



*Washington
Department of*
**FISH and
WILDLIFE**

CHIEF JOSEPH WILDLIFE AREA ROAD STABILIZATION PHASE 2

DIRECTOR:
KELLY SUSEWIND

PROGRAM DIRECTOR:
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CHIEF ENGINEER:
GLENN F. GERTH, P.E.



DATE:
MARCH 2022

PROJECT NO.
AN:R38:2019-2

PROJECT MANAGER:
HARRY KNECHTEL

WDFW Title VI Clause

It is the policy of Washington Department of Fish and Wildlife (WDFW) to provide equal access to its programs, services, activities, and facilities under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Architectural Barriers Act of 1968. WDFW is a recipient of state and federal financial assistance.

WDFW prohibits discrimination on the basis of race, color, religion, national origin, including language, sex, age, mental or physical disability, reprisal, sexual orientation, status as a parent, and genetic information.

If you believe you have been discriminated against, please contact the WDFW Title VI Manager, PO Box 43139, Olympia, WA 98504, or online at: <https://wdfw.wa.gov/accessibility/grievances> within 20 calendar days of the alleged incident to file a formal complaint, or you can file with the Washington State Human Rights Commission directly at: 1-800-233-3247, or you can write to: Chief, Public Civil Rights Division, Department of the Interior, 1849 C Street NW, Washington DC 20240.

Persons who need to receive this information in an alternative format, different language, or who need a reasonable accommodation to participate in WDFW sponsored public meetings, or other activities, may contact the Title VI Manager by phone at: (360) 902-2349, or TDD (711), or email Title6@dfw.wa.gov.

If you need further assistance or information, please contact the Olympia office of the Washington Department of Fish and Wildlife: (360) 902-2464, or Telecommunications Device for the Deaf, TDD (711).

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DIVISION 0 – BID AND CONTRACT DOCUMENTS

SECTION 00030 NOTICE TO CONTRACTORS

Sealed bids for the following Public Works Project will be received until 2:00 p.m. on April 28, 2022 at 600 Capitol Way North, MS: 43158, Olympia, Washington, 98501-1091, and will be publicly opened and read.

Due to the safety and health of the public and employees WDFW CAMP is temporarily closing Bid Openings to public attendance. Bid opening results will be made public within 24 hours of opening.
Please Note: The Public will not be able to attend this bid opening.

PROJECT:

Chief Joseph Wildlife Area Road Stabilization Phase 2

NUMBER:

AN:R38:2019-2

Provide all labor, material, equipment, and permits to construct wood cribwalls for erosion mitigation and road stabilization at the Department's Chief Joseph Wildlife Area, located at GPS Coordinates 46.028893, -117.016053, Rogersburg, Washington, in Asotin County.

Engineer's Estimate: \$120,000

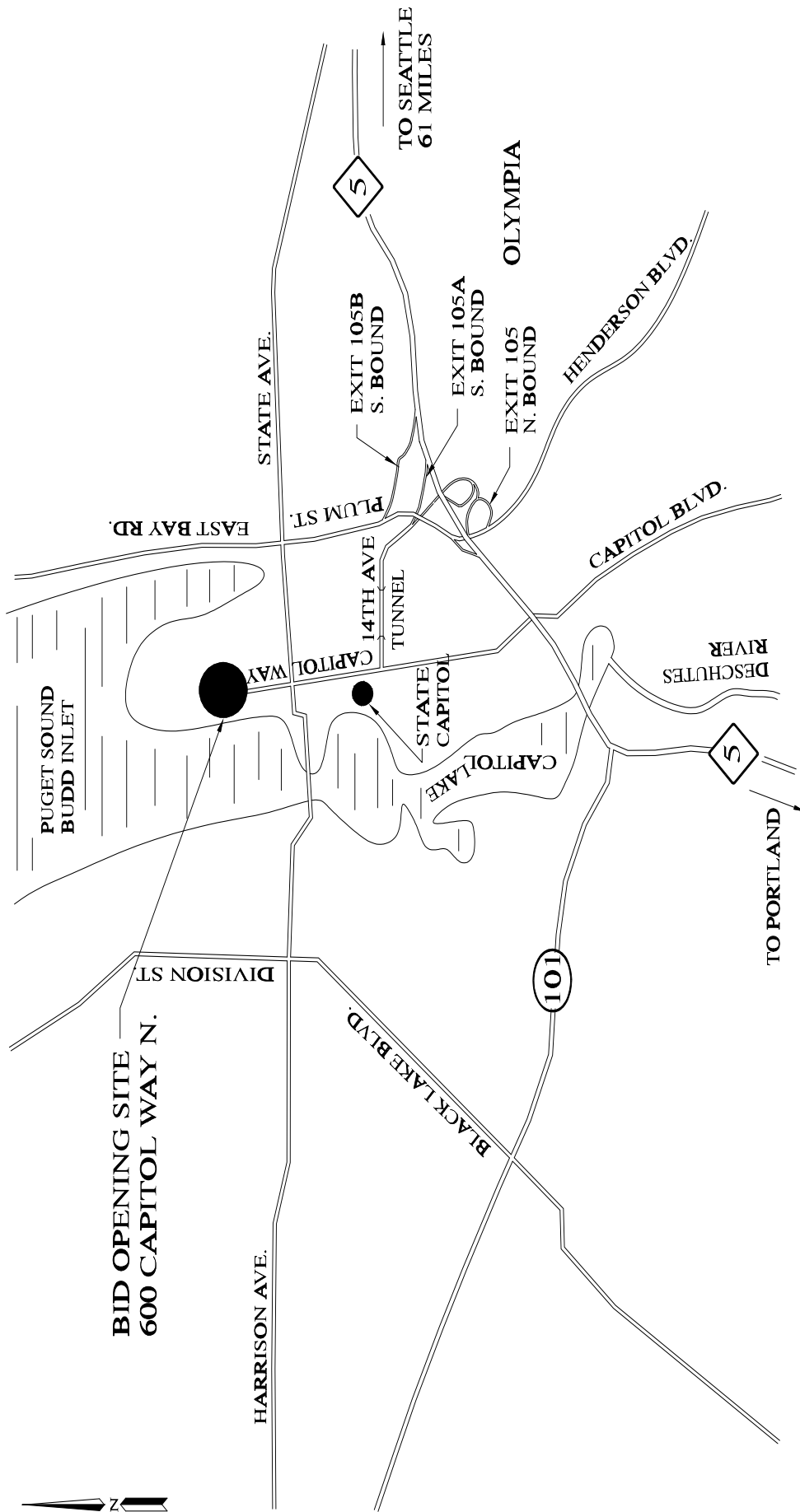
No pre-bid walkthrough is scheduled, **Contractors are strongly encouraged to independently visit the site.**

For access to Drawings, Specifications, Addenda, plan holders list, and additional information for this project, please visit Builders Exchange of Washington, Inc. at <http://www.bxwa.com> – the official projects bidding affiliate for WA Department of Fish and Wildlife Public Works bidding projects. Click on “Posted Projects”; “Public Works”, “Washington State Department of Fish and Wildlife”, “Projects Bidding.”

For information or technical questions regarding this project, email CAMP.Bids@dfw.wa.gov with the project title and project number in subject line. This email may also be used to request copies of the project's posted documents (Drawings, Specifications, Addenda).

Minority and Women's Business Enterprises (MWBE) are encouraged to participate in the bidding as prime contractors, subcontractors, or suppliers.

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
Timothy Burns, Capital and Asset Management Program Director
By
Glenn F. Gerth, P.E., Chief Engineer
Capital and Asset Management Program



**BID OPENING SITE
600 CAPITOL WAY N.
OLYMPIA, WA 98501-1091**

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE
DATE DRAWN: 04-10-95 SCALE: N.T.S.**

DIVISION 0 – BID AND CONTRACT DOCUMENTS

SECTION 00100 INSTRUCTIONS TO BIDDER

00110 PREBID REQUIREMENTS

- A. Carefully examine all project documents.
- B. Be fully informed of all existing conditions and limitations, including any activities by City, County, State, Federal or private entities affecting access to the project.
- C. Include in the bid sufficient amount to cover all costs required by Bid Documents to complete the work, but not limited to applicable federal, state, and local taxes (except State Retail Sales Tax), insurance, bonding license(s), payment of prevailing wage rates, L&I filing fees, and all costs that may be necessary to complete the work.
- D. No Apprenticeship Participation requirements for projects estimated less than \$1,000,000.
- E. The project is not federally funded.

00120 REQUIRED BID DOCUMENTS

Failure to submit ALL PAGES of the following forms is sufficient cause to reject the bid.

- A. **Bid Form**: The ENTIRE current Bid Form Section 00300 must be signed. Check for addenda at Builders Exchange of Washington, Inc. (<http://www.bxwa.com>) before submitting bid.
- B. **Standard Questionnaire for Qualification of Contractors Form**: Submit the completed form immediately following bid opening or submit with bid form.
- C. **Bid Bond**: For bids of \$35,000 or less, no bid guarantee is required. Bids greater than \$35,000 shall be accompanied by a certified check, cashier's check, or bid bond payable to the Treasurer of the State of Washington in an amount equal to at least five-percent of the bid as evidence of good faith and as a guarantee that, if awarded the Contract, the bidder will execute the Contract and give separate bond as required, see Section 00702.06.

00130 BID FORMAT

- A. Each bid must be submitted on the current Bid Form, Section 00300 contained in these Bid Documents. Place your required bid documents into an envelope clearly marked on the outside with "BID ENCLOSED", the project name, and project number. Envelope shall clearly identify your Company's name and address as shown below.

Company Name Address City, State Zip	BID ENCLOSED PROJECT NAME PROJECT NUMBER BID OPENING
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- B. No oral, email, telephonic, faxed bids or modifications will be accepted or considered.

00135 BID OPENING

Bidders must submit their bid to the Washington Department of Fish and Wildlife, Capital and Asset Management Program, located at 600 Capitol Way North, MS: 43158, Olympia, Washington 98501-1091 before the bid submittal deadline for this solicitation. Sending your bid through the United States Postal Services (USPS) or United States Express Mail will not guarantee your bid will be received at the above location on time.

PLEASE NOTE: As a state agency, USPS mail is routed through the State's Consolidated Mail Service with unpredictable delivery times. We encourage the following:

- Hand delivery;
- Courier service;
- Allow sufficient amount of time;
- Third party (i.e. Federal Express, United Parcel Service) for overnight delivery;
- Clearly label the outside of your envelope using the format in Section 00130.

00140 BID SUBMITTAL DEADLINE

- A. Sealed bids for this project will be received by an authorized representative within the Washington Department of Fish and Wildlife, Capital and Asset Management Program located at 600 Capitol Way North, MS: 43158, Olympia, Washington, 98501-1091 until the time and date indicated on the current Bid Form, Section 00300. **Due to the safety and health of the public and employees, WDFW CAMP has temporarily closed Bid Openings to public attendance. Bid opening results will be made public within 24-hours of opening.**
- B. Bids submitted after deadline will not be accepted.

00145 REASONABLE ACCOMMODATIONS

- A. Persons with disabilities who need reasonable accommodations to participate in the bid openings are invited to contact Capital and Asset Management Program at (360) 902-8300 or CAMP.Bids@dfw.wa.gov. Reasonable accommodation requests should be received at least three business days prior to the bid opening to ensure availability.
- B. **Bid Results:** After bid opening, bidders may obtain bid results from Builders Exchange of Washington, Inc. at <http://bxwa.com> the next business day.

00150 MANDATORY RESPONSIBILITY CRITERIA

Before award of a public works contract, a bidder must meet the following mandatory responsibility criteria under RCW 39.04.350 (1) to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

- A. At time of bid submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
- B. Have a current state Unified Business Identifier (UBI) number;
- C. If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

DIVISION 0 – BID AND CONTRACT DOCUMENTS

- D. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
- E. If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington State apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under Chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;
- F. Have received training on the requirements related to public works and prevailing wage under this chapter and Chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the Department of Labor and Industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The Department of Labor and Industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

Labor and Industries (LNI) Training Information Link:
<https://www.lni.wa.gov/TradesLicensing/PrevWage/Contractors/Training.asp>
- G. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, and provision of Chapter 49.46, 49.48 or 49.52 RCW.
- H. Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection G above. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

00155 BASIS OF AWARD

The lowest responsive bid and responsible bidder is based upon the Base Bid. The Owner reserves the right to award the contract amount based on any or all of the bid items listed, to restrict the contract amount to the funds available, and to reject any or all bids for any reason whatsoever and waive informalities.

00160 PERIOD OF ACCEPTANCE

All bids may be held 45 calendar days from bid opening date. At the end of this period, the three lowest bids may be retained for 15 additional days, or as may be further extended by the Owner with the approval of the bidding companies.

00170 PAYMENT AND PERFORMANCE BONDS

- A. Base bids greater than \$150,000; Contractor shall provide separate Payment and Performance Bonds, each executed by Contractor and Contractor's Surety.

DIVISION 0 – BID AND CONTRACT DOCUMENTS

B. Base bids \$150,000 or less, Contractor shall provide separate Payment and Performance Bonds, each executed by Contractor and Contractor's Surety, unless the Contractor agrees Owner may, in lieu of the bond(s), retain 10 percent of the Contract Sum for the period allowed by RCW 39.08.010.

C. For additional information see Section 00702.04.

00175 BUILDERS RISK INSURANCE

Builders Risk Insurance is not required, see Section 00802.07.

00180 INTERPRETATIONS

For information or technical questions regarding this project email CAMP.Bids@dfw.wa.gov with the project title and project number in subject line and address questions to the Project Manager. Questions resulting in changes to the scope or nature of the drawings, specifications, or bid documents will be answered by addendum/addenda reflective of the Owner's process.

The Owner will **NOT** answer questions received after 2:00 p.m. on April 21, 2022. All addenda issued are part of the bid documents. The Owner will not be responsible for any oral interpretations.

00190 MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION

Minority and Women's Business Enterprises (MWBE) are encouraged to participate in the bidding as prime contractors, subcontractors, or suppliers.

00195 CONTRACT RESPONSIVENESS

Contractor shall return all required contract documents and signed contract no later than 21 calendar days from date of Award Letter.

END OF SECTION 00100

DIVISION 0 – BID AND CONTRACT DOCUMENTS

SECTION 00200 CONTRACTOR CHECKLIST

00230 PRIOR TO CONTRACT EXECUTION

Submit the following to WDFW's Contract Administrator within 21 calendar days from the date of the Award Letter:

- A. Signed Public Works Contract Agreement.
- B. Performance and Payment Bonds Forms: Separate performance and payment bonds executed by Contractor and Contractor's Surety.
- C. Retainage in Lieu of Performance Bond Option on Contracts of \$150,000 or Less: If Contractor elects, Owner may retain ten percent of the Contract Sum in lieu of the Performance and Payment Bonds, see Section 00620.
- D. Retainage Options Form, see Section 00630.
- E. Certificate of Liability Insurance Form, see Section 00640.
- F. Statewide Payee Form, Form W-9, Request for Taxpayer ID Number and Certification: for General Contractors and Subcontractors.

00235 PRIOR TO NOTICE TO PROCEED

- A. Provide to the Project Manager:
 - 1. List of subcontractors and major suppliers of work and materials greater than \$2,500.
 - 2. Construction Schedule for approval, see Section 00703.2.
 - 3. Schedule of Values for approval, see Section 00650.
- B. Attend preconstruction conference.

00240 SUBMIT WITH PAY REQUEST

- A. First invoice: include Statement of Intent to Pay Prevailing Wage Rates for Contractor and all Subcontractors, filed and approved by the Department of Labor and Industries (L&I). Information regarding Prevailing Wages is found at the L&I website: <http://www.lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/File/default.asp>.
- B. All invoices: include Verification of Monthly Payments to MWBEs, see Section 00660.
- C. For contract sums of \$1,000,000 or more include Statement of Apprentice/Journeyman Participation, see Section 00670.

00250 DURING PROGRESS OF CONTRACT

- A. Provide Submittals and Shop Drawings as required, see Section 01300.
- B. If work exceeds 30 calendar days, Contractor may request partial payment once per month. If work is 30 calendar days or less, Contractor requests payment when project is complete.

00260 FOR SUBSTANTIAL COMPLETION

- A. Owner/operator training completed.
- B. Submit Operation and Maintenance Manual draft to Owner, see Section 01730.
- C. Written Certificate of Occupancy received by Owner.
- D. Owner provides Contractor final punch list.
- E. Owner provides written Substantial Completion.

00270 FOR FINAL COMPLETION

- A. Contractor completes final punch list.
- B. Owner completes walkthrough and validates final punch list.
- C. Contractor submits final Operation and Maintenance Manuals to Owner, see Section 01730.
- D. Contractor submits Project Record to Owner if required in the contract.
- E. Contractor provides all signed permits to the Owner.
- F. Contractor provides all expressed warranties greater than one year to Owner.
- G. Owner issues Final Completion Letter to Contractor.
- H. Contractor submits final invoice after receipt of the Final Completion Certificate.
- I. Contractor submits Affidavit of Wages Paid to L&I.
- J. L&I approves the Affidavit of Wages Paid for Contractor and all Subcontractors working on the project.
- K. Owner submits a Notice of Completion Form to L&I, the Department of Revenue, and the Employment Security Department.
- L. Owner's Contract Administrator receives the notarized Contractor's Release of Claims Form.

00280 FOR RETAINAGE TO BE RELEASED

- A. Contract must not be in dispute.
- B. Owner processes final progress payment.
- C. Owner administers 60-day legal lien period.
- D. Owner's Contract Administrator receives releases from Department of Revenue, Employment Security Department, and Labor & Industries.

END OF SECTION 00200

**SECTION 00300
BID FORM**

**FAILURE TO SUBMIT ALL PAGES OF BID FORM SHALL BE
SUFFICIENT CAUSE TO REJECT THE BID.**

To: Washington Department of Fish & Wildlife
Chief Engineer
600 Capitol Way North, MS: 43158
Olympia, WA 98501-1091

Project Title: Chief Joseph Wildlife Area Road
Stabilization Phase 2
Project No.: AN:R38:2019-2
Bid Opening: 2:00 p.m. April 28, 2022

00310 BID

Pursuant to and in compliance with the Bid Documents, the undersigned Bidder agrees to submit all bid form pages and perform the Work for the following Base Bid amount for the above referenced project:

Lump Sum Items	
Bid Item 1: Mobilization, demobilization, TESC plan implementation, and incidentals.	\$
Bid Item 2: Stream isolation and dewatering.	\$
Bid Item 3: Excavate, install and backfill two sections of log cribwall as shown and noted on the drawings.	\$

Unit Price Items					
Item	Description	Estimated Quantity	Unit	Unit Price Dollars/Cents	Total Price Dollars/Cents
4.	Excavate, install, and backfill additional sections of log cribwall as shown and noted on the drawings.	2	EA		\$

Base Bid – Sum of bid items: 1 through 4. (Do not include Washington State Sales Tax)	\$
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TRENCH EXCAVATION SAFETY PROVISIONS

If the bid amounts contain any work in which trench excavation will exceed a depth of four feet, all costs for adequate trench safety systems amount shall be included in base bid in compliance with RCW 39.04.180. The Bidder agrees to comply with all the relevant trench safety requirements of Chapter 49.17 RCW and WAC 296-155-66411.

If trench excavation safety provisions do not pertain to this project, enter "N/A" for the dollar amount. Failure to complete this requirement shall be sufficient cause to reject the bid.

Trench Excavation Safety Provisions	\$
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00320 CONTRACT COMPLETION TIME

Substantial Completion shall be achieved by October 28, 2022.

Final Completion shall be achieved by November 18, 2022.

00330 LIQUIDATED DAMAGES

The undersigned agrees to pay the Owner as liquidated damages the sum of \$90 for each consecutive calendar day that is in default after the Contract Time. Liquidated damages shall be deducted from the Contract by Change Order.

00340 MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE) UTILIZATION CERTIFICATION

The bidder certifies they have, in good faith, afforded maximum opportunities to MWBEs, and if they are the successful bidder on this project, the following MWBE firms or approved substitutes shall be utilized on the project and compensated in the amounts shown. **If the bidder does not expect to utilize MWBE firms, enter "N.A." on line one below.**

Firm Name, Address and Federal I.D. #	Telephone Number	Type of Work	Certificate Number	MBE%	WBE%
1					
2					
TOTALS					

00350 IDENTIFICATION OF SUBCONTRACTORS FOR PROJECTS GREATER THAN \$1,000,000

Not Used.

00360 CONTRACT EXECUTION

- A. Contract Execution: If the Owner awards a contract based on this bid within 60 calendar days (unless otherwise negotiated) of the bid submission deadline, the Bidder agrees to execute a contract for the above work, for compensation computed from the above stated bid amounts, on the WDFW Public Works Contract Form.
- B. Bonds and Insurance: If Bidder fails to submit the documents listed in Section 00230, within 21 calendar days after date on the Award Letter, the Owner may revoke the award.
- C. Failure to Execute Contract: If the successful bidder, fails to submit the documents listed in Section 00230, the Owner may revoke the award. The bid guarantee may be retained by Owner as liquidated damages, not as penalty.

If a contract is not awarded within 60 calendar days (unless otherwise negotiated) after the bid submission deadline or Contractor fails to submit the documents listed in Section 00230, the certified or cashier's check submitted as the bid guarantee shall be returned to the bidder, or the Bid Bond shall become void.

00370 DECLARATION

- A. Familiarity with Bid Document and Site: The undersigned Bidder hereby certifies to have personally and carefully examined the Bid Documents issued for the above referenced project, the site where the Work is to be performed and the conditions affecting the Work.
- B. Proposal to Perform Work: The Bidder hereby proposes to furnish all labor, materials, equipment, and services and to perform all work which may be required to complete the Work within the time fixed and in strict accordance with the Contract Documents for the above-referenced project for the Base Bid indicated above. The bid prices cover all expenses of the Bidder, including but not limited to, overhead, profit, insurance, and bonding, to perform the Work in accordance with the Contract Documents.
- C. Non-Collusion: The Bidder affirms that the bid is a genuine and not a sham or collusive bid or made in the interest or on behalf of any person not therein named. The Bidder has not directly or indirectly induced or solicited any bidder on the work to put in a sham bid, or any other person or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure for itself an advantage over any other bidder or bidders. The Bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in the preparation and submission of this bid to the Owner for the project described in the Bid Documents.
- D. Certification of Compliance with Wage Payment Statutes: The bidder hereby certifies that, within the 3 year period immediately preceding the bid solicitation date the bidder is not a “willful” violator, as defined in RCW 49.48.082, of any provision of Chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

00380 ACKNOWLEDGEMENT

I certify by signing the current Bid Form that all Addendum/Addenda, Contract Execution and Declarations have been acknowledged. Contractor shall review online bid documents at Builders Exchange of Washington, Inc. <http://www.bxwa.com> to ensure all information is considered in bid proposal.

Bidder's Business Name:		
Unified Business Number (UBI):	Contractor's License Number:	
Physical Business Street Address		
City:	State:	Zip Code:
Phone Number:		
Email Address:		
If the above address is not in Washington State, check ONE of the boxes below:		
<input type="checkbox"/> Physical office in WA: _____ <div style="display: flex; justify-content: space-around; width: 100%;"> Street Address City Zip Code </div> <div style="text-align: center; margin-top: 5px;">OR</div> <input type="checkbox"/> State of incorporation or where business entity was formed, if not corporation: _____		

OFFICIAL AUTHORIZED TO SIGN FOR BIDDER:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":	
Signature of Authorized Official:	Date:
Print Name	Title

**FAILURE TO SUBMIT ALL PAGES OF BID FORM SHALL BE
SUFFICIENT CAUSE TO REJECT THE BID.**

END OF SECTION 00300

**SECTION 00400
SUPPLEMENTS TO BID FORM**

00420 QUALIFICATION QUESTIONNAIRE

A. Information and Instructions - Standard Questionnaire for Qualification of Contractors:

1. Any person, firm, or corporation bidding on this project shall execute and submit with their bid a Standard Questionnaire for Qualification of Contractors Form. Failure to submit the completed form immediately following the bid opening may be sufficient cause to reject the bid.
2. The Chief Engineer will make the sole determination as to the adequacy of the experience and responsibility of the bidder.
3. All information furnished will be treated as confidential to the extent that such policy is compatible with the provisions of the general statutes affecting the conduct of public offices.

B. Preparation of Standard Questionnaire for Qualification of Contractors Form:

1. Bidder shall submit the Standard Questionnaire for Qualification of Contractors Form only in the exact name under which the bid is submitted. Answers and entries shall be specific and complete in detail.
2. Bidder shall verify that Representative or Project Manager Contact information is current and valid prior to submission.

C. Joint Ventures: The bids of Joint Ventures will be accepted if qualification has been satisfactorily established by each of the firms bidding in the name of the Joint Venture.

DIVISION 0 – BID AND CONTRACT DOCUMENTS

**STANDARD QUESTIONNAIRE
FOR QUALIFICATION OF CONTRACTORS**

PROJECT NO. _____

Submitted by: _____
Name Title

Street Address City State Zip ()
Phone Number

Signature

QUESTIONNAIRE

A. How many years has your organization been in business under your present business name?

B. List three projects your organization has completed or has underway on this date reflecting the type of work for which you desire to qualify.

1.	Owner	Owner's Representative or PM	Representative or PM Phone Number
Project Name			Contract Amount
Class of Work Performed			
2.	Owner	Owner's Representative or PM	Representative or PM Phone Number
Project Name			Contract Amount
Class of Work Performed			
3.	Owner	Owner's Representative or PM	Representative or PM Phone Number
Project Name			Contract Amount
Class of Work Performed			

C. Has your organization ever failed to complete a construction contract?

☐ YES ☐ NO

If Yes, state reason why:

00440 SUPPLEMENTAL BIDDER RESPONSIBILITY CRITERIA

Not Used.

END OF SECTION 00400



SECTION 00500

PUBLIC WORKS CONTRACT

TITLE: [REDACTED]

CONTRACT NUMBER: [REDACTED]

CONTRACTOR: [REDACTED]

ENGINEERING #: [REDACTED]

CONTRACT AMOUNT: [REDACTED]

MASTER INDEX: [REDACTED]

TYPE: Payable / Engineering / Public Works

PROJECT MANAGER: [REDACTED]

CONTRACT PERIOD: [REDACTED]

A. PARTIES TO THIS CONTRACT

This Contract is entered into under the authority of Chapter 39.04 of the Revised Code of Washington (RCW) between the Washington State Department of Fish and Wildlife (WDFW), 600 Capitol Way North, Olympia, WA 98501-1091; and (Contractor), Company Address, Company City, Company State, Company Postal Code; and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF CONTRACT

The Contractor shall provide those goods and /or services in accordance with and as described in the plans and drawings designated as "State of Washington Department of Fish & Wildlife Engineer Number XX:XX:XXXX together with the Contractor's bid opened at 2:00 P.M. Pacific Time on XX/XX/XXXX; and in full compliance with terms, conditions and stipulations of the General Conditions of the Contract, Release of Claims, the Special Conditions of the contract and material, Rights-of-Way and Easements (other than those provided by the State), licenses, permits, for this contract, now referred to and by this reference incorporated herein and made a part hereof as fully, for all purposes as if here set forth at length.

C. DESCRIPTION OF PROJECT

The Contractor shall perform the project as described in Attachments, which are incorporated herein by this reference:

Attachment "A" Specifications and Drawings (WDFW Engineer Number: XX/XXXX/XXXX)

D. PERIOD OF PERFORMANCE

The Contractor shall begin work as stated in the Notice to Proceed letter from WDFW; and shall complete all work under this contract not later than **DATE**. No expenditures made before or after this period are eligible for reimbursement unless incorporated by written amendment into this Contract. The Contract may be terminated or the performance period extended pursuant to terms set forth in Attachment "A."

WDFW may suspend the work of the Contractor due to weather or other needs of WDFW. The Contractor shall suspend all work on the contract upon the receipt of a Notice to Suspend from WDFW; and shall not re-commence work until a Notice to Resume Work is received from WDFW.

E. COMPENSATION / PAYMENT

WDFW hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above-described work, and to complete and finish the same according to the plans designated, and the attached specifications and the terms and conditions herein contained, and hereby contracts to pay for the same in the manner set out in the specifications the sum of **\$00.00** plus applicable Washington State sales tax at the time and upon the conditions provided for in this contract and every part thereof.

DIVISION 0 – BID AND CONTRACT DOCUMENTS

That WDFW further agrees to employ the Contractor to perform any alterations in or additions to the work covered by this contract and any force account work that may be ordered, if the construction or labor required by such changes or force work is to be executed during the period specified herein for the completion of the work under this contract, and to pay for the same under the terms of this contract. Except as otherwise provided in Section 00707 of Attachment "A" of the contract, no alteration or modification of any of the terms, conditions, price, quality, quantity or specifications of this contract will be effective if not in writing and signed by WDFW.

The Contractor is required to be registered in the Statewide Vendor Payment System prior to submitting a request for payment under this contract. The Washington State Office of Financial Management (OFM) maintains the Statewide Vendor Payment System; to obtain registration materials, forms are available on the OFM payee registration [website](#) or contact the Statewide Payee Help Desk at HereToHelp@ofm.wa.gov (360) 407.9100.

F. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties of this Contract are subject to this Contract, including the Attachments, which are incorporated herein by this reference. By signing this Contract the Contractor acknowledges that they have read, fully understand, and agree to be bound by all terms and conditions set forth in this Contract.

G. ORDER OF PRECEDENCE

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

Applicable Federal and State of Washington statutes and regulations;
Special Terms and Conditions as contained in this basic contract instrument;
Attachment "A" Specifications and Drawings (WDFW Engineer Number: XX/XXXX/XX); and
Any other provision, term or material incorporated herein by reference or otherwise incorporated.

H. CONTRACT REPRESENTATIVES

The below named representatives for each of the parties shall be the contact people for all communications and billings regarding the performance of this Contract. All written communications regarding this Contract shall be sent to the designated representatives at the addresses below unless notified in writing of any change.

Contractor's Representative

Name:
Company Name:
Address:
Office Phone:
Email:

WDFW's Representative

Project Manager:
Capital and Asset Management Program
PO Box 43158
Olympia, WA 98504-3158
(360) 902-8300
Email:

I. ENTIRE CONTRACT

This Contract, along with all attachments and exhibits, constitutes the entire agreement of the parties. No other understandings, verbal or otherwise, regarding this Contract shall exist or bind any of the parties.

J. APPROVAL

This contract shall be subject to the written approval of WDFW'S authorized representative and shall not be binding until so approved. This Contract may be altered, amended, or waived only by a written amendment executed by both parties.

DIVISION 0 – BID AND CONTRACT DOCUMENTS

IN WITNESS WHERE, WDFW and the Contractor have signed this contract.

CONTRACTOR NAME

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

Signature and Date

Signature and Date

Printed Name and Title

Timothy W. Burns, PE
Program Director
Capital and Asset Management Program

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL 12/19/2014

DIVISION 0 – BID AND CONTRACT DOCUMENTS

SECTION 00600

00620 RETAINAGE IN LIEU OF PERFORMANCE BOND OPTION ON CONTRACTS
OF \$150,000 OR LESS



Contract No. _____

Project Name: _____

Agency: DEPARTMENT OF FISH AND WILDLIFE _____

Contractor: _____

Pursuant to *RCW 39.08.010* you are permitted to exercise your option, IN WRITING, on whether to provide a performance bond, or in lieu of bond to have retention increased to 10 percent. You are therefore requested to complete and return this form prior to receiving the *Notice to Proceed*.

OPTION 1:

Provide a performance bond in accordance with *SECTION 00702.04* of the *GENERAL CONDITIONS*.

I request Option #1 _____

OPTION 2:

Retain 10 percent of the contract payments in lieu of providing a performance bond in accordance with *SECTION 00702.04* of the *GENERAL CONDITIONS*.

I request Option #2 _____

Signature

Title

Date



00640

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> CLAIMS-MADE					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

STATE OF WASHINGTON
00650 SCHEDULE OF VALUES

CERTIFICATE FOR PAYMENT. For period from: date to date
Contract for: project title Date: 01/00/00
Location: project location Certificate No.: _____
Contractor: _____ Contract No.: _____

Original Contract Amount: \$0.00
Net change in Contract Amount to Date: \$0.00

				Adjusted Contract amount		\$0.00
ITEM NO.	SCHEDULE OF VALUES DETAIL	ESTIMATED VALUE	AMOUNT EARNED	%	PREVIOUSLY CLAIMED	THIS INVOICE
1		\$0.00	\$0.00	####	\$0.00	\$0.00
2		\$0.00	\$0.00	####	\$0.00	\$0.00
3		\$0.00	\$0.00	####	\$0.00	\$0.00
4		\$0.00	\$0.00	####	\$0.00	\$0.00
5		\$0.00	\$0.00	####	\$0.00	\$0.00
6		\$0.00	\$0.00	####	\$0.00	\$0.00
7		\$0.00	\$0.00	####	\$0.00	\$0.00
8		\$0.00	\$0.00	####	\$0.00	\$0.00
9		\$0.00	\$0.00	####	\$0.00	\$0.00
10		\$0.00	\$0.00	####	\$0.00	\$0.00
11		\$0.00	\$0.00	####	\$0.00	\$0.00
12		\$0.00	\$0.00	####	\$0.00	\$0.00
13		\$0.00	\$0.00	####	\$0.00	\$0.00
14		\$0.00	\$0.00	####	\$0.00	\$0.00
15		\$0.00	\$0.00	####	\$0.00	\$0.00
16		\$0.00	\$0.00	####	\$0.00	\$0.00
17		\$0.00	\$0.00	####	\$0.00	\$0.00
18		\$0.00	\$0.00	####	\$0.00	\$0.00
19	Change Orders:					
20	1.	\$0.00	\$0.00	####	\$0.00	\$0.00
21	2.	\$0.00	\$0.00	####	\$0.00	\$0.00
22	3.	\$0.00	\$0.00	####	\$0.00	\$0.00
23	4.	\$0.00	\$0.00	####	\$0.00	\$0.00
24	5.	\$0.00	\$0.00	####	\$0.00	\$0.00
25	6.	\$0.00	\$0.00	####	\$0.00	\$0.00
26	7.	\$0.00	\$0.00	####	\$0.00	\$0.00
27	8.	\$0.00	\$0.00	####	\$0.00	\$0.00
28	6.	\$0.00	\$0.00	####	\$0.00	\$0.00
SUBTOTAL		\$0.00	\$0.00	####	\$0.00	\$0.00
TAX 0.00% SALES TAX		\$0.00	\$0.00		\$0.00	\$0.00
TOTAL		\$0.00	\$0.00		\$0.00	\$0.00
Less Retainage.. 5%			\$0.00		\$0.00	\$0.00
NET			\$0.00		\$0.00	\$0.00
Less Previous Payments....			\$0.00			
Additional Tax 0.00%		\$0.00			\$0.00	
AMOUNT DUE THIS ESTIMATE			\$0.00			\$0.00

check
\$0.00
\$0.00
\$0.00
\$0.00
\$0.00

This is to certify that the contractor, having complied with the terms and conditions of the above mentioned contract, is due and payable from the State of Washington, the amount set after "AMOUNT DUE THIS ESTIMATE."

By 0 (Contracting Firm) By _____ (Architect or Engineer)
By _____ SIGN IN INK By _____ SIGN AND DATE



00660 VERIFICATION OF MONTHLY PAYMENTS TO MWBES

State of Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington, 98501-1091, (360) 902-8300

Project No _____ Project Title _____ Sheet _____ of _____

Contractor _____ Payment # _____

Federal Tax Identification #	Contractor/Supplier	WBE or MBE	Nature of Work or Type of Supplies	Bid Total Utilization Dollars	Amount Paid This Month	Amount Paid to Date

CONTRACTOR: _____

Authorized Signature

DATE: _____

Washington Department of Fish and Wildlife

STATEMENT OF APPRENTICE/JOURNEYMAN PARTICIPATION

Firm Name, Address, City, State & ZIP+4	Project Name (Title)		Contract No.
	Contract Award Amount: \$	Notice to Proceed Date	
Reporting Period from: to		Required Apprenticeship Percentage: 15%	

APPRENTICE SUMMARY

Apprentice Name	Craft or Trade	Apprentice Registration Number	Name of Contractor or Sub-Contractor	Apprentice	
				Total Number	Hours Worked

JOURNEYMEN SUMMARY

Journeyman Name	Craft or Trade	Journeyman Registration Number	Name of Contractor or Sub-Contractor	Journeyman	
				Total Number	Hours Worked

Apprentice total hours worked this period:	0									
Journeyman total hours worked this period:	0									
	<table border="1"> <tr> <td>Previous Total</td> <td>New Total</td> <td>Percentage</td> </tr> <tr> <td>Cumulative Apprentice hour Total brought forward from last reporting period: previous total</td> <td></td> <td></td> </tr> <tr> <td>Cumulative Journeyman hour Total brought forward from last reporting period: previous total</td> <td></td> <td></td> </tr> </table>	Previous Total	New Total	Percentage	Cumulative Apprentice hour Total brought forward from last reporting period: previous total			Cumulative Journeyman hour Total brought forward from last reporting period: previous total		
Previous Total	New Total	Percentage								
Cumulative Apprentice hour Total brought forward from last reporting period: previous total										
Cumulative Journeyman hour Total brought forward from last reporting period: previous total										

I, the undersigned, do hereby certify under penalty of perjury that the items listed herein represent the proper hourly totals for Apprenticeship/Journeyman participation during this reporting period.

Printed Name:	Signature:	Date:	Title:
---------------	------------	-------	--------

DES Labor Form 100412

END OF SECTION 00600

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\$1,000,000

PART 1 - 00701.00 DEFINITIONS

00701.01 DEFINITIONS

- A. Application for Payment: A written request submitted by Contractor to A/E for payment of Work completed, in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or A/E may require.
- B. Architect, Owner, or A/E: A person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. Change Order: A written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any; and (3) the extent of the adjustment in the Contract Time, if any.
- D. Claim: Contractor's exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in *SECTION 00708 - CLAIMS AND DISPUTE RESOLUTION*.
- E. Contract Documents: The Advertisement for Bids, Instructions to Bidders, completed Form of Proposal, *GENERAL CONDITIONS*, Modifications to the *GENERAL CONDITIONS*, *SUPPLEMENTAL CONDITIONS*, Public Works Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.
- F. Contract Sum: The total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents.
- G. Contract Time: The number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- H. Contractor: The person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents.
- I. Drawings: The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- J. Final Acceptance: The written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents.
- K. Final Completion: The Work is fully and finally completed in accordance with the Contract Documents.

DIVISION 0 – GENERAL CONDITIONS

- L. Force Majeure: Those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in *SECTION 00703.05A*.
- M. Notice: A written notice that has been delivered in person to the individual or a member of the firm or entity, or to an officer of the corporation for which it was intended, or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.
- N. Notice to Proceed: A notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- O. Owner: The state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.
- P. Person: A corporation, partnership, business association of any kind, trust, company, or individual.
- Q. Prior Occupancy: Owner's use of all or parts of the Project before Substantial Completion.
- R. Construction Schedule: A schedule of the Work, in a form satisfactory to Owner, as further set forth in *SECTION 00703.02*.
- S. Project: The total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- T. Project Manual: The volume usually assembled for the Work, which may include documents such as the bidding requirements, sample forms, and other Contract Documents.
- U. Project Record: The separate set of Drawings and Specifications as further set forth in *SECTION 00704.02A*.
- V. Schedule of Values: A written breakdown allocating the total Contract Sum to each principle category of Work, in such detail as requested by Owner.
- W. Specifications: That portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, and performance of related services.
- X. Subcontract: A contract entered between the Contractor and a Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for, or in connection with, the Work.
- Y. Subcontractor: Any person other than the Contractor who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.
- Z. Substantial Completion: That stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities for the purposes intended, as more fully set forth in *SECTION 00706.07*.

DIVISION 0 – GENERAL CONDITIONS

- AA. Work: The construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

00701.02 ORDER OF PRECEDENCE

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

- A. Signed Public Works Contract, including any Change Orders and any Special Forms
- B. *SUPPLEMENTAL CONDITIONS*
- C. *GENERAL CONDITIONS*
- D. Specifications: Provisions in *DIVISION 1* shall take precedence over provision of any other division.
- E. Drawings: In case of conflict within the Drawings, large-scale drawings (24" x 36" shall take precedence over reduced scale drawings.
- F. Signed and Completed *Bid Form*
- G. Instructions to Bidder
- H. Notice to Contractor

00701.03 EXECUTION AND INTENT

Contractor makes the following representations to Owner:

- A. The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents.
- B. Contractor has carefully reviewed the Contract Documents, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, labor, materials, equipment, goods, supplies, services, and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof.
- C. Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents.
- D. Contractor is able to furnish the plants; tools, materials, supplies, equipment, and labor required to complete the Work and perform the obligations required by the Contract Documents and have sufficient experience and competence to do so.

PART 2 - 00702.00 INSURANCE AND BONDS

00702.01 CONTRACTOR'S LIABILITY INSURANCE

Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this section shall be licensed to do business under *Chapter 48 RCW* or comply with the *Surplus Lines Law* of the State of Washington. Contractor shall include in its bid the cost of all insurance and bonds required to complete the base bid work and accepted alternates. Insurance carriers providing insurance in accordance with the Contract Documents shall be rated "B+" or better by A.M. Best and ratings shall be indicated on the insurance certificates.

- A. Contractor shall maintain the following insurance coverage during the Work and for 1 year after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by *SECTION 00705.16*.
 - 1. General liability on the *ISO 1986 New Occurrence Form* or its equivalent, which will include:
 - a. Completed operations/products liability
 - b. Explosion, collapse, and underground
 - c. Employer's liability coverage
 - 2. Automobile liability
- B. Contractor shall comply with the *Washington State Industrial Insurance Act*, and, if applicable, the *Federal Longshoremen's and Harbor Workers' Act*, and the *Jones Act*.
- C. All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.
- D. All insurance coverages shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence the Owner as an additional insured.

00702.02 COVERAGE LIMITS

- A. Required Insurance Coverages:
 - 1. For a contract less than \$100,000.00, the coverage required is:
 - a. Comprehensive General Liability Insurance – The Contractor shall at all times during the term of this contract, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death or property damage occurring or arising out of services provided under this contract.

DIVISION 0 – GENERAL CONDITIONS

This insurance shall cover claims caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased as deemed necessary by the contracting parties, shall be:

Each Occurrence	\$1,000,000.00
General Aggregate Limits (other than products – commercial operations)	\$1,000,000.00
Products – Commercial Operations Limited	\$1,000,000.00
Personal and Advertising Injury Limit	\$1,000,000.00
Fire Damage Limit (any one fire)	\$50,000.00
Medical Expenses Limit (any one person)	\$5,000.00

- b. If the contract is for underground utility work the Contractor shall provide proof of insurance for that above in the form of Explosion, Collapse and Underground (XCU) coverage.
 - c. Employers Liability on an occurrence basis in an amount not less than \$1,000,000.00 per occurrence.
2. For contracts over \$100,000.00 but less than \$5,000,000.00 the Contractor shall obtain the coverage limits as listed for contracts below \$100,000.00 and General Aggregate and Products – Commercial Operations Limit of not less than \$2,000,000.00.
3. Coverage for Comprehensive General Bodily Injury Liability Insurance for a contract over \$5,000,000.00 is:

Each Occurrence	\$2,000,000.00
General Aggregate Limits (other than products – commercial operations)	\$4,000,000.00
Products – Commercial Operations Limited	\$4,000,000.00
Personal and Advertising Injury Limit	\$2,000,000.00
Fire Damage Limit (any one fire)	\$50,000.00
Medical Expenses Limit (any one person)	\$5,000.00

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 4. For all Contracts – Automobile Liability; in the event that services delivered pursuant to this contract involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If Contractor owned personal vehicles are used, a Business Automobile Policy covering at a minimum Code 2 “owned autos only” must be secured. If Contractor employee’s vehicles are used, the Contractor must also include under the Business Automobile Policy Code 9, coverage for non-owned autos. The minimum limits for automobile liability is: \$1,000,000.00 per occurrence, using a combined single limit for bodily injury and property damage.

DIVISION 0 – GENERAL CONDITIONS

5. For contracts for Hazardous Substance Removal (Asbestos Abatement, PCB Abatement, etc.)

- a. In addition to providing insurance coverage for the project as outlined above, the Contractor shall provide Pollution Liability insurance for the hazardous substance removal as follows:

<u>EACH OCCURRENCE</u>	<u>AGGREGATE</u>
\$500,000.00	1,000,000.00

Or \$1,000,000.00 each occurrence/aggregate bodily injury and property damage combined single limit.

- 1) Insurance certificate must state that the insurer is covering hazardous substance removal.
- 2) Should this insurance be secured on a “claims made” basis, the coverage must be continuously maintained for 1 year following the project’s “final completion” through official completion of the project, plus 1 year following.

For contracts where hazardous substance removal is a subcomponent of contracted work, the general contractor shall provide to the Owner a certificate of insurance for coverage as defined in 5a above. The State of Washington must be listed as an additional insured. This certificate of insurance must be provided to the Owner prior to commencing work.

00702.03 INSURANCE COVERAGE CERTIFICATES

- A. Prior to the commencement of the Work, Contractor shall furnish acceptable proof of insurance on the State of Washington Certificate of Insurance Form SF500A, as well as copies of insurance policies.
- B. All insurance certificates shall name Owner's Project number and Project title.
- C. All insurance certificates shall specifically require 45 days prior notice to Owner of cancellation or any material change, except 30 days for surplus line insurance.

702.04.1 PAYMENT AND PERFORMANCE BONDS

- A. Contractor shall provide separate performance and payment bonds, each executed by the Contractor and the Contractor’s Surety.
- B. Option: Contract sums of \$150,000 or less, Owner will not require performance and payments bonds; if Contractor agrees Owner may, in lieu of the bond, retain 10 percent of the Contract Sum.

00702.05 ADDITIONAL BOND SECURITY

Contractor shall promptly furnish additional security required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if requested by Owner.

00702.06 BID BOND OR PROPOSAL GUARANTEE

- A. For bids of \$35,000 or less, no bid bond is required. Bids greater than \$35,000 shall be accompanied by a certified check, cashier's check, or bid bond payable to the Treasurer of the State of Washington in an amount equal to at least 5 percent of the bid as evidence of good faith and as a guarantee that, if awarded the Contract, the bidder will execute the Contract and give Performance Bond as required. All proposal guarantees may be held a maximum of 30 calendar days, and the 3 lowest bids may be held 45 calendar days from the date of the bid opening. At the end of the 30 calendar day period, all proposal guarantees, except those accompanying the 3 lowest bids, will be returned to the respective bidders. After the Contract and bonds have been executed, the remaining 3 proposal guarantees will be returned to their respective bidders.
- B. Only a cashier's check or certified check will be accepted in lieu of a bid bond. State statute requires deposit of negotiable receipts at the time of receipt. The bidder should be prepared to accept an additional 60 to 90 day delay in obtaining repayment from the State Treasurer.
- C. Fiscal procedures in preparing repayment are time consuming, and result in the requirement for additional time. Failure to comply with this section will cause bid to be considered nonresponsive.

00702.07 BUILDER'S RISK

- A. Contractor shall purchase and maintain property insurance in the amount of the Contract Sum including all Change Orders for the Work on a replacement cost basis until Final Completion. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear.
- B. Contractor property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for A/Es' services and expenses required as a result of an insured loss.

- C. Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/Es' sub consultants, separate contractors described in *SECTION 00705.20*, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

PART 3 - 00703.00 TIME AND SCHEDULE

00703.01 PROGRESS AND COMPLETION

Contractor shall diligently prosecute the Work, with adequate forces, achieve Substantial Completion within the Contract Time, and achieve Final Completion within a reasonable period thereafter.

00703.02 CONSTRUCTION SCHEDULE

- A. The Contractor shall, at the Preconstruction Conference and prior to Notice to Proceed, submit a Construction Schedule showing the sequence in which the Contractor proposes to perform the work, including dates on which the contractor plans to start and finish major portions of the work, dates for submitting shop drawings and other submittals, and dates for acquisition of materials and equipment.
- B. The Construction Schedule shall be in the form of a bar chart, or a critical path method analysis, as specified by Owner. The preliminary Construction Schedule may be general, showing the major portions of the Work, with more specific Construction Schedules in subsequent months as directed by Owner.
- C. Owner shall return comments on the preliminary Construction Schedule to Contractor within 14 days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold progress payments until a Construction Schedule has been submitted that meets the requirements of this section.
- D. Contractor shall utilize and comply with the Construction Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Construction Schedule at its own expense to Owner indicating actual progress. If, in the opinion of the Owner, Contractor is not in conformance with the Construction Schedule for reasons other than acts of *force majeure* as identified in *SECTION 00703.05*, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Construction Schedule, or revise the Construction Schedule to reconcile with the actual progress of the Work.

DIVISION 0 – GENERAL CONDITIONS

- E. Contractor shall promptly notify Owner in writing of any actual or anticipated event that is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Construction Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.
- F. The Contractor shall notify the Owner or Owner at least 2 weeks in advance if work is to be performed on a Saturday, Sunday, and/or state holiday.
- G. No excavation work, as defined by *SECTION 00705.09*, will be allowed on Saturdays, Sundays and/or state holidays unless specifically authorized by the Owner.

00703.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE

- A. Owner may, at its sole discretion, order the Contractor in writing to suspend all or any part of the Work for up to 90 days, or for such longer period as mutually agreed.
- B. Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
 - 1. Cancel the written notice suspending the Work; or
 - 2. Terminate the Work covered by the notice as provided in the termination provisions of *SECTION 00709.00*.
- C. If a written notice suspending the Work is canceled or the period of the notice or any extension thereof expires, Contractor shall resume the Work.
- D. Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance directly attributable to such suspension, provided Contractor complies with all requirements set forth in *SECTION 00707.00*.

00703.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order the Contractor in writing to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

00703.05 DELAY

- A. Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party (*force majeure*). Acts of *force majeure* include, but are not limited to:
1. Acts of God or the public enemy
 2. Acts or omissions of any government entity
 3. Fire or other casualty for which Contractor is not responsible
 4. Quarantine or epidemic
 5. Strike or defensive lockout
 6. Unusually severe weather conditions that could not have been reasonably anticipated
 7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.
- B. Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of *force majeure*, provided it makes a request for equitable adjustment according to *SECTION 00707.03*. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of *force majeure*.
- C. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to *SECTIONS 00707.02* and *00707.03*.
- D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to *SECTION 00707.03*, but shall not be entitled to an adjustment in Contract Sum.
- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of *force majeure* or otherwise.

00703.06 NOTICE TO OWNER OF LABOR DISPUTES

If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner.

Contractor agrees to insert a provision in its Subcontracts and to require insertion in all Sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

00703.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

A. Liquidated Damages:

1. Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents.
2. The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
3. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

B. Actual Damages:

Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

PART 4 - 00704.00 SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

00704.01 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW

- A. The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Specifications, and other provisions of the Contract Documents.

DIVISION 0 – GENERAL CONDITIONS

- B. The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If during the performance of the Work Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby report such conflict, error, inconsistency, or omission to A/E in writing.
- D. Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or shop drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.
- E. Contractor shall provide any work or materials the provision of which is clearly implied in the Contract Documents even if the Contract Documents do not mention them specifically.
- F. Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the A/E.

00704.02 PROJECT RECORD

- A. Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order proposals. This separate set of Drawings and Specifications shall be the "Project Record."
- B. The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled "PROJECT RECORD." The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.
- C. Contractor shall submit the completed and finalized Project Record to A/E prior to Final Acceptance.

00704.03 SHOP DRAWINGS

- A. "Shop Drawings" means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents.

DIVISION 0 – GENERAL CONDITIONS

For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose shop drawings provided in accordance with the Contract Documents.

- B. Contractor shall coordinate all shop drawings and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, shop drawings shall be stamped by an appropriate professional licensed by the State of Washington. Shop drawings submitted to A/E without evidence of Contractor's approval shall be returned for resubmission.

Contractor shall review, approve, and submit shop drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the shop drawings. Contractor shall perform no portion of the Work requiring submittal and review of shop drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to shop drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed shop drawings. Submittals made by Contractor that are not required by the Contract Documents may be returned without action.

- C. Approval or other appropriate action with regard to shop drawings by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such shop drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.
- D. If shop drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the shop drawings, at the time it submits the shop drawings containing such variations. If A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order need not be issued; however, the modification shall be recorded on the Project Record.
- E. Unless otherwise provided in *DIVISION 1*, Contractor shall submit to A/E for approval one electronic or paper copy of all shop drawings and submittals, unless otherwise indicated.

00704.04 ORGANIZATION OF SPECIFICATIONS

Specifications are prepared in sections that conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

00704.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

- A. Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.
- B. The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.
- C. Contractor and all Subcontractors grant a nonexclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all shop drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing shop drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the shop drawings, and that such license is not in violation of any copyright or other intellectual property right.
- D. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in *SECTION 00705.22* from any violations of copyright or other intellectual property rights arising out of Owner's use of the shop drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.
- E. The shop drawings and other submittals prepared by Contractor, Subcontractors, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the shop drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

PART 5 - 00705.00 PERFORMANCE

00705.01 CONTRACTOR CONTROL AND SUPERVISION

- A. Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.

DIVISION 0 – GENERAL CONDITIONS

- B. Performance of the Work shall be directly supervised by a competent superintendent who is satisfactory to Owner, and has authority to act for Contractor. The superintendent shall not be changed without the prior written consent of Owner.
- C. Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, and their employees and agents.
- D. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times, conduct business in a manner that assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.
- E. Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed shop drawings, and permits and permit drawings.
- F. Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, comply with the *Executive Conflict of Interest Act, RCW 42.18*, which, among other things, prohibits state employees from having an economic interest in any Public Works Contract that was made by, or supervised by, that employee. Contractor shall remove at its sole cost and expense any of its or its Subcontractors', employees if they are in violation of this Act.

00705.02 PERMITS, FEES, AND NOTICES

- A. Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.
- B. If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference shall be adjusted by Change Order.
- C. Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.
- D. The Contractor shall conform to all local, state, and national codes in all phases of this project. Where conflicts arise between the code requirements and Drawings or Specifications requirements, the code shall govern and prevail unless the Drawings or Specifications impose requirements or limitations that are more stringent than the code requirements, in which case the more stringent requirements or limitations shall govern and prevail...

00705.03 PATENTS AND ROYALTIES

Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement.

00705.04 PREVAILING WAGES

- A. Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with *RCW 39.12* and the rules and regulations of the Department of Labor and Industries (L&I). The schedule of prevailing wage rates for the locality or localities of the Work, as determined by the Industrial Statistician of L&I, is by reference made a part of the Contract Documents as though fully set forth herein.
1. Before commencing the Work, Contractor shall file a statement under oath with Owner and with the Director of L&I certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
 2. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of L&I. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by *RCW 39.12.060*.
 3. Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefilled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of L&I where a complaint or inquiry concerning prevailing wages may be made.
 4. In compliance with *CHAPTER 296-127 WAC*, Contractor shall pay to L&I the currently established fee for each statement of intent and/or affidavit of wages paid submitted to L&I for certification.
 5. Per EHB 2805, public works contracts estimated to cost over \$1 million requires the Contractor and Subcontractor to submit information regarding any off-site, pre-fabricated, non-standard, project-specific items produced under each contract and produced outside Washington.
 6. Contractor and Subcontractor must have the following information on their Affidavit of Wages Paid form:
 - a. The estimated cost of the public works project;
 - b. The name of the awarding agency and the title of the public works project;

DIVISION 0 – GENERAL CONDITIONS

- c. The contract value of the off-site, pre-fabricated, non-standard, project specific items produced outside Washington; and
 - d. The name, address, and federal employer identification number of the contractor that produced the off-site, pre-fabricated, non-standard, project specific items.
- B. Projects identified as having federal financing, excluding FEMA shall comply with *Federal Davis Bacon Act* requirements.
 - 1. All laborers, mechanics, and other workers employed by the Contractor or Subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the U.S. Secretary of Labor (40 Stat 1494, Mar, 3, 1921, Chap, 411, 40 USC276A 276A S).
 - 2. When the project is subject to both state and federal wage rates, and when the rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate. The area in which the worker is physically employed shall determine which federal wage and fringe benefit rate shall be used to compare against the state wage and fringe benefit rate.
 - 3. Washington State's prevailing wage rate for this project can be found at the Department of Labor and Industries' (L&I) website: <https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>.
- C. Projects identified as having FEMA funding shall comply with Stafford Act Requirements. Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities.
 - 1. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40, and every such employee shall receive compensation at a rate not less than one and 1/2 times the basic rate of pay of the employee for all hours worked in any workweek in excess of 8-hours in any workday or 40 hours in the workweek, as the case may be. The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.
 - 2. When the project is subject to both state and federal wage rates, and when the rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate. The area in which the worker is physically employed shall determine which federal wage and fringe benefit rate shall be used to compare against the state wage and fringe benefit rate.

00705.05 HOURS OF LABOR

- A. Contractor shall comply with all applicable provisions of *RCW 49.28*, and they are incorporated herein by reference. Pursuant to that statute no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work shall be permitted or required to work more than 8 hours in any one calendar day, provided that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of 8 hours of each calendar day shall be not less than 1½ times the rate allowed for this same amount of time during 8 hours of service.
- B. Notwithstanding the preceding paragraph, *RCW 49.28* permits a Contractor or Subcontractor in any Public Works Contract subject to those provisions to enter into an agreement with its employees in which the employees work up to 10 hours in a calendar day. No such agreement may provide that the employees work 10 hour days for more than 4 calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of *RCW 49.28* shall not apply to the hours, up to 40 hours per week, worked pursuant to any such agreement.

00705.06 NONDISCRIMINATION

- A. Discrimination in all phases of employment is prohibited by, among other laws and regulations, *Title VII of the Civil Rights Act of 1964*, the *Vietnam Era Veterans Readjustment Act of 1974*, *Sections 503 and 504 of the Vocational Rehabilitation Act of 1973*, the *Equal Employment Act of 1972*, the *Age Discrimination Act of 1967*, the *Americans with Disabilities Act of 1990*, the *Civil Rights Act of 1991*, *Presidential Executive order 11246*, *Presidential Executive Order 11375*, *Presidential Executive Order 13672*, the *Washington State Law Against Discrimination*, *RCW 49.60*, and *Gubernatorial Executive Order 85-09*. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.
- B. During Performance of the Work:
 - 1. Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in *RCW 49.60*.
 - 2. Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment without regard to race, creed, color, national origin, sex, sexual orientation, age, marital status, or the presence of any physical, sensory, or mental disability.
 - 3. Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and *RCW 49.60*.

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4. Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
5. Contractor shall include the provisions of this section in every Subcontract.

00705.07 SAFETY PRECAUTIONS

- A. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- B. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether onsite or stored offsite; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.
- C. Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
- D. Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
 1. Information: At a minimum, Contractor shall inform persons working on the Project site of:
 - a. The requirements of *CHAPTER 296-62 WAC, General Occupational Health Standards*
 - b. Any operations in their work area where hazardous chemicals are present
 - c. The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and Safety Data Sheets (SDS) required by *CHAPTER 296-62 WAC*.
 2. Training: At a minimum, Contractor shall provide training for persons working on the project site, which includes:
 - a. Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.).
 - b. The physical and health hazards of the chemicals in the work area.

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- c. The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.
 - d. The details of the hazard communication program developed by Contractor or its Subcontractors, including an explanation of the labeling system and the SDS, and how employees can obtain and use the appropriate hazard information.
- E. Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
 - 1. Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state, or local law, regulation, statute or ordinance (hereinafter collectively referred to as "hazardous substances"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 days on the Project site.
 - 2. Contractor shall promptly notify Owner of all spills or releases of any hazardous substances that are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
- F. All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
- G. In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.
- H. Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

00705.08 OPERATIONS, MATERIAL HANDLING, EASEMENTS AND STORAGE AREAS

- A. Contractor shall confine all operations, including storage of materials, to Owner-approved areas. The Owner has acquired ownership and/or easement of lands for the construction as indicated on the Drawings without cost to the Contractor. It is understood and agreed by the Contractor that if it should appear at any time that the Owner has not acquired title to all of the right-of-ways and lands necessary for the performance of the Work under the provisions of this Contract, and that if any delay in the performance of said Work occasioned by the failure of the Owner, its officers, or employees to acquire a title of any of said lands or right-of-way, such failure shall extend the Contract completion date the number of days equal to the period of such delay. The Contractor waives any and all claims for damages against the Owner, its officers, and employees which the Contractor may sustain by reason of delay in the Work.
- B. Temporary buildings (e.g. storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor at its expense upon completion of the Work.
- C. Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.
- D. Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.
- E. Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.
- F. Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

00705.09 PRIOR NOTICE OF EXCAVATION

"Excavation" means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line. Before commencing any excavation, Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities and utilities through locator services.

00705.10 UNFORSEEN PHYSICAL CONDITIONS

- A. If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly before conditions are disturbed and in no event later than 7 days after the first observance of the conditions.
- B. If such conditions differ materially and cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an equitable adjustment in the Contract Time or Contract Sum or both, provided it makes a request thereof as provided in *SECTION 00707.00 - CHANGES*.

00705.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, STOCK, VEGETATION, UTILITIES, AND IMPROVEMENTS

- A. Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation at or near the Project site, and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.
- B. Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.
- C. Damage to facility production resulting in death or sickness of stock shall result in claims against the Contractor for loss of production or costs incurred by any extraordinary measures required to save production.

00705.12 LAYOUT OF WORK

- A. Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.

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- B. Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonable implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
- C. Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this work, in whatever state of completion, may be rejected by Owner.

00705.13 MATERIAL AND EQUIPMENT

- A. All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E, is equal to that named in the Specifications, unless otherwise specifically provided in the Contract Documents.
- B. It shall be the responsibility of the Contractor to furnish proof of equality in all respects to specified items when proposing alternate brands or items. Any significant deviations from Specifications, Drawings, or equality must be noted by the Contractor when submitting alternate materials for approval. The Owner shall be the sole judge of the equality and suitability of any products, materials, or components proposed by the Contractor as alternates to specified items. The Contractor shall, at their own expense, make any secondary changes required to incorporate an approved substitute or alternate into the project. No offers for substitution will be acknowledged from suppliers, distributors, manufacturers, or Subcontractors.
- C. Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
- D. Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this work, in whatever stage of completion, may be rejected by Owner.

00705.14 AVAILABILITY AND USE OF UTILITY SERVICES

- A. Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities furnished.

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- B. Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to Final Completion, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

00705.15 TESTS AND INSPECTION

- A. Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.
- B. Owner may, at any reasonable time, conduct such inspections and tests, as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:
 - 1. Constitute or imply acceptance
 - 2. Relieve Contractor of responsibility for providing adequate quality control measures
 - 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment
 - 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents
 - 5. Impair Owner's right to reject defective or nonconforming items or to avail itself of any other remedy to which it may be entitled.
- C. In addition to any inspections required by local authorities or permitting agencies, the State will appoint its own inspector for the project. Construction inspectors employed by the State shall assist the Owner in making all necessary inspections and measurements and shall enforce a strict compliance with the terms of the Contract and the orders of the Owner. The Inspector will have the authority to reject materials or workmanship which do not fulfill the requirements of these Specifications. In case of dispute, the Contractor may appeal to the Owner whose decision shall be final. The acceptance of any material by the Inspector shall not hinder its subsequent rejection if found defective. Rejected materials and workmanship shall be replaced promptly or be remedied by the Contractor, without additional cost to the Owner.

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- D. Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- E. Contractor shall promptly furnish, without additional charge, all facilities, labor, material, and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes re-inspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

00705.16 CORRECTION OF NONCONFORMING WORK

- A. If a portion of the Work is covered contrary to the requirements of the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense and without change in the Contract Time.
- B. If any time prior to Final Completion Owner desires to examine the Work or any portion of it that has been covered, Owner may request to see such Work, and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes a request therefore as provided in *SECTION 00707.00 - CHANGES*. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.
- C. Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.
- D. If, within 1 year after the date of Substantial Completion of the Work, or designated portion thereof, or within 1 year after the date for commencement of any system warranties established under *SECTION 00706.08*, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of 1 year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for 1 year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

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- F. If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor.
- G. Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations that Contractor might have according to the Contract Documents. Establishment of the time period of 1 year, as described in *SECTION 00705.16D*, relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. If Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract sum may be reduced as appropriate and equitable.

00705.17 CLEANUP

Contractor shall at all times keep the Project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Contractor.

00705.18 ACCESS TO WORK

Contractor shall provide Owner and A/E access to the Work in progress wherever located.

00705.19 OTHER CONTRACTS

Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall reasonably cooperate with the other contractors and Owner's employees and shall carefully adapt scheduling and perform the Work in accordance with Contract Documents to reasonably accommodate the other work.

00705.20 SUBCONTRACTORS AND SUPPLIERS

- A. Before submitting its first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of \$2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.

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- B. All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- C. Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.
- D. Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:
 - 1. The assignment is effective only after termination by Owner for cause pursuant to *SECTION 00709.01* and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and
 - 2. After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor that Contractor assumed in the Subcontract.
 - 3. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

00705.21 WARRANTY OF CONSTRUCTION

- A. In addition to any special warranties provided elsewhere in the Contract Documents, Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor.
- B. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
 - 1. Obtain all warranties that would be given in normal commercial practice.
 - 2. Require all warranties to be executed, in writing, for the benefit of Owner.
 - 3. Enforce all warranties for the benefit of Owner, if directed by Owner.
 - 4. Be responsible to enforce any subcontractor's, manufacturers', or supplier's warranty should they extend beyond the period specified in the Contract Documents.
- C. The obligations under this section shall survive Final Acceptance.

00705.22 INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:
1. The sole negligence of Contractor or any of its Subcontractors
 2. The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor
 3. The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued or violates any other proprietary interest, including copyright, trademark, and trade secret.
- B. In any action against Owner and any other entity indemnified in accordance with this section by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under *RCW Title 51, the Industrial Insurance Act*, or any other employee benefit acts. In addition, Contractor waives immunity as to Owner and A/E only, in accordance with *RCW Title 51*.

00705.23 REQUIRED PAYROLL DOCUMENTS

- A. The Contractor shall submit to the Owner the following for itself and for each subcontractor and each agent to a Subcontractor that performed work on the Contract:
1. *A Statement of Intent to Pay Prevailing Wages.* The Contracting Agency will make no payment under this Contract for the work performed until this statement has been completed and submitted.
 2. *An Affidavit of Wages Paid with the Final Contract Voucher Certification.* The Contracting Agency will not release to the Contractor any funds retained under *RCW 60.28.010* until all of the *Affidavit of Wages Paid* forms have been completed and submitted.
- B. In addition, the Prime Contractor shall submit a Request for Release to the Washington State Labor and Industries (L&I), (L&I provides the form).
- C. Certified payrolls are required to be submitted by the Contractor to the Owner for the Contractor and all Subcontractors or agents on all federally funded projects, and when requested in writing by the Owner, on projects funded with only Contracting Agency funds. If these payrolls are not supplied within 10 calendar days of the end of the proceeding weekly payroll period for federally funded projects, or within 10 calendar days from the date of the written request on projects with only Contracting Agency funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by state laws (*RCW 39.12.050*) and/or federal regulations (*29 CFR 5.12*). All certified payrolls shall be complete and explicit.

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Employee work classification codes used on certified payrolls shall coincide exactly with the occupation codes listed on the minimum wage schedule, unless the Owner specifically approves an alternate method to identify the occupation coding used by the Contractor to compare with the codes listed. When an apprentice is shown on the certified payroll at a rate less than the minimum prevailing journey wage rate, the apprenticeship registration number for that employee from the State Apprenticeship and Training Council shall be shown, along with the correct employee classification code.

00705.24 STATEMENT OF APPRENTICE/JOURNEYMAN PARTICIPATION

In accordance with *RCW 39.04.320*, the State of Washington requires a mandatory 15 percent apprenticeship (labor hours) participation for projects estimated to cost \$1,000,000 or more. Apprentice participation under this contract may be counted towards the required percentage (%) only if the apprentices are from an apprenticeship program registered and approved by the Washington State Apprenticeship and Training Council (*RCW 49.04* and *WAC 296-04*).

- A. For each project that has apprentice requirements, the contractor shall submit a **“Statement of Apprentice/Journeyman Participation** (See *SECTION 00670*)” on forms provided by the Washington Department of Fish and Wildlife, with every request for progress payment. The Contractor shall submit consolidated and cumulative data collected by the Contractor and collected from all Subcontractors by the Contractor. The submitted data includes the following:
1. Contractor name and address;
 2. Contract number;
 3. Project name;
 4. Contract value;
 5. Reporting period “Notice to Proceed” through “Invoicing Date”;
 6. Name and registration number of each apprentice;
 7. Total number of apprentices and labor hours worked by them, categorized by trade or craft;
 8. Total number of journeymen and labor hours worked by them, categorized by trade or craft;
 9. Cumulative combined total of apprentice and journeymen labor hours; and
 10. Total percentage of apprentice hours worked.
- B. No changes to the required percentage (%) of apprentice participation shall be allowed without written approval of the Owner. In any request for the change the Contractor shall clearly demonstrate a good faith effort to comply with the requirements for apprentice participation.

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- C. Any substantive violation of the mandatory requirements of this part of the contract may be a material breach of the contract by the Contractor.

00705.25 FEDERALLY FUNDED CONTRACT CONDITIONS

A. Equal Employment Opportunity :

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, Vietnam era and disabled veteran's status, or other presence of any sensory, mental, or physical handicap. The Contractor will take affirmative action to ensure that applications are employed and that employees are treated during employment without regard to their race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, Vietnam era and disabled veteran's status or the presence of any sensory, mental, or physical handicap.

Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, Vietnam era and disabled veteran's status, or the presence of any sensory, mental, or physical handicap.
3. The Contractor will send to each labor union, or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the Contractor's commitments under *Section 202 of Executive Order No. 11246 of September 24, 1965*, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of *Executive Order No. 11246 of September 24, 1965*, and the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by *Executive Order No. 11246 of September 24, 1965*, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in *Executive Order No. 11246 of September 24, 1965*, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 7. The Contractor will include the provisions of *Paragraphs "1" through "7"* in every Subcontract or Purchase Order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to *Section 204 of Executive Order No. 11246 of September 24, 1965*, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including the sanctions for noncompliance, provided however that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- B. *Civil Rights Act of 1964 (P.L. 88-352, 78 STAT. 241)*:
1. *Section 601 (In General)*: No person in the United States shall, on the grounds of race, color, national origin, sex, religion, marital status, age, Vietnam era and disabled veteran status, or the presence of any sensory, mental, or physical handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 2. *Section 602 (Effecting Compliance)*: Each federal department and agency which is empowered to extend federal financial assistance to any program or activity by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of *Section 601* with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected by:
 - a.) The termination of or refusal to grant or to continue assistance under such programs or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, and;

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- b.) By any other means authorized by law, provided, however, that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with a requirement imposed pursuant to this section, the head of the federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until 30 days have elapsed after the filing of such report.
- 3. Section 603 (Judicial Review): Any department or agency action taken pursuant to Section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon finding or failure to comply with any requirement imposed pursuant to Section 602, any assistance upon a finding or failure to comply with any requirement imposed pursuant to Section 602, any person aggrieved (including any State or political subdivision thereof or any agency of either) may obtain judicial review of such action in accordance with Section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.
- 4. Section 604 (Restriction on Action): Nothing contained in this title shall be construed to authorized action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the federal financial assistance is to provide employment.
- 5. Section 605 (Existing Authority Not Impaired): Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which federal financial assistance is extended by way of a contract of insurance or guaranty.
- C. Contracts in excess of \$10,000 shall comply with *Executive Order No. 11246*, entitled *Equal Employment Opportunity*, as amended by *Executive Order No. 11375*, *Executive Order No. 13672* and as supplemented in *Department of Labor Regulations (41 CFR, Part 60)*.
- D. This Contract shall comply with the *Copeland Anti-Kick Back Act (18 U.S.C. 874)* as supplemented in *Department of Labor Regulations (29 CFR, Part 3)*. The Contractor shall not induce by any means any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he is otherwise entitled.
- E. Contracts in excess of \$2,000 shall comply with the *Davis-Bacon Act (40 U.S.C. 276a to a-7)* and as supplemented by *Department of Labor Regulations (29 CFR, Part 5)*. Contractors shall pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor, and shall pay wages not less often than once a week.

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- F. Contracts in excess of \$2,000 which involve the employment of mechanics or laborers shall comply with *Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)* as supplemented by *Department of Labor Regulations (29 CFR, Part 5)*. Each Contractor shall compute the wages of every mechanic and laborer on the basis of a standard workday of eight hours, and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible, provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day of 40 hours in the workweek. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor.
- G. Contracts in excess of \$100,000 require the recipient to agree to comply with applicable standards, orders, or regulations pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), amended.
- H. Contractor shall submit Certified Payrolls as described in *Section 00705.23*.

PART 6 - 00706.00 PAYMENTS AND COMPLETION

00706.01 CONTRACT SUM

Owner shall pay Contractor the Contract Sum for performance of the Work in accordance with the Contract Documents. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Project, including sales tax.

00706.02 SCHEDULE OF VALUES

Prior to Notice to Proceed, Contractor shall submit to Owner for approval a breakdown allocating the total Contract Sum to each principle category of work, in such detail as requested by Owner ("Schedule of Values"). The approved Schedule of Values shall include appropriate amounts for demobilization, record drawings, operation and maintenance manuals, and any other requirements for Project closeout and shall be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

00706.03 APPLICATION FOR PAYMENT

- A. At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.
- B. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with *RCW 60.28.010*, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in *SECTION 00701.03* are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment.

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- C. At the time the Contractor submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Construction Schedule.
- D. If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
 - 1. The material will be placed in a warehouse that is structurally sound, dry, lighted, and suitable for the materials to be stored.
 - 2. The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized if approved in writing by Owner.
 - 3. Only materials for the Project are stored within the warehouse (or secure portion of a warehouse set aside for the Project).
 - 4. Contractor furnishes Owner a Certificate of Insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored or in transit.
 - 5. The warehouse (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access.
 - 6. Owner shall at all times have the right of access in company of Contractor.
 - 7. The Contractor and its surety assume total responsibility for the stored materials.
 - 8. Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Project site.

00706.04 PROGRESS PAYMENTS

- A. Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 days after receipt of a properly executed Application for Payment. Owner shall notify Contractor in accordance with *RCW 39.76* if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Owner shall retain 5 percent of the amount of each progress payment until 30 days after Final Acceptance and receipt of all documents required by law or the Contract Documents including, at Owner's request, consent of surety to release of the retainage. In accordance with *RCW 60.28*, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.
- C. For Base Bids of \$150,000 or less, Owner may at Contractor Request, retain 10% of the amount of each progress payment, in lieu of payment and performance bonds.

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- D. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.
- E. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in *RCW 39.76*.

00706.05 PAYMENTS WITHHELD

- A. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
 - 1. Work not in accordance with the Contract Documents
 - 2. Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum
 - 3. Work by Owner to correct defective Work or complete the Work in accordance with *SECTION 00705.16*
 - 4. Failure to perform in accordance with the Contract Documents
 - 5. Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.
- B. In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with *RCW 39.76*.

00706.06 RETAINAGE AND BOND CLAIM RIGHTS

RCW CHAPTERS 39.08 and 60.28, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein.

00706.07 SUBSTANTIAL COMPLETION

Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punch list work shall have been completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion, which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

0706.08 PRIOR OCCUPANCY

- A. Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work ("prior occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, prior occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.
- B. Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss or damage to the Work resulting from its prior occupancy. Contractor's 1 year duty to repair and any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

00706.09 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT

- A. Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing.
- B. Final Acceptance is the formal action of Owner acknowledging Final Completion. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance nor final payment shall release Contractor or its sureties from any obligations of these Contract Documents or the Public Works Bond, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Acceptance of final payment by Contractor or any Subcontractor shall constitute a waiver and release to Owner of all claims by Contractor or any such Subcontractor for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in *SECTION 00708.00*.

PART 7 - 00707.00 CHANGES

00707.01 CHANGES IN THE WORK

- A. Owner may at any time and without notice to Contractor's surety order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in *SECTION 00707.02* or *00707.03*, respectively, and such adjustment(s) shall be incorporated into a Change Order.

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- B. If Owner desires to order a change in the Work, it may request a written Change Order proposal from Contractor. Contractor shall submit a Change Order proposal within 14 days of the request from Owner, or within such other period as mutually agreed. Contractor's Change Order proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.
- C. Upon receipt of the Change Order proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in *SECTIONS 00707.02 and 00707.03*, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- D. If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time, in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in *SECTION 00708.00*.

00707.02 CHANGE IN THE CONTRACT SUM

- A. General Application:
 - 1. The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order proposal.
 - 2. If the cost of Contractor's performance is changed due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent that Contractor's changed cost of performance is due to the fault or negligence of Contractor or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of force majeure, as defined in *SECTION 00703.05*.

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- a. A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 days of the occurrence of the event-giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event-giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested, shall promptly furnish copies of such records to Owner.
- b. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors, if any; and, to the extent possible, the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
- c. Within 30 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement written notice provided in accordance with Subparagraph "a" (above) with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner.

When the request for compensation relates to a delay or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with *SECTION 00707.03C*. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

- d. Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- e. Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.

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3. The value of any work covered by a Change Order or of any request for an equitable adjustment in the Contract Sum shall be determined by one of the following methods:
 - a. On the basis of a fixed price as determined in *SECTION 00707.02B*.
 - b. By application of unit prices to the quantities of the items involved as determined *SECTION 00707.02C*.
 - c. On the basis of time and material as determined in *SECTION 00707.02D*.
 4. When Owner has requested Contractor to submit a Change Order proposal, Owner may direct Contractor as to which method in Subparagraph 3 (above) to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work or of a request for an equitable adjustment, on the basis of the fixed price method.
- B. Change Order Pricing - Fixed Price: When the fixed price method is used to determine the value of any Work covered by a Change Order or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:
1. Contractor's Change Order Proposal or request for adjustment in the Contract Sum shall be accompanied by a complete itemization of the costs including labor, materials, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below and shall be submitted on breakdown sheets in a form approved by Owner.
 2. All costs shall be calculated based on appropriate industry standard methods of calculating labor, material quantities, and equipment costs.
 3. If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
 4. The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond, and insurance markups will apply to the net difference.
 5. If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.
 6. If the total cost of the change in the Work or request for equitable adjustment is between \$1,000 and \$2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:
 - a. Lump sum labor

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- b. Lump sum material
 - c. Lump sum equipment usage
 - d. Overhead and profit as set forth below
 - e. Insurance and bond costs as set forth below
7. Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
- a. Craft Labor Costs: These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
 - 1) Basic Wages and Benefits: Hourly rates and benefits as stated on the L&I approved Statement of Intent to Pay Prevailing Wages. Direct supervision shall be a reasonable percentage not to exceed 15 percent of the cost of direct labor. No supervision markup shall be allowed if a working supervisor's hours are included in the breakdown.
 - 2) Worker's Insurance: Direct contributions to the State of Washington for industrial insurance, medical aid, and supplemental pension by the class and rates established by L&I.
 - a. Federal Insurance: Direct contributions required by the *Federal Insurance Compensation Act*, *Federal Unemployment Tax Act*, and the *State Unemployment Compensation Act*.
 - 4) Safety: Costs incurred due to the *Washington Industrial Safety and Health Act*, which shall be a reasonable percentage not to exceed 2 percent of the sum of the amounts calculated in SUBPARAGRAPHS (1), (2), and (3) above.
 - 5) Travel Allowance: Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.
 - b. Material Costs: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed from actual known costs, supplier quotations or standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges shall be itemized.

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- c. Equipment Costs: This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work or for additional rental costs actually incurred by the Contractor. Equipment charges shall be developed from the current edition of one of the following sources:
- 1) *Associated General Contractors - Washington State Department of Transportation Equipment Rental Agreement; latest edition.*
 - 2) *The State of Washington Utilities and Transportation Commission* for trucks used on highways.
 - 3) *The National Electrical Contractors Association* for equipment used on electrical work.
 - 4) *The Mechanical Contractors Association of America* for equipment used on mechanical work.
 - 5) *Equipment Watch Rental Rate (Blue Book) for Construction Equipment* shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed 50 percent of the applicable rate.
- d. Allowance for Small Tools, Expendables, and Consumable Supplies: Small tools consist of tools that cost \$250 or less and are normally furnished by the performing Contractor. The maximum rate for small tools shall not exceed the following:
- 1) For Contractor, 3 percent of direct labor costs.
 - 2) For Subcontractors, 5 percent of direct labor costs.
- Expendables and consumable supplies directly associated with the change in Work must be itemized.
- e. Subcontractor Costs: This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.

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f. Allowance for Overhead and Profit: This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any Change Order, or any request for additional Work or extra payment of any kind on the Project. This allowance shall compensate Contractor for all non-craft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, Business and Occupation taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the following:

- 1) For Contractor, for any Work actually performed by Contractor's own forces, 22 percent of the first \$50,000 of the cost and 10 percent of the remaining cost, if any.
- 2) For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 22 percent of the first \$50,000 of the cost and 10 percent of the remaining cost, if any.
- 3) For Contractor, for any Work performed by its Subcontractor(s), 8 percent of the first \$50,000 of the amount due each Subcontractor and 6 percent of the remaining amount, if any.
- 4) For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 8 percent of the first \$50,000 of the amount due the sub-Subcontractor and 6 percent of the remaining amount, if any.
- 5) The cost to which overhead and profit is to be applied shall be determined in accordance with *SUBPARAGRAPHS a-e* above.

g. Cost of Change in Insurance or Bond Premium: This is defined as:

- 1) Contractor's Liability Insurance: The cost of any changes in Contractor's liability insurance arising directly from execution of the Change Order; and
- 2) Public Works Bond(s): The cost of the additional premium for Contractor's bond arising directly from the changed Work.

The costs of any change in insurance or bond premium shall be added after overhead and profit are calculated in accordance with *SUBPARAGRAPH "f"* above.

C. Change Order Pricing - Unit Prices:

1. Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
 - a. Scope of work to be performed

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- b. Type of reimbursement including pre-agreed rates for material quantities
- c. Cost limit of reimbursement

2. Contractor shall:

- a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working.
- b. Leave access as appropriate for quantity measurement.
- c. Not exceed any cost limit(s) without Owner's prior written approval.

3. Contractor shall submit costs in accordance with *SECTION 00707.02B* and satisfy the following requirements:

- a. Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead and profit and bond and insurance costs.
- b. Quantities must be supported by field measurement statements signed by Owner.

D. Change Order Pricing - Time and Material Prices:

1. Whenever Owner authorizes Contractor to perform work on a time-and-material basis, Owner's authorization shall clearly state:

- a. Scope of work to be performed
- b. Type of reimbursement including pre-agreed rates, if any, for material quantities or labor
- c. Cost limit of reimbursement

2. Contractor shall:

- a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working.
- b. Identify on daily timesheets all labor performed in accordance with this authorization. Submit copies of daily timesheets within 2 working days for Owner's review.
- c. Leave access as appropriate for quantity measurement.
- d. Perform all Work in accordance with this section as efficiently as possible.
- e. Not exceed any cost limit(s) without Owner's prior written approval.

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3. Contractor shall submit costs in accordance with *SECTION 00707.02B* and additional verification supported by:
 - a. Labor detailed on daily timesheets
 - b. Invoices for material

00707.03 CHANGE IN THE CONTRACT TIME

- A. The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order proposal.
- B. If the time of Contractor's performance is changed due to an act of force majeure or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor or anyone for whose acts Contractor is responsible.
 1. A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 days of the occurrence of the event-giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested, shall promptly furnish copies of such records to Owner.
 2. Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and, to the extent possible, the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
 3. Within 30 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with *SECTION 00707.03B.2* with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

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4. Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- C. Any change in the Contract Time covered by a Change Order or based on a request for an equitable adjustment in the Contract Time shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Construction Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by re-sequencing of the Work or other reasonable alternatives.
- D. Contractor may request compensation for the cost of a change in Contract Time in accordance with this section, *00707.03D*, subject to the following conditions:
1. The change in Contract Time shall solely be caused by the fault or negligence of Owner or A/E.
 2. Compensation under this paragraph is limited to changes in Contract Time for which Contractor is not entitled to be compensated under *SECTION 00707.02*.
 3. Contractor shall follow the procedure set forth in *SECTION 00707.03B*.
 4. Contractor shall establish the extent of the change in Contract Time in accordance with *SECTION 00707.03C*.
 5. The daily cost of any change in Contract Time shall be limited to:
 - a. Cost of nonproductive field supervision or labor extended because of the delay
 - b. Cost of weekly meetings or similar indirect activities extended because of the delay
 - c. Cost of temporary facilities or equipment rental extended because of the delay
 - d. Cost of insurance extended because of the delay
 - e. General and administrative overhead in an amount to be agreed upon, but not to exceed 3 percent of Contract Sum divided by the Contract Time for each day of the delay.

PART 8 - 00708.00 CLAIMS AND DISPUTE RESOLUTION

00708.01 CLAIMS PROCEDURE

- A. If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in *SECTION 00707.01*, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in *SECTION 00707.02* or the Contract Time as provided in *SECTION 00707.03*, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. Contractor shall file its Claim within the earlier of: 120 days from Owner's final offer in accordance with *SECTION 00707.01E*, or the date of Final Acceptance.
- C. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:
 - 1. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim
 - 2. The date on which facts arose which gave rise to the Claim
 - 3. The name of each employee of Owner or A/E knowledgeable about the Claim
 - 4. The specific provisions of the Contract Documents that support the Claim
 - 5. The identification of any documents and the substance of any oral communications that support the Claim
 - 6. Copies of any identified documents, other than the Contract Documents, that support the Claim;
 - 7. If an adjustment in the Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Construction Schedule to demonstrate the reason for the extension in Contract Time.
 - 8. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, *SECTION 00707.02*.
 - 9. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.

DIVISION 0 – GENERAL CONDITIONS

- D. After Contractor has submitted a fully documented Claim that complies with all applicable provisions of *SECTIONS 00707.00* and *00708.00*, Owner shall respond, in writing, to Contractor as follows:
1. If the Claim amount is less than \$50,000, with a decision within 60 days from the date the Claim is received; or
 2. If the Claim amount is \$50,000 or more, with a decision within 60 days from the date the Claim is received or, with notice to Contractor, of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.
- E. To assist in the review of Contractor's Claim, Owner may visit the Project site or request additional information in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision, as set forth above, shall be final and conclusive as to all matters set forth in the Claim unless Contractor follows the procedure set forth in *SECTION 00708.02*.
- F. Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time shall be conclusively deemed to have been waived by the Contractor unless timely made in accordance with the requirements of this section.

00708.02 ARBITRATION

- A. If Contractor disagrees with Owner's decision rendered in accordance with *SECTION 00708.01D*, Contractor shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than 30 days after the date of Owner's decision on such Claim. Failure to demand arbitration within said 30 day period shall result in Owner's decision being final and binding upon Contractor and its Subcontractors.
- B. Notice of the demand for arbitration shall be filed with the *American Arbitration Association (AAA)*, with a copy provided to Owner. The parties shall negotiate or mediate under the *Voluntary Construction Mediation Rules* of the AAA or mutually acceptable service before seeking arbitration in accordance with the *Construction Industry Arbitration Rules of AAA* as follows:
1. Disputes involving \$30,000 or less shall be conducted in accordance with the *Northwest Region Expedited Commercial Arbitration Rules*; or
 2. Disputes over \$30,000 shall be conducted in accordance with the *Construction Industry Arbitration Rules of the AAA*, unless the parties agree to use the expedited rules.
- C. All Claims arising out of the Work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.

DIVISION 0 – GENERAL CONDITIONS

- D. Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall, upon demand by Owner, be submitted in the same arbitration or mediation.
- E. If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

00708.03 CLAIMS AUDITS

- A. All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.
- B. In support of Owner's audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:
 - 1. Daily time sheets and supervisor's daily reports
 - 2. Collective bargaining agreements
 - 3. Insurance, welfare, and benefits records
 - 4. Payroll registers
 - 5. Earnings records
 - 6. Payroll tax forms
 - 7. Material invoices, requisitions, and delivery confirmations
 - 8. Material cost distribution worksheet
 - 9. Equipment records (list of company equipment, rates, etc.)
 - 10. Vendors', rental agencies', Subcontractors', and agents' invoices
 - 11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts
 - 12. Subcontractors' and agents' payment certificates
 - 13. Canceled checks (payroll and vendors)
 - 14. Job cost report, including monthly totals
 - 15. Job payroll ledger

DIVISION 0 – GENERAL CONDITIONS

16. Planned resource loading schedules and summaries
 17. General ledger
 18. Cash disbursements journal
 19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work.
 20. Depreciation records on all company equipment, whether these records are maintained by the company involved, its accountant, or others.
 21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
 22. All non-privileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim.
 23. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, hours for the individuals, and rates for individuals.
 24. Worksheets, software, and all other documents used by Contractor to prepare its bid.
- C. The audit may be performed by employees of Owner or a representative of Owner. Contractor and its Subcontractors shall provide adequate facilities acceptable to Owner for the audit during normal business hours. Contractor and all Subcontractors shall make a good-faith effort to cooperate with Owner's auditors.

PART 9 - 00709.00 TERMINATION OF THE WORK

00709.01 TERMINATION BY OWNER FOR CAUSE

- A. Owner may, upon 7 days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work or any part of it for cause upon the occurrence of any one or more of the following events:
1. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time.
 2. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of its insolvency.

DIVISION 0 – GENERAL CONDITIONS

3. Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents.
 4. Contractor repeatedly fails to supply skilled workers or proper materials or equipment.
 5. Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor.
 6. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.
 7. Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Upon termination, Owner may at its option:
1. Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of and to finish the Work
 2. Accept assignment of subcontracts pursuant to *SECTION 00705.21*.
 3. Finish the Work by whatever other reasonable method it deems expedient.
- C. Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- D. When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in *SECTION 00709.02B* and shall not be entitled to receive further payment until the Work is accepted.
- E. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.
- F. Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. If Owner terminates Contractor for cause and it is later determined that none of the circumstances set forth in *SECTION 00709.01A* exist, then such termination shall be deemed a termination for convenience pursuant to *SECTION 00709.02*.

00709.02 TERMINATION BY OWNER FOR CONVENIENCE

- A. Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work or any part of it for the convenience of Owner.

DIVISION 0 – GENERAL CONDITIONS

- B. Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
1. Stop performing Work on the date and as specified in the notice of termination.
 2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated.
 3. Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated.
 4. Assign to Owner all of the rights, title, and interest of Contractor in all orders and subcontracts.
 5. Take such action as may be necessary or as directed by Owner to preserve and protect the work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest.
 6. Continue performance only to the extent not terminated.
- C. If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination plus a reasonable allowance for overhead and profit on Work performed prior to termination and the reasonable administrative costs of the termination but shall not be entitled to any other costs or damages whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of *SECTION 00707.00*.
- D. If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

PART 10 - 00710.00 MISCELLANEOUS PROVISIONS

00710.01 GOVERNING LAW

The Contract Documents and the rights of the parties herein shall be governed by the laws of the State of Washington. Venue shall be in Thurston County unless otherwise specified by the Owner.

00710.02 SUCCESSORS AND ASSIGNS

Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other, except that Contractor may assign the Work for security purposes, to a bank or lending institution authorized to do business in the State of Washington. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

00710.03 MEANING OF WORDS

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the Drawings or are required to complete the installation.

00710.04 RIGHTS AND REMEDIES

No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of an acquiescence in a breach therein, except as may be specifically agreed in writing.

00710.05 CONTRACTOR REGISTRATION

Pursuant to *RCW 39.06*, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to *RCW 18.27*.

00710.06 TIME COMPUTATIONS

When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

0710.07 RECORDS RETENTION

The wage, payroll, and cost records of Contractor and its Subcontractors, and all records subject to audit in accordance with *SECTION 00708.03*, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

00710.08 THIRD-PARTY AGREEMENTS

The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

00710.09 ANTITRUST ASSIGNMENT

Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges that result from antitrust violations commencing after the Contract Sum is established and that are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

00710.10 IDENTIFICATION OF SUBCONTRACTORS FOR PROJECTS GREATER THAN \$1,000,000

When an Owner's Estimate is in excess of \$1,000,000 for Public Works described in these documents, the bidder must as part of the bid, submit the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of the following:

- A. Heating, Ventilation, and Air Conditioning (HVAC);
- B. Plumbing, per RCW Chapter 18.106; and
- C. Electrical, per RCW Chapter 19.28 or to name itself for the work.

The Prime Contractor shall not list more than one subcontractor, or self, for each category of work identified.

Failure of the Prime Contractor to submit, as part of the bid names of such sub-contractors or itself to perform such work, or naming two (2) or more subcontractors to perform such work shall render the Contract bidder's bid as non-responsive and therefore void, in accordance with RCW 39.30.060.

END OF SECTION 00700

DIVISION 0 – SUPPLEMENTAL CONDITIONS

SECTION 00800 TABLE OF CONTENTS

00800 SUPPLEMENTAL CONDITIONS

In accordance with the *GENERAL CONDITIONS*, *SUPPLEMENTAL CONDITIONS* take precedence over *GENERAL CONDITIONS*.

00802.07	Builders Risk Insurance
00810.13	Abbreviations of Administrative Organizations

00802.07 BUILDERS RISK INSURANCE

This section supersedes Section 00702.07.
Builders Risk Insurance is not required.

00810.13 ABBREVIATIONS OF ADMINISTRATIVE ORGANIZATIONS

This section supplements **SECTION 00710.03** of the **GENERAL CONDITIONS**.

TABLE 00810.13	
ABBREVIATIONS OF ADMINISTRATIVE ORGANIZATIONS	
<i>AASHTO</i>	<i>American Association of State Highway and Transportation Officials</i>
<i>ACI</i>	<i>American Concrete Institute</i>
<i>AF&PA</i>	<i>American Forest & Paper Association</i>
<i>AIA</i>	<i>American Institute of Architects</i>
<i>AISC</i>	<i>American Institute of Steel Construction</i>
<i>AISI</i>	<i>American Iron and Steel Institute</i>
<i>AITC</i>	<i>American Institute of Timber Construction</i>
<i>ANSI</i>	<i>American National Standards Institute</i>
<i>APA</i>	<i>APA – The Engineered Wood Association</i>
<i>APWA</i>	<i>American Public Works Association</i>
<i>AREMA</i>	<i>American Railway Engineering and Maintenance-of-Way Association</i>
<i>ASCE</i>	<i>American Society of Civil Engineers</i>
<i>ASME</i>	<i>American Society of Mechanical Engineers</i>
<i>ASTM</i>	<i>ASTM International (formerly American Society of Testing and Materials)</i>
<i>AWPA</i>	<i>American Wood Protection Association</i>
<i>AWPI</i>	<i>American Wood Preservers Institute</i>
<i>AWS</i>	<i>American Welding Society</i>
<i>AWWA</i>	<i>American Water Works Association</i>
<i>CSI</i>	<i>Construction Specifications Institute</i>
<i>NEC</i>	<i>National Electrical Code</i>
<i>IAPMO</i>	<i>International Association of Plumbing and Mechanical Officials</i>
<i>IBC</i>	<i>International Building Code</i>
<i>IEEE</i>	<i>Institute of Electrical and Electronics Engineers</i>
<i>NEMA</i>	<i>National Electrical Manufacturers Association</i>
<i>NFPA</i>	<i>National Fire Protection Association</i>
<i>OSHA</i>	<i>Occupational Safety and Health Administration</i>
<i>RCW</i>	<i>Revised Code of Washington</i>
<i>SAE</i>	<i>SAE International (formerly Society of Automotive Engineers)</i>
<i>SSPC</i>	<i>Society of Protective Coatings (formerly Steel Structures Painting Council)</i>
<i>TAA</i>	<i>The Aluminum Association</i>
<i>UL</i>	<i>Underwriters Laboratories, Inc.</i>
<i>UMC</i>	<i>Uniform Mechanical Code (developed by the IAPMO)</i>
<i>UPC</i>	<i>Uniform Plumbing Code (developed by the IAPMO)</i>
<i>WAC</i>	<i>Washington Administrative Code</i>
<i>WISHA</i>	<i>Washington Industrial Safety and Health Administration</i>
<i>WSDOT</i>	<i>Washington State Department of Transportation</i>
<i>WWPA</i>	<i>Western Wood Products Association</i>

Reference herein to specifications issued by the above named or other organization shall mean the latest edition of said specifications, unless otherwise noted.

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01000 GENERAL REQUIREMENTS

01010 SUMMARY OF WORK

Facilities, infrastructure, and crops are located along Joseph creek in an area known as Green Gulch. These facilities are essential to management operations in the Wildlife Area. The access road to these facilities, Green Gulch Rd., is located on the bank of an outer bend of Joseph Creek. In recent years, the erosion of this outer bank has resulted in loss of the access road prism.

The contractor will excavate, isolate and dewater the work area from the stream, construct log wood crib structures, backfill, and plant willow stakes in accordance with the contract documents. The bid items are described as follows:

Bid Item 1: Mobilize onto the site using the staging area noted in the plans. Implement a TESC Plan and employ a CESCL lead as necessary to prevent soil erosion and work within laws and regulations. Demobilize off the site leaving it in a clean manner and in a condition equal to or better than prior to mobilizing. Include any incidental work not specifically covered in other bid items in this bid item.

Bid Item 2: Isolate the work area from the stream using material handling bags per the plans and specifications as well as laws and regulations. Provide a dewatering plan and install a dewatering system as necessary to work below the water surface elevation.

Bid Item 3: Excavate out the bankside as necessary to install two sections of log cribwall as noted on the plans. Procure all the necessary materials and construct the log cribwall sections as shown and described in the plans and specifications. Back fill the bankside and the cribwall sections. Plant willow stakes in the tops of the cribwall when complete.

Unit Price Item 4: Excavate out the bankside as necessary to install an additional two sections of log cribwall as noted on the plans. Procure all the necessary materials and construct the log cribwall sections as shown and described in the plans and specifications. Back fill the bankside and the cribwall sections. Plant willow stakes in the tops of the cribwall when complete.

Unit Price Items					
Item	Description	Estimated Quantity	Unit	Unit Price Dollars/Cents	Total Price Dollars/Cents
4.	Excavate, install, and backfill additional sections of log cribwall as shown and noted on the drawings.	2	EA		\$

01011 OWNER FURNISHED ITEMS

Not Used.

01012 CONTRACT TIME

Substantial Completion shall be achieved by October 28, 2022.

Final Completion shall be achieved by November 18, 2022.

01030 SCHEDULE OF VALUES

- A. Prior to the preconstruction meeting, the Contractor shall submit on the provided form a detailed Schedule of Values to the Owner for approval. The Schedule shall show in detail all items performed on this Project. For each major line item, list sub-values of material and installation. The sum of all values listed in the Schedule shall equal the total Base Bid.
- B. The Contractor shall include a line item identified as "Submittal of Signed Permits, Project Record, and Operation and Maintenance Manuals." This item shall be assigned a value of \$1,000. The amount will be withheld from the final payment until Project Owner has received and approved the above mentioned document(s).

01040 COORDINATION

- A. The Contractor shall, before preparing the construction schedule, consult with the Owner to determine any particular scheduling or operational coordination conditions that will arise during the course of construction and coordinate work accordingly to minimize disruption to Owner or to progress of the work.
- B. The Contractor shall coordinate all materials, supplies, subcontract work, and its own work to ensure conflict-free and uniform flow of construction activities to completion within time set forth in Paragraph 01012.

01060 REGULATORY REQUIREMENTS

- A. Washington Department of Fish and Wildlife has obtained the following listed permits:
 - Hydraulic Project Approval (HPA)
 - SEPA Determination of Nonsignificance (DNS)
 - Shoreline Substantial Development Permit (SSDP) Exemption
 - NMFS Biological Opinion (BiOp)
 - USFWS Letter of Concurrence
 - USACE Verification Letter
 - USACE Nationwide Permit Terms and Conditions
- 1. The permits with provisions affecting the construction methods or schedule of this project have been incorporated in Attachment 1 at the end of this division. The Contractor shall abide by all restrictions noted in these permits as the construction is in progress.
- 2. All other permits or fees required by local, state, or federal governmental agencies necessary for the accomplishment of this project, including Construction General Stormwater Permits if needed, shall be obtained and paid for by the Contractor, except that any utility company costs for new permanent service shall be paid directly to the utility company by the State.
- 3. All costs associated with obtaining the permits, including labor, materials, and equipment shall be included in the Base Bid, except for permit fees.
- 4. The Contractor shall pay all permit fees. The Contractor shall not include any permit fees in the Base Bid. The State shall reimburse the Contractor by Change Order for the actual fees charged by city, state, or county authorities with no Contractor markup. The Contractor shall provide to the State documentation regarding costs for fees paid.
- B. The Contractor shall notify city, county, and state authorities of any inspections and/or approvals required.

DIVISION 1 – GENERAL REQUIREMENTS

- C. The Washington Department of Fish and Wildlife has obtained an exemption from the Shoreline Substantial Development Permit for this Project. The Letter of Exemption is incorporated in Attachment 1 at the end of this Division.
- D. Contractor shall follow the Cultural Resource plan including Inadvertent Discovery Plan shown in Attachment 2.
- E. In water work window for this project is July 16-August 15.

01100 SPECIAL PROJECT PROCEDURES

- A. Contractors working on WDFW property will adhere to these COVID-19 Requirements:
 - 1. Face coverings:
 - a. Encouraged but not required in indoor public areas. Public areas include lobbies, reception or customer service areas, or other settings where interaction with customers or others with unknown vaccination status occurs.
 - b. Required for indoor, non-public, controlled-access areas, such as back offices and residences. Exception for those with verified vaccination per Business Partner Access Agreement, available by request.
 - c. Not required outdoors, unless in close proximity to persons of unknown vaccination status or other transmission risk factors are present.
 - 2. The Contractor must also be aware of and comply with current L&I and local/county COVID-19 requirements.
 - 3. These requirements are subject to change. Always follow applicable requirements in effect throughout the project duration.
- B. To reduce wildfire risk, the following conditions apply on the project site, when Industrial Fire Precaution Levels (IFPL) are activated. If any conditions are lifted, it shall be done in writing by the Owner. If any additional conditions are required it shall be done in writing by the Owner.
 - 1. No smoking except in an enclosed vehicle, per WAC 232-13-07000A.
 - 2. No fires or campfires, per WAC 232-13-07000A.
 - 3. No open flame, welding, metal cutting, chainsaw operation, or any activity that may cause a spark or hot metal, per WAC 232-13-05000A.
 - 4. No operation or parking of a motor vehicle (road vehicles and off-road vehicles) off developed roadways. However, it is permissible to park in an area devoid of vegetation within 10 feet of a developed roadway. For purposes of this paragraph, a developed roadway is a roadway constructed for standard highway vehicles with an asphalt, gravel or dirt surface with no vegetation, 14 feet wide or more. Trails or tracks are not such roadways.
 - 5. A violation of these provisions is punishable under RCW 77.15.160(5)(b). A violation of these provisions may result in removal of offending personnel from the work, per General Conditions Section 00705.01 Contractor Control and Supervision.
 - 6. All vehicles shall be equipped with a fire extinguisher, 2 gallons of water, and a shovel. All worksites shall have a fire extinguisher and shovel present. The Contractor shall take all reasonable precautions to prevent fires.

DIVISION 1 – GENERAL REQUIREMENTS

7. The Contractor shall have an employee remain at the worksite with sufficient firefighting capability, for at least one hour after work has ceased for the day, or if leaving for more than one hour, to ensure no fires have started.
 8. The Contractor shall contact the Site/Facility Manager at the beginning of each week; Monday mornings, for any special instructions.
- C. The contractor will be provided a key for entrance beyond the vehicle gate to the Green Gulch access road. At the end of the work day this gate must be closed and locked. During construction restrict public access to the road. Post signage that the access road is closed. Provide WDFW access throughout the construction.

01200 PROJECT MEETINGS

Contractor shall attend a preconstruction meeting with the Owner's representative prior to receiving the Notice to Proceed, to discuss the work and contracting procedures.

01300 CONTRACTOR SUBMITTALS

A. Preliminary Submittals

Within 7 calendar days after the date of Notice to Proceed, the Contractor shall submit the following items to the Owner for review:

1. The schedule of submittals shall be based on Contractor's priority, planned construction sequence and schedule, long lead items, and size of submittal package. Allow time for project resubmittals. The Owner is not responsible for any delay associated with project resubmittals. The schedule shall include at a minimum the submittal number, Specification section and description of the submittal contents.
2. A list of permits and licenses the Contractor shall obtain, indicating the agency required to grant the permit, such as building permits, equipment or clearance permits, etc. and the expected date of submittal for the permit and required date for receipt of the permit.

B. Preconstruction Conference Submittals

At the preconstruction conference of Paragraph 01010 - Summary of Work, the Contractor shall submit the following items to the Owner for review:

1. A preliminary Schedule of Values.
2. An Initial Schedule Submittal in accordance with Division 0 – General Conditions 00703.2.

C. Shop Drawings

Not Used.

D. Samples

Not Used.

E. Record Drawings

1. The Contractor shall maintain one set of Drawings at the Project Site for the preparation and weekly update of Record Drawings.

DIVISION 1 – GENERAL REQUIREMENTS

2. The Record Drawings shall mark every project condition, location, configuration, and any other change or deviation which may differ from the Contract Drawings at the time of award, including buried or concealed construction and utility features that are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of buried utilities that differ from the locations indicated, or that were not indicated on the Contract Drawings.
3. Record drawings shall be supplemented by any detailed sketches as necessary or as Contractor is directed, to fully indicate the work as actually constructed. These record drawings are the Contractor's representation of as-built conditions, shall include revisions made by addenda and change orders, and shall be maintained up-to-date during the progress of the work.

F. Quality Control ("QC") Submittals

1. Quality control submittals are defined as those required by the Specifications to present documentary evidence to the Owner that the Contractor has satisfied certain requirements of the Contract.
2. Unless otherwise indicated, submit QC submittals before delivery and unloading, for the following types of submittals:
 - a. Manufacturers' installation instructions.
 - b. Manufacturers' and Installers' experience qualifications.
 - c. Ready mix concrete delivery tickets.
 - d. Design calculations.
 - e. Affidavits and manufacturers' certification of compliance with indicated product requirements.
 - f. Laboratory analysis results.
 - g. Factory test reports.
 - h. Inspection results and reports of Contractor's testing firm for special inspections.
3. Unless otherwise indicated, submit QC submittals within 30 business days of the event documented for the following types of submittals:
 - a. Manufacturer's field representative certification of proper installation.
 - b. Field measurement.
 - c. Field test reports.
 - d. Receipt of permit.
 - e. Receipt of regulatory approval.
4. The Owner will record the date that a QC submittal was received and review it for compliance with submittal requirements, but the review procedures and Owner time limits above for Shop Drawings and samples will not apply.

01510 TEMPORARY UTILITIES

- A. Contractor shall supply and maintain all necessary and temporary electrical services as required for construction of this project. These services shall include temporary lighting receptacles for extension cords and outlets for power tools. Contractor shall pay for all power.

DIVISION 1 – GENERAL REQUIREMENTS

- B. The Contractor shall provide adequate temporary toilet facilities, where directed, when work is started for all those connected with the work. The Contractor shall keep the toilet facilities in a sanitary condition and remove the toilet facilities at the end of the project and disinfect the premises.
- C. Drinking water is not available at the site. Provide single-service containers or a sanitary drinking device from a proven safe source for all those connected with the work.
- D. Water for construction purposes is not available at the site.

01730 OPERATIONS AND MAINTENANCE (O&M) MANUALS

Not Used.

END OF SECTION 01000

ATTACHMENT 1: PERMITS

Hydraulic Project Approval (HPA)
SEPA Determination of Nonsignificance (DNS)
Shoreline Substantial Development Permit (SSDP) Exemption
NMFS Biological Opinion (BiOp)
USFWS Letter of Concurrence
USACE Verification Letter
USACE Nationwide Permit Terms and Conditions



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: December 09, 2021
Project End Date: September 30, 2026

Permit Number: 2021-1-173+01
FPA/Public Notice Number: N/A
Application ID: 26812

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
WDFW ATTENTION: Anna Sample 600 Capitol Way N Olympia, WA 98501-1076	

Project Name: Chief Joseph Access Road Repair

Project Description: WDFW proposes to create a long-term solution to an eroding bank of Joseph Creek, which threatens a single lane gravel access road to the WDFW Wildlife Area Headquarters Building and public access to the Chief Joseph Wildlife Area.

Using a soft armoring approach, a design is proposed to provide erosion control to the Green Gulch access road running along Joseph Creek. The basis of the design comes from the living crib wall design from the USACE design manual. This proposal includes the installation of a wooden crib wall structure below the ordinary high-water mark (OHWM) to prevent further loss of the bank. This structure will be 50 ft long, 9 ft wide, and 9 ft in depth, protruding into the stream (120 SF if fill material below OHWM). The footprint of fill material above OHWM will be 161 SF. The crib wall structure will cut 62 CY of material below OHWM and will add 18 cubic yards CY of fill material below OHWM. Above OHWM, 8 CY will be excavated, and 48 CY of fill will be added. These quantities do not reflect woody material (logs/root wads) as fill, only the streambed cobble/soil mix material. The structure will be lined with a fine mesh, bio-degradable material (coconut husk fiber wrap) and back-filled with a cobble/soil. The fine mesh material will act to hold in fine soils. The crib wall structure will be planted with native willow stakes to provide additional stabilization (450 SF).

Four root wads (approx. 3 ft x 3 ft, 14"-18" DBH) will be incorporated into the crib wall structure within one layer of the crib wall lateral logs below OHWM. The root wads will be positioned perpendicular to the face of the crib wall to roughen the face, provide refugia and collect and retain sediment and natural materials.

Phase 1 – October 2019

A temporary bank support project was applied in October 2019. This temporary bank support consisted of an anchored series of logs at the base of the eroded bank. A jute mat wrap was applied to the rest of the bank and keyed into the top with sandbags lining the top. All work was completed above OHWM.

The existing logs will remain in place and only moved to install the crib wall. Some logs may be incorporated into the crib wall.

PROVISIONS

1. **TIMING LIMITATIONS:** The project may begin January 21, 2022, and shall be completed by September 30, 2026; provided, any work within the Ordinary High Water Line shall be done between July 15 and September 30 of each calendar year.



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2. NOTIFICATION REQUIREMENT: The Area Habitat Biologist (AHB) listed below shall receive notification from the person to whom this Hydraulic Project Approval (HPA) is issued (permittee) or the agent/contractor no less than three working days prior to the start of construction activities. The notification shall include the permittee's name, project location, starting date for work, and the control number for this HPA.
3. Work shall be accomplished per plans and specifications approved by the Washington Department of Fish and Wildlife entitled Chief Joseph Access Road Repair JARPA and dated November 16, 2021, except as modified by this Hydraulic Project Approval. A copy of these plans shall be available on-site during construction.
4. Equipment used for this project may operate below the ordinary high-water line, provided the drive mechanisms (wheels, tracks, tires, etc.) shall not enter or operate below the water line, except as needed to position for work.
5. Equipment used for this project shall be free of external petroleum-based products while working around the stream. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and undercarriage of equipment prior to its working below the Ordinary High-Water Line. Equipment shall be checked daily for leaks and any necessary repairs shall be completed prior to commencing work activities along the stream.
6. Every effort shall be taken during all phases of this project to ensure that silt-laden water is not allowed to enter the stream. This may require the use of straw bales, filter fabric, and/or immediate mulching of exposed areas.
7. Equipment used for this project may operate below the ordinary high-water line, provided the drive mechanisms (wheels, tracks, tires, etc.) shall not enter or operate below the ordinary high-water line, except as needed to gain position for work.
8. All waste material such as silt, excess dirt or overburden resulting from this project shall be deposited above the limits of floodwater in an approved upland disposal site, unless used as backfill.
9. A Cofferdam shall be installed to isolate the work area for the installation of the various structures in the stream. The cofferdam shall be removed upon completion of the project.
10. The permittee shall capture and safely move food fish, game fish, and other fish life from the job site. The permittee shall have fish capture and transportation equipment (net and buckets) ready and on the job site. Captured fish shall be immediately and safely transferred to free-flowing water downstream of the project site.
11. The existing logs and jute mat from the previous project (Oct 2019) shall be removed, and the bank cleared of large boulders, debris, and blackberry vines. The excavator will create a space to install the crib wall above and below OHWM.
12. The crib wall structure will be 50 ft long, 9 ft wide, and 9 ft in depth, will be excavated into the stream bottom to establish a toe, and keyed into the bank.
13. Four root wads shall be incorporated into the crib wall structure above the crib wall lateral logs.
14. A coconut husk fiber wrap will be placed inside the crib wall to act as a liner to hold in fine soil material. The crib wall structure will then be back filled with 66 cy of streambed cobble/soil material.
15. Native willow stakes will be planted on the top of the crib wall (450 sf) to provide additional stabilization. The willow stakes will also provide habitat structure and eventually shade to this section of stream as they grow, and volunteer plant species recolonize the bank.



HYDRAULIC PROJECT APPROVAL

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Permit Number: 2021-1-173+01
FPA/Public Notice Number: N/A
Application ID: 26812

16. POST-CONSTRUCTION NOTIFICATION REQUIREMENT: The permittee, agent or contractor shall contact the Washington Department of Fish and Wildlife by e-mail to HPAapplications@dfw.wa.gov; mail to Post Office Box 43234, Olympia, Washington 98501-1091; or fax to (360) 902-2946 within seven days of completion of the work. The notification shall include the permittee's name, project location, completion date for the work, and the Hydraulic Project Approval control number. The department may conduct a compliance inspection; however, the department will notify the permittee or agent prior to the inspection.

LOCATION #1:	Site Name: Chief Joseph Wildlife Area 45945 Joseph Creek Rd, Asotin, WA 99402					
WORK START:	May 1, 2022			WORK END:	October 31, 2022	
<u>WRIA</u>	<u>Waterbody:</u>			<u>Tributary to:</u>		
35 - Middle Snake	Joseph Creek (rb)			Grande Ronde River		
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	02	06 N	46 E	46.029436	-117.015873	Asotin
<u>Location #1 Driving Directions</u>						
From the town of Clarkston, WA follow WA-129 (5.9 miles) to 1st St in Asotin. Take Snake River Rd to Joseph Creek Rd (28.5 mi). The access road is to the south of Joseph Creek Rd and is gated.						

APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.



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All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.

MINOR MODIFICATIONS TO THIS HPA: You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

MAJOR MODIFICATIONS TO THIS HPA: You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.



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A. INFORMAL APPEALS: WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist Thomas.Schirm@dfw.wa.gov
Tom Schirm 509-382-1266

for Director
WDFW



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: P.O. Box 43200, Olympia, WA 98504-3200 • (360) 902-2200 • TDD (360) 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

DETERMINATION OF NONSIGNIFICANCE (DNS)

Name of Proposal: DNS 21-041: CHIEF JOSEPH WILDLIFE AREA ACCESS ROAD
REPAIR

Description of Proposal:

WDFW proposes to create a long-term solution to an eroding bank of Joseph Creek, which threatens a single lane gravel access road to the WDFW Wildlife Area Headquarters Building and public access to the Chief Joseph Wildlife Area.

Using a bio-engineering approach, a design is proposed to provide erosion control to the Green Gulch access road running along Joseph Creek. The basis of the design comes from the living crib wall design from the USACE design manual. This proposal includes the installation of a wooden crib wall structure below the ordinary high-water mark (OHWM) to prevent further loss of the bank. This structure will be 50 ft long, 9 ft wide, and 9 ft in depth, protruding into the stream (120 SF if fill material below OHWM). The footprint of fill material above OHWM will be 161 SF. The crib wall structure will cut 62 CY of material below OHWM and will add 18 cubic yards CY of fill material below OHWM. Above OHWM, 8 CY will be excavated, and 48 CY of fill will be added. These quantities do not reflect woody material (logs/root wads) as fill, only the streambed cobble/soil mix material. The structure will be lined with a fine mesh, bio-degradable material (coconut husk fiber wrap) and back-filled with a cobble/soil. The fine mesh material will act to hold in fine soils. The crib wall structure will be planted with native willow stakes to provide additional stabilization (450 SF).

Four root wads (3 ft x 3 ft, 14"-18" DBH) will be incorporated into the crib wall structure within one layer of the crib wall lateral logs below OHWM. The root wads will be positioned perpendicular to the face of the crib wall to roughen the face, slowing the stream flow to create pools, provide refugia and collect and retain sediment and natural materials.

Fish Exclusion, Sediment Control

A sandbag coffer dam will be installed for the duration of work in water while excavating and installing the crib wall structure. This will exclude the creek bank location from fish as well as contain sediment. A CAMP Environmental Planner will be present on site during the installation of the coffer dam and will remove all fish from within the excluded area prior to any equipment working in water. This will require the use of seine nets, pushing fish downstream and out of the excluded area. This will occur at least three consecutive times and until no fish are visibly present within the excluded coffer dam.

Phase 1 – October 2019

An emergency, temporary bank support project was applied in October 2019. This temporary bank support consisted of an anchored series of logs at the base of the eroded bank. A jute mat

wrap was applied to the rest of the bank and keyed into the top with sandbags lining the top. All work was completed above OHWM.

The existing logs will remain in place and only moved to install the crib wall. Some logs may be incorporated into the crib wall.

Wetlands

A wetland reconnaissance survey was completed in February 2021, in the project area and no wetlands were identified.

Mitigation

The crib wall fill material will add 18 CY and 120 SF below OHWM. Adding root wads to the crib structure design will offset the impact of adding fill (dirt/rock) material below OHWM. Each root wad trunk will be 14"-18" DBH.

3 ft across x 3 ft beyond crib wall face = 9 SF per root wad x 4 root wads = 28 SF

The top of the structure will be planted with native willow stakes at 4 ft on center. This will be 450 SF mitigation to offset the fill material. This is 478 SF of mitigation (4:1). (450 SF + 28 SF = 478 SF).

Proponent/Applicant: Washington State Department of Fish and Wildlife (WDFW)
Contact: Anna Sample
600 Capitol Way N
Olympia, WA 98501
(360) 790-0868
AnnaMarie.Sample@dfw.wa.gov

Location of Proposal, including street, if any: Joseph Creek Road on the WDFW Chief Joseph Wildlife Area, Asotin (Rogersburg), Asotin County, Washington: Township 7N, Range 46E, Section 2.

Lead Agency: Washington Department of Fish and Wildlife (WDFW)

WDFW has determined that this proposal will likely not have a significant adverse impact on the environment. Therefore, state law¹ does not require an environmental impact statement (EIS). WDFW made this determination of nonsignificance (DNS) after we reviewed the environmental checklist and other information on file with us.

We issued this DNS according to state rules.² **We will not act on this proposal for 14 days** from the date we issued the DNS. Agencies, affected tribes, and members of the public are invited to comment on this proposal or DNS. We must receive your comments within 14 days of the date of this letter. The comment period will end at **5:00 pm on August 19, 2021.**

Method of Comment:

The following procedures shall govern the method to comment on agency SEPA proposals. Comments received through these procedures are part of the official SEPA record for this proposal.

You can submit your comments any one of the following ways:

- Email to SEPADesk2@dfw.wa.gov
- Online at the WDFW SEPA website comment link at:
<http://wdfw.wa.gov/licenses/environmental/sepa/open-comments>
- Fax to (360) 902-2946
- Mail to the address below.

Responsible Official: Lisa Wood

Position/Title: SEPA/NEPA Coordinator, WDFW Habitat Program, Protection Division

Address: P.O. Box 43200, Olympia, WA 98504-3200

After the comment period closes, applicants may view the updated status of this proposal on the WDFW SEPA website: <https://wdfw.wa.gov/licenses/environmental/sepa/closed-final>. Once the status is posted as final, applicants and permittees may take action on the proposal. When a proposal is modified or withdrawn, notice will be given in accordance with state law.¹

If you have questions about this DNS or the details of the proposal, contact Lisa Wood at the address above or email SEPADesk2@dfw.wa.gov.

DATE OF ISSUE: August 5, 2021

SIGNATURE:



Footnotes

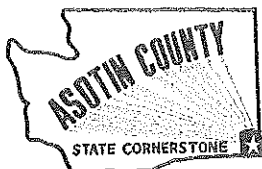
1. RCW 43.21C.030(2)(c)
2. WAC 197-11-340(2).

SEPA Log Number: 21-041.dns

Individuals who need to receive this information in an alternative format or language, or who need reasonable accommodations to participate in WDFW-sponsored public meetings or other activities may contact the Title VI/ADA Compliance Coordinator by phone at 360-902-2349, TTY (711), or email (Title6@dfw.wa.gov).

BUILDING & PLANNING DEPARTMENT

KARST J. RIGGERS
BUILDING OFFICIAL
COUNTY PLANNER



P.O. Box 610
Asotin, WA 99402
PHONE (509) 243-2020
Fax: (509) 243-2019

EXEMPTION FROM SHORELINES MANAGEMENT ACT SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT

TO: Name of Applicant: WA State Department of Fish & Wildlife
Attn: Anna Marie Sample
Mailing Address: 600 Capitol Way N.
Olympia, WA 98501-1091

Legal Description including location: Project is located at 45945 Joseph Creek Road, Asotin, WA. Project is along Joseph Creek in Section of 2, T6N, R46E. See attached map.

PROJECT:

The project purpose is to stabilize approximately 50' of stream bank to protect a sole access road to WDFW & ODFW property. Using and bio-engineering approach, log cribbing, root wads, and cobble/soil will be placed above and below the Ordinary High Water Mark to prevent further erosion.

PROJECT CONDITIONS:

- 1) Fill placement shall be limited to the parameters of the Bio-engineered Plan.
- 2) Obtain all necessary permits from applicable agencies.

IDENTIFY EXEMPTION SECTION:

The proposal made by the applicant to undertake the development described above are along the waters of **Joseph Creek** and its associated wetlands and is exempt from the requirement of a substantial development permit. Exemption is identified as Ordinary Maintenance and Repair under WAC 173.27.040 (2)(b).

The proposed development is consistent or inconsistent with:

Consistent	Inconsistent	
(X)	()	Policies of the Shoreline
		Management Act
(X)	()	Asotin County Shorelines
		Master Program

Administrator: Karst Riggers
Title: Asotin County Planner

Date: 8-31-21



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
800 E. Park Blvd, Plaza IV, Suite 220
Boise, Idaho 83712

Refer to NMFS No: WCRO-2021-02116

January 12, 2022

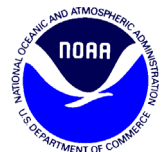
Michelle Walker
Chief, Regulatory Branch
U.S. Army Corps of Engineers, Seattle District
P.O. Box 3755
Seattle, WA 98124-3755

Re: Endangered Species Act Section 7(a)(2) Concurrence and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Chief Joseph Wildlife Area Access Road Repair, Joseph Creek (HUC1706010606), Asotin County, Washington.

Dear Ms. Walker:

On July 26, 2021, NOAA's National Marine Fisheries Service (NMFS) received your request for a written concurrence that the subject action, to be authorized under Section 404 of the Clean Water Act (CWA) by the U.S. Corps of Engineers (Corps), is not likely to adversely affect (NLAA) listed species or critical habitats designated under the Section 7 of the Endangered Species Act (ESA). Upon review of the Biological Assessment (BA), NMFS did not concur with the NLAA determination; specifically, the action has the potential to harass or harm juvenile Snake River Basin (SRB) steelhead. After communication with Corps staff, on October 7, 2021, the Corps agreed to move the proposed action forward under formal consultation and with the likely to adversely affect (LAA) determination for SRB steelhead. Therefore, NMFS will proceed with formal consultation pursuant to section 7(a)(2) of the ESA with the determination that the proposed action will be LAA SRB steelhead. NMFS has also determined that the action, and associated BA, qualified for our expedited review and analysis (i.e. condensed biological opinion) because it met our screening criteria and contained most of the required information on and analysis of, your proposed action and its potential effects to listed species and designated critical habitat. Specifically, we have adopted the information and analyses provided in sections 1.0 through 5.5 of the BA. The following document is a condensed biological opinion for SRB steelhead. Additionally, this letter documents NMFS's concurrence with the Corps determination that the action is NLAA Snake River (SR) spring/summer Chinook salmon and SR fall Chinook salmon or their critical habitats.

Thank you also for your request for consultation pursuant to the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson–Stevens Fishery Conservation and Management Act [16 U.S.C. 1855(b)] for this action. After reviewing the proposed action, we agree with your conclusion that the action would not adversely affect EFH. Therefore, we are hereby concluding EFH consultation.



Consultation History

NMFS received a BA along with a request to initiate informal consultation from the Corps on July 26, 2021. Upon initial review of the BA, NMFS corresponded by phone with the Corps seeking clarification of the proposed fish exclusion procedures, which was needed for the NLAA concurrence. The Corps submitted an updated BA on August 3, 2021; however, conflicting language regarding fish exclusion procedures still existed in the BA. NMFS emailed the Corps on August 5, 2021 providing highlighted segments of the updated BA that contained conflicting fish exclusion language. NMFS received the clarifying information via a final BA that was emailed on August 9, 2021. Through subsequent analysis of fish distribution, timing, and the proposed exclusion techniques, we determined individual steelhead could be adversely affected. On October 7, 2021, NMFS communicated to the Corps that the actions were LAA SRB steelhead and formal consultation was initiated on that date.

After reviewing the initial consultation request and final BA, we adopted the information and analyses the Corps provided or referenced, but only after NMFS's independent, science-based evaluation confirmed they meet our regulatory and scientific standards. We adopt by reference here sections 1.0 through 5.5 of the Chief Joseph Wildlife Area – Access Road Repair Asotin County, Washington BA, File No. 3730-179-00, including the Federal Action (section 1.0), Listed Species (section 1.3), Environmental Baseline (section 4.0), and the Effect of the Action (section 5.0). The referenced BA, we have adopted, is available in its entirety in our official project record, available at NMFS Boise Office or by contacting Todd Andersen (todd.andersen@noaa.gov). This document may also be accessed by contacting David Moore, Biologist/Soil Scientist in the Spokane Regulatory Field Office at (206) 316-3166, or by email at david.j.moore@usace.army.mil. NMFS supplemented this CORPS analysis with additional discussion regarding effect pathways for fish-exclusion activities and rearing critical habitat (see *Effects of the Action*, below).

BIOLOGICAL OPINION

Proposed Action

The Washington Department of Fish and Wildlife (WDFW) proposes to create a long-term solution to address ongoing erosion along the right (eastern) bank of a side channel of Joseph Creek (Figure 1). The creek is adjacent to a road that provides access to the WDFW Wildlife Area (WLA) Headquarters Building as well as public access to the Chief Joseph WLA.

Using a bioengineering approach, the proposed project design would provide erosion control along the Green Gulch access road and Joseph Creek (Section 2.0 of the BA). This proposal includes the installation of a wooden crib wall structure below the ordinary high water mark (OHWM) to prevent further loss of the eroding streambank. A crib wall is comprised of stacked logs with each layer perpendicular to adjacent layers. Root wads are incorporated to buffer high water velocities and provide cover for fish. The voids in the crib wall are filled with a cobble or soil mix.

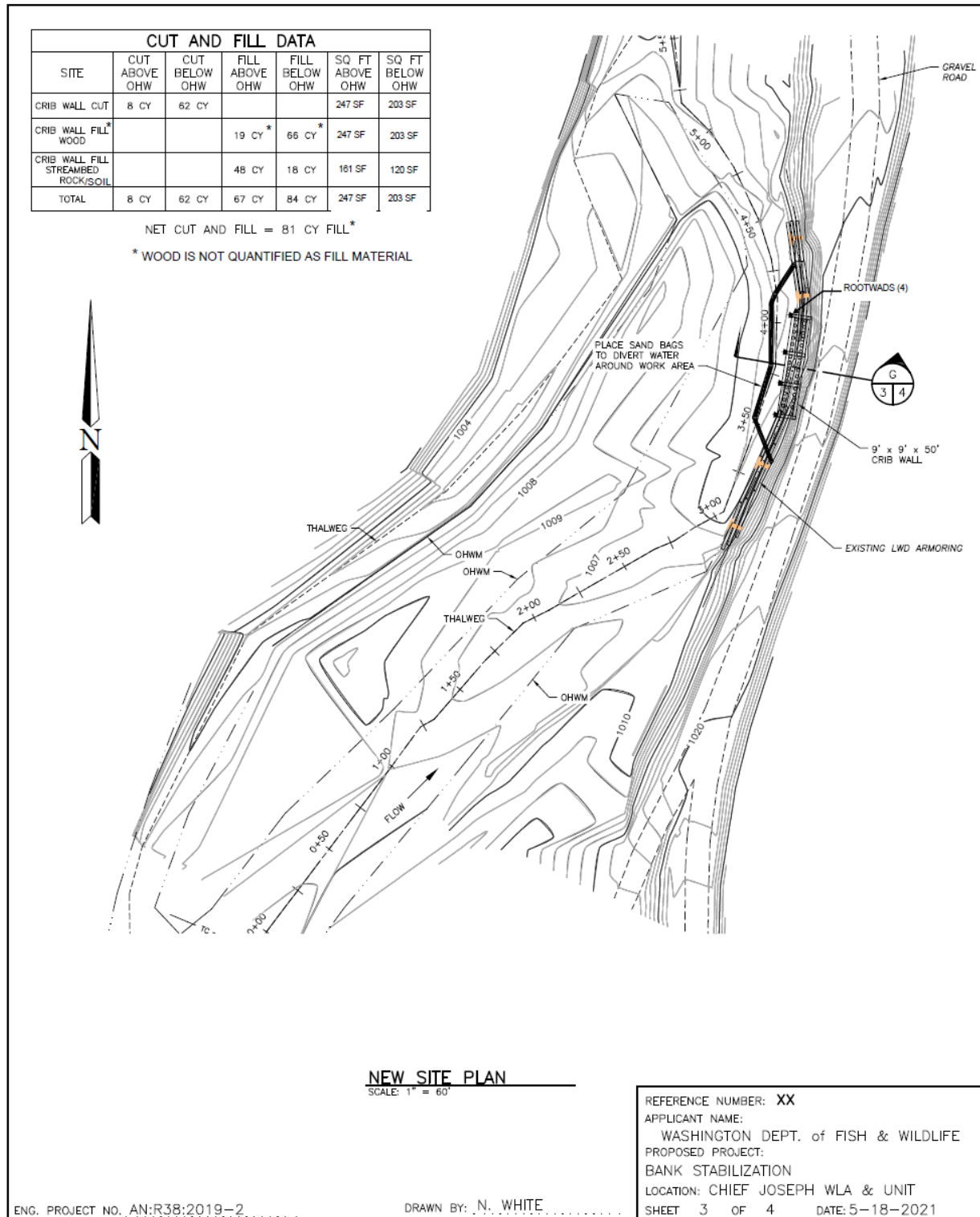


Figure 1. Photograph looking downstream at the side channel eroding stream bank and access road to the Chief Joseph Wildlife Area. The side channel rejoins the main channel at the end of the gravel bar.

Willow stakes are planted in the top of the structure to provide additional structure and stability, overhead stream cover, and shading to the stream. This structure will be 50 feet long, 9 feet wide, and 9 feet in depth, and protruding into the current stream channel. 120 square feet of fill material will be placed below OHWM (Figure 2) and the footprint of fill material above OHWM will be 161 square feet.

Section 2.2 of the BA describes the construction equipment and materials used for project implementation. An excavator, backhoe and other equipment will be used to remove existing wood and embankment material and install the wood crib wall structure. No machinery will work below the OHWM; however, machine attachments (e.g. excavator bucket) will be used for proposed work below the OHWM. Sediment and erosion control measures will be implemented for all phases of construction. Construction of the project will be timed to coincide with the approved in-water work window associated with the WDFW Hydraulic Project Approval (HPA). The in-water work window for the project is July 16 through August 15. This work window is designed to reduce impacts to listed salmonids. In addition to the in-water work window, construction best management practices (BMPs) and temporary sediment and erosion control measures will be utilized during the project to avoid impacts to ESA-listed species and designated critical habitat.

Impact minimization measures outlined in the BA (section 2.4) also include equipment staging and materials storage, equipment inspection and cleaning, debris removal, waste disposal, and a Spill Prevention Control (SPC) Plan.



Fish Exclusion Procedures

The active work area is located in a side channel of Joseph Creek (see Figure 1) and will be approximately 100 feet long and 12 feet at the widest point (measured at OHWM). Water depth is not anticipated to be more than 12 inches deep within the work area. A WDFW Environmental Planner will be present on site during the fish exclusion procedures, which will take place prior to any equipment working in water. Fish will be removed and excluded from the work area using the following technique as described in Section 5.2 of the BA:

- A block net (1/8-inch mesh) will be placed upstream of the work area to prevent fish from moving into the work area.
- Two people will use a seine net (1/8-inch mesh) to herd fish out of the work area. Starting at the upstream block net, the seine will be worked along the bottom of the side channel in a downstream direction to the downstream boundary of the work area. The seine will then be anchored and used as a block net to prevent any fish from entering the work site.
- Within the seined channel, a sandbag cofferdam will be installed by hand to dewater the toe of the streambank where the crib wall will be installed; the cofferdam will to be left in place for the duration of in-water work while excavating and installing the crib wall structure.
- The downstream end of the cofferdam will be left open so that any remaining fish will be herded out of the work area. Two people, on each edge of the inside of the cofferdam exclusion, will use a seine net (1/8-inch mesh) to push any remaining fish downstream and out of the cofferdam exclusion area. This will occur at least three consecutive times and until no fish are visibly present within the excluded cofferdam. The cofferdam will be fully enclosed and the upstream and downstream block nets will be removed. The coffered area will then be dewatered.

Status of Species and Critical Habitat

We examined and considered the status of the species (BA section 4.4.2) for SRB steelhead to inform the description of the species' "reproduction, numbers, or distribution" as described in 50 CFR 402.02. We also examined and considered the condition of critical habitat throughout the designated area and the function of the physical or biological features essential to the conservation of the species that create the conservation value of that habitat (BA section 5.4).

Joseph Creek is designated critical habitat for SRB steelhead. Both adult and juvenile life stages use the main channel as a migration corridor (BA section 4.4.2). The BA also states that juveniles may utilize Joseph Creek, within the project area, for rearing; however, high water temperatures likely limit utilization by juvenile steelhead during the work window. During the winter and spring months, juvenile SRB steelhead may utilize the side channel areas of Joseph Creek. During the summer months, and the proposed July 16 to August 15 work window, mean daily water temperatures often exceed 68°F with daily maximum temperatures averaging 76°F. The optimal water temperatures for rearing steelhead range from 53-64°F, and sustained temperature above 77°F is lethal.

“Action area” means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). The action area, therefore, includes the spatial extent of all direct, indirect, interrelated and interdependent effects of the project. The action area includes aquatic habitat within Joseph Creek and the adjacent bank riparian area and access road (BA section 3.2). The part of the action area below water surfaces is the stream section starting where the upstream block net is set, extending down through the work area, and ending approximately 300 feet below the work area, accounting for the expected extent of turbidity. Sediment, both suspended and deposited, is the pathway of effect that will have the greatest extent (i.e., covers the largest area) compared to other potential pathways of effect (e.g., noise).

The “environmental baseline” refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all federal, state, or private actions and other human activities in the action area, the anticipated impacts of all proposed federal projects in the action area that have already undergone formal or early section 7 consultations, and the impact of state or private actions, which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify are part of the environmental baseline (50 CFR 402.02). Section 4.0 of the BA describes the environmental baseline, including recent alterations of the action area.

Baseline conditions in the action area have been shaped by decades of livestock grazing, fire, road construction, hunting, fishing, camping, etc. Streambed sediments within the project area consist primarily of cobbles and riparian vegetation consists primarily of invasive Himalayan blackberry. Although riparian habitat within the project site is degraded, riparian habitat within other parts of the action area includes dense overhanging native riparian vegetation that provide rearing, forage and refuge habitat for salmonids. Native riparian vegetation within the action area includes alder and cottonwood canopy with red osier dogwood. Due to high water temperatures, the Oregon Department of Environmental Quality has listed Joseph Creek 303(d) impaired for fish and aquatic life.

The Grande Ronde/Imnaha steelhead Major Population Group of SRB steelhead is tentatively rated as achieving viable status given that one population (Joseph Creek) is Highly Viable, the Upper Grande Ronde population meets the criteria for Viable, and the remaining two populations are provisionally rated as Maintained. The Joseph Creek population is the only population affected by the proposed action. The Joseph Creek steelhead population’s overall viability rating is highly viable, with abundance/productivity (A/P) rating at a very low risk and a spatial structure and a diversity rating of low risk.

The physical and biological features (PBF) of steelhead critical habitat most likely to be affected by the proposed action include water quality (turbidity and possible toxic chemicals), substrate, natural cover, and freedom from artificial obstructions. Modification of these PBFs may affect freshwater rearing, or migration in the action area. Proper function of these essential features is

necessary to support successful adult and juvenile migration, rearing, and the growth and development of juvenile fish.

Effects of the Action

Under the ESA, “effects of the action” are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (see 50 CFR 402.17). In our analysis, which describes the effects of the proposed action, we considered 50 CFR 402.17(a) and (b).

The BA provides a detailed discussion and assessment of the fish exclusion, noise, and water quality (sediment and chemical contamination) effects of the proposed action in Section 5.0 of the initiation package. With exceptions noted below, the Corps’ analysis is adopted here (50 CFR 402.14(h)(3)). Although the effects analysis in the BA provides the key information, NMFS does not agree with the conclusion the Corps drew that the effects are insignificant. In section 5.3 of the BA, it is stated “*Because of the life history of listed salmonids present within the action area, which may remain in Joseph Creek at any time of year, it cannot be guaranteed that no listed individuals will be present during these activities.*” While NMFS agrees that, the proposed activities to limit the likelihood of encountering juvenile steelhead (e.g. the proposed work window) are valid, if steelhead (particularly young-of-the-year) are present during fish exclusion and construction activities, implementing the project could result in injury or mortality to individual fish. The effect pathways of injury or mortality associated with construction activities were not addressed in the BA and thus are discussed below.

Implementation of the proposed action has the potential to affect steelhead by directly disturbing the fish with construction equipment and activities (e.g. noise), exposing fish to toxic chemicals, creating temporary plumes of suspended sediment, causing fish to flee or become stranded when isolating or dewatering the work site, and possible crushing, impinging, or entraining fish by construction activities. Potential alterations to critical habitat include; temporary water quality degradation; effects on instream and edge cover from conversion of a portion of the stream channel to riparian habitat (i.e. extending the existing bank into the current channel), sedimentation of stream substrate, and temporary obstruction of fish passage with block nets.

The summaries of each type of effect below are provided to supplement the analysis in the BA. While the BA explained the types and physical dimensions of project effects, it appeared to assume that steelhead would not be in the area (given the work window) or that fish exclusion would be 100 percent effective and the process would not harm any fish. However, NMFS assessed that there is more than a negligible likelihood juvenile steelhead will be present, especially at the start of the work window, when the fish exclusion activities are implemented and when stream temperatures may not be so high as to preclude steelhead presence. Also, because steelhead spawning is known to occur upstream of this area, it is possible some of the fish present would be very small, recently emerged fish. With those things in mind, below NMFS briefly reviews and adds to the effects analysis in the BA.

In-air construction noise may permeate the surrounding terrestrial environment at and adjacent to the work; however, there will be very limited in-water noise generated by the project. Furthermore, the work area will be isolated from Joseph Creek during construction, further reducing construction noise extending into the aquatic environment. Fish may move short distances temporarily in response to the noise; however, suitable habitat is abundant in nearby reaches and such responses are not expected to adversely affect the rearing of juvenile fish at this site.

Equipment staging and materials storage will be located in an area away from the stream. A Spill Prevention Control and Countermeasure (SPCC) Plan will be prepared, approved and implemented by the contractor. The plan will be site-specific and cover the project scope of work. Equipment used for this project shall be free of external petroleum-based products while the work is performed around the water. Equipment shall be checked daily for leaks, and any necessary repairs shall be completed prior to commencing work activities adjacent to the creek. Heavy equipment shall be washed free of deleterious material prior to commencement of work. All debris resulting from construction shall be removed from the project area and prevented from entering the water. With successful implementation of the proposed SPCC, the likelihood and level of effect from chemical contamination is expected to be very low and is not likely to cause injury, harm, or behavioral changes to juvenile steelhead in the action area.

Water quality will be more appreciably affected by project turbidity. Elevated turbidity due to suspension of sediments is expected during work area isolation (cofferdam construction) and following removal of the cofferdam. Water quality is expected to return to baseline conditions immediately following completion of construction. Increased turbidity is anticipated to affect the project area and extend up to 300 feet downstream from the construction limits, causing potential sub-lethal effects to steelhead. Turbidity may increase physiological stress, resulting in physical injury (e.g., gill abrasion), and potentially displace rearing juvenile fish. In-water construction work will be limited to the approved in-water work window for the project. This measure should limit the number of steelhead exposed to the expected temporary increases in turbidity. With appropriate BMPs in place and adherence to the approved in-water work window for fish protection, the effect on water quality is expected to extend up to 300 feet downstream of the work site over a period of several hours while the cofferdam is installed and then removed. The work site is located in a side channel that joins the main channel approximately 100 feet downstream of the cofferdam. The main channel provides refugia from sediment plumes and contains similar habitat to the side channel; therefore, the likelihood of injury or harm to displaced juvenile fish from elevated turbidity is expected to be very low.

In-water work, including fish exclusion efforts, will be restricted to the approved work window, which is July 16 through August 15. Restricting the fish exclusion methods (strictly herding with seine) and using the work window help reduce but do not eliminate the possibility of encountering listed salmonids during the project. As noted above, NMFS assumes some juvenile steelhead, including young of the year, could be present. The project work site is located in a relatively shallow side channel (typically < 12 inch depths during summer) and displaced fish would have abundant similar habitat in adjacent areas. If listed fish are present, injury or mortality from setting the block net and sweeping the seine through the reach is unlikely. Fish

would flee downstream either to similar habitat or (for some young) burrow into the substrate and get under the net. The disturbance would be temporary and unlikely to harm the fish.

Fish exclusion techniques may not be entirely successful, especially for newly emerged steelhead fry. Rather than flee during fish exclusion activities, fry may burrow into the substrate. Furthermore, the mesh size used (1/8 inch) and gaps in the sandbag cofferdam may not preclude fry from re-entering the work site. If initial fish exclusion activities fail to remove all steelhead from the work area (particularly possible with young of the year fish that hide in the substrate), then the subsequent activities of coffer damming, three pass seining, and dewatering could injure or kill fish. Fish could be harassed, entrained, impinged on equipment or structures, or stranded on the dewatered streambed. Fish that are present in the work area could become trapped in the bucket of the excavator during excavation of in-water substrates. If juvenile fish are present, they could possibly be crushed within the substrate while excavation occurs. The proposed period of in-water work (July 16 – August 15) has high stream temperatures in this area and will likely limit the number if not preclude juvenile steelhead from the action area. To estimate numbers of fish adversely affected, and probably erring toward an overestimate, we developed estimates of juvenile fish based on area-specific data, and assumed the 1+ age fish would be effectively excluded whereas the young-of-the-year or fry would not (see below).

In August of 2006, WDFW completed electrofishing surveys in five sections of lower Joseph Creek; the mean density for rainbow trout or steelhead was 0.14 fish/100 m². The steelhead sampled by WDFW were all age-1+ and ranged in size from 118-187 mm. We applied that density estimate to the active work area (100 feet long and 12 feet wide or 111 m²) and estimated there would be one age 1+ steelhead within the area at the time of implementation. The age-1+ steelhead would likely flee the work site and not be harmed during fish exclusion activities.

The 2006 WDFW surveys of this area did not capture any young-of-the-year steelhead. However, newly emerged fry are small and harder for netters to see and capture during electrofishing surveys. In addition, fry are often overlooked by netters as they have a tendency to focus on larger fish and operators tend to skip the shallow margins where fry are often located. Therefore, we also estimated the number of fry that could be present in the work area. Cottonwood Creek, a tributary that enters Joseph Creek approximately 2.5 miles upstream of the work site, contains the nearest documented steelhead spawning (the next nearest is over 30 miles upstream in Joseph Creek). In 2016, there were 24 steelhead redds counted in Cottonwood Creek. We took the average steelhead fecundity and egg to fry survival rate and estimated that Cottonwood Creek steelhead produce 34,618 fry. There is an estimated 15.8 miles of suitable rearing habitat from the Joseph Creek mouth up through the Cottonwood Creek watershed. If the fish were uniformly distributed across that whole area, there would be approximately 41 steelhead fry within the work site during construction activities. Assuming there could be more redds upstream when the project is implemented, and the fish are somewhat more concentrated in this area for some reason, we doubled the estimate—to a total of 82 steelhead fry. Because of their small size and limited development, steelhead fry tend to hide rather than flee like age-1+ fish. Therefore, we expect that the 82 fry present will be potentially injured or killed as a result of project activities.

The long-term impacts of the proposed action to habitat features, and thus to steelhead, are primarily altering bank and stream channel conditions. These habitat effects will occur within and adjacent to the proposed crib wall. Approximately 120 square feet of aquatic fill will occur within the footprint of the crib wall through the placement of the cobble or soil mix; there will also be 83 square feet of wood structure, for a total fill area of 203 square feet below the OHWM. Steelhead habitat will be altered through the installation of logs and root wads within the creek along the face of the crib wall.

Although the installation of the crib wall will narrow the side channel and reduce the amount of aquatic habitat by approximately 203 square feet, the installation of root wads along the face of the structure will improve available habitat by roughening the face of the structure and providing cover along the margins of the channel. Habitat benefits will include slowing flows to create pools that will provide refugia for steelhead in an area that currently experiences high velocities and little refuge. Slower flows caused by the root wads are also expected to retain stream sediment and other natural materials.

Permanent loss of aquatic habitat is limited to 203 square feet within an area that has previously eroded from the access road embankment. Within these 203 square feet, aquatic habitat will be converted to a crib wall structure intended to enhance adjacent aquatic habitat and stabilize the streambank to prevent further erosion towards the access road. The loss of aquatic habitat that had eroded from the access road fill embankment is very small in size, the channel narrowing and roughening will not negatively impact steelhead migrating through or rearing in the side channel, and instead will somewhat improve habitat for steelhead at the project site.

The action area includes designated critical habitat for SRB steelhead. The action as proposed has the potential to affect the following PBFs: water quality, substrate, natural cover, and freedom from artificial obstructions (Table 1). Any modification of these PBFs may affect freshwater spawning, rearing, or migration in the action area. Proper function of these PBFs is necessary to support successful adult and juvenile migration, adult holding, adult spawning, and juvenile rearing. All remaining PBFs would not be affected by the proposed action. Based on the anticipated project effects and the PBFs present within the project action area, the following effects on critical habitat PBF's are anticipated:

- As discussed above, given project BMPs for equipment, fuel, etc. effects from toxic chemicals on the water quality PBF will be avoided or minimized to extremely small amounts. However, water quality will be temporarily degraded during construction by increasing suspended sediment and turbidity during construction. The project site is located in a side channel approximately 100 feet upstream from its confluence with mainstem Joseph Creek. Turbidity pulses from cofferdam installation and removal will likely occur for no more than a few hours, will become mixed with the mainstem water, and likely become indistinguishable from background levels approximately 300 feet below the site. With appropriate BMPs in place and adherence to the approved in-water work window for fish protection, the effect on water quality is expected to be limited in size, occur no more than a few hours, and will not appreciably alter the function of this PBF in the action area.

Table 1. Types of sites, essential physical and biological features, and the species life stage each physical and biological feature supports.

Site	Essential Physical and Biological Features	Species Life Stage
Snake River Basin Steelhead^a		
Freshwater spawning	Water quality, water quantity, and substrate	Spawning, incubation, and larval development
Freshwater rearing	Water quantity and floodplain connectivity to form and maintain physical habitat conditions	Juvenile growth and mobility
	Water quality and forage ^b	Juvenile development
	Natural cover ^c	Juvenile mobility and survival
Freshwater migration	Free of artificial obstructions, water quality and quantity, and natural cover ^c	Juvenile and adult mobility and survival

^a Additional PBFs pertaining to estuarine, nearshore, and offshore marine areas have also been described for Snake River steelhead and Middle Columbia steelhead. These PBFs will not be affected by the proposed action and have therefore not been described in this opinion.

^b Forage includes aquatic invertebrate and fish species that support growth and maturation.

^c Natural cover includes shade, large wood, logjams, beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

- Approximately 203 square feet of side channel substrate at OHWM will be displaced by conversion of the streambed to streambank. The conversion of this narrow strip of channel along the bank into riparian habitat will increase water depth but decrease width of the side channel. The associated small amount of substrate area loss at the project site will not appreciably alter the function of the PBF in the action area. Substrate condition may somewhat improve with the addition of root wads along the channel, which will slow the stream flow to create pools, provide refugia and collect and retain sediment and natural materials. The root wads are expected to deepen the water and improve rearing and migration habitat. Increased turbidity from project activities will result in sediment deposition downstream of the in-water work area for a short time period during and immediately following in-water work. Fine sediment deposition in the action area is expected to occur over a small area and is likely to be transient, as seasonal increases in flow are expected to return the habitat to its previous level of function. The scale of impact will be minimal relative to the rearing habitat in the action area, and will not meaningfully change the conservation value of the substrate PBF in the action area.
- Riparian cover conditions will be temporarily impacted as a result of clearing for equipment access and bank stabilization work. This area, located above the OHWM, is small (247 square feet) and contains low quality riparian habitat primarily composed of invasive vegetation and bare dirt. Temporarily disturbed areas will be enhanced through installation of native willow stakes. The project willows and root wads will likely improve stream edge cover and PBF function at this small site over the long term.
- Installation of the cofferdam and block nets will affect the migration PBF in the action area since the work area will preclude fish from the site. However, the effect will be temporary and will not appreciably alter the PBF function in the action area because fish will still be able to migrate along the main channel of the creek.

Cumulative Effects

“Cumulative effects” are those effects of future state or private activities, not involving federal activities, that are reasonably certain to occur within the action area of the federal action subject to consultation (50 CFR 402.02 and 402.17(a)). Future federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the ESA. Within the action area, continued recreational activities, road maintenance, grazing, and water use are expected to occur. The population of Asotin County has increased 4.4 percent from 2010 to 2019. Based on the relatively small increase in population (Washington state increased 13.2 percent), it is likely that future activities in Joseph Creek will remain at levels that are roughly similar to what is currently experienced. Therefore, for our analysis NMFS assumes that future state and private actions and land uses will continue within the action area at roughly their current rate.

Integration and Synthesis

The Integration and Synthesis section is the final step in our assessment of the risk posed to species and critical habitat as a result of implementing the proposed action. In this section, we add the effects of the action to the environmental baseline and the cumulative effects, taking into account the status of the species and critical habitat, to formulate the agency’s biological opinion as to whether the proposed action is likely to: (1) Reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing its numbers, reproduction, or distribution; or (2) appreciably diminish the value of designated or proposed critical habitat as a whole for the conservation of the species.

Juvenile SRB steelhead could potentially be present in the action area during implementation of the project. There is no documented steelhead spawning in the stream reach where the proposed action is located; however, spawning occurs upstream and the work window coincides with the emergence and period soon after emergence of steelhead fry. Newly emerged fry might not be developed enough to be successfully excluded from the work site using the fish exclusion techniques (BA section 5.2); rather than flee they may burrow into the substrate. Furthermore, the mesh size used (1/8 inch) and gaps in the sandbag cofferdam may not preclude fry from re-entering the work site. While mean daily stream temperatures during the work window in this area can be near lethal levels for steelhead, NMFS assumes that juvenile steelhead may be present during some portion of the work window.

The potential project effects of noise, chemical contamination, suspended sediment (BA section 5.0) will be minimized using best management practices. The possibility of impingement or entrainment will be minimized by implementing the proposed fish exclusion procedure (BA section 5.2). If juvenile steelhead are present within the cofferdam enclosure during construction activities, it is likely some individual will be stranded or crushed. Based project fish exclusion measures and applying available data and estimates noted in the effects section, NMFS anticipates that 1+ age steelhead will not be trapped in the active work area, but a small number of newly emerged steelhead fry moving or rearing down through this reach could be injured or killed.

Within the SRB steelhead Distinct Population Segment, the Grande Ronde/Imnaha MPG is the only MPG potentially affected by the proposed action. The Grande Ronde/Imnaha steelhead MPG is tentatively rated as achieving viable status. The Joseph Creek SRB steelhead population, which is the only population affected by the proposed action, is rated as Highly Viable while the other populations are rated either Viable (one population) or maintained (two populations). The Joseph Creek population also has an A/P rating of very low risk and a spatial structure and diversity rating of low risk making it a strong component of the viability rating for the Grande Ronde/Imnaha MPG. It is expected that few steelhead juveniles will be exposed and adversely affected as a result of the proposed action. The single-season loss of 82 fry will not alter the highly viable status of the Joseph Creek population, and similarly will not change the viable status of the Grande Ronde/Imnaha MPG. Because we expect no change to the status of the Grande Ronde/Imnaha MPG, we do not think the implementation of the proposed action will change the survival and recovery of the SRB steelhead DPS. After reviewing and analyzing the current status of the listed species, the environmental baseline within the action area, the effects of the proposed action, the effects of other activities caused by the proposed action, and cumulative effects, it is NMFS biological opinion that the proposed action is not likely to jeopardize the continued existence of SRB steelhead.

The action area is designated critical habitat for SRB steelhead, providing migratory habitat for adult and juvenile steelhead as well as potentially providing winter and spring rearing habitat for juveniles; summer rearing habitat may be limited because of high temperatures. Suspended sediment generated from implementation of the action is expected to be minimal and have only a short-term and small effect on the water quality PBF. Stabilizing the eroding bank is expected to decrease sediment inputs in the action area and provide long-term benefits for the substrate PBF in this stream reach. Implementation of the action will result in the loss of 203 square feet of shallow side channel habitat with the installation of the crib wall. However, the crib wall is expected to result in improved steelhead habitat PBFs by deepening the side channel, slowing water velocities, providing instream and overhead cover, and improving the riparian condition. The short-term effects will be manifest at the scale of the action area, and will not affect the quality or amount of critical habitat available at the scale of the designation. Thus, the action is also not likely to destroy or adversely modify designated critical habitat for SRB steelhead.

After reviewing and analyzing the current status of the listed species and critical habitat, the environmental baseline within the action area, the effects of the proposed action, the effects of other activities caused by the proposed action, and cumulative effects, it is NMFS biological opinion that the proposed action is not likely to destroy or adversely modify its designated critical habitat.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and Federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. “Harm” is further defined by regulation to include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102). “Incidental take” is defined by regulation as takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant (50 CFR 402.02). Section 7(b)(4) and section 7(o)(2) provide that taking that is incidental to an otherwise lawful agency action is not considered to be prohibited taking under the ESA if that action is performed in compliance with the terms and conditions of this ITS.

Amount or Extent of Take

In this opinion, NMFS determined that the proposed action has the potential to result in incidental take of ESA-listed species, and that such take is due to exposure to excess turbidity or from injury or death as a result of harassment, stranding, or entrainment or impingement in the coffer-dammed area.

As detailed above in the effects section, take associated with harassment, entrainment or impingement, or stranding is limited to the small number of young of the year fish that would be in this reach and not effectively excluded by the fish exclusion technique. NMFS estimates that up to 82 young of the year steelhead could be present and injured or killed by the project.

Abundance of Joseph Creek steelhead since 1996 has remained above 1,000 spawners (NWFSC 2015). From 2000 through 2009, the 10-year geometric mean abundance of natural-origin spawners was 2,186. Recent analysis by the NWFSC (2015) indicates that population abundance has remained high. The 10-year (2005-2014) geometric mean abundance of natural-origin spawners was 1,839. Given mean smolt-to-adult return rates of 2.24 percent from 1996–2013 (Comparative Survival Study Annual Report 2020), the injury or loss of 82 steelhead fry in the Joseph Creek population would mean a one-time loss of less than one adult equivalent (0.03) returning to spawn.

Monitoring or measuring the number of steelhead actually harmed or killed from project activities is complicated because fry are very small; collecting and counting dead fry is not feasible because a relatively high number would be unaccounted for. Numerous dead fry would be buried in fill or float into crevices of the cofferdam and be missed; therefore, the number of affected fish is difficult to measure. Because of the difficulty of clearly defining the number of fish that could be affected by the proposed action, surrogate measures of take are necessary to establish a limit to the take exempted by this take statement. Estimated mortality for this action is confined to the coffer-dammed area and thus the size of the isolated work area is causally related to the amount of take predicted; consequently, the extent of the cofferdam is the best surrogate measure for incidental take. Therefore, the extent of take is the 1,200 square foot area of the cofferdam (measured at OHWM).

The extent of take allowed in the opinion is exceeded if:

1. The cofferdam extends beyond an area of 1,200 square feet, measured at OHWM.

The authorized take includes only take caused by the proposed actions within the action area as defined in this opinion. The extent of take is the threshold for reinitiating consultation. Should any of these limits be exceeded, the reinitiation provisions of the opinion apply.

Effect of the Take

In the biological opinion, NMFS determined that the amount or extent of anticipated take, coupled with other effects of the proposed action, is not likely to result in jeopardy to the species, destruction, or adverse modification of critical habitat.

Reasonable and Prudent Measures

“Reasonable and prudent measures” measures that are necessary or appropriate to minimize the impact of the amount or extent of incidental take (50 CFR 402.02).

The CORPS shall:

- Ensure that the coffer-dammed area (the surrogate) is no greater than 1,200 square feet.
- Ensure completion of a monitoring and reporting program to confirm that the Terms and Conditions in this Incidental Take Statement are effective in avoiding and minimizing incidental take from permitted activities.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the ESA, the Federal action agency must comply (or must ensure that any applicant complies) with the following terms and conditions. The Corps or any applicant has a continuing duty to monitor the impacts of incidental take and must report the progress of the action and its impact on the species as specified in this ITS (50 CFR 402.14). If the entity to whom a term and condition is directed does not comply with the following terms and conditions, protective coverage for the proposed action would likely lapse.

1. The following terms and conditions implement reasonable and prudent measure 1: the Corps shall inspect the work site daily, prior to initiation of work, to ensure isolation is maintained.
2. The following terms and conditions implement reasonable and prudent measure 2: submit a post-project report, providing the information requested above and confirming the successful application of all terms and conditions of this by April 15 of the year following project completion to the Snake Basin Office email: nmfswcr.srbo@noaa.gov.

Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. Specifically, conservation recommendations are suggestions regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information (50 CFR 402.02).

1. The Corps should monitor daily water temperature and fish presence in the action area during in-water construction to provide scientific data to inform future Joseph Creek consultations.

Reinitiation of Consultation

This concludes formal consultation for the Chief Joseph WLA Road Repair Project.

Reinitiation of consultation is required and shall be requested by Corps or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) the amount or extent of incidental taking specified in the ITS is exceeded, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this biological opinion; or if (4) a new species is listed or critical habitat designated that may be affected by the identified action.

The amount of take will be considered exceeded if more than 82 steelhead fry or any plus one age steelhead are found dead in the work site, or if turbidity is visible more than 300 feet downstream of the work site.

Not Likely to Adversely Affect Determination

This document also responds to your July 26, 2021 request for concurrence from NMFS pursuant to Section 7 of the ESA for the subject action. Your request qualified for our expedited review and concurrence because it met our screening criteria and contained all required information on your proposed action and its potential effects to ESA-listed species and designated critical habitat.

We reviewed the Corps consultation request document and related materials. Based on our knowledge, expertise, and the materials you provided, we concur with your conclusions that the proposed action is not likely to adversely affect SR spring/summer Chinook salmon, SR fall Chinook salmon, or their critical habitats.

Spring/summer Chinook salmon use the Grande Ronde River as a migration corridor only. There is no documented or historical information indicating spring/summer Chinook salmon utilization of Joseph Creek. Fall Chinook salmon spawning is documented in the Grande Ronde River near the confluence of Joseph Creek. The action area is located approximately two miles upstream from the confluence; it is unlikely that sediment generated from project activities would be transported to the confluence given the low flows generally experienced during the work

window. In addition, temperatures in the Grande Ronde River during the work window are likely lethal to salmon; therefore, it is not expected that salmon would be in the river at the time of the proposed action, and thus all effects are discountable.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the Corps or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law, and: (1) the proposed action causes take; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or, (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

This concludes the ESA portion of this consultation. Please direct questions regarding this letter to Todd Andersen, Northern Snake Branch at (208) 366-9586 or todd.andersen@noaa.gov.

Sincerely,



Michael P. Tehan
Assistant Regional Administrator
Interior Columbia Basin Office

cc: D. Moore – Corps
M. Lopez – Nez Perce Tribe
G. James - Confederated Tribes of the Umatilla
K. Sarensen - USFWS



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Eastern Washington Field Office
7421 E Appleway Blvd
Spokane Valley, WA 99212



In Reply Refer To:
01EWF00-2021-I-1532

Jacalen Printz
U.S. Army Corps of Engineers, Seattle District
ATTN: David Moore
4735 E. Marginal Way South, Building 1202
Seattle, Washington 98124-3755

Dear Ms. Printz:

Subject: Chief Joseph Wildlife Area Access Road Repair

This letter responds to the U.S. Army Corps of Engineers' (Corps) request for informal consultation on the proposed Chief Joseph Wildlife Area Access Road Repair project in Asotin County, Washington. The U.S. Fish and Wildlife Service (Service) received your request for consultation, Biological Assessment (BA), and permit design drawings on July 26, 2021. We received the revised Biological Evaluation (BE) on August 11, 2021 and additional project information on August 16, September 1, and October 22, 2021. The Corps has requested concurrence on a "may affect, not likely to adversely affect" determination for bull trout (*Salvelinus confluentus*) and yellow-billed cuckoo (*Coccyzus americanus*). This informal consultation has been conducted in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act).

The Corps also concluded a "no effect" determination for Spalding's catchfly (*Silene spaldingii*). The U.S. Fish and Wildlife Service (Service) has no regulatory or statutory authority for concurring with a "no effect" determination, and no consultation with the Service is required. Therefore, the determination rests with the action agency. We recommend that the action agency document their analysis on effects to listed species and maintain that documentation as part of the project file.

As described in the BA (pp. 2-7) and clarified through additional project information received by the Service, the Corps is proposing to install a bio-engineered living crib wall below ordinary high water (OHW) along the right bank of a side channel to Joseph Creek to stabilize 50 ft of eroding streambank that is threatening the adjacent access road. Prior to construction, fish will be excluded from the larger work area using seine nets and herded downstream, and block nets will be used to prevent reentry. Following fish exclusion, the work area will be isolated using a sandbag cofferdam that will remain in place throughout project implementation, but fish passage around the project area will be maintained at all times. The 50-foot long by 9-foot wide by

INTERIOR REGION 9
COLUMBIA-PACIFIC NORTHWEST

IDAHO*, MONTANA*, OREGON*, WASHINGTON

*PARTIAL

9-foot deep crib wall will reduce 203 square ft (sq ft) of aquatic habitat below OHW; 120 sq ft of crib wall materials, consisting of logs lined with coconut husk fabric, backfilled with wood, cobble and soil mix, and 83 sq ft where the outer logs and root wads extend into the channel. The four 3-foot by 3-foot root wads, measuring 14- to 18-inch-diameter at breast height, will be integrated increasing aquatic habitat complexity. Construction of the crib wall will require moving approximately 62 cubic yards (cy) of streambed cobble/soil fill material (fill volume does not consider logs and wood material) from below OHW and 8 cy from above OHW and filling approximately 84 cy of fill material below OHW and 67 cy above OHW.

Riparian vegetation, predominantly Himalayan blackberry, will be cleared and grubbed to facilitate construction of the wall and will be revegetated with native willow stakes upon completion, affecting approximately 450 sq ft of riparian habitat. Equipment staging and materials storage will occur in an upland location and be limited to non-vegetated surfaces whenever possible, but some limited vegetation removal may occur, upon which native willow will be planted at project completion. The in-water portion of the proposed project will be implemented between July 16 and August 15 while upland activities, occurring above OHW, will occur any time.

The Service concurs that the proposed project is “not likely to adversely affect” the bull trout or the yellow-billed cuckoo. Our concurrence is based on the BE, information in your letter and supplemental information, plan drawings, and the rationale described in the following paragraphs.

Bull Trout

The bull trout is a native char found in the coastal and intermountain west of North America that exhibit both resident and migratory life history strategies. Bull trout have more specific habitat requirements than most other salmonids, and its distribution and abundance is largely influenced by water temperature, cover, channel form and stability, valley form, spawning and rearing substrate, and migratory corridors. The proposed project will occur in Joseph Creek, approximately 2 miles upstream of its confluence with the Grande Ronde River. The Grande Ronde River watershed houses eleven local populations of bull trout widespread across two core areas and is considered a stronghold within the Mid-Columbia River Recovery Unit. Both resident and migratory forms persist in the watershed. The lower Grande Ronde River, at the confluence with Joseph Creek, is designated foraging, migrating, and over-wintering critical habitat for bull trout. While Joseph Creek is not designated bull trout critical habitat and bull trout have not been documented in Joseph Creek, the Service is unaware of any physical barriers that prevent bull trout moving from the Grande Ronde River into Joseph Creek seasonally and as conditions allow. Bull trout that may occur in Joseph Creek are expected to be adult or subadult migrating individuals utilizing the area for foraging or refuge. While it is possible that bull trout may occur seasonally in Joseph Creek, high water temperatures documented in Joseph Creek during the summer months likely limit or preclude bull trout presence during this time.

The proposed project has the potential to affect bull trout through noise disturbance, increased sedimentation, and potential effects to water quality through chemical contamination or project-related debris. Additionally, bull trout may be exposed to disturbances associated with fish exclusion activities or as a result of modification to the riparian habitat where such modifications reduce functional bull trout habitat (i.e., refuge or foraging habitat). However, as discussed above, we expect very few, if any, bull trout to be present during implementation because project implementation coincides with the summer work window when high water temperatures limit the potential for bull trout presence; thus, the risk of exposure to project-related disturbances is very low.

In the unlikely event an individual bull trout is present during project implementation, we expect it will be capable of avoiding any project-related disturbances and moving into suitable alternative habitat. As indicated in the BA (p. 8), refuge habitat within which bull trout can avoid project-related disturbances is available nearby (i.e., within 2,000 ft of project activities), which is outside of the area within which we would expect aquatic project-related disturbances, and the presumed low density of bull trout discounts the potential for intra-specific habitat competition. If an individual is exposed to fish exclusion activities, herding is a passive activity that avoids direct contact with fish. Due to the age class of bull trout that might occur in Joseph Creek, we expect bull trout will respond to seining by moving away of their own volition, and the risk of bull trout becoming entrained in the dewatered area is insignificant.

Sediment will be minimized by working within an isolated area during low flow conditions, and the project will meet state water quality standards that limit turbidity impacts to an area no more than 300 ft downstream of the project activities; thus, sediment impacts will be temporary and localized, and we expect bull trout would be capable of avoiding any sediment-related stressors. Although the project will reduce approximately 203 sq ft of the existing channel, the habitat consists of eroding streambank that provides little habitat value to bull trout. Upon completion, the crib wall will protrude into the stream, but the structure will stabilize the streambank and reduce erosion, and the root wads will provide habitat complexity that will improve local habitat conditions.

Project-related debris will be removed from site and disposed of properly and will not be allowed to enter the stream. Similarly, the risk of chemical contamination will be controlled through using best management practices such as implementing a Spill Prevention Control and Countermeasure Plan, maintaining equipment in clean and leak-free conditions, and other measures described in the BA (pp. 4-5). Although the proposed action includes removal of approximately 450 sq ft of riparian vegetation, the existing vegetation in the project footprint is comprised of non-native Himalayan blackberry (BA, p. 13). Upon completion of the crib wall, the entire riparian impact area, including the top of the crib wall, will be revegetated with native willow stakes that are expected to become established within 1 to 2 years (BA, p. 14). The proposed project includes a mitigation and monitoring plan with performance standards requiring a minimum 80 percent survival of willow during the first 5 years following implementation. Native willow plants are expected to improve riparian function within the project area over existing conditions.

Although the proposed action has the potential to result in short-term localized disturbances, we expect very few, if any bull trout to be exposed to project-related stressors. Project design criteria and best management practices further reduce the potential for impacts to bull trout and the project is expected to improve local conditions in the long-term. Given these factors, we expect project-related impacts to bull trout will be insignificant.

Yellow-billed Cuckoo

Western yellow-billed cuckoo is a neotropical migratory species believed to occur at very low density in Washington annually from early June through late September. Since 1956, only 20 confirmed sightings of yellow-billed cuckoos have been confirmed in Washington. Of these 20 occurrences, none were confirmed breeding, but the potential for breeding in Washington state cannot be discounted. During the breeding season, the species is primarily associated with large (i.e., greater than 50 acres in size and greater than 100 ft wide), intact cottonwood or willow riparian stands with high levels of vertical habitat complexity. Habitat use during migration or wintering appears to be less targeted and, while riparian habitat appears to be favored, use has also been documented in thick scrub, open woodcuts, secondary forest, or forest edge. During migration, yellow-billed cuckoo has been observed in arid habitats and disturbed vegetation. Although the low density of yellow-billed cuckoo throughout Washington state reduces the

potential for occurrence in or near the project site, its presence cannot be completely discounted given the lack of survey effort and riparian component of the proposed project. As described in the BA (p. 10), forested habitat in the action area lies in narrow bands smaller than 50 acres; thus, the action area does not contain suitable Yellow-billed cuckoo breeding/nesting habitat.

The proposed project will impact approximately 450 sq ft of riparian habitat by removing the existing vegetation that is comprised primarily of non-native blackberry. Riparian habitat outside of the project site, both within the larger action area and beyond its extent, consists of forested wetlands and dense overhanging native riparian vegetation, including alder and cottonwood canopy (BA, p. 8), which we expect will be more attractive to yellow-billed cuckoo than the blackberry. Thus, we do not expect the project to significantly impact individual yellow-billed cuckoo or their potential preferred habitat. Disturbed riparian habitat will be planted with native willow and a minimum 80 percent survival rate will be maintained for the first 5 years following project implementation, which is expected to marginally increase potential yellow-billed cuckoo habitat in the local area. Project-related noise is likely to extend beyond the project footprint, causing temporary noise disturbance within approximately 2,000 ft (BA, pp. 6 - 7). In the unlikely event an individual were present in this larger area, we expect it would move away from the disturbance into nearby suitable dispersal habitat. Given the low likelihood of yellow-billed cuckoo presence during implementation, project activities that are expected to improve riparian vegetation in the long-term, and occurrence of nearby and suitable alternative habitat, we expect any impacts to yellow-billed cuckoo from the proposed project will be insignificant.

Due to the short-term, localized nature of project-related disturbances, low likelihood of bull trout or yellow-billed cuckoo presence in the project area during implementation, best management practices that avoid significant impact to species or their potential habitats, and project elements that are likely to improve habitat function in the long-term, we concur with your project determination of “may affect, not likely to adversely affect” for bull trout and yellow-billed cuckoo resulting from the Chief Joseph Wildlife Area Access Road Repair project. The project should be reanalyzed and re-initiation may be necessary if new information reveals effects of the action that may affect listed species or critical habitat in a manner, or to an extent, not considered in this consultation and/or a new species is listed or critical habitat is designated that may be affected by the actions.

If you have any questions about this letter or our joint responsibilities under the Act, please contact Kat Sarensen at (509) 795-4776 or katherine_sarensen@fws.gov.

Sincerely,

Brad Thompson, State Supervisor
Washington Fish and Wildlife Office

cc:
NOAA, Lacey, WA (T. Andersen)



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT
4735 EAST MARGINAL WAY SOUTH, BLDG 1202
SEATTLE, WA 98134-2388

Regulatory Branch

January 13, 2022

Ms. Anna Marie Sample
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, Washington 98501

Reference: NWS-2021-717
WDFW
(Chief Joseph Wildlife
Area – Access Road
Repair)

Dear Ms. Sample:

We have reviewed your application to stabilize 120 linear feet of eroding access road streambank by excavating 62 cubic yards over 203 square feet and placing 18 cubic yards of fill using a bioengineered approach over 120 square feet of Joseph Creek near Asotin, Asotin County, Washington. Up to 450 square feet of willows will be planted and up to four rootwads will be incorporated into the stabilized bank.

Based on the information you provided to us, Nationwide Permit (NWP) 13, Bank Stabilization (Federal Register January 6, 2017, Vol. 82, No. 4), authorizes your proposal as depicted on the enclosed drawings dated May 18, 2021.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 13, Terms and Conditions* and the following special conditions:

- a. Incidents where any individuals of fish species listed by National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of

individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

- b. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the Biological Assessment for the Chief Joseph Wildlife Area, Access Road Repair, dated June 30, 2021, in its entirety. The National Marine Fisheries Service (NMFS) provided the enclosed Biological Opinion (BO) with a finding of “may affect, not likely to adversely affect” based on this document on January 12, 2022 (NMFS Reference Number WCRO-2021-02116). The U.S. Fish and Wildlife Service (USFWS) provided the enclosed LOC with a finding of “may affect, not likely to adversely affect” based on this document on November 8, 2021 (USFWS Reference Number 01EWF00-2021-I-1532). Both agencies will be informed of this permit issuance. Failure to comply with the commitments made in this consultation constitutes non-compliance with the ESA and your U.S. Army Corps of Engineers permit. The USFWS/NMFS is the appropriate authority to determine compliance with ESA.
- c. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species, in particular the Snake River Basin Steelhead. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA; e.g., an ESA Section 10 permit, or ESA Section 7 consultation Biological Opinion (BO) with non-discretionary “incidental take” provisions with which you must comply). The enclosed BO prepared by the National Marine Fisheries Service (NMFS) dated January 12, 2022 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified “incidental take” in the BO (NMFS Reference Number WCRO-2021-02116). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the enclosed BO. These terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.
- d. You must protect and preserve the riparian plantings and allow the vegetation to grow in a natural state for as long as the permitted project remains in place.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please be reminded that Special Condition “b” of your permit requires that you implement and abide by the Endangered Species Act (ESA) requirements set forth in the Biological Opinion (BO) for this project. The non-discretionary terms and conditions are listed on Page 15.

The authorized work complies with the Washington State Department of Ecology’s (Ecology) Water Quality Certification (WQC) requirement for this NWP. No further coordination with Ecology for WQC is required.

You have not requested a jurisdictional determination for this proposed project. If you believe the Corps does not have jurisdiction over all or portions of your project you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this 2017 NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work for the 2017 NWP authorization has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

You are cautioned that any change in project location or plans will require that you submit a copy of the revised plans to this office and obtain our approval before you begin work. Deviating from the approved plans could result in the assessment of criminal or civil penalties. Please note that we may need to reinstitute consultation with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service in order to authorize any work not already included in the enclosed plans.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Thank you for your cooperation during the permitting process. We are interested in your experience with

our Regulatory Program and encourage you to complete a customer service survey. These documents and information about our program are available on our website at www.nws.usace.army.mil, select "Regulatory Branch, Permit Information" and then "Contact Us." If you have any questions, please contact me at david.j.moore@usace.army.mil or (206) 316-3166.

Sincerely,

A handwritten signature in black ink, reading "David Moore". The signature is fluid and cursive, with the first name "David" and last name "Moore" clearly distinguishable.

David Moore, Project Manager
Regulatory Branch

Enclosures



US Army Corps
of Engineers ®
Seattle District

NATIONWIDE PERMIT 13

Terms and Conditions

Effective Date: March 19, 2017



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- A. Description of Authorized Activities
 - B. U.S. Army Corps of Engineers (Corps) National General Conditions for all NWP
 - C. Corps Seattle District Regional General Conditions
 - D. Corps Regional Specific Conditions for this NWP
 - E. Washington Department of Ecology (Ecology) Section 401 Water Quality Certification (401 Certification): General Conditions
 - F. Ecology 401 Certification: Specific Conditions for this NWP
 - G. Coastal Zone Management Consistency Response for this NWP
-

In addition to any special condition that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit (NWP) authorization to be valid in Washington State.

A. DESCRIPTION OF AUTHORIZED ACTIVITIES

Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a

manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

B. CORPS NATIONAL GENERAL CONDITIONS FOR ALL NWP's

To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Every person who may wish to obtain permit authorization under one or more NWP's, or who is currently relying on an existing or prior permit authorization under one or more NWP's, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP's 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. (b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or

study status. (c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs. (e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the

agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required. (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified

historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. (d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment. (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)). (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses. (f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation. (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)). (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation. (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided. (6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements)

may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs. (h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management. (i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: “When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include: (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions; (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWP 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than

minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals. (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal. (2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes. (3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity’s compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided

below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision: 1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre. 2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns. 3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district

engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer. 4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information: 1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP. 2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. 3. NWPs do not grant any property rights or exclusive privileges. 4. NWPs do not authorize any injury to the property or rights of others. 5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

C. CORPS SEATTLE DISTRICT REGIONAL GENERAL CONDITIONS: The following conditions apply to all NWPs for the Seattle District in Washington State, unless specified.

1. Project Drawings: Drawings must be submitted with pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the U.S. will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

2. Aquatic Resources Requiring Special Protection: Activities resulting in a loss of waters of the United States in mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, wetlands in coastal lagoons, and wetlands in dunal systems along the Washington coast cannot be authorized by a NWP, except by the following NWPs:

- NWP 3 – Maintenance
- NWP 20 – Response Operations for Oil and Hazardous Substances
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous and Toxic Waste

In order to use one of the above-referenced NWPs in any of the aquatic resources requiring special protection, prospective permittees must submit a PCN to the Corps of Engineers (see NWP general condition 32) and obtain written authorization before commencing work.

3. New Bank Stabilization in Tidal Waters of Puget Sound: Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within the areas identified on Figures 1a through 1e on Corps website) cannot be authorized by NWP.

4. Commencement Bay: The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (see Figure 2 on Corps website):

- NWP 12 – Utility Line Activities (substations)
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 23 – Approved Categorical Exclusions
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater and Wastewater Management Facilities

5. Bank Stabilization: All projects including new or maintenance bank stabilization activities require PCN to the Corps of Engineers (see NWP general condition 32). For new bank stabilization projects only, the following must be submitted to the Corps of Engineers:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can be submitted with the PCN if it describes current or expected conditions in the waterbody.

6. Crossings of Waters of the United States: Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the Corps of Engineers (see NWP general condition 32). If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied for a culvert where salmonid species are present or could be present, the project proponent must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, project proponents must provide a monitoring plan with the PCN that specifies how the proposed culvert will be assessed over a five-year period from the time of construction completion to ensure its effectiveness in providing passage at all life stages at all flows where the salmonid species would naturally seek passage. Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

7. Stream Loss: A PCN is required for all activities that result in the loss of any linear feet of stream beds. No activity shall result in the loss of any linear feet of perennial stream beds or the loss of greater than 300 linear feet of intermittent and/or ephemeral stream beds. A stream may be rerouted if it is designed in a manner that maintains or restores hydrologic, ecologic, and geomorphic stream processes, provided there is not a reduction in the linear feet of stream bed. Streams include brooks, creeks, rivers, and historical waters of the U.S. that have been channelized into ditches. This condition does not apply to ditches constructed in uplands. Stream loss restrictions may be waived by the district engineer on a case-by-case basis provided the activities result in net increases of aquatic resource functions and services.

8. Mitigation: Pre-construction notification is required for any project that will result in permanent wetland losses that exceed 1,000 square feet. In addition to the requirements of General Condition 23 (Mitigation), compensatory mitigation at a minimum one-to-one ratio will be required for all permanent wetland losses that exceed 1,000 square feet. When a PCN is required for wetland losses less than 1,000 square feet, the Corps of Engineers may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation for impacts to marine waters, lakes, and streams will be determined on a case-by-case basis. If temporary impacts to waters of the U.S. exceed six months, the Corps of Engineers may require compensatory mitigation for temporal effects.

9. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat Essential Fish Habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. If EFH may be adversely affected by a proposed activity, the prospective permittee must provide a written EFH assessment with an analysis of the effects of the proposed action on EFH. The assessment must identify the type(s) of essential fish habitat (i.e., Pacific salmon, groundfish, and/or coastal-pelagic species) that may be affected. If the Corps of Engineers determines the project will adversely affect EFH, consultation with NOAA Fisheries will be required. Federal agencies should follow their own procedures for complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. If PCN is required for the proposed activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

10. Forage Fish: For projects in forage fish spawning habitat, in-water work must occur within designated forage fish work windows, or when forage fish are not spawning. If working outside of a designated work window, or if forage fish work windows are closed year round, work may occur if the work window restriction is released for a period of time after a forage fish spawning survey has been conducted by a biologist approved by the Washington State Department of Fish and Wildlife (WDFW). Forage fish species with designated in-water work windows include Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), and surf smelt (*Hypomesus pretiosus*). This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

11. Notification of Permit Requirements: The permittee must provide a copy of the nationwide permit authorization letter, conditions, and permit drawings to all contractors and any other parties performing the authorized work prior to the commencement of any work in waters of the U.S. The permittee must

ensure all appropriate contractors and any other parties performing the authorized work at the project site have read and understand relevant NWP conditions as well as plans, approvals, and documents referenced in the NWP letter. A copy of these documents must be maintained onsite throughout the duration of construction.

12. Construction Boundaries: Permittees must clearly mark all construction area boundaries before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

13. Temporary Impacts and Site Restoration

- a. Temporary impacts to waters of the U.S. must not exceed six months unless the prospective permittee requests and receives a waiver by the district engineer. Temporary impacts to waters of the U.S. must be identified in the PCN.
- b. No more than 1/2 acre of waters of the U.S. may be temporarily filled unless the prospective permittee requests and receives a waiver from the district engineer (temporary fills do not affect specified limits for loss of waters associated with specific nationwide permits).
- c. Native soils removed from waters of the U.S. for project construction should be stockpiled and used for site restoration. Restoration of temporarily disturbed areas must include returning the area to pre-project ground surface contours. If native soil is not available from the project site for restoration, suitable clean soil of the same textural class may be used. Other soils may be used only if identified in the PCN.
- d. The permittee must revegetate disturbed areas with native plant species sufficient in number, spacing, and diversity to restore affected functions. A maintenance and monitoring plan commensurate with the impacts, may be required. Revegetation must begin as soon as site conditions allow within the same growing season as the disturbance unless the schedule is approved by the Corps of Engineers. Native plants removed from waters of the U.S. for project construction should be stockpiled and used for revegetation when feasible. Temporary Erosion and Sediment Control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.
- e. If the Corps determines the project will result in temporary impacts of submerged aquatic vegetation (SAV) that are more than minimal, a monitoring plan must be submitted. If recovery is not achieved by the end of the monitoring period, contingencies must be implemented, and additional monitoring will be required.

This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

D. CORPS REGIONAL SPECIFIC CONDITIONS FOR THIS NWPS: None

E. ECOLOGY 401 CERTIFICATION: GENERAL CONDITIONS

In addition to all the Corps National and Seattle Districts' Regional permit conditions, the following State General Section 401 Water Quality Certification (Section 401) conditions apply to all Nationwide Permits whether **certified** or **partially certified** in the State of Washington.

1. **For in-water construction activities.** Ecology Section 401 review is required for projects or activities authorized under NWPs that will cause, or may be likely to cause or contribute to an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC). State water quality standards and sediment management standards are available on Ecology's website. Note: In-water activities include any activity within a wetland and/or activities below the ordinary high water mark (OHWM).

2. Projects or Activities Discharging to Impaired Waters. Ecology Section 401 review is required for projects or activities authorized under NWP's if the project or activity will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listed parameter. To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools.

3. Application. For projects or activities that will require Ecology Section 401 review, applicants must provide Ecology with a Joint Aquatic Resources Permit Application (JARPA) along with the documentation provided to the Corps, as described in National General Condition 32, Pre-Construction Notification, including, when applicable: (a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, best management practices (BMPs), and any other Department of the Army or federal agency permits used or intended to be used to authorize any part of the proposed project or any related activity. (b) Drawings indicating the Ordinary High Water Mark (OHWM), delineation of special aquatic sites and other waters of the state. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. Wetland rating forms are subject to review and verification by Ecology staff. Guidance for determining the OHWM is available on Ecology's website. (c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See State General Condition 5 for details on mitigation requirements. (d) Other applicable requirements of Corps Nationwide Permit General Condition 32, Corps Regional Conditions, or notification conditions of the applicable NWP. (e) Within 180 calendar days from receipt of applicable documents noted above **and** a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program Ecology will provide the applicant notice of whether an individual Section 401 will be required for the project. If Ecology fails to act within a year after receipt of **both** of these documents, Section 401 is presumed waived.

4. Aquatic resources requiring special protection. Certain aquatic resources are unique, difficult-to-replace components of the aquatic environment in Washington State. Activities that would affect these resources must be avoided to the greatest extent possible. Compensating for adverse impacts to high value aquatic resources is typically difficult, prohibitively expensive, and may not be possible in some landscape settings. Ecology Section 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Seattle District Regional General Condition): (a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):

- Estuarine wetlands.
- Wetlands of High Conservation Value.
- Bogs.
- Old-growth and mature forested wetlands.
- Wetlands in coastal lagoons.
- Interdunal wetlands.
- Vernal pools.
- Alkali wetlands.

(b) Fens, aspen-dominated wetlands, camas prairie wetlands. (c) Marine water with eelgrass (*Zostera marina*) beds (except for NWP 48). (d) Category I wetlands. (e) Category II wetlands with a habitat score ≥ 8 points. This State General Condition does not apply to the following Nationwide Permits: NWP 20 – *Response Operations for Oil and Hazardous Substances*, NWP 32 – *Completed Enforcement Actions*

5. Mitigation. Applicants are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resources wherever practicable. For projects

requiring Ecology Section 401 review with unavoidable impacts to aquatics resources, adequate compensatory mitigation must be provided.

(a) Wetland mitigation plans submitted for Ecology review and approval shall be based on the most current guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (available on Ecology's website) and shall, at a minimum, include the following:

i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.

ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).

iii. The rationale for the mitigation site that was selected.

iv. The goals and objectives of the compensatory mitigation project.

v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths.

vi. How it will be maintained and monitored to assess progress towards goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.

vii. How the compensatory mitigation site will be legally protected for the long term. Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) and Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publications #09-06-032 (Western Washington) and #10-06-007 (Eastern Washington)) for guidance on selecting suitable mitigation sites and developing mitigation plans. Ecology encourages the use of alternative mitigation approaches, including credit/debit methodology, advance mitigation, and other programmatic approach such as mitigation banks and in-lieu fee programs. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. Information on alternative mitigation approaches is available on Ecology's website.

(b) Mitigation for other aquatic resource impacts will be determined on a case-by-case basis.

6. Temporary Fills. Ecology Section 401 review is required for any project or activity with temporary fill in wetlands or other waters of the state for more than 90 days, unless the applicant has received written approval from Ecology. Note: This State General Condition does not apply to projects or activities authorized under NWP 33, *Temporary Construction, Access, and Dewatering*

7. Stormwater pollution prevention: All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the State.

(a) For land disturbances during construction, the applicant must obtain and implement permits (e.g., Construction Stormwater General Permit) where required and follow Ecology's current stormwater manual.

(b) Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces shall be provided.

Ecology's Stormwater Management and Design Manuals and stormwater permit information are available on Ecology's website.

8. State Section 401 Review for PCNs not receiving 45-day response from the Seattle District. In the event the Seattle District Corps does not issue a NWP authorization letter within 45 calendar days of receipt of a **complete** pre-construction notification, the applicant must contact Ecology for Section 401 review prior to commencing work.

F. ECOLOGY 401 CERTIFICATION: SPECIFIC CONDITIONS FOR THIS NWP:

Certified subject to conditions.

1. An individual Section 401 Certification is required for new, or expansion of existing, bank stabilization in marine and estuarine waters of the Salish Sea.
2. Ecology Section 401 review is required for projects or activities authorized under this NWP if:
 - a. The project or activity is greater than 500 feet in length.
 - b. The project or activity has not been designed and stamped by a Professional Engineer or Engineering Geologist.
 - c. The project or activity exceeds an average of one cubic yard per running foot below the Ordinary High Water Mark or High Tide Line.
 - d. The project or activity involves discharges of dredged or fill material into special aquatic sites.

G. COASTAL ZONE MANAGEMENT CONSISTENCY RESPONSE FOR THIS NWP:

(Note: This only applies in the following counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum and Whatcom)

Response: Ecology concurs that this NWP is consistent with the CZMP, subject to the following condition: An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

General Conditions: For Non-Federal Permittees

1. Necessary Data and Information. A Coastal Zone Management Program “Certification of Consistency” form is required for projects located within a coastal county. “Certification of Consistency” forms are available on Ecology’s website. The form shall include a description of the proposed project or activity and evidence of compliance with the applicable enforceable policies of the Washington Coastal Zone Management Program (CZMP). Also, a map of the site location is required.
2. Timing. Within 6 months from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 6 month period, concurrence with the CZMP is presumed.

General Conditions: For Federal Permittees (Agencies)

1. Necessary Data and Information. Federal agencies shall submit the determination, information, and analysis required by 15 CFR 930.39 to obtain a federal consistency determination.
2. Timing. Within 60 days from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 60 day period, concurrence with the CZMP is presumed.

ATTACHMENT 2: INADVERTENT DISCOVERY PLAN

Inadvertent Discovery Plan for Cultural Resources

**WASHINGTON STATE DEPARTMENT OF FISH & WILDLIFE
INADVERTENT DISCOVERY PLAN FOR CULTURAL RESOURCES
FOR JOSEPH CREEK BANK STABILIZATION PROJECT
IN ASOTIN COUNTY, WASHINGTON**

This Inadvertent Discovery Plan (IDP) provides clear guidance for managing an unexpected discovery or unearthing of cultural materials, cultural features, human remains, and/or skeletal materials of unknown origin during WDFW projects not governed by a DAHP issued excavation permit, or an Archaeological Monitoring or Site Protection Plan for a specific project area or activity.

This plan is to be implemented without exception whenever such discoveries occur. The plan applies to WDFW staff, contractors, subcontractors, volunteers, and others who may be involved with projects initiated by WDFW, or occurring on WDFW managed land. This plan does not supersede or satisfy requirements for Monitoring, Site Protection, or any other management plans developed to address concerns at known archaeological and historic sites.

PRE-FIELD ACTIONS

Prior to ground disturbance, the WDFW project or program manager (PM) will notify work crews/machine operators that they are obligated to cease work in the immediate area and notify supervisory personnel upon discovery of any bones or objects of human manufacture, particularly suspected Native American artifacts. This action will be repeated prior to commencement of work in new locations, after significant changes in field staff, and if work is re-started after a hiatus. Field supervisors will be made aware of their responsibilities for interim protection and notification as detailed below.

FIELD ACTIONS

Specific Procedures for the Inadvertent Discovery of Archaeological Resources

In the event that cultural resources (not including human remains) are encountered during project implementation, the following actions will be taken:

1. All work within the discovery area and a surrounding buffer adequate and sufficient to prevent further disturbance will cease. The field supervisor will notify the PM immediately.
2. The PM will immediately contact WDFW archaeologist or archaeological monitor. If an archaeological monitor is present, they will notify the WDFW archaeologist.
3. If the WDFW archaeologist determines that potentially significant archaeological materials or historic sites are present, the PM will be advised of interim protective measures. Work may resume outside the buffer, unless the WDFW archaeologist directs otherwise.

4. The WDFW archaeologist will initiate Tribal and DAHP consultation regarding evaluation of the find's significance, potential for effects caused by the project, and subsequent treatment plans or Memoranda of Agreement (MOA).
5. Wherever possible, the preferred treatment of significant archaeological resources and historic sites will be in situ preservation. If a treatment plan requires that such resources be excavated or removed, an agreement must first be reached between WDFW and the consulting parties.

Specific Procedures for the Inadvertent Discovery of Human Remains

Inadvertent finds of what appear to be human remains introduce cultural concerns and legal requirements that initiate a different response than cultural resources. Human remains must be treated with utmost respect. Four presumptions regarding identification guide the treatment of possible human remains:

- Unidentified bones will be considered human until there is evidence that they are not.
- Human remains will be considered non-forensic until and unless the county coroner has determined them to be forensic.
- Non-forensic human remains will be treated as Native American until and unless the DAHP physical anthropologist, in consultation with interested Tribes, has determined that they are not.
- Only the coroner and physical anthropologist may handle human remains until a burial treatment plan developed with the WDFW and consulting parties has been established. Examination and recording beyond that required to make the legally required determination is not authorized except through a burial treatment plan developed by WDFW and the consulting parties.

If human remains are found within the project area, the following actions will be taken, consistent with Washington State RCWs 68.50.645, 27.44.055, and 68.60.055:

1. If ground disturbing activities encounter human remains during the course of construction, then all activity will cease that may cause further disturbance to those remains.
2. The area of the find will be secured and protected from further disturbance. The project supervisor will cover the remains with a tarp or other fabric when available, notify workers that the area is off limits, and will maintain a watch to ensure that the area is not disturbed. The remains will be treated respectfully at all times. News of the discovery is not to be communicated beyond the people who need to know.

3. The finding of human remains will be reported to the county medical examiner/coroner, local law enforcement, and the WDFW archaeologist in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed.
4. The county medical examiner/coroner will assume jurisdiction over the human remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to DAHP, which will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find.
5. WDFW archaeologist will serve as WDFW's lead for Tribal and DAHP consultation process should the remains be determined non-forensic.
6. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes by certified letter within two business days of examination.
7. Interim protective measures will be maintained until the required determinations have been made and a burial treatment plan has been finalized. The WDFW will develop the plan in cooperation with all consulting parties and lineal descendants (if any). Parties defined in the burial treatment plan will implement its provisions.
8. Under no conditions are WDFW staff or other project personnel to make the location or contents of inadvertent human remains finds public, unless specifically authorized to do so in the burial treatment plan.

CONTACTS

WASHINGTON STATE DEPARTMENT OF FISH & WILDLIFE

Department Archaeologist

Adam Rorabaugh, WDFW CAMP Archaeologist 360-789-3290

Project Manager and Alternative Contact

Harrison Knechtel, WDFW Project Manager 360-529-6936

Nez Perce Tribe

Keith "Pat" Baird, THPO 208-621-3851

WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

Allyson Brooks, State Historic Preservation Officer 360-586-3066

Rob Whitlam, State Archaeologist 360-890-2615

Guy Tasa, State Physical Anthropologist 360-586-3534

ASOTIN COUNTY

Asotin County Sheriff's Office 509-243-4717

Asotin County Coroner 509-243-2061

Definitions:

Archaeological Features are physical alterations in the natural environment such as pits or house foundations.

Archaeological materials are the physical remains of human cultural behavior, including artifacts and features left on the landscape.

Artifacts are the physical objects of a culture, including tools with evidence of intentional modification (such as flaked stone blades) as well as those objects such as fire-cracked rock that reflect human activity.

Burial statutes include the 2008 Washington State legislation that established current practices for inadvertent burial treatment through additions and amendments to the code, including 27.44 RCW (Indian Graves and Records, as amended), 27.53 (Archaeological Sites and Resources, as amended), as well as chapters 27.34, 43.334, 68.60, and 68.60 RCW.

Consulting parties are those which have a legal right to comment on determinations of significance and NRHP eligibility, project effects on cultural resources, and human remains. This may vary according to projects, but typically includes DAHP and Tribes whose Ceded Lands or Usual and Accustomed areas include the project area.

Coroner refers to the office of the local county coroner or medical examiner, and is responsible for confirming that the remains are human and determining whether they are forensic (dead less than 50 years, and therefore a law enforcement matter) or non-forensic (more than 50 years, and therefore subject to burial statutes).

Cultural Deposits are layers or features of sediment containing cultural materials.

Cultural Resources include archaeological resources and historic sites.

Historic sites are locations 50 years old or older, where native or non-native events and activities have taken place since the arrival of Euro-Americans, and which are considered by DAHP to be historic site types.

Human remains are any physical remains that are known to be human, or could be human but have not yet been positively identified.

Physical anthropologist in this case refers to the professional physical anthropologist employed at DAHP, who determines whether human remains are Native American (if possible), and is the individual responsible for handling human remains.

**SECTION 02000
GENERAL SITE WORK PROVISIONS**

PART 1 - GENERAL

1.01 SECTION INCLUDES

This section specifies general requirements for all sections of Division 2 – Site Work.

1.02 RELATED WORK

Not Used.

1.03 REFERENCES

References listed in Division 2 are from the following organizations' publications and reference standards:

AASHTO – American Association of State Highway and Transportation Officials

ANSI – American National Standards Institute

ASTM – ASTM International (formerly American Society for Testing and Materials)

OSHA – Occupational Safety and Health Administration Construction Standards

RCW – Revised Code of Washington

IBC – International Building Code

WAC – Washington Administrative Code

WISHA – Washington Industrial Safety and Health Act

WSDOT – Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, latest edition

1.04 SUBMITTALS

Make submittals for items in all sections of Division 2 in accordance with Sections 00704.03 Shop Drawings and 01300 Contractor Submittals.

1.05 DELIVERY, STORAGE, AND HANDLING

A. Protect all materials from exposure to moisture, wind, sunlight, or other excessive weather conditions that will render them unsuitable for usage as intended and be cause for rejection.

B. Stockpile or store in areas protected from contamination and physical damage.

C. Contractor is responsible for all costs associated with replacement of all rejected items.

PART 2 - PRODUCTS

Not Used.

PART 3 - EXECUTION

Not Used.

END OF SECTION 02000

02000 - 1

**SECTION 02141
STREAM ISOLATION AND DEWATERING**

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Design, furnish, install, operate, and maintain all pumps, piping, drains, well points, wells, and other facilities for the control, collection and disposal of groundwater or surface water for the proper construction of all work specified herein.
- B. Measures given in the Drawings and Specifications are minimum requirements, the Contractor shall supplement the measures described to the extent necessary to achieve the required results. Owner's review of the Contractor's proposed dewatering system does not relieve the Contractor of the full responsibility for the adequacy of the dewatering system. The dewatering system shall prevent loss of fines, boiling, quick conditions, and softening of foundation strata and maintain stability of excavation bottoms.

1.02 RELATED SECTIONS

Not Used.

1.03 REFERENCES

Not Used.

1.04 SUBMITTALS

21 days prior to the start of construction, submit a written plan that provides specific dewatering and sediment control measures to minimize delivery of soil and turbidity into the stream during the construction period. Include a channel diversion and dewatering plan where dewatering is required, the sequence of operations, and information on equipment, materials, and suppliers. Include details regarding the anticipated types and locations of various dewatering features, as well as appropriate design calculations to substantiate the dewatering plan. The plan shall also indicate discharge treatment, discharge location, and receiving body.

1.05 DEFINITIONS

- A. Special Dewatering: Dewatering by single or multiple stage well points or deep wells.
- B. Hydrostatic Groundwater Level: The groundwater level at any location at the time of construction and prior to dewatering.

1.06 REGULATORY REQUIREMENTS

- A. All dewatering activities shall comply with all local, state, and federal regulations, including the requirements of the Washington State Department of Ecology (WDOE) and WDFW HPA's.

- B. No in-water work may begin until WDFW biologists have approved work areas and performed trapping and transporting of aquatic species within work areas. The Contractor shall be responsible coordinating in-water work schedules and notifying the Owner not less than 14 days prior to the anticipated beginning of in-water work so that WDFW biologists can perform trapping and transporting.

1.07 DEFINITIONS

- A. NMFS Screen Criteria – National Marine Fisheries Service, Specific criteria and guidelines for pump intake screen meshes.
- B. WAC 173-201A-200 – Fresh water designated uses and criteria.
- C. ASTM D4632 – Standard test method for grab breaking load and elongation of geotextiles.
- D. HPA – Hydraulic Project Approval.

PART 2 - PRODUCTS

2.01 COMPONENTS

- A. The materials and construction of the dewatering wells, and any required observation wells shall be selected by the Contractor and his dewatering specialist.
- B. Geotextile shall be nonwoven geotextile composed of polypropylene fibers such as Mirafi 180N or approved equal.

PART 3 - EXECUTION

3.01 INSTALLATION

- A. Do not begin work until the necessary dewatering and de-sediment control measures for that particular phase of work has been implemented. Incorporate all sediment control features into the project at the earliest practicable time.
- B. At all times during construction, provide ample means and devices to promptly remove and properly dispose of all water entering excavation such that the bottom is kept firm and acceptably free of standing water until the structures to be built therein are completed.
- C. Provide continuous superintendence during all periods of dewatering.
- D. The location of every element of the dewatering system shall be such that interference with excavation and construction activity is minimized.
- E. Direct discharged water into settling basins or areas where silts and sediments may be filtered prior to entry into waterways or other property. At streamside construction and other locations where siltation or erosion may occur, install hay-bale silt fencing and/or other control measures as required to control and prevent siltation.
- F. Special dewatering is required in any location where the soil and/or groundwater conditions would otherwise tend to result in boiling or other disturbance to the subsoils and/or walls of the excavation.

3.02 DEWATERING AND STREAM DIVERSION

- A. Construct temporary sandbag berm to divert water around disturbed areas and work areas.
- B. Notify the Owner of the intention to dewater or divert the stream, at least 10 working days in advance. Do not divert or dewater any area of the stream until approved by the Owner. Dewater the stream slowly and incrementally or as directed by Owner in order to facilitate the fish rescue.
- C. In-Stream Work:
 - 1. Isolate construction area and coordinate with Owner for aquatic species removal by the WDFW. Notify Owner 10 working days prior to isolating in stream work areas.
 - 2. Cease project operations under high flow conditions that inundate the work area, except for efforts to avoid or minimize resource damage. Work not affected by inundated work areas may proceed.
 - 3. Only operate heavy equipment in streams, riparian areas, and wetlands with Owner's approval. When submitting for approval to operate heavy equipment in stream areas (including isolated areas) demonstrate that such actions are the only reasonable alternative for implementation or would result in less sediment in the stream channel or damage (short or long term) to the overall aquatic and riparian ecosystem relative to other alternatives. When approved, minimize time in which heavy equipment is in stream channels, riparian areas, and wetlands.
 - 4. Clean and repair all equipment used in the in-stream work prior to entering the work area. Remove external oil and grease, along with dirt and mud, prior to construction. Inspect equipment daily for leaks or accumulations of grease, and repair and identified problems prior to entering streams or areas that drain directly to streams or wetlands.
 - 5. Fuel and service equipment used for in stream or riparian work in an approved staging area outside of riparian zone. When not in use, store vehicles in the staging area.
- D. Gravel bag Cofferdams and Diversion Culverts: Construct dams of material handling bags as shown on the Drawings or as approved by the Owner. The mining of material from the streambed or floodplain to construct diversions is not permitted.
 - 1. Gravel Bag Cofferdams: Construct the material handling bag dam in a dry condition by first pumping the stream around the dam. Place temporary cofferdams as needed to produce a dry working area. Remove rock and other irregularities from the streambed by hand to form smooth bedding for the bypass dam. Place the dam so that water does not seep from the downstream side of the dam; if seepage occurs, improve the dam by adding bags, improving or adding seals, or other means to minimize seepage from the dam. When it is impossible to eliminate seepage, construct a sump and pump clear water to the upstream side of the dam.
 - 2. Cofferdam Impervious Membrane: Place an impervious membrane within or on the waterside side of the dam. Entrench the membrane in the streambed as shown on the Drawings or as approved by the Owner. Where necessary, cut a hole in the membrane to fit a bypass pipe and seal the membrane to the bypass pipe or the bypass pipe collar using gaskets, adhesive strips, or other approved methods.
 - 3. Material Handling Bags: Use only clean pea gravel in the bags. Loosely fill and tamp the bags in place by hand to minimize seepage between, under, and around the bags.

- E. Pumps: Install pumps as required to re-route stream around work areas, dewater foundations, and maintain hatchery intake flow as show on the Drawings. When failure of pump would result in movement of sediment or turbidity beyond the work area, provide a backup pump that is readily available. Provide a temporary hatchery supply system as required on the Drawings. Pumps must have fish screens and be operated in accordance with National Marine Fisheries Service (NMFS) aquatic species screen criteria. Equip the pump with approved screens, appropriate suction and discharge hoses, fittings and flow regulation equipment as needed. Ensure that the pumps are clean, free of leaks and that the oil used as lubricant in the pump seal systems is food grade mineral oil. Install and operate pumps in a manner that will avoid impingement of small fish against the intake screens.
1. Pump intakes: Use one of the following methods of screening on all draft hoses:
 - a. Perforated Plate: Screen openings shall not exceed 3/32 or 0.0938 inches.
 - b. Profile Bar Screen: The narrowest dimension in the screen openings shall not exceed 0.0689 inches in the narrowest direction.
 - c. Woven Wire Screen: Screen openings shall not exceed 3/32 or 0.0938 inches the narrow direction.
 - d. Check intakes frequently and clean as needed with wire brushing, flushing, or any other acceptable method.
 2. Sump Pumps: Supply pumps capable of dewatering the structure foundation and sediment retention pond. Ensure that pumps are clean and free of leaks. Remove sediment and turbidity in the Sump Pump discharge water prior to re-entering the stream.
 3. Sump Water Discharge: Discharge sump water as shown on the Drawings or as approved by the Owner. Apply one or more methods to remove sediment from sediment-laden water prior to release into the stream. Apply additional methods as needed to eliminate increase in downstream turbidity. Use the following methods as needed:
 - a. Silt Bag Filtration: Discharge sump water into one or more silt bags. Silt bags are constructed of Mirafi 180N (or approved equal) with sewn seam strengths of 90% efficiency according to ASTM D4632. Construct bag to hold and filter sump water. Place silt bag(s) on level ground having layer of straw one foot thick minimum.
 - b. Settling Basin: Discharge sump water into settling basin as shown on Drawings.
- F. Stream Rewatering: Monitor downstream during rewatering to prevent stranding of aquatic organisms below the work area. Notify Owner one week prior to rewatering.

3.03 TURBIDITY CRITERIA

The turbidity of the water in the stream channel downstream of the work shall meet all associated jurisdictional approvals and requirements of WAC 173-201A-200.

The following Water Quality Monitoring Plan shall be implemented by the Contractor.

3.04 OPERATION OF DEWATERING SYSTEMS

- A. Operate dewatering systems in a manner that will avoid harm to aquatic organisms or result in turbid discharge to streams.
- B. Prior to any excavation in stream or below the hydrostatic groundwater level, the dewatering system shall be operated to lower the water levels as required. Then it shall be operated continuously, 24 hours per day, 7 days per week, until all facilities and structures affected by

the dewatering have been satisfactorily constructed, including placement of fill materials to an elevation above the hydrostatic groundwater level.

- C. Wherever special dewatering is used, the dewatering system shall lower the groundwater level in the entire excavation at least 1 foot below bottom grade or the bottom of over-excavation of unsuitable material.
- D. Take positive measures to prevent flotation or uplift of partially completed structures until they are able to sufficiently resist water pressures.
- E. The pumping and dewatering operations shall be carried out in such a manner that no disturbance to the bearing soil or to soil supporting overlying and adjacent structures from this or any other work will result.
- G. Where existing wells are utilized for the Contractor's dewatering purposes, the Contractor shall take full responsibility for the protection, maintenance, and any required development of the wells during the construction period.
- H. Provide complete standby equipment and power sources available for immediate operation as may be required to adequately maintain the dewatering on a continuous basis in the event that all or any part of the dewatering system may become inadequate or fail.

3.05 REPAIR AND RESTORATION

When failure to provide adequate dewatering and drainage causes disturbance to the soils below bottom grade, slope instability, or damage to foundations or structures, the Contractor shall, at their own expense, provide all materials and labor to perform all work required for restoration of subgrade soils, slopes, foundations, or structures to the satisfaction of the Owner.

3.06 REMOVAL

- A. An adequate weight of backfill material to prevent flotation of pipes or structures shall be in place before any dewatering systems are shut off.
- B. At the completion of the dewatering work, all units of the dewatering system installed by the Contractor shall be removed.

END OF SECTION 02141

**SECTION 02170
COFFERDAMS**

PART 1 - GENERAL

1.01 SECTION INCLUDES

This section describes temporary watertight enclosures for construction below water.

1.02 REFERENCES

Not Used.

1.03 SUBMITTALS

Submit a cofferdam design, including the materials and methods to be used. The Owner's approval does not relieve the Contractor of the full responsibility for the adequacy of the design and its conformance with federal, state, and local regulations.

PART 2 - PRODUCTS

2.01 MATERIALS

Materials shall be as proposed by the Contractor and approved by the Owner.

PART 3 - EXECUTION

3.01 INSTALLATION

Furnish all labor, materials, and equipment necessary to install and maintain any cofferdams or other water-diversion structures required for construction of this project.

3.02 REMOVAL

Completely remove temporary construction when no longer in use.

END OF SECTION 02170

**SECTION 02220
EXCAVATION, BACKFILL, AND COMPACTION**

PART 1 - GENERAL

1.01 SECTION INCLUDES

The work under this Section includes providing all labor, materials, tools, and equipment necessary for excavation, filling, compaction, grading, trenching, bedding and backfilling, and placement of excess earth, as shown on the Drawings and described in the Specifications.

1.02 RELATED SECTIONS

Section 02140 Dewatering
Section 02240 Construction Geotextiles

1.03 REFERENCES

ASTM C136 – Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates
ASTM D1557 – Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort
ASTM D6938 – Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)
RCW 49.17 – Washington State Industrial Safety and Health Act
WSDOT M 41-10 – Standard Specifications for Roads, Bridges, and Municipal Construction, latest edition

1.04 SUBMITTALS

- A. Safety plan.
- B. Authorization for use of selected disposal areas.
- C. Gradation analysis and certified test results for all imported fill material and onsite material to be incorporated into the work.
- D. Compaction test results.

1.05 JOB SITE CONDITIONS

- A. Do not perform earthwork operations if the weather conditions, in the opinion of the Owner, are inappropriate. Work in muddy or frozen ground will not be allowed.
- B. Maintain proper drainage, and stormwater and erosion controls at all times.

1.06 STOCKPILES

- A. Locate all stockpiles so as not to interfere with other work or disturb adjoining property owners. Obtain Owner's prior approval for stockpile locations.
- B. Maximum stockpile height is ten feet.

1.07 SAFETY AND PROTECTION

- A. Barricade open excavations occurring as part of this work and post warning lights. Operate warning lights during hours from dusk to dawn each day and as otherwise required by applicable safety regulations.
- B. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining washout, and other hazards created by all earthwork related operations.
- C. Contact utility companies to locate service lines prior to any excavation.
- D. Proceed with caution in the excavation so that damage to underground structures, both known and unknown, may be avoided.
- E. Take extreme precautions for the protection of utility lines and other subsurface improvements. Repair any improvements damaged by construction operations at the Contractor's expense in compliance with the requirements of the utility owner and to the Owner's satisfaction.
- F. Sheet, shore, and brace trenches and excavations where required in a manner consistent with established safe practices and in accordance with all applicable safety regulations.
- G. Comply with Chapter 49.17 RCW, the Washington State Industrial Safety and Health Act, if trench excavation exceeds four feet in depth. Include the cost of required safety systems in all bid schedules and list as a separate Bid Item on the Bid Proposal Form.
- H. Provide all materials, equipment, and labor necessary to provide support to manholes, footings, and foundation walls during excavation and backfilling at all locations.

PART 2 - PRODUCTS

2.01 EXCAVATION MATERIALS

- A. Common Excavation: Includes all material other than rock as described below required for the construction of this project. It includes, but is not restricted to earth, gravel, hardpan, cemented gravel, soft or disintegrated rock, and boulders or detached pieces of solid rock not exceeding one cubic yard in volume.
- B. Rock Excavation: consists of rock boulders greater than one cubic yard in volume and bedrock. Rock excavation shall be approved by the Owner and will be considered a change in the work.
- C. For bidding purposes, assume all excavated material meets the specifications for common borrow.
- D. Excavated materials may be used for fill and backfill applications required for construction of this project; provided the material meets the specifications for the intended use and has been properly protected from water conditions that would render it undesirable.

2.02 FILL MATERIALS

- A. Common Borrow: Fill required to raise existing grade or backfill excavations beyond five feet of a structure or as trench backfill above pipes or conduits. Common borrow shall be material from common excavation or from a borrow site which is free of deleterious materials.

Deleterious material includes wood, organic waste, or any other objectionable material greater than three percent by weight.

- B. Sand: Clean, uniformly graded sand with the gradation of WSDOT 9-03.1(2)B, Class 1.
- C. Ballast Rock: Hard, sound, and durable rock with at least one face fractured. Rock shall be free of frozen material, debris, and organics, and meet the gradation of WSDOT 9-03.9(1).
- D. Crushed Surfacing Base Course (CSBC) and Top Course (CSTC): Manufactured from ledge rock, talus or gravel, uniform in quality, substantially free of wood and other extraneous material, meeting the requirements of WSDOT 9-03.9(3).
- E. Trench Backfill shall meet the requirements of WSDOT 9-03.10 with 100% of material passing through two 1/2-inch screens.
- F. Structural Fill shall meet the following requirements for Gravel Backfill:

TABLE 02220 - 2.02F	
Sieve Designation	Percent Passing by Weight
2 Inches	100
1/2 Inch	60-80
No. 4	30 Maximum
No. 200	0-5
Sand Equivalent	45 Minimum

- 1. Foundations: WSDOT 9-03.12(1) A or B
- 2. Walls: WSDOT 9-03.12(2)
- G. Pipe Bedding: Clean sand/gravel mixture free from wood waste or other extraneous materials and conforming to the gradation of WSDOT 9-03.12(3) when tested in accordance with ASTM C136.
- H. Drain Rock: Washed rock with the gradation of WSDOT 9-03.12(4).
- I. Gravel Borrow: Selected granular material, free-draining mineral soil, free from organic matter, frozen or lumpy material, meeting the requirements of WSDOT 9-03.14(1).
- J. Quarry Spalls: Meet the gradation of WSDOT 9-13.1(5).

PART 3 - EXECUTION

3.01 EXCAVATION

- A. Excavation consists of the removal of material required to establish the proposed subgrade surface elevations. Conduct excavations in such a manner as to avoid disturbance to all materials located outside the limits of the work area, unless specifically identified by the Owner as an acceptable borrow source. Methods of excavation will be the Contractor's option. Exercise care when approaching final grade. If final grade is disturbed, replace it with suitable materials and compact at Contractor's expense.
- B. Large rocks, which size qualifies them as common excavation, encountered during excavation or trenching may be partially removed as required to reach subgrade elevations. With Owner's approval, Contractor has the option to remove these rocks by excavation and subsequent backfilling the over excavated portions. No extras will be paid for such over excavations.

- C. Protect bottoms of all excavations from freestanding water and frost. Protect excavations from caving, flooding, or other source of damages. Damage to excavation shall be repaired at the Contractor's expense.
- D. Any excess excavation performed by the Contractor for his convenience shall be at the expense of the Contractor.
- E. Dispose of excavated materials at a permitted offsite location. Provide the Owner with a letter authorizing disposal at selected locations prior to disposal.
- F. Dispose of excavated materials of any nature if quantities exceed the fill or backfill needs of this project. This disposal will not be considered a change in work, and no extra payment will be made.
- G. Dispose of excavated materials determined by the Owner to be unsuitable for use as common borrow. This disposal shall be considered a change in work with extra payment determined per General Conditions Section 00707.00 Changes. The disposal quantity considered for extra payment will be limited to the amount of common borrow imported to replace the unsuitable material.
- H. Any excavation and replacement of unsuitable materials below final grade will be as directed by the Owner. "Unsuitable material" is any type of soil such as clays, silts, or organic materials that will not compact to specified compaction percentage or does not meet the specification for its intended use.

3.02 ROCK REMOVAL

- A. Large rocks greater than one cubic yard encountered within the excavation limits may be partially or entirely removed; however, the subsequent backfill for such over excavation shall be done at the Contractor's expense.
- B. Blasting is not allowed.

3.03 BACKFILL AND COMPACTION

- A. Dewater and prepare foundations prior to placing backfill materials.
- B. When backfilling, extra care must be taken so that no damage will occur to foundations or related structures.
 - 1. Where backfill is to be placed against both sides of concrete walls, bring the backfill up evenly on both sides of the wall.
 - 2. Where backfill is to be placed against one side of concrete walls, abutting concrete walls, or beams, do not place backfill until the concrete has developed sufficient strength to resist the loading imposed by the backfill. Unless high-early strength concrete has been approved for use, place backfill at least 72 hours after concrete placement and do not exceed the following schedule:

TABLE 02220 - 3.03B			
Backfill Depth:	1/2 wall height	2/3 wall height	Full wall height
Concrete Age:	72 hours	7 days	28 days

- C. Each lift of fill material shall be spread uniformly in horizontal layers and compacted in accordance with the following table:

TABLE 02220 - 3.03C			
Type of Material	Max. Loose Lift Placed (inches)	Percent Compaction*	Application
Common borrow	24	90	General fill**
Sand	6	95	Pipe and conduit bedding, fill under structures
Ballast rock	8	90	Fill under other materials, where noted
Crushed surfacing base course	<u>Total Depth</u> 2	95	Subgrade for crushed rock or asphalt pavement surface/finished crushed rock surface such as parking lots, driving areas
Trench backfill	6	95	Fill above pipe bedding to pipe centerline
Trench backfill	12	90	Pipe centerline to top of trench
Structural fill	6	95	Fill under structures and wall backfill***
Structural fill	12	90	Fill around structures**
Pipe bedding	6	95	Pipe and conduit bedding
Drain rock	6	95	Backfill in drain trenches
Gravel borrow	12	90	Select Fill****
Quarry spalls	12	90	Rock lining for outfall channel

* Percent compaction at maximum dry density as determined in accordance with ASTM D1557.

** All fill and backfill not under structures and beyond 5-feet concrete slabs, walls, and footings.

*** All fill and backfill under concrete slabs and footings (interior and exterior) and all fill and backfill within 5 feet of concrete slabs, walls and footings.

**** All fill under roadways and trench backfill under paving.

- D. Compact with power-operated tampers, rollers, idlers, or vibratory equipment. Water jetting for compaction purposes is not permitted.
- E. Any application of water or any working of fill material required to bring it within acceptable moisture content and density limits during compaction operations shall be done at the Contractor's expense.
- F. Do not place, spread, or compact backfill materials at an unsuitably high moisture content or during adverse weather conditions. When work is interrupted by heavy rain, do not resume backfill operations until field tests indicate the moisture content density of the backfill areas are within specified limits.

3.04 ROAD AND PARKING FILL

- A. Place base course and top course each in two lifts on top of a prepared and compacted subgrade.
- B. Provide the water and equipment necessary for adequately distributing moisture on the material. Apply water lightly and frequently to avoid having free water running out of the material and building up on the subgrade.
- C. Do not place materials when snow is falling or blowing or when the weather is such that, in the Owner's opinion, satisfactory results cannot be obtained.

3.05 FIELD QUALITY CONTROL

- A. Perform field observation and testing as required to control the work.
- B. Density and moisture-content testing of embankment fill and excess earth placements, in accordance with Section 00705.15, shall follow ASTM D6938.
- C. Level surface check: Unless otherwise shown on the Drawings, the variation above or below a 10-foot straightedge placed between any two contacts with the finished surface shall not exceed one-tenth of a foot.
- D. Any area which has been tested and shown to not meet the requirements of these Specifications shall be reworked and retested at the Contractor's expense until it complies.

END OF SECTION 02220

**SECTION 02240
CONSTRUCTION GEOTEXTILE**

PART 1 - GENERAL

1.01 SECTION INCLUDES

This section specifies minimum requirements for construction geotextile.

1.02 REFERENCES

WSDOT Washington State Department of Transportation Standard Specification for Road, Bridge and Municipal Construction.

1.03 SUBMITTALS

The Contractor shall submit to the Owner one copy of the following information regarding each geotextile proposed for use:

- A. Manufacturer's name and current address.
- B. Full product name.
- C. Geotextile structure, including fiber/yarn type.
- D. Proposed geotextile uses(s).
- E. Manufacturer's Certificate of Compliance.

PART 2 - PRODUCTS

2.01 BIODEGRADABLE SEPARATION TEXTILES

- A. Geotextiles used in this project shall be composed of 100% biodegradable materials; coconut, jute, or wood fiber. Straw will not be used for separation textiles.
- B. Textiles used shall use a non-woven central layer and use net support structure. Net support structure shall not be made of synthetic material. Alternatively, a single layer of non-woven fiber may be used if thickness is equal to ½ inch or greater.

PART 3 - EXECUTION

3.01 SHIPMENT AND STORAGE

During periods of shipment and storage, the geotextile shall be kept dry at all times and stored off the ground. Under no circumstances shall the material be exposed to sunlight or other form of ultraviolet rays for more than 5 calendar days.

3.02 INSTALLATION

- A. The filter fabric shall be placed as shown on the Drawings. The surface to receive the fabric shall be prepared to a smooth, uniform condition free of obstructions, protrusions, depressions, and debris.
- B. The geotextile shall be spread immediately ahead of the covering operation.
- C. Under no circumstances shall the geotextile be dragged through mud or over sharp objects that could damage the geotextile.
- D. The fabric shall not be laid in a stretched condition but laid loosely and smoothly without excessive wrinkles.
- E. In trenches, the geotextile shall either be overlapped a minimum of 1 foot at all longitudinal and transverse joints, or the geotextile joints shall be sewn. In those cases where the trench width is less than 1 foot, the minimum overlap shall be the trench width.
- F. In all other applications, the geotextile shall be overlapped a minimum of 2 feet at all longitudinal and transverse joints or the geotextile joints shall be sewn together.
- G. Pegs, pins, or the manufacturer's recommended method shall be used as needed to hold the geotextile in place until the specified cover material is placed.
- H. The minimum initial lift thickness over the geotextile shall be 12 inches.

3.03 PROTECTION

- A. Gravel fill shall not be dropped on the fabric from a height greater than 3 feet. End-dumping the cover material directly on the geotextile will not be permitted.
- B. Compaction of the first lift above the geotextile shall be limited to routing of placement and spreading equipment only. No vibratory compaction will be allowed on the first lift.
- C. The cover material shall be placed on the geotextile in such a manner that a minimum of 12 to 18 inches of material, depending on the survivability of the geotextile, will be between the equipment tires or tracks and the geotextile at all times.
- D. Construction vehicles shall be limited in size and weight such that rutting in the initial lift above the geotextile is not greater than 3 inches deep to prevent overstressing the geotextile. Turning of vehicles on the first lift above the geotextile will not be permitted.

3.04 REPAIR AND RESTORATION

Fabric damaged or displaced or the overlaps or sewn joints disturbed, as evidenced by visible geotextile damage, subgrade pumping, intrusion, roadbed distortion, or other means before or during installation or during placement of overlying gravel layers shall be removed, and the damaged area replaced or repaired to the Owner's satisfaction at the Contractor's expense. The repair shall consist of a patch of the same type of geotextile placed over the damaged area. The patch shall overlap the existing geotextile a minimum of 2 feet from the edge of any part of the damaged area.

END OF SECTION 02240

**SECTION 02272
PLANTINGS**

PART 1 - GENERAL

1.01 SECTION INCLUDES

This section specifies plantings of live stakes, container plants, seeding, fertilizing, and mulching.

PART 2 - PRODUCTS

2.01 VEGETATION PLAN

Contractor shall provide and plant all vegetation in accordance with the Drawings or associated vegetation plan. Any substitutions shall be approved by the Owner.

2.02 SUBMITTALS

The Contractor shall provide the following information for plants:

- A. Name and current address of nursery.
- B. Date sold and shipped.
- C. List of plant species, sizes, and quantities.
- D. Planting recommendations.
- E. Certificate of Grade.

2.03 SEED

Seed shall be a standard year seed mix with no noxious weed seeds.

2.04 FERTILIZER

Not Used.

2.05 MULCH

Mulch shall consist of a fine wood cellulose fiber.

PART 3 - EXECUTION

3.01 LIVE STAKES

- A. Cuttings from willows near the site shall be 48 inches long and a minimum of 1/2 inch in diameter. Written permission from the landowner where the cuttings are to be collected shall be obtained by the Contractor and provided to the Owner before cutting. All cuts shall be made with a sharp instrument. Cuts shall have a straight top immediately above a bud. Cuts on low or "butt" end shall be at a 45-degree angle. Split stake cuttings shall be rejected. Stakes shall be driven butt end in the ground until only 4 to 6 inches protrude. This protrusion shall have 2 to 3 buds exposed aboveground. Care shall be taken not to damage the top bud. Cuttings shall be kept moist after cutting and driven on the same day as cut.

- B. Plant at least 50 stakes, 4 ft on center, maximum. Spacing can be less (2-3 ft on center).
- C. Plant cuttings so at least half their length is buried in soil (deeper may be better, as long as a few buds at the top are exposed).
- D. Install plantings October 15th - March 15th (the earlier the better within this time frame).
- E. Choose appropriate species for your site conditions, native species to eastern WA (ex. Coyote Willow *Salix exigua*; Pacific willow *Salix lasiandra*; Scouler's willow *Salix scouleriana*) and grown from eastern Washington parent material.

3.02 CONTAINER PLANTS

Not Used.

3.03 SEEDING PREPARATION

- A. Inspect soil surface for sticks, oil, chemicals, plaster, concrete, and other deleterious material. Remove and dispose of all deleterious material.
- B. In planting areas, provide a minimum of 18 inch of topsoil or meet finished grade requirements, whichever is greater. Place topsoil in 6 inch lifts.
- C. The top 4 inches of soil in all cultivated areas shall be free of stones, clods or earth larger than one inch in diameter and other deleterious matter which might be a hindrance to mixing of soil amendments, planting and maintenance, as determined by the Owner.
- D. Roll or hand compact soil to achieve compaction of 85% of dry weight density.

3.04 SEEDING, FERTILIZING, AND MULCHING

- A. The seeding operation shall include the installation of mulch, to a uniform application.
- B. Wood Cellulose Fiber: Wood cellulose fiber shall be applied at the rate specified herein. Wood cellulose fiber shall be utilized as a mulch.

END OF SECTION 02272

**SECTION 02370
LARGE WOODY MATERIAL**

PART 1 - GENERAL

1.01 SECTION INCLUDES

The work under this Section includes providing all labor, materials, tools, and equipment necessary for installation of large woody material (LWM) as shown on the Drawings and described in the Specifications.

1.02 RELATED SECTION

Not Used.

1.03 DEFINITIONS

- A. DBH: diameter at breast height, measured four feet above log base.
- B. Large woody material (LWM): Natural logs meeting the dimensions and characteristics indicated on the Drawings and described in the Specifications.
- C. Members: Individual pieces of LWM.
- D. Rootwad mass: The roots and the flared portion of the tree transitioning between the roots and the trunk.
- E. Rootwad log: LWM that includes an intact rootwad mass connected to a portion of the tree trunk. Rootwad logs are typically produced by removing an entire tree, including the rootwad mass from the ground, removing the limbs, and cutting the log to a specified length.

1.04 SUBMITTALS

No later than 21 calendar days prior to delivery, submit the following:

- A. Source(s) of LWM and an inventory of members from each source. Photographic documentation of the proposed materials is encouraged.
- B. A list of tree species from which the LWM will be harvested. Owner's prior written approval is required for tree species not listed in the Specifications or indicated on the Drawings.

1.05 DELIVERY, STORAGE, AND HANDLING

- A. Transport, deliver, store, and handle materials in a manner that does not damage or adversely affect the product or surroundings.
- B. Upon delivery to the Contractor's work or storage area, inspect the LWM in the presence of the Owner. Ensure the members meet the contract requirements and that the total quantity of products is available to complete the Work. Upon completion of the inspection, furnish the Owner with a written report of the results.
- C. Store materials where they will not restrict access to other work in the staging areas indicated on the Drawings or otherwise approved by the Owner.

- D. Replace, at no additional cost to the Owner, products that are damaged, stolen, and/or do not meet the requirements indicated on the Drawings and as described in the Specifications.

PART 2 - PRODUCTS

2.01 LARGE WOODY MATERIAL

- A. Use salvaged natural wood, that has not been preservative treated.
- B. Acceptable species are Douglas fir, Hemlock, or Western Red Cedar. Other conifer species native to Washington state may be used if approved by the Owner.
- C. Material shall be from sound stock and appropriate for structural constructions. The trunk of the logs shall be reasonably straight and uniform, and free of excessive bends, bulges, and limbs that may impede the placement of additional logs in the structure. Logs exhibiting breakage, rot, splitting, holes, pest infestation, foreign objects/finishes, vandalism, burn, or other damages are not allowed.
- D. Include original bark intact with minimal marring.
- E. Trim limbs to within one inch of the face of the log. Limbs do not include the root mass.
- F. Log diameters must be within three inches, plus or minus, of the diameter indicated on the Drawings, measured at breast height.
- G. The length of the root wad logs shall be measured from the location at which the root wad mass has tapered into the log to the end of the log. Logs that exceed the lengths indicated on the Drawings may be hewed to fit as approved by the Owner.
- H. Root wad masses shall be reasonably uniform and full.

2.02 CONNECTIONS

Connection spikes shall have a minimum yield stress of 40 ksi and be a minimum of 1/2" in diameter. Lengths shall be furnished as needed to secure the logs as shown on the Drawings.

PART 3 - EXECUTION

3.01 PREPARATION

- A. Install all soil preparation, such as soil, sand, gravel, and rock, prior to installing LWM.
- B. Wash logs and root wad masses free of soil and debris prior to installation, ensuring that no materials fall into or contaminate project waters
- C. Convey LWM from stockpile to location shown on Drawings. LWM shall be installed from the water without disturbance of the riparian vegetation. LWM shall be available to be inspected by Owner prior to installation to ensure.

3.02 INSTALLATION

- A. Place all LWM on site as directed by the Owner. Locations shown on the Drawings are approximate. Notify the Owner at least 48-hours before selection and placement of LWM.
- B. Handle, move, and install LWM without damaging existing features or riparian vegetation.
- C. Place LWM using appropriate equipment and methods. Do not drop LWM into position.
- D. Connection spikes shall be pounded flush or slightly recessed into the logs. No edges, ends, or burrs of the spikes shall be exposed beyond the log's surface so as not to pose a hazard to fish.

3.03 ANCHORING

Not Used.

3.04 SITE CLEANUP

- A. Maintain neat and orderly storage and work areas.
- B. Collect and properly dispose of remaining materials, debris, and rubbish resulting from stockpiling and installation of LWM.
- C. Restore the surrounding area from impacts resulting from the work, such as regrading, as needed to meet Owner's approval.

END OF SECTION 02370