performed in
2 July. The payroll period to be reflected in the report is the last payroll period in July
3 in which work was performed. This report is required of each Design-Builder and
4 Subcontractor for each federally assisted contract on which Design-Builder or
5 Subcontractor performs work during the month of July.

6 (b) **Monthly Employment Utilization Reports (WSDOT Form #820-010)** - This form
7 (or substitute form as approved by WSDOT) is required for all federally assisted
8 programs if the contract is equal to or greater than \$10,000 and for every
9 associated subcontract equal to or greater than \$10,000. These monthly reports
10 are to be maintained in the respective Design-Builder's or subcontractor's records.
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APPENDIX 7

Key Personnel

[to be inserted prior to execution]

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APPENDIX 8

Invoice and Certificate

INVOICE

Contract for SR 99 Bored Tunnel Alternative Design-Build Project

INVOICE NO.: _____ Date: _____
Washington Department of Transportation Name of Design-Builder: _____
("WSDOT")
[to be inserted] FEIN: _____
Attn: _____ Address: _____
City / State / Zip: _____
Contact Name: _____
Contractor Project No: _____

Invoices for services rendered for a period from _____ to _____

Contract Price	\$ _____
Less cumulative amount invoiced to date, including this period	< _____ >
Balance of Contract Price not invoiced	\$ _____
Cumulative amount invoiced	\$ _____
Less cumulative amount as of prior month	< _____ >
Current amount invoiced	\$ _____
Less current retainage	< _____ >
Current amount due	\$ _____
Physical weighted percent progress complete with this invoice	_____ %

The following are submitted with this Invoice and incorporated herein by reference

<u>Exhibit</u>	<u>Title</u>	<u>Contract Reference</u>
[Insert list of supporting documentation]		

1 **CONSTRUCTION CERTIFICATE**

2 As a condition precedent for the Washington Department of Transportation ("WSDOT") to make
3 payment as requested by the foregoing Invoice, the undersigned Design-Builder hereby
4 certifies, as follows:

5 1. Unless otherwise indicated, capitalized terms used herein shall have the meanings set
6 forth in that certain Design-Build Contract No. _____ between Design-Builder and WSDOT
7 (the "Contract").

8 2. The Work described in the exhibits attached hereto has been fully performed in a
9 prudent manner and in compliance with the requirements of the Contract Documents; all
10 necessary materials to perform such Work have been provided in accordance with the
11 provisions of the Contract Documents; and the information contained in such exhibits is true,
12 complete and correct in all material respects.

13 3. No Event of Default or event which with the giving of notice or the lapse of time would
14 result in an Event of Default has occurred and is continuing as of the date hereof.

15 4. Design-Builder has delivered all documents and submittals required under the terms of
16 the Contract Documents to be delivered on or prior to the date hereof, including but not limited
17 to the data required under Section 11.6 of the Contract.

[Design-Builder]

By: _____

Name: _____

Title: _____

Date: _____, 201_

18

19 cc: Project Manager

QUALITY ASSURANCE / QUALITY CONTROL COMPLIANCE CERTIFICATE

As a condition precedent for the Washington Department of Transportation (“WSDOT”) to make payment as requested by the foregoing Invoice, each of the undersigned hereby certifies as follows:

(a.) All engineering and design Work which is the subject of the invoice has been checked and inspected by the design quality assurance/quality control team in accordance with the Design-Builder’s Quality Management Plan;

(b.) All Work other than engineering and design, including that of Subcontractors, suppliers and fabricators, which is the subject of the invoice has been checked, verified, certified and/or inspected by the construction quality assurance/quality control team in accordance with the Quality Management Plan;

(c.) All Work which is the subject of the invoice fully conforms to the requirements of the Contract Documents, subject to the following exceptions:

_____;

and

(d.) The Quality Management Plan and all of the measures and procedures provided therein are functioning properly and are being followed in all respects, subject to the following exceptions:

Certificate to be signed and sealed by each of the quality assurance managers responsible for quality assurance for design and construction work included in the invoice.

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APPENDIX 9

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APPENDIX 10

Contract Bonds

Appendix 10-A Payment Bond
Appendix 10-B Performance Bond

Appendix 10-A

Payment Bond

[PROJECT TITLE]

[CONTRACT NO. _____]

KNOW ALL MEN BY THESE PRESENTS, That the Washington State Department of Transportation, an agency of the State of Washington ("WSDOT"), and **[Name of Design-Builder]** ("Design-Builder"), have entered into a Design-Build Contract ("the "Contract") dated _____, 20__ for the SR 99 Tunnel Design-Builder Project (the "Project").

By virtue of this Payment Bond (the "Bond"), the Design-Builder as Principal (the "Principal") and **[Name of Surety]**, a corporation duly organized under the laws of the State of _____ and authorized to do business in the State of Washington, and **[Name of Surety]**, a corporation duly organized under the laws of the State of _____¹ and authorized to do business in the State of Washington (collectively "Co-Sureties"), are jointly and severally held and firmly bound unto WSDOT, as Obligee, in the penal sum of _____ (\$_____), lawful money of the United States of America, for the payment of which sum we jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

The condition of this Bond is such that:

WHEREAS, the Contract is incorporated by reference into this Bond; and all capitalized terms used but not defined herein to be as defined in the Contract (as applicable); and

WHEREAS, by the terms, conditions and provisions of the Contract, the Principal agreed to: (i) provide all design, labor, furnish all tools, materials and equipment for the Contract Work; (ii) pay all laborers, mechanics, subcontractors, agents and material men and all persons who shall supply the Principal with services, provisions and supplies for carrying out the Contract Work; and (iii) perform such other work as may be required by the specifications, drawings and other Contract Documents; and

WHEREAS, this Bond shall cover all of the Contract Work, including Contract Work ordered pursuant to Change Orders.

WHEREAS, the Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The Co-Sureties also agree to designate a single agent for service of process with respect to any actions on this Bond, which agent shall either be (a) a natural person or (b) a corporation qualified to act as an agent for service of process under Washington law. The designated representative and agent for service of process may be changed only by delivery of written

¹ Insert names of all Co-Sureties and information regarding incorporation of each entity prior to execution.

1 notice (by personal delivery or by certified mail, return receipt requested) to Owner designating
2 a single new representative and/or agent, signed by all of the Co-Sureties. The initial
3 representative shall be _____, and
4 the initial agent for service of process shall be _____
5 _____.

6 **NOW, THEREFORE**, if the Principal herein shall pay all laborers, mechanics,
7 subcontractors, agents and material men, all persons who shall supply the Principal with
8 services, provisions and supplies for carrying out the Contract Work, and all persons who shall
9 supply such person or persons or subcontractor with provisions or supplies for carrying out the
10 Contract Work, or anyone else permitted to claim under RCW 39.08 for all labor, material and
11 equipment used or reasonably required for use in the performance of the Contract, all of which
12 claimants shall have a direct right of action against this Bond, then this obligation to be void,
13 otherwise to remain in full force and effect.

14 Signed this _____ day of _____, 20__.

15 _____
16 **PRINCIPAL (Design-Builder)**

17 BY: _____

18 TITLE: _____

19 ADDRESS: _____

20 _____

21 _____
22 **SURETY**

23 BY: _____

24 TITLE: _____

25 ADDRESS: _____

26 _____

27 ***[Insert additional signature blocks for Co-Sureties as necessary]***

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Appendix 10-B

Performance Bond

[PROJECT TITLE]

[CONTRACT NO. _____]

KNOW ALL MEN BY THESE PRESENTS, That the Washington State Department of Transportation, an agency of the State of Washington ("WSDOT"), and **[Name of Design-Builder]** ("Design-Builder"), have entered into a Design-Build Contract ("the "Contract") dated _____, 20__ for the SR 99 Tunnel Design-Builder Project (the "Project").

By virtue of this Performance Bond (the "Bond"), the Design-Builder as Principal (the "Principal") and **[Name of Surety]**, a corporation duly organized under the laws of the State of _____ and authorized to do business in the State of Washington, and **[Name of Surety]**, a corporation duly organized under the laws of the State of _____² and authorized to do business in the State of Washington (collectively, "Co-Sureties"), are jointly and severally held and firmly bound unto WSDOT, as Obligee, in the penal sum of _____ (**\$**_____), lawful money of the United States of America, for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

The condition of this Bond is such that:

WHEREAS, the Contract is incorporated by reference into this Bond; and all capitalized terms used but not defined herein to be as defined in the Contract (as applicable); and

WHEREAS, by the terms, conditions and provisions of the Contract, the Principal agreed to: (i) provide all design, labor, furnish all tools, materials and equipment for the Contract Work; (ii) pay all laborers, mechanics, subcontractors, agents and material men and all person who shall supply the Principal with services, provisions and supplies for carrying out the Contract Work; and (iii) perform such other work as may be required by the specifications, drawings and other Contract Documents; and

WHEREAS, this Bond shall cover all of the Contract Work, including Contract Work ordered pursuant to Change Orders.

WHEREAS, the Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The Co-Sureties also agree to designate a single agent for service of process with respect to any actions on this Bond, which agent shall either be (a) a natural person or (b) a corporation qualified to act as an agent for service of process under Washington law. The designated

² Insert names of all Co-Sureties and information regarding incorporation of each entity prior to execution.

1 representative and agent for service of process may be changed only by delivery of written
2 notice (by personal delivery or by certified mail, return receipt requested) to Owner designating
3 a single new representative and/or agent, signed by all of the Co-Sureties. The initial
4 representative shall be _____, and
5 the initial agent for service of process shall be _____
6 _____.

7 **NOW, THEREFORE**, if the Principal herein shall fully and faithfully observe and comply
8 with all the terms, conditions and provisions of the Contract in all respects and shall fully and
9 faithfully perform the Contract Work, including but not limited to the work to be performed by
10 Principal respecting the Project prior to the date of this Bond and warranty obligations,
11 according to law and the terms of the Contract Documents, and shall indemnify the State of
12 Washington and WSDOT against any damages that shall be suffered or claimed arising out of
13 the Principal's performance of the Contract, then this obligation to be void, otherwise to remain
14 in full force and effect.

15 Signed this _____ day of _____, 20__.

16 _____
17 **PRINCIPAL (Design-Builder)**

18 BY: _____

19 TITLE: _____

20 ADDRESS: _____

21 _____

22 _____
23 **SURETY**

24 BY: _____

25 TITLE: _____

26 ADDRESS: _____

27 _____

28 ***[Insert additional signature blocks for Co-Sureties as necessary]***

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1 **APPENDIX 11**

2 **Dispute Review Board**

3 **Scope of Work**

4 The Scope of Work of a Disputes Review Board (DRB) includes the following items of work:

5 DRB Consideration of Disputes or Claims: Upon request by either WSDOT or Design-Builder to
6 review a dispute, the DRB shall convene to review and consider the issue. Both WSDOT and
7 Design-Builder shall be given the opportunity to present their evidence at these meetings. The
8 time and location of DRB meetings shall be determined by WSDOT, Design-Builder, and the DRB.
9 It is expressly understood that the DRB members are to act impartially and independently in the
10 consideration of facts and conditions surrounding any written appeal presented by WSDOT or
11 Design-Builder and that the recommendations concerning any such appeal are advisory.

12 Procedures: Prior to any hearing involving a contract dispute, the DRB will meet with WSDOT and
13 Design-Builder to establish the rules and procedures that will govern the DRB's participation in the
14 Project as set forth in the Contract. In establishing the rules and procedures, the parties may
15 consider the Suggested Administrative Procedures included in this Appendix. The DRB may
16 establish any internal rules and procedures not covered in the Agreement with WSDOT and
17 Design-Builder. The DRB's recommendations resulting from its consideration of a dispute shall be
18 furnished in writing to WSDOT and Design-Builder. The recommendations shall be based on the
19 construction contract provisions and the facts and circumstances involved in the dispute.

20 Furnishing Documents: WSDOT shall furnish to the DRB three copies of the contract and other
21 documents which are or may become pertinent to the activities of the DRB. Design-Builder shall
22 furnish to the DRB three sets of documents which are or may become pertinent to the activities of
23 the DRB, except documents furnished by WSDOT.

24 Construction Site Visits: The DRB members shall visit the project site to keep abreast of
25 construction activities and to develop a familiarity of the work in progress. The frequency, exact
26 time, and duration of these visits shall be as mutually agreed between WSDOT, Design-Builder,
27 and the DRB.

28 **Suggested Administrative Procedures**

29 **Objective**

30 The principal objective of the DRB is to assist in the resolution of disputes which would otherwise
31 be likely submitted to litigation processes. If this objective is achieved, such disputes can be
32 resolved promptly, with minimum expense, and with minimum disruption to the administration and
33 performance of the work. It is not intended for WSDOT or Design-Builder to default on their
34 normal responsibility to amicably and fairly settle their differences by indiscriminately assigning
35 them to the DRB. It is intended that the mere existence of the DRB will encourage WSDOT and
36 Design-Builder to resolve potential disputes without resorting to this appeal procedure. But when a
37 dispute which is serious enough to warrant the DRB's review does develop, the machinery for
38 prompt and efficient action will already be in place.

39 **Responsibility of the DRB**

40 Render findings and recommendations on disputes between Design-Builder and WSDOT arising
41 from the construction contract. Primarily, the DRB will consider claims and disputes involving
42 interpretation of the Plans and Specifications, delays, acceleration of the work, scheduling,

1 classification of extra work, changed conditions, design changes, and the like. During its regular
2 visits to the job site, the DRB will encourage the settlement of differences at the job level.

3 The DRB will refrain from officially giving any advice or consultative services to either party. The
4 individual members will act in a completely independent manner and will have no consultative or
5 business connections with either party.

6 During routine meetings of the DRB as well as during formal hearings, DRB members should
7 refrain from expressing opinions on the merits of statements on matters under dispute or potential
8 dispute. Opinions of DRB members expressed in private sessions should be kept strictly
9 confidential.

10 **Regular Construction Progress Meetings**

11 All regular meetings will be held at or near the job site. The frequency of regular meetings will be
12 set by agreement of the DRB, WSDOT and Design-Builder, consistent with the construction
13 activities and the matters under consideration and dispute. Each meeting will consist of a round
14 table discussion and a field inspection of the work being performed on that contract. The round
15 table discussion will be conducted by a member of WSDOT's staff and will be attended by
16 selected personnel from WSDOT and Design-Builder. The agenda will generally be as follows:

17 *Meeting opened by Chairman of the DRB.*

18 *Remarks by WSDOT 's representative.*

19 *A description by Design-Builder of work accomplished since the last meeting, the current status of the work, schedule-*
20 *wise, and a forecast for the coming period.*

21 *An outline, by Design-Builder, of potential problems and a description.*

22 *An outline, by the WSDOT Engineer, of the status of the work as WSDOT's Engineer views it.*

23 *A brief description, by Design-Builder or WSDOT, of potential claims or disputes, which have surfaced since the last*
24 *meeting.*

25 *A summary, by Design-Builder, WSDOT or the DRB, of the status of past disputes and claims.*

26 WSDOT will prepare minutes of all regular meetings and circulate them for revision and approval
27 by all concerned.

28 The field inspection will cover all active segments of the work, the DRB being accompanied by
29 both WSDOT and Design-Builder personnel.

30 **Handling of Written Appeals**

31 When the DRB receives a written appeal, it shall first reach agreement with the parties on a time
32 to conduct the hearings. The decision shall be tempered by the desires and needs of WSDOT
33 and Design-Builder. If the matter is not urgent, it may be scheduled for the time of the next regular
34 visitation to the project. For an urgent matter, the DRB should meet at its earliest convenience.

35 The DRB may also request that written documentation concerning the dispute be sent to each
36 individual member for study before the hearing begins. A party furnishing any written
37 documentation to the DRB must furnish copies of such information to the other party before the
38 hearing begins in compliance with the Contract.

39 Normally, the hearings would be conducted at the job site. However, any location would be
40 satisfactory that would be more convenient and still provide all required facilities and access to the
41 necessary documentation. Private sessions of the DRB may also be held at a location other than
42 the job site.

1 WSDOT and Design-Builder shall have a representative at all hearings. The claimant will discuss
2 the dispute followed by the other party. Each party will then be allowed one or more rebuttals until
3 all aspects are thoroughly covered. Each time a person testifies, the DRB members may ask
4 questions, seek clarification, or request further data. The DRB may request from either party
5 documents or information that would assist the DRB in making its findings and recommendations,
6 including documents used by the Design-Builder in preparing the bid for this project. A refusal by
7 a party to provide information requested by the DRB may be considered by the DRB in making its
8 findings and recommendations. In large or complex issues, one or more additional hearings may
9 be necessary in order to consider all the evidence presented by both parties.

10 During open hearings, no DRB member should express an opinion concerning the merit of any
11 facet of the dispute. By the same token, all DRB deliberations should be conducted in private, with
12 all interim individual views kept strictly confidential.

13 After the hearings are concluded, the DRB shall meet in private and reach a conclusion supported
14 by two or more members. Its findings and recommendations, together with its reasons shall then
15 be submitted as a written report to both parties. The recommendations shall be based on the
16 pertinent contract provisions and facts and circumstances involved in the dispute. The DRB
17 should make every effort to reach a unanimous decision. If this proves impossible, the dissenting
18 member may prepare a minority report.

19 Although both parties should place weight upon the DRB's recommendations, they are not binding.
20 Either party may appeal a recommendation to the DRB for reconsideration. However, if the DRB's
21 recommendations do not resolve the dispute, all records, and written recommendations, including
22 any minority reports, may be admissible as evidence in any subsequent litigation.

23 **Miscellaneous**

24 It is not desirable to adopt hard and fast rules for the functioning of the DRB. The entire procedure
25 should be kept flexible so that it can adapt to changing situations. The DRB should initiate, with
26 the other parties' concurrence, new rules or modifications to old ones whenever this is deemed
27 necessary.

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APPENDIX 12

Designation of Initial Representatives

[to be inserted prior to execution]