

Exhibit D

City of Snoqualmie Community Center Expansion Project

General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder

DRAFT

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Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Additional Services* refers to those services defined or described in Section 2.3.1.8 of the Contract.

1.2.2 *Allowance Items* are specific portions of the Phase 2 Work set forth in the GMP Amendment with the cost for such Work estimated in an assigned dollar amount.

1.2.3 *Allowance Values* are the dollar amounts assigned to Allowance Items.

1.2.4 *Application for Payment* is the Design-Builder's request for payment prepared and submitted in compliance with Article 8 of the Contract and Article 6 of these General Conditions of Contract.

1.2.5 *Basis of Design Documents* are those documents specifically identified in the Phase 2 Proposal and GMP Amendment as being the "Basis of Design Documents" and shall include, but not be limited to, agreed upon modifications to the Owner's Project Criteria.

1.2.6 *Change Order* is defined or described in Section 9.1 of these General Conditions of Contract.

1.2.7 *Claim* is a demand or assertion by Design-Builder for itself or for the benefit of any Subcontractor or supplier of any tier seeking an adjustment of GMP or Contract Time, or both, or any other relief with respect to the terms of the Contract Documents.

1.2.8 *Construction Documents* are the documents, consisting of drawings and specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.9 *Construction General Conditions Costs* are defined or described in Section 7.3 of the Contract.

1.2.10 *Construction General Conditions Work* includes all work set forth in **Exhibit D** to the Contract.

1.2.11 *Contract* refers to the Progressive Design-Build Agreement between Owner and Design-Builder dated [REDACTED], DBIA Document No. 544 (2019 Edition), as modified.

1.2.12 *Contract Documents* are as defined in Article 3 of the Contract.

1.2.13 *Contract Price* is defined or described in Section 2.3.1.1 of the Contract.

1.2.14 *Contract Time(s)* are the dates for Substantial Completion, Acceptance and Final Completion set forth in, or calculable from, Article 6 of the Contract.

1.2.15 *Cost of the Phase 2 Work* is defined or described in Section 7.5 of the Contract.

1.2.16 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.17 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant (Architect and/or Engineer of Record), and Key Subcontractors (Key Firms) identified by the Design-Builder in its proposal in response to the Owner's Request for Proposals. The Key Firms are identified in Section 10.4 of the Contract.

1.2.18 *Design-Builder* is Absher Construction Co.

1.2.19 *Design-Builder's Contingency* is defined or described in Section 7.6.2 of the Contract.

1.2.20 *Design-Build Fee* is defined or described in Section 7.4 of the Contract.

1.2.21 *Design Builder's Representative* is defined or described in Section 10.2.2 of the Contract.

1.2.22 *Design Builder's Senior Representative* is defined or described in Section 10.2.1 of the Contract.

1.2.23 *Design Consultant ~~or~~ (Architect and/or Engineer of Record)* is a qualified, licensed design professional or employed or retained to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents. The Architect or Engineer of Record shall be a professional architect or engineer licensed in the state of Washington.

1.2.24 *Differing Site Conditions* are defined or described in Section 4.2.1 of these General Conditions of Contract.

1.2.25 *Electronic Data* is defined or described in Section 12.1.1 of these General Conditions of Contract.

1.2.26 *Final Application for Payment* is defined or described in Section 6.7 of these General Conditions of Contract and 8.4 of the Contract.

1.2.27 *Final Completion* is the date on which all Work, except for warranties, is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list and the submission of all documents s6.7.2 of these General Conditions of Contract.

1.2.28 *Force Majeure Events* are those unanticipated events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes (but not labor disputes involving Design-Builder), earthquakes, pandemics, epidemics, abnormal adverse weather conditions not reasonably anticipated, and other acts of God. Force Majeure Events shall not include known events or conditions (and associated Legal Requirements) in existence at the time of execution of the GMP Amendment.

1.2.29 *General Conditions of Contract* refer to this Document.

1.2.30 *GMP or Guaranteed Maximum Price* is defined or described in Section 7.6 of the Contract

1.2.31 *GMP Amendment* is an amendment to the Contract contingent upon Owner's approval of

the Phase 2 Proposal as defined or described in Section 2.3.2.3 of the Contract.

1.2.32 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.33 *Legal Requirements* are all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.34 *Notice to Proceed* is a formal written notice from Owner to Design-Builder instructing it to commence with all or some portion of the Work.

1.2.35 *Open-Book* means that all costs and expenses of any kind chargeable to Owner shall be open and transparent to Owner. Owner has the right, directly or through agents or representatives of its choosing, to access and audit all information used or obtained by Design-Builder in formulating the price in Article 7 of the Contract. Any adjustment to price throughout the Project shall be made on an Open-Book basis as well. Open-Book pricing and payment procedures will not apply to a Lump Sum payment structure.

1.2.36 *Owner* is the City of Snoqualmie.

1.2.37 *Owner's Project Criteria* will be developed by Design-Builder in coordination with Owner as part of the Phase 1 Work, and will describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements. The Owner's Project Criteria will be set forth in **Exhibit B** to the Contract.

1.2.38 *Owner's Representative* is defined or described in Section 10.1.2 of the Contract.

1.2.39 *Owner's Senior Representative* is defined or described in Section 10.1.1 of the Contract.

1.2.40 *Pass-Through Costs* is defined or described in Section 7.5.3 of the Contract.

1.2.41 *Phase 1 Work* is that portion of the Work defined and described in the Phase 1 Scope of Services and includes but is not limited to pre-design and programming, to develop the Owner's Project Criteria, and development of the design to a 40-60 percent design level as mutually agreed, such that a Guaranteed Maximum Price (GMP) for the Phase 2 Scope can be developed by the Design-Builder.

1.2.42 *Phase 1 Scope of Services* is the document attached to the Contract as **Exhibit C**.

1.2.43 *Phase 2 Work* is that portion of the Work defined and described in the GMP Amendment and includes but is not limited to the completion of design, obtaining all required permits, subcontractor bidding, procurement of all materials and equipment for the Project, the performance of construction services for the Project, development of various documents associated with Phase 2, commissioning of building systems, training of Owner's operations staff, all tasks related to obtaining final approval and occupancy permit from the authorities having jurisdiction and the provision of warranty services.

1.2.44 *Phase 2 Proposal* is defined and described in Section 2.3 of the Contract.

1.2.45 *Project* is the City of Snoqualmie Community Center Expansion Project and all Work associated therewith.

1.2.46 *Reference Documents* are those documents itemized in **Exhibit A**.

1.2.47 *Safety Representative* is defined and described in Section 2.8.1 of these General Conditions of Contract.

1.2.48 *Scheduled Substantial Completion Date* is the date set forth in the Contract at Section 6.2.1 and is subject to adjustment in accordance with these General Conditions of Contract.

1.2.49 *Site* is the land or premises on which the Project is located.

1.2.50 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.51 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.52 *Substantial Completion* or *Substantially Complete* means the Work, or a designated portion thereof approved by the Owner, except for agreed incidental corrective or punch list items, is sufficiently complete in accordance with the Contract Documents such that Owner can occupy and use the Project or a portion thereof for its intended purposes, and Design-Builder has provided all documentation and other information as is required by Section 6.6 of these General Conditions. The Work is not Substantially Complete unless the Owner can: reasonably judge that the Work can achieve Final Completion within sixty (60) days (or such other period of time as is specified in the Design-Build Documents); appropriate cleaning has occurred; all designated systems and portions thereof are usable, including the HVAC system; utilities are connected and operating normally; Owner training sessions have begun; all required permits and approvals have been issued by the authorities having jurisdiction; O&M manuals have been submitted for review; and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may take beneficial occupancy of the Work or a designated portion thereof does not indicate that the Work is acceptable in whole or in part.

1.2.53 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring, and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

1.2.54 *Construction Change Directive* is defined and described in Section 9.2 of these General Conditions of Contract.

1.2.55 *Work Product* is defined and described in Section 5.1 of the Contract.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and Owner's Representative and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be

vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder. Design-Builder shall be lawfully licensed, bonded, and insured in the jurisdiction where the Project is located. The Design-Builder shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Design-Builder is not authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner.

2.1.2 Design-Builder shall provide Owner's Representative and with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Contract; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work, within the GMP, for the Contract Price and within the Contract Time(s).

2.1.3 Pursuant to Section 2.3.1.4 of the Contract, Design-Builder shall prepare and submit a schedule for the execution of the Phase 2 Work for Owner's review and response (Project Schedule). The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the (i) the care and skill necessary to comply with the requirements of this Contract and (ii) care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project, whichever is greater. Notwithstanding the preceding sentence, if the Owner's Project Criteria contains specific performance standards for any aspect of the Work, the design professional services shall be performed to achieve such standards.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1 hereof and Section 2.1.1 of the Contract. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3 hereof, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity or authority having jurisdiction over the Project.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary

utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed in the state of Washington and qualified to perform the Work consistent with the Contract Documents. Owner approves Subcontractors identified in Section 10.3 of the Contract as Key Firms and Key Personnel. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.3.1 The Design-Builder shall include the language of this sub-paragraph in each of its first tier subcontracts, and shall require each of its Subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of Owner, Design-Builder shall promptly provide documentation to Owner demonstrating that the Subcontractor meets the subcontractor responsibility criteria below. The requirements of this subsection apply to all subcontractors regardless of tier. At the time of subcontract execution, Design-Builder shall verify that each of its first tier Subcontractors meets the following bidder responsibility criteria:

- a) Have a current certificate of registration as a contractor in compliance with Chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
- b) Have a current Washington Unified Business Identifier (UBI) number;
- c) If applicable, have:
 - i. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - ii. A Washington Employment Security Department number, as required in Title 50 RCW;
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
 - v. An elevator contractor license, if required by Chapter 70.87 RCW.
 - vi. Receipt of training on the requirements related to public works and prevailing wages under Chapters 39.04 and 39.12 RCW to a person or persons designate by Bidder. This training must be provided by the Department of Labor and Industries (L&I) or by a training provider whose curriculum is approved by L&I. L&I, in consultation with the prevailing wage advisory committee, will determine the length of this 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 the training requirement stated in this subparagraph.

- d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.7.7 Prevailing Wage Requirements. The Design-Builder and each Subcontractor engaged in the Work shall pay all workers, laborers, or mechanics employed in the performance of any part of the Work an amount not less than the prevailing rate of wages established for each trade or occupation as established by the Washington Department of Labor and Industries. It is the Design-Builder's responsibility to determine the appropriate classifications and verify the applicable prevailing wage rates in effect at the time the proposal submittal is due. A worker, laborer, or mechanic whose type of work is not covered by any of the prevailing wage classifications and rates established by the Department of Labor and Industries shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work to be performed, or as determined by the Industrial Statistician of the Washington Department of Labor and Industries.

The hourly minimum rates for wages and fringe benefits can be obtained at the following URL:

<https://lni.wa.gov/forms-publications/f700-032-000.pdf>

Printed copies of the current prevailing wage rates shall be available for viewing at project work site. Owner will mail a hard copy of the prevailing wage rates upon written request received within seven days of the Proposal Submittal Date.

2.7.7.1 State wages: In accordance with RCW 39.12.020, the Design-Builder shall post on the Project site a copy of the approved Statements of Intent to Pay Prevailing Wages for the Design-Builder and every subcontractor of any tier. In addition, the Design-Builder shall post contact information for the Department of Labor and Industries regarding where a complaint about prevailing wages may be filed.

2.7.7.2 Owner does not guarantee that labor can be procured for the minimum wages provided for in the applicable prevailing wages. The prevailing rates of wages listed are a minimum only, below which Design-Builder cannot pay, and they do not constitute a representation that labor can be procured for the minimum listed. Design-Builder shall

ascertain the wages above the minimum set forth that may have to be paid.

2.7.7.3 Before commencing the Work, Design-Builder and all Subcontractors, regardless of tier, shall file with the Owner a "Statement of Intent to Pay Prevailing Wages" approved by the Washington State Department of Labor and Industries certifying the rate of hourly wage to be paid each classification of worker, laborer, or mechanic to be employed upon the Work by the Design-Builder and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate. Before any payment is made by the Owner of any sums due under this contract, the Owner must receive from the Design-Builder and any Subcontractor, regardless of tier, a copy of the approved "Statement of Intent to Pay Prevailing Wages." Also following the Final Acceptance of the project, the Owner must receive from the Design-Builder and each Subcontractor, regardless of tier, a copy of the "Affidavit of Wages Paid" approved by the State Department of Labor and Industries. The Design-Builder and each Subcontractor shall pay all fees associated with and make all applications directly to the Department of Labor and Industries. Forms may be obtained from the Department of Labor and Industries. These affidavits will be required before any funds retained, according to the provisions of RCW 60.28.011, are released to the Design-Builder.

2.7.7.4 Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. 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.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. (Note that the Safety Representative stated herein and the Safety Manager stated in Article 10.3 of the Contract are separate roles.) Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.8.4 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work, including observance of drug testing and all smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of personnel at the Owner's property and at the Project Site. Without change to the GMP or Contract Time, the Design-Builder shall remove from the Work and Work Site any employee or other person pursuant to this Section 2.8.4. Failure to comply with these requirements is grounds for immediate termination of the Contract for Cause.

2.8.5 The Design-Builder shall comply with the pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Ch. 296-155 WAC, "Safety Standards for Construction Work."

2.8.6 Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-307-560 et seq., the Design-Builder shall provide the Owner copies of and have available at the Project Site a workplace survey and material safety data sheets for all "hazardous" chemicals under the control or use of Design-Builder or any Subcontractor of any tier at the Project Site.

2.9 Warranties and Guaranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, are considered defective. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Nonconforming Work.

2.10.1 The Design-Builder shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Final Acceptance and whether or not fabricated, installed or completed. All costs related to the correcting of such rejected Work, including additional testing, shall be at the Design-Builder's expense. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, whether discovered during construction or within a period of one year from the date of Final Completion or within such longer period to the extent required by any specific warranty included in the Contract Documents. This includes that part of the Work subject to Section 2.9 herein.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own or other contracted forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 Non-Discrimination.

2.11.1 Design-Builder shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. Design-Builder shall not participate either directly or indirectly in such discrimination, including discrimination in employment practices. In the event of Design-Builder's noncompliance with the nondiscrimination provisions of the Contract Documents, Owner shall impose such sanctions as it, or the Owner's funding agencies, may determine to be appropriate, including, but not limited to: (a) withholding of payments to Design-Builder until Design-Builder complies, and (b) termination or suspension of the Contract, in whole or in part.

2.11.2 Design-Builder shall actively and in good faith provide opportunities for underutilized firms as Design Consultants, Subcontractors and suppliers in the performance of the Phase 1 & Phase 2 Services. Design-Builder shall consider granting contracts to Underutilized Firms on the basis of substantially equal proposals in the light most favorable to the Underutilized Firm. Design-Builder shall implement an Outreach and Inclusion Plan, reviewed and approved by the Owner prior to the execution of this Contract, that outlines the proactive strategies, resource commitments, and specific steps Design-Builder will take to effectively reach out to Underutilized Firms for the performance of the Phase 2 Services. As requested by Owner, Design-Builder shall furnish evidence of its compliance with these requirements. As used in this section, Underutilized Firms shall include the following business types at the aspiration goals identified: minority business enterprises (MBEs) (10%), women business enterprises (WBEs) (6%), small business enterprises (SBEs) (5%) and Local Businesses (25%). The percentages identified are based on the Design-Build Contract total value. The terms MBE, WBE, and SBE are any such business that have been so certified by the State of Washington. The term Local Business shall be defined as a business having headquarters in King County, Washington.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations, and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the Project Schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1. Reference Documents. Owner has provided Design-Builder with access to the reference documents (the "Reference Documents") listed in **Exhibit A** to the Contract. Owner provides such Reference Documents to Design-Builder for information only. Design-Builder understands and agrees that Owner shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by Design-Builder by reason

of any use of any information contained in the Reference Documents or any action or forbearance in reliance thereon. Design-Builder further acknowledges and agrees that (a) if and to the extent Design-Builder or anyone on Design-Builder's behalf uses any of the information in the Reference Documents in any way, such use is made on the basis that Design-Builder, not Owner, has approved and is responsible for such information, and (b) Design-Builder is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement such information, and that any use of such information is entirely at Design Builder's own risk and at its own discretion.

3.2.2 Except as otherwise provided in the Contract Documents, Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Reserved.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions, or defects in the performance of the Work. Provided, however, that the failure of Owner's Representative to provide such notice shall not relieve Design-Builder from the obligation to perform the Work and deliver the Project in a manner consistent with its obligations under the Contract Documents. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees for the Project.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Design-Builder is generally responsible for testing and inspection necessary to identify the existence of any Hazardous Conditions on the Site, and to take all necessary measures required to ensure that the Hazard Conditions are remediated or rendered harmless consistent with applicable Legal Requirements. Such necessary measures may include Design-Builder retaining qualified independent experts.

4.1.2 If Design-Builder encounters Hazardous Conditions during the course of its performance of the Work, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.3 Design-Builder shall be entitled to resume Work at the affected area of the Project only after it certifies in writing that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions, to an adjustment in the GMP and/or Contract Time(s) only to the extent that (1) Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions; (2) Design-Builder could not have reasonably identified such Hazardous Conditions in the course of its performance of its testing and inspection obligations under this Agreement including Section 4.1.1 herein; and (3) Design-Builder establishes an adverse impact to the critical path caused by the presence of such Hazardous Conditions. If Design-Builder seeks to have the GMP or the Contract Time, or both, adjusted due to any Hazardous Conditions, Design-Builder shall comply with the provisions of Section 9.1.3 of these General Conditions (Design-Builder Change Order Proposal) in addition to the requirements of this Article 4. If Design-Builder has complied with this Article 4 and Section 9.1.3 of these General Conditions and Owner and Design-Builder cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in GMP or Contract Time, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Design-Builder, the Design-Builder may make a Claim therefor as provided in Article 10.

4.1.5 Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors, or anyone for whose acts they may be liable or responsible. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.6 Design Builder shall not use or otherwise incorporate any asbestos-containing materials or products in the Work. At the time of final acceptance, Design-Builder shall submit a letter to the Owner that no asbestos-containing materials or products have been installed in the building in violation of this contractual provision and applicable laws.

4.1.7 Training and Reporting

4.1.7.1 All workers onsite who are involved in demolition, construction, installation or excavation activities must have current Asbestos Awareness Training, as required by WAC 296-62-07722(6).

4.1.7.2 Prior to bringing onsite any chemicals listed in 6 CFR part 27, Appendix A, the Design-Builder shall submit for itself and for all Subcontractors a completed "Contractor Declaration and Reporting Form for Department of Homeland Security – Chemicals of Interest."

4.1.8 General Requirements When Design-Builder Performs Hazardous Conditions Abatement

4.1.8.1 SUPERVISORY AUTHORITY: Design-Builder assumes all responsibilities and shall perform all required work under applicable regulations related to their supervisory authority over Subcontractors and personnel performing work related to

hazardous materials.

4.1.8.2 ACCESS RESTRICTIONS: Work described in the Contract Documents includes restriction of access to work areas during hazardous materials activities. Access to various work areas by the general public, Subcontractors, and other individuals will not be possible during certain hazardous materials work sequences, as specified in the Contract Documents. Design-Builder shall coordinate the Work to facilitate access by Subcontractors while enforcing work area restrictions, and shall minimize disruption to building occupants and services.

4.1.8.3 WORKING HOURS: No hazardous materials work shall occur when building users have access to work areas. Schedule all hazardous materials work to occur in accordance with schedule requirements outlined elsewhere in the Contract Documents, and when work areas have been vacated by building users.

4.1.8.4 EMERGENCY CONTACTS: Designated qualified representatives of the Contractor and specific hazardous materials Subcontractors are to be available on a 24-hour emergency basis for the duration of the Work. Provide contact information to the Owner's Representative for inclusion in the Project emergency contact list.

4.1.8.5 GENERAL HAZARDOUS MATERIALS SUBMITTALS: Design-Builder shall review the scope of work and submittal requirements outlined in the Contract Documents. Design-Builder shall submit, and require all subcontractors performing the work of handling or disposing of any hazardous materials to submit, pertinent information required by the Contract Documents. Examples of work and impact may include abatement, demolition, saw cutting, roto-hammering, welding, sanding, drilling, scraping or other remodeling and metals-related impact, impact of asbestos-containing joint compound or other material with <1% asbestos, PCB ballast removal or light tube removal and disposal.

4.1.8.6 REGULATIONS, LAWS and ORDINANCES: Design-Builder shall comply with all applicable regulations, laws and ordinances concerning the impact, removal, handling, storage, disposal, monitoring and protection against exposure or environmental pollution related to hazardous or regulated materials and conditions. Impacts to hazardous or regulated materials that may be required by the Work may include, but are not limited to: manual demolition, mechanical demolition, cutting, sawing, drilling, sanding, scraping, welding, power-washing or torch-cutting. Confirm required impacts with other applicable specification sections and drawing sheets. Design-Builder shall furnish all labor, materials, equipment, services and insurance that is specified, shown, or reasonably implied for the removal and handling of hazardous materials as part of the Work.

4.2 Differing Site Conditions.

4.2.1 Differing Site Condition. If Design Builder 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 (collectively, a "Differing Site Condition"), then Design Builder shall give written notice to Owner within 24 hours after becoming aware of or having encountered such condition. Design-Builder shall not further disturb the Differing Site Condition or perform any Work in connection therewith (except for an emergency) until receipt of written order to do so. After receipt of such written notice, Owner will promptly review the pertinent condition.

4.2.2 Possible GMP and Contract Time Adjustments

4.2.2.1 If Design-Builder seeks to have the GMP or the Contract Time, or both, adjusted due to the existence of a Differing Site Condition, Design-Builder shall comply with the provisions of Article 9 in addition to the requirements of this Section 4.2.

4.2.2.2 Design-Builder shall not be entitled to any adjustment in the Contract Price or Contract Time if:

- a) Design-Builder knew or should have reasonably known of the existence of such conditions at the time Design-Builder and Owner negotiated this Contract; or
- b) Design-Builder failed to give the written notice as required by Section 4.2 and/or comply with Article 9.

4.2.2.3 If Design-Builder knows or should have known of a Differing Site Condition during Phase 1 of the Project, but fails to mitigate by taking the Differing Site Condition into account in its design, the adjustment to the GMP or Contract Time will be limited to the adjustment, if any, that Design-Builder would have been entitled to if Design-Builder had not so failed to mitigate.

4.2.2.4 If Design-Builder complies with the provisions of Article 9 and this Section 4.2 and Owner and Design-Builder are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the GMP or Contract Time, or both, a Claim may be made by Design-Builder as provided in Article 10.

Article 5

Insurance and Bonds

5.1 Insurance. The Design-Builder shall provide insurance consistent with and in accordance with the requirements of Article 11 of the Contract.

5.2 Bonds. The Design-Builder shall provide performance and payment bonds consistent with and in accordance with the requirements of Article 11 of the Contract.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 The Design-Builder shall submit a Schedule of Values at least 15 days prior to submitting their first Application for Payment for Phase 2 Work. The Schedule of Values shall reasonably allocate the Contract Sum among the various portions of the Work; be complete; be organized to include detailed breakdown of each major unit of the Work; be organized to correspond to Design-Builder's schedule; break down the Contract Sum showing the value assigned to each part of the Work; break down costs into separate values for labor and materials; be so organized as to facilitate assessment of work and payment of Subcontractors; and be balanced. To the greatest extent possible, the breakdown shall use the same tasks or units as the Design-Builder's CPM schedule. Design-Builder shall provide documentation substantiating the cost allocation if asked by the Owner. Upon acceptance of the Schedule of Values by the Owner, it shall be used as a basis for all requests for payment. In addition to the items above, the Schedule of Values shall include line items for the following:

- .1 Total of mobilization costs, Design-Build Contractor and Subcontractors, shall be a maximum of one-half of one percent (0.5%) of the GMP.
- .2 Payment applicable to the expenses of Design-Builder's contractually required bond and builder's risk insurance will be invoiced 100% and paid in full in the first payment application after the certificates, policies, and bonds have been provided to the Owner.
- .3 No payment will be made for shop drawings or submittals until on-site receipt of materials, except for structural steel, fire sprinkler, automatic temperature control, and fire alarm shop drawings.
- .4 The schedule of values shall allocate at least one-half of one percent (0.5%) of the GMP to Commissioning of Operational Systems, as defined in the Design-Build Documents.
- .5 The schedule of values shall allocate at least one-half of one percent (0.5%) of the GMP for completion of punchlist items.
- .6 The schedule of values shall allocate at least one-quarter of one percent (0.25%) of the GMP for completion of approved operations and maintenance data and the delivery of warranties.
- .7 The schedule of values shall allocate at least one-quarter of one percent (0.25%) of the GMP for completion of record drawings, delivery of extra stock, and all other documentation or items of the Work required for Final Completion of the entire Project.
- .8 None of the percentages in this Section 9.2.1 are the statutory retainage described in Section 9.3.4 or any other retainage from amounts earned, but rather this allocation requires the Design-Builder to recognize that the Design-Builder and its Subcontractors will expend significant costs in advancing the line item of the Work from Substantial Completion to Final Completion. These amounts are not earned until Final Completion is accomplished, respectively, for a line item or the Work as a whole. At its sole discretion, the Owner may release portions of this amount progressively as items are completed.
- .9 Separately itemize line item costs (or percentages when applicable) for permits, bonds, and insurance.

6.1.2 The Owner will timely review and approve the Schedule of Values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Payments.

Owner shall make payments for Phase 1 and Phase 2 Services in accordance with Section 8 of the Contract.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Contract, Owner shall pay Design-Builder all amounts properly due, less statutory retainage. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment because of Design-Builder's failure to meet its

obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Contract.

6.4 Reserved.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants, Subcontractors and Suppliers, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice (and all required documents and information), Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion. Design-Builder's notice shall include the following documents and information:

6.6.1.1 An affidavit certifying that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work through the date of the notice which will in any way affect Owner's interests;

6.6.1.2 All operating manuals, warranties, record documents and other deliverables required by the Contract Documents;

6.6.1.3 A signed and stamped set of all calculations supporting the design of the Project;

6.6.1.4 Design-Builder's punchlist of items to be completed or corrected and a written request for the Owner to make an inspection.

6.6.1.5 Documentation to show or statement confirming that final start-up and testing on all building systems has been completed and that instruction and training sessions on those systems has begun.

6.6.1.6 Documentation to show that applicable occupancy permits have been obtained, including fire/life safety systems and health department approval, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.

6.6.1.7 Documentation to show or statement to confirm that final changeover of locks has been completed and that new keys have been transmitted to the Owner, and advising the Owner of the changeover in security provisions.

6.6.1.8 Documentation to show or statement to confirm that temporary facilities and services have been either discontinued, changed over to the Owner or removed from the Project site as required for the facility to be utilized for its intended purpose.

6.6.1.9 Notice advising the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion, and subject to the Retainage requirements of RCW 60.28 and Section 8.3 of the Contract.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, together with all information required by Section 6.7.2 below, Owner shall make final payment by the time required in the Contract if Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit certifying that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Reserved.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend, with counsel reasonably acceptable to Owner, any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses incurred by or awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after Acceptance. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance

with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification. Design-Builder shall defend, indemnify and hold the Owner, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Owner.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Design-Builder and the Owner, its officers, officials, employees, and volunteers, the Design-Builder's liability hereunder shall be only to the extent of the Design-Builder's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Design-Builder's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 6 of the Contract. By executing the Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. Delays attributable to and within the control of a Subcontractor or supplier shall be deemed to be delays within the control of Design-Builder. By way of example, events that may entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events. Design-Builder shall make all reasonable efforts to prevent and mitigate the effects of any delay,

whether occasioned by an act of Force Majeure or otherwise. In no event, however, shall the Design-Builder be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the Project schedule, so as to actually delay the Project completion beyond the date of Substantial Completion or (2) delay transforming an activity into the critical path of the Project schedule, so as to actually delay the Project completion beyond the date of Substantial Completion.

8.2.2 Design-Builder is not entitled to a change in Contract Time unless the progress of the Work on the critical path is delayed and Substantial Completion of the Work within Contract Time is delayed. A Request for a Change Order that includes a request for an adjustment in the Contract Time shall be delivered to Owner in accordance with Article 9 herein and, in addition to any requirements in Article 9, shall:

- a. Include a clear explanation of how the event or conditions specifically impacted the critical path and overall construction schedule and the amount of the adjustment in Contract Time requested.
- b. Demonstrate that the delay could not have been avoided by re-sequencing of the Work or other reasonable alternatives.
- c. Be limited to the change in the critical path of a construction schedule, and any updates, attributable to the event or conditions which caused the request for adjustment.

8.3 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may also be entitled to an appropriate adjustment of the GMP; except that the GMP shall not be adjusted for Force Majeure Events.

8.3.1 If the delay was not caused by the Owner, the Design-Builder, a Subcontractor of any tier, or the Engineer, or anyone acting on behalf of any of them, the Design-Builder is entitled only to an increase in the Contract Time in accordance with the Design-Build Documents but not an increase in the GMP. If the delay was caused by the Design-Builder, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Design-Builder is not entitled to an increase in the Contract Time or in the GMP. The Design-Builder shall be entitled to a change in the GMP only if the delay was caused by the Owner or anyone acting on behalf of it. The Design-Builder shall not recover damages, an equitable adjustment or an increase in the GMP or Contract Time from the Owner where the Design-Builder could have reasonably avoided the delay by the exercise of due diligence. The Design-Builder shall be able to recover an increase in the GMP, provided it is consistent with the terms of the Design-Build Documents, only if the delay was in the critical path, could not have reasonably been avoided, delays the critical path for at least one working day, and was caused by the Owner or anyone acting on its behalf as permitted under the Design-Build Documents. The Owner is not obligated directly or indirectly for damages, an equitable adjustment, or an increase in the GMP for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.

8.3.2 In the event the Design-Builder is held to be entitled to an increase in the GMP, it is agreed that the total combined damages awardable against the Owner for each day of delay shall be limited to the original Design-Builder's general conditions costs divided by the total number of days of Contract Time. For any impact and delay costs to Subcontractors for which the Owner is responsible under the Design-Build Documents, damages awardable against the Owner shall be limited to the Subcontractor's project management, superintendence and administrative staff located and working directly at the Project site and only for the extended duration that such staff are required to work beyond the original required date of Substantial Completion and ending no later than the date at which Substantial Completion is achieved, with no Subcontractor Fee or overhead

added to such costs. By submitting its proposal and by signing the GMP Amendment, the Design-Builder represents that it would be difficult if not impossible to determine the amount of any delay damages due it, that it has taken this provision for liquidated damages into consideration in its bid, and that these liquidated damages are a reasonable estimate of its loss. No damages will be allowed for any time prior to seven (7) days before receipt of written notice of the Claim of the delay pursuant to Article 4.

8.3.3 The Design-Builder shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; rescheduling of work, schedule compression; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended or expanded overhead or general conditions; profit upon damages for delay; impact damages; cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Design-Builder or its Subcontractors of any tier is fully compensated through the percentage Fee on Change Orders paid and any delay damages paid hereunder.

8.3.4 The Design-Builder shall not be entitled to any adjustment in the Contract Time or the GMP, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time not on the critical path or time between the Design-Builder's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Design-Builder's Construction Schedule.

Article 9

Changes to the GMP and Contract Time

9.1 Authorized Changes in the Work

9.1.1 General. After execution of the Contract, Changes in the Work are effective solely by Change Order or Construction Change Directive.

9.1.2 Change Order. A Change Order is a written instrument issued after execution of the Contract signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.2.1 The scope of the change in the Work;

9.1.2.2 The amount of the adjustment to the GMP, if any; and

9.1.2.3 The extent of the adjustment to the Contract Time(s), if any.

A Change Order shall constitute full payment and final settlement of all Claims for Contract Time adjustment 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 recovered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment

9.1.3 Design-Builder Change Order Proposal. Change Order requests may be initiated by Design-Builder in accordance with this subsection 9.1.3.

9.1.3.1 If Design-Builder believes that it is entitled to relief for any event or condition arising out of or related to the Work or Project, Design-Builder shall provide to Owner a written Notice of Intent to Submit a Change Order Proposal no later than seven days after the event or condition giving rise to the claim for relief.

- 9.1.3.2** Unless the Owner's Representative issues written notice authorizing Design-Builder additional time to submit the Change Order Proposal, Design-Builder shall provide a written Change Order Proposal to the Owner's Representative no later than 21 days after delivery of the Notice of Intent to Submit a Change Order Proposal. The Change Order Proposal must include (a) specific dollar amount of the requested change to GMP, covering all costs associated with the requested Change Order; (b) specific request for change in Contract Time (number of days); and (c) all documentation supporting the Request for a Change Order, including but not limited to all cost records, schedule analysis, and the documents identified in the Contract Documents, that are in any way relevant to the Design-Builder's Change Order Proposal.
- 9.1.3.3** Pending resolution of Design-Builder's Request for a Change Order, Design-Builder shall continue to perform all Work including, at the written request of the Owner, the work associated with the pending Change Order Proposal.
- 9.1.3.4** A Change Order Proposal that is not accepted by Owner within 30 days after receipt by Owner is deemed denied.
- 9.1.3.5** If Design-Builder disagrees with denial of a Change Order Proposal, the Design-Builder's sole remedy shall be to file a fully documented Claim in accordance with Article 10 within 30 days after Design-Builder's receipt of the denial or within thirty (30) days after the denial is deemed to have occurred under Section 9.1.3.4 above.

9.1.4 Unilateral Change Order. Owner may unilaterally issue a Change Order at any time, without invalidating the Contract and without notice to sureties. If any such Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Work, Owner may make an adjustment in the GMP, Contract Time, or both, in accordance with the Contract Documents. If Design-Builder disagrees with the adjustment to the GMP or Contract Time as indicated in a Unilateral Change Order, Design-Builder's only remedy shall be to file a fully documented Claim in accordance with Article 10. Regardless of any such disagreement, the Design-Builder is required to continue with performance of all Work, including work associated with the Unilateral Change Order.

9.1.5 Owner Change Order Proposal. Change requests may be initiated by Owner through a Change Order Proposal submitted to Design-Builder. Such a request is for information and pricing only, and is not an instruction to execute changes or to stop work in progress, unless issued as a Construction Change Directive. Upon receipt of the Owner Change Order Proposal, the Design-Builder shall promptly submit its proposed costs and pricing. If Owner and Design-Builder agree to the terms of the cost and pricing for the proposed change, they shall execute a mutually acceptable Change Order to authorize the change.

9.2 Construction Change Directives.

9.2.1 A Construction Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Construction Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the GMP and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 GMP Adjustments.

9.4.1 For the Design-Builder, the value of any changed Work or of any Claim for an increase or decrease in the GMP or Contract Sum shall be limited to the Cost of the Work and the Fee and markups set forth in the Agreement. For Subcontractors of any tier, the total cost of any changed Work or of any other increase or decrease in the GMP or Contract Sum, including a Claim, shall be established based on lump sum quotations whenever possible. If the parties are unable to agree upon such lump sum costs, then such reimbursable costs shall be limited to the following components:

9.4.1.1 Direct labor costs: These are the actual labor costs determined by the number of additional craft hours and the hourly costs necessary for the Subcontractor to perform the Change in the Work. The hourly cost shall be based upon the following:

.1 Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Subcontractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Subcontractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Subcontractors shall provide to the Owner copies of payroll records, including certified payroll statements upon the Owner's request.

.2 Workers' insurances: Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.

.3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

9.4.1.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the Change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

9.4.1.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment necessary and appropriate for the Work is

used solely on the change at the site times the applicable rental cost as established in Exhibit C and if not established therein, then by the lower of the local prevailing rate published in The Rental Rate Blue Book by EquipmentWatch, Atlanta, Georgia, as modified by the latest edition of the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. Mobilization and standby costs shall not be charged for equipment already present on the site. If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the change are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for providing all oil, lubrication, repairs, maintenance, and insurance. No gas surcharges shall be charged to Owner unless charged to Design-Builder by the vendor. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for longer than one (1) week) on the changed Work shall be fifty percent (50%) of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

9.4.1.4 Costs of Lower-Tier Subcontractors: These are payments a Subcontractor makes to lower-tier Subcontractors for changed Work performed by such lower-tier Subcontractors. Such Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 9.4.

9.4.1.5 Subcontractor's Fee: This is the percentage amount for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, other engineers (except design engineers), estimator, and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, layout and control, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally provided by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim and Change preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise), added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements of Subcontractor claims by the Owner after Substantial Completion. The Fee shall be limited in all cases to the following schedule:

.1 A Subcontractor of any tier shall receive 12% of the cost of any materials supplied or work properly performed by that Subcontractor's own forces.

.2 A Subcontractor of any tier shall receive 8% of the amount owed (less fee) directly to a lower-tier Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier.

.3 A Subcontractor of any tier shall receive no more than 5% of any amounts owed (less fee) to any remote, sub-tier subcontractors which are within the lines of contractual responsibility but not in privity of contract with such Subcontractor, for work performed by that remote, sub-tier subcontractor.

.4 The cost to which this Fee is to be applied shall be determined in accordance with Sections GC-7.6.1 through GC-7.6.4. None of the fee percentages

authorized in this Section GC-7.6.5 may be compounded with any other fee percentage or percentages authorized in this paragraph.

.5 The total summed Fee of the first-tier Subcontractor and all lower-tier Subcontractors shall not exceed 25%. If the Fee would otherwise exceed 25%, the Design-Builder shall proportionately reduce the Fee percentage for the Design-Builder and all Subcontractors except for the Subcontractor supplying material or performing work with its own forces. None of the fee in this Section **9.4.1.5** may be compounded with any other fee percentage or percentages authorized in this Section.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section **9.4.1.5** are higher than the fees and overhead normally included in determining the Subcontractor's subcontract price; that these higher percentages are a sufficient amount to compensate the Subcontractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Subcontractor for some Changes compensates the Subcontractor for any Changes for which the Subcontractor believes the percentage is otherwise insufficient.

9.4.1.6 Cost of change in insurance or bond premium. This is added to the sum of the amounts specified in Sections **9.4.1.1** through **9.4.1.5** and is defined as:

.1 Subcontractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance, subject to audit, and not to exceed 1.25%) of any changes in the Subcontractor's liability insurance arising directly from the changed Work; and

.2 Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability, subject to audit, and not to exceed 1.0%) of the change in the Subcontractor's premium for any statutorily or contractually required performance and payment bond arising directly from the changed Work.

Upon request, the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any claimed cost.

9.4.1.7 The costs reimbursable to Design-Builder and Subcontractors of any tier may not include consultant costs, attorneys' fees, or Claim preparation expenses as such matters are not recoverable from the Owner.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the GMP and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Claims and Disputes

- 10.1 Condition Precedent to Filing a Claim.** The following actions are a mandatory condition precedent to filing a Claim: (a) a Design-Builder initiated Change Order Proposal is denied by the Owner or (b) a Unilateral Change Order is issued by the Owner.
- 10.2 Claim Deadline.** Unless otherwise agreed to in writing by the Owner, a fully documented Claim shall be received by the Owner within thirty (30) days after the denial or deemed denial of a Design-Builder initiated Change Order Proposal, or, in the case of a Unilateral Change Order, Design-Builder's receipt of Owner's decision regarding Contract Time or GMP adjustments pursuant to the Unilateral Change Order. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the Design-Builder, on behalf of itself and its Subcontractors and suppliers, of the Unilateral Change Order or the Owner's denial or deemed denial of a Design-Builder initiated Change Order Proposal. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Design-Builder initiated Change Order Proposal or Unilateral Change Order.
- 10.3 Design-Builder's Obligation to Continue Work.** Pending final decision of a Claim hereunder, the Design-Builder shall proceed diligently with the performance of the Work, including that work associated with the Claim, and maintain its progress with the Work. Failure to proceed as required herein shall constitute grounds for termination for cause under Article 11.
- 10.4 Information Required in a Fully Documented Claim.** Every Claim must be submitted by Design-Builder, in writing and clearly designated by Design-Builder as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:
- 10.4.1** A detailed factual statement of the Claim providing all necessary details, locations, and items of Work affected;
 - 10.4.2** The date on which facts arose that gave rise to the Claim;
 - 10.4.3** The name of each person employed or associated with Design-Builder, Subcontractors, suppliers, and/or the Owner with knowledge about the event or condition which gave rise to the Claim;
 - 10.4.4** Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;
 - 10.4.5** The specific provisions of the Contract Documents on which the Claim is based;
 - 10.4.6** if an adjustment in the GMP is sought, the exact amount sought, calculated in accordance with the Contract Document and accompanied by all records supporting the Claim;
 - 10.4.7** If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reason Design-Builder believes an adjustment in the Contract Time should be granted; and Design-Builder's analyses of its construction schedule, any specific schedule analysis as required by the Contract Documents, and all updates to demonstrate the reason for the adjustment in Contract Time; and,
 - 10.4.8** A statement certifying, under penalty of perjury, that after the exercise or reasonable diligence and investigation the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Design-Builder'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 GMP or Contract Time for which Design-Builder believes the Owner is liable.

10.5 Cooperation/Claims Audit. Design-Builder shall cooperate with Owner or its designee in the evaluation of its Claim and provide all information and documentation requested by Owner or its designee. Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Design-Builder, or Subcontractors of any tier, to maintain and retain reasonably 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 Design-Builder, or Subcontractors of any tier, shall constitute a waiver of that part of the Claim and shall bar any recovery on that part of the Claim.

10.6 Owner Evaluation of Claim. After Design-Builder has submitted a fully documented Claim that complies with Article 10, Owner shall respond, in writing, to Design-Builder within sixty (60) days from the date the fully documented Claim is received with a decision regarding the Claim. The Claim shall be deemed denied upon the 61st day following receipt of the Claim by Owner. Any Claims not fully resolved must be submitted to Dispute Resolution in accordance with Section 10.7.

10.7 Dispute Avoidance and Resolution.

10.7.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. If a Claim or other disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such Claim.

10.7.4 If after meeting the Senior Representatives determine that the Claim or other disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator. An officer of the Design-Builder and the Owner must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as the Design-Builder's Engineer or Subcontractors of any tier, their representatives, also with authority to settle the Claim, shall also attend the mediation session. Unless the Owner and the Design-Builder mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion but prior to Final Acceptance by the Owner. If the parties have not reached an agreement on a mediator within thirty (30) days of the request, either party may submit the unresolved claims or disputes to either JAMS, Seattle, Washington, or such other alternative dispute resolution service to which the parties mutually agree, for appointment of a single mediator. The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.8 Litigation. Any Claims, disputes or controversies between the parties arising out of or relating to the Contract, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.7 above shall be decided by litigation, unless the parties mutually agree in writing otherwise. All unresolved Claims of Design-Builder shall be waived and released unless Design-Builder has complied with the time limits of the Contract Documents, and

litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion of all the Work designated in writing by Owner or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by Owner and Design-Builder. The pendency of mediation shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or 30 days after the last mediation session ended with no further sessions scheduled by the mediator. Neither the Design-Builder nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner (but may recover attorneys' fees from the bond or statutory retainage fund to the extent allowable under law).

10.9 CONSEQUENTIAL DAMAGES.

10.9.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.9.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING. Costs and damages for which Owner shall not be liable under any circumstances include, but are not limited to: (a) borrowing or interest costs, charges, or expenses of Design-Builder; (b) alleged lost profit or overhead on any other project; and (c) Design-Builder's failure or inability to obtain other work.

10.9.2 The consequential damages limitation set forth in Section 10.9.1 above is not intended to affect the payment of liquidated damages which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work.

11.1.2 Design-Builder is entitled to seek an adjustment of the GMP and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.1.3 If the Design-Builder fails to correct Work that is not in conformance with the requirements of the Design-Build Documents or persistently or materially fails to carry out Work in accordance with the Design-Build Documents, the Owner may, without change to the GMP or the Contract Time, issue a written order to the Design-Builder signed personally or by an agent specifically so empowered by the Owner directing the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the

Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Contract terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Contract terminated pursuant to Section 11.2.2 above, Owner may enter the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Contract establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed under this Contract. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Contract for cause, the termination for cause will be considered a termination for convenience in accordance with the provisions of Article 9 of the Contract.

11.3 Reserved.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Contract for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to Force Majeure Events, the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days

during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within thirty (30) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Contract terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Contract for its convenience under Article 9 of the Contract.

11.5 Bankruptcy of Design-Builder.

11.5.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Design-Builder's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Design-Builder, its trustee or other successor, shall furnish, upon request of the Owner, adequate assurance of the ability of the Design-Builder to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Design-Builder fails to comply with its foregoing obligations, the Owner shall be entitled to request the bankruptcy court to reject the Contract, declare the Contract terminated and pursue any other recourse available to the Owner under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of

the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Contract, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 5 of the Contract. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information. Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the

Confidential Information and agrees to use the Confidential Information solely in connection with the Project. Except for Confidential Information as defined above, all proceedings, records, contracts, and other public records relating to public works are open to the inspection of any interested person, firm or corporation in accordance with RCW 42.56, Public Records Act of the State of Washington.

13.2 Assignment. Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship. Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors, and assigns.

13.4 Governing Law. The Contract and all Contract Documents shall be governed by the laws of the State of Washington without giving effect to its conflict of law principles. Exclusive venue for any dispute arising out of this Contract shall be in King County Superior Court.

13.5 Severability. If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver. The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings. The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice. Whenever the Contract Documents require that notice be provided to the other party, notice shall be provided consistent with Section 12.3 of the Contract.

13.9 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.