



Request for Proposals (RFP) for Design-Build (D/B) Services

City of Snoqualmie Community Center Expansion Project

RFP Release Date: March 21, 2023

**Deadline to Submit Response to RFP:
April 11, 2023 (2:00pm PST)**

1.0 GENERAL INFORMATION

Proposers are reminded that Design-Build Contractor Finalists will not be allowed to present detailed, project-specific design concepts, detailed pricing, 3-D models, renderings or other design or estimating intensive efforts as part of the Design-Build RFQ/RFP process.

Refer to RFQ and any corresponding addenda for additional information related to this section.

2.0 RFQ EVALUATION CRITERIA

Refer to RFQ and any corresponding addenda for information related to this section.

3.0 INTERVIEW AND RFP (PROPOSAL) EVALUATION CRITERIA (125 total points)

The City's review team has evaluated and scored the SOQs submitted by prospective Design- Build Contractors. Based on the scoring from that process, the City has shortlisted qualified Design- Build Contractors as Finalists for this project and has invited them to Interview and to submit a Proposal. **(Note that only Design-Build Finalists who are shortlisted and invited, will be allowed to submit a Proposal. Proposals received from Design-Build Contractors who were not shortlisted, identified as Finalists and invited to submit a Proposal will be considered non-responsive and will not be reviewed and scored.)**

This document outlines the Interview and RFP Evaluation Criteria for the Design-Builder Finalists. The RFP stage of selection will include an Interview and submittal of a Proposal. The City's review team will review and score the Interviews and the Proposals received. The combined score of SOQ's and Interview/Proposal will be used to determine the "Most Qualified Design- Builder".

The Proposal submitted by Finalists must include information documenting how the proposed team meets the evaluation criteria below and will be evaluated based on these criteria and weighted scoring. Each Finalist's Proposal must include a Table of Contents (not included in maximum page count of the Proposal) and be organized by sections corresponding to the criteria and order shown below. Proposal submittals will remain the property of the City and will not be returned to the submitters.

3.1 Interview (Note: No tab or information for interviews required to be included in the Proposal submitted.)

Following the submittal of the Proposals, each Finalist will be asked to attend an Interview with the selection committee. The purpose of the Interview is to allow each Finalist's team to meet with the City's team in person to provide an overview of their qualifications, highlight and explain their project thoughts and approach, express their ideas, and engage in a question-and-answer period with the selection committee.

Evaluation and Scoring of Interviews

The following is a list of the Interview evaluation criteria and the maximum points available for each. This will be the basis for evaluation and scoring of the Statement of Qualifications:

Evaluation Criteria	Points
Quality of Presentation	10
Team Communication and Cohesiveness	5
Ability to Engage with City's Selection Committee	5
Responses to Interview Questions	20

Evaluation Criteria	Points
Interview Max Points	40

Interviews will be group evaluated and scored by the City's selection committee based on the level of responsiveness and the content of the information provided by each Finalist. The selection committee will assign a numerical point total for each criterium and a total numerical point score for each Finalist's Interview.

3.2 Acceptance of Contract and Insurance Requirements (pass/fail)

The Design-Build Finalist shall respond to the following criteria in their RFP submittal:

- (a) Compliance with proposed Contracts and General Conditions. Each Proposer must affirm that the terms and conditions of the draft Contract and General Conditions documents are acceptable. If you wish to propose changes to the Contract or General Conditions, please describe them along with the rationale for each. Changes proposed following the Proposal may not be considered. Though the terms of the Contract and General Conditions are negotiable, the City makes no commitment that it will modify any of the terms of the Contract or General Conditions.
- (b) Insurability: Provide a letter from the Proposer's insurance carrier indicating that the insurance requirements of the contract can be met by the Proposer.

Any Finalist's submittal which fails to respond to item (a) and/or provide the letter required by item (b) will be considered non-responsive. A determination of non-responsive under this criterion will result in the Proposer being assigned a score of zero (0) points for the entire RFP submittal (Proposal).

3.3 Design Build Delivery Approach

Specific to our project, describe the Design-Build Contractor's understanding of, and insights into, the design-build project delivery method.

- Describe method-specific risks and opportunities and how best to manage them.
- Describe the characteristics and behaviors that are essential for members of a design-build team and why they are important to a successful project.
- Describe how your team is organized in regard to major tasks, roles and responsibilities and how the structure helps minimize gaps, assures clarity and lends to a successful project.
- Describe your approach to collaboration among design-build team members and with the City's project staff.

The design-build team will include team members from the contractor, architect, engineers and/or subcontractors, suppliers and installers. Specific to this project:

- How will the Design-Builder assure effective communication and coordination among their team members at the various disciplines and tiers within.
- How will work between offices be coordinated within the Design-Builder's team.
- What is the process envisioned for interdisciplinary review/checking of the designs being developed by the Design-Builder's team?
- What role, if any, will prospective subcontractors play during this effort?
- How will the Design-Builder assure effective communication and coordination with the City and their team.
- Consider that long-lead materials and equipment may have to be identified and ordered early

to meet schedule. Which team members will be responsible for the major aspects of this work?

- The City acknowledges that the major scope elements all draw from the same fixed budget and that it will be necessary to carefully manage the design and estimating processes to optimize the outcome for all major elements. Provide a description of how your team will do this.

Describe how the proposed methods and ideas included in your response to this criterion are supported by experiences on past, similar projects. Provide basic project information including, summary of project scope, a phone number for a contact person within each project client's organization. Response to this criterion may reference project(s) provided/described in your SOQ.

3.4 Design Approach Pre-Design through Final Design

Phase 1 – Pre-Design, Programming and Design Development Approach

After execution of the contract and selection of the design team, it will be expected that the Design-Builder's team will work collaboratively with the City to develop a program and a conceptual/schematic design package that will adequately define the scope, scale, relationships, size and character of the project based on City-approved design criteria and programmatic requirements of the specific project. During conceptual/schematic design, it will be expected that the Design-Builder will provide ongoing, transparent cost estimates along with value analysis and constructability recommendations to ensure that the City's budgetary requirements are being achieved. Specific to this project, describe how your team proposes to approach the Phase 1 services in regard to:

- Gathering and assembly of the building and site programming information.
- Creation of a project program document, suitable to describe the programmatic requirements of the project
- Development of Architectural and building design concepts (schematic design (30%) and design development (60%)).
- Development of civil engineering, site design and landscaping concepts (schematic design (30%) and design development (60%)).
- Development of conceptual/schematic architectural and aesthetic concepts and drawings.
- Development of mechanical engineering, electrical engineering and plumbing design concepts (schematic design (30%) and design development (60%)).
- Specific areas of the design that may need to be taken beyond design development (60%) level in order to be able to adequately negotiate a GMP.
- Development of "transparent", pre-construction cost estimates at schematic design (30%) and design development (60%).
- Reconciliation of the City's available budget against the Design-Builder's cost estimates.
- Development of Architectural and other Design/Engineering consultant Phase 2 fees to complete project design, permitting, bidding and construction.
- Negotiation of the Guaranteed Maximum Price to complete project design, permitting, bidding and construct the project.

Phase 2 – Final Design Approach

Following execution of a GMP amendment, the Design-Builder will work collaboratively with the City to refine the design and create permit, bidding and construction documents adequate to describe the project for purposes of permit review, subcontractor bidding, construction, commissioning, performance guarantees and other aspects of scope and terms sufficient to complete the project as required for use and occupancy by City. During the development of the design, the Design-Builder will be required to provide ongoing, "transparent" cost estimates along with value analysis and constructability recommendations to ensure that both the City's programmatic and budgetary requirements are being achieved. Specific to this project, describe how your team proposes to approach the Phase 2 services

in regard to:

- Developing the architectural, programmatic and aesthetic elements of the building and site design to reflect items identified in Phase 1 services and additional, detailed City input.
- Identifying, documenting specific City requirements for mechanical, plumbing, electrical and low voltage (data, security, audio/visual, etc.) systems to reflect items identified in pre-construction and additional, detailed City input.
- Creating drawings and specifications for City approval, jurisdictional review/approval, bidding and construction that reflect the City's requirements.
- Record and track the status of Value Analysis and Constructability review comments and recommendations.
- Cost estimating and alignment of the estimated costs with City's available budget.
- Explain how the architectural and engineering design approaches will be compatible with the requirement for meeting current regulatory requirements. (codes, environmental, public works, building, planning, etc.)

3.5 Management Approach Permitting Through Closeout

Permitting, Bidding and Construction

The Design-Builder will be responsible for managing the project during permitting, bidding and construction to deliver a finished project that will be "on time and on budget". Specific to this project, please describe your approach for managing and assuring success in:

- Permitting
- Bidding and Subcontractor Buy-out
- Scheduling and Schedule Control
- Mobilization and Staging
- Construction Logistics
- Construction Quality Control
- Special Inspections and AHJ Inspections
- Cost Control During Construction
- Design/Scope Changes During Construction
- Changes in Scope, Cost and Design Due to Unforeseen or Latent Conditions
- Building Start-up and Commissioning
- Obtaining Final Occupancy Permit
- Documentation of As-built Conditions
- Final Record Drawings
- Project Closeout
- Project Warrantee Period Support

The Design-Builder will be responsible for start-up, commissioning and training of the City's staff as it is related to building systems and equipment. Specific to this project:

- Explain what role, if any, the individuals tasked with commissioning will play in the design process.
- How will the Design-Builder assure that the transition from construction completion to operations by City's staff is as seamless and effective as possible?
- Describe what type of support, if any, the Design-Builder will provide for ongoing training and commissioning after occupancy.

Describe how the proposed methods and ideas included in your response to this criterion are supported by experiences on past, similar projects. Provide basic project information including, summary of project scope, a phone number for a contact person within each project's organization. Responses to these criteria may reference project(s) and references previously provided/described in your SOQ.

3.6 Management of Time and Budget Requirements

The Design-Builder will be responsible for managing the project during construction to deliver a finished project that will be “on time and on budget”. Specific to this project:

- For purposes of this exercise, assume the following: May 5, 2025 limited notice to proceed for design team selection; May 30, 2023 notice to proceed for Phase 1 services; substantial completion date, with occupancy permit, of no later than June 27, 2025; and facility open to the public on July 19, 2025. Based on your current knowledge of the project, submit a proposed milestone schedule for the completion of the project including but not limited to:
 - Design Team Procurement
 - Programming;
 - Design phases (Schematic Design (30%), Design Development (60%) & Construction Documents (100%));
 - Milestone cost estimates and budget reconciliation at each design phase;
 - Owner reviews at each phase;
 - Formal value engineering;
 - Formal constructability review;
 - Negotiating/Agreement for final design and construction;
 - Completion of permit documents for early construction package(s) (if applicable);
 - Permit review for early construction package(s) (if applicable);
 - Ordering, manufacturing and delivery of materials for early construction package(s);
 - Ordering, manufacturing and shipping of long-lead materials and equipment;
 - Completion of permit documents for remaining construction packages;
 - Permit review for remaining construction packages;
 - Permit available for early construction package(s);
 - Subcontractor bidding/buy-out for early construction package(s)
 - Early construction package(s) start construction;
 - Completion of bidding/construction documents for remaining construction packages;
 - Permit available for remaining construction packages;
 - Subcontractor bidding/buy-out for remaining construction packages;
 - Building construction;
 - Systems start up, commissioning and Owner training;
 - Substantial completion;
 - Occupancy permit;
 - City Install FF&E;
 - City move-in;
 - Public grand opening;
 - Project close-out;
 - Warrantee period.
- Describe the major schedule risks and critical path issues and your approach to managing them.
- Describe your approach to City review and approval during design and include milestone events in your schedule for these activities.
- It will be expected that the Design-Builder will provide ongoing, transparent cost estimates to ensure that the City’s budgetary requirements are being achieved. Describe your approach to cost estimating and include major cost estimating events on your schedule.
- Describe the major variables affecting price and how you will manage to stay within the overall

budget framework.

- Describe the relationships between major schedule risks and major budget risks, if any, and how that relationship will be measured and managed.

3.7 Current Workload and Capacity to Complete the Work

Based on the potential impact of recent, current, and projected workloads of the Design-Build contractor, describe the team's ability to perform the work and meet the schedule so that the project may be substantially complete, occupied and ready for use by the date indicated in RFQ Section 1.8.

- Identify, by name and company, each of the key Design-Build team members (including subcontractors) that are proposed to be involved during programming, design and construction for this project.
- At a minimum, the key Design-Build team members identified for the project shall include the individuals listed in Section 1.6 of the RFQ. The qualifications of these individuals will be evidenced by the resumes and other information provided in your SOQ.
- Briefly describe the responsibilities of each key team member and the extent of their involvement during each phase of the Project. Involvement shall be expressed as a percentage (100% = full time).

3.8 Project-specific Accident Prevention Plan

Provide a summary of the project-specific accident prevention plan, including your approach/philosophy and the implementation, monitoring and notification process, that you would recommend for our project. Please do not submit the contractor's complete Accident Prevention Program as part of the response to this criterion.

3.9 MBE/WBE/SBE/Local Business Utilization Plan

The City is committed to supporting the local community and economy by increasing the participation of small business enterprises and socially and economically disadvantaged business enterprises, as well as local businesses. This commitment is designed to invest tax-payer dollars back into the community, as well as help build a strong professional community able to tackle the increased construction projects expected for Washington state and especially the Seattle-Tacoma corridor.

For this project, the City aspires to meet the "Governor's goals" for diversity, equity and inclusion. The Design-Build Contractor will be expected to demonstrate due diligence and implement an outreach program to encourage, include and track the participation of Small Business Enterprises (5%), Women Business Enterprises (6%), Minority Business Enterprises (10%), Local Businesses (25%), and other socially and economically disadvantaged business enterprises on this project. "Local" is defined as having headquarters in King County, Washington. Please provide the following:

- A project specific plan to increase opportunities and encourage MBE, WBE, SBE, or other socially or economically disadvantaged business and Local businesses to participate in this project.
- A project specific plan to recruit, mentor and involve MBE, WBE, SBE or other socially or economically disadvantaged business enterprises and Local businesses in this project.
- Your proposed method to work with the City to track, and report monthly, the status of MBE, WBE, SBE or other disadvantaged business enterprises and Local business participation for this project.

Evaluation and Scoring of Proposals (Criteria 3.2-3.9)

The following is a list of the maximum points available for each of the Proposal evaluation criteria and will be the basis for evaluation and scoring of the Proposals:

	Evaluation Criteria	Points
3.2	Acceptance of Contract and Insurance Requirements (pass/fail)	Pass/Fail
3.3	Design Build Delivery Approach	10
3.4	Design Approach Pre-Design through Final Design	10
3.5	Management Approach Permitting Through Closeout	10
3.6	Management of Time and Budget Requirements	10
3.7	Current Workload and Capacity to Complete the Work	10
3.8	Project Specific Accident Prevention Plan	10
3.9	MBE/WBE/SBE/Local Business Utilization Plan	10
	Proposal Max Points	70

Submittals will be group evaluated and scored by the City's selection committee based on the level of responsiveness and the content of the information provided by each Finalist. The selection committee will assign a numerical point total for each criterium and a total numerical point score for each responsive Finalist's proposal.

3.10 Price Factor Proposal (15 points)

Design-Builders Fee: Provide the proposed Fee for overhead and profit of the Design-Builder, expressed as a percentage of the total Cost of the Work to be invoiced during the second contract period. (Refer to Price Factor Proposal Form attached to this RFP.)

Refer to the sample Agreement (attached to this RFP) for the definition of and additional information related to the Design-Builder's Fee and the Cost of the Work.

A completed and signed Price Factor Proposal Form (refer to Appendix) shall be submitted as a separate hardcopy and separate electronic pdf file, placed in a sealed and labeled envelope, at the time of submitting the Design-Builders Proposal. Envelope shall be labeled "Contractor Name, Price Factor Proposal". Do not include a copy of the Price Factor Proposal Form in the Design Builder's compiled Final Proposal (hardcopy or pdf). (Refer to RFQ Section 1.10.1.)

Scoring of Price Factor Proposals

Price Factor Proposal submissions will be publicly "opened", confirmed to be complete and responsive and then will be scored based on the following formula:

- The conforming Price Factor Proposal with the lowest Fee receives full points possible (15 points).
- Other responsive Price Factor Proposals will be allocated points calculated by the following formula:

[Lowest Fee] divided by [Other Fee] multiplied by [Maximum Points Allowed (15)]

The City reserves the right, at its sole discretion, to reject any Price Factor Proposal which is which deviates from the lowest responsive proposal submitted by more than 20%.

END OF REQUEST FOR PROPOSALS

Attachments

- Price Factor Proposal Form
- Sample Design-Build Agreement Forms

PRICE FACTOR PROPOSAL FORM

To: City of Snoqualmie
Attn: Michael Chambless
38624 SE River Street
Snoqualmie, WA 98065

Price Factor Proposal Form

Pursuant to and in compliance with the Request for Final Proposal, the undersigned certifies, having carefully examined the Contract Documents and conditions affecting the Work, and being familiar with the site; proposes to furnish all labor, materials, equipment and services necessary to complete the Work, as follows (*complete items below*):

1. Design-Builder's Proposed Fee

Having read all pertinent information and understanding the requirements identified within the RFQ/RFP and Contract Documents, the Design-Builder proposes a fee of _____% for overhead and profit of the Design-Builder as a percentage of the total Cost of the Work to be invoiced during the second contract period.

2. Sales Tax:

Applicable Washington State Sales Tax shall not be included in any amounts on this Bid Form.

3. Bonds and Insurance

For the purposes of calculating the costs of bonds and insurance, prior to negotiation of the GMP, the bidder shall assume an "Owners MACC" as referenced in Section 1.3 of the Request for Qualifications. The "Owners MACC" is the anticipated, total cost of design and construction, not including WA State sales tax.

4. Business Information and Addenda Acknowledgement

Proposer's Business Name:			
Type of Business: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (State of Incorporation:____) <input type="checkbox"/> Other			
Business Address:		City:	State: Zip Code:
Business Telephone Number:	Business Fax Number:	Business E-mail Address:	
State of Washington numbers for the following:			
Contractor Registration No.:	UBI No.:	Employment Security Dept. No.:	
Receipt is hereby acknowledged of RFP Addenda No(s): _____			

5. Authorized Signature

REPRESENTATIVE AUTHORIZED TO SIGN FOR PROPOSER:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":	
Signature:	Date:
Print Name and Title	Location or Place Executed: (City, State)

NOTE: If bidder is a corporation, write State of Incorporation; if a partnership, give full names and addresses of all parties below.

Note: This document is to be submitted as a separate hardcopy and a separate electronic pdf file, and placed in a sealed and labeled envelope, from the RFP response documents (Final Proposal). Envelope shall be labeled "Contractor Name, Price Factor Proposal". Do not include a copy of the Price Factor Form bound into the compiled RFP response documents (Final Proposal).

END OF SECTION

City of Snoqualmie Community Center Expansion Project

Progressive Design-Build Contract

This **Contract** is made and entered into as of the ____, 2023, by and between the following parties, for services in connection with the Project identified below:

OWNER:

**City of Snoqualmie
38624 SE River St.
Snoqualmie, WA 98065**

DESIGN-BUILDER:

(Name and address)

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

City of Snoqualmie Community Center Expansion Project

[ADDRESS]

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

General

- 1.1 Authorization.** This Design-Build Contract (the "Contract") is authorized by and entered in accordance with the Design-Build requirements of RCW 39.10. This Contract shall be interpreted to be consistent with the requirements of those statutory provisions.
- 1.2 Duty to Cooperate.** Owner and Design-Builder always commit 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 this Contract.
- 1.3 Definitions.** Terms, words, and phrases used in this Contract shall have the meanings given them in the *General Conditions of Contract Between Owner and Design-Builder* ("General Conditions").
- 1.4 Design Services.** Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Contract. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Contract is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2

Scope of Work

Design-Builder shall perform all design and construction services, and provide all material, equipment, tools, and labor necessary to complete the Work (including both Phase 1 and Phase 2 Services) described in and reasonably inferable from the Contract Documents. The Design-Builder is fully responsible to design and to build the Project, as described in the Project Criteria, as may be revised in accordance with Section 2.1.2 hereof.

2.1 General.

2.1.1 Owner has provided Design-Builder with access to the reference documents listed in **Exhibit A**. Owner provides such Reference Documents to Design-Builder for information only, and subject to the conditions and qualifications identified in Section 3.2.1 of the General Conditions.

2.2 Phased Services.

2.2.1 Phase 1 Preconstruction and Design Services. Design-Builder shall perform the services of pre-design and programming to develop the Owner's Project Criteria. Owner's Project Criteria shall be memorialized in an agreed-upon **Exhibit B** Owner's Project Criteria, which shall be attached to this Agreement. Design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, will follow as part of Phase 1 Services as set forth in **Exhibit C**, Scope of Services. Owner intends to authorize performance of the Phase 1 Work in phases, and the parties may amend Exhibit C to reflect the additional authorized Phase 1 Work to be included in the Phase 1 Scope of Services. The Parties intend that the Phase 1 Scope of Services will ultimately include 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 and submitted for review and negotiation between the parties. The Design-Builder's costs associated with

negotiation of the GMP are not included in Phase 1 Services. The Design-Builder's Compensation for Phase 1 Services is set forth in Article 7 hereof.

2.2.1.1 GMP Amendment for Phase 2. The Contract Price and GMP for Phase 2 shall be developed during Phase 1. Owner and Design-Builder may reach agreement on the GMP Amendment for Phase 2 at any point following Design-Builder's completion of the 40 percent design but no later than 60 percent design, including incorporation of any Owner comments thereon. As a result, Phase 1 may overlap with Phase 2.

2.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of 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, all as may be described in the Phase 2 Proposal and GMP Amendment.

2.2.3 Initial (Early) Works Packages. Owner may negotiate one or more initial (early) works packages with Design-Builder prior to the GMP Amendment. Scope of work, bonding (consistent with the requirements of Article 11), insurance (consistent with the requirements of Article 11), pricing, and other terms for any early works shall be negotiated and memorialized in a written executed agreement prior to issuance of a notice to proceed. Pricing shall be substantially similar to the pricing structure for Phase 2 set forth in Article 7 hereof and any General Conditions Costs shall be pro-rated to the scope of General Conditions Work included in the initial (early) works package.

2.3 Phase 2 Proposal. Design-Builder may develop a Phase 2 Proposal at any point following completion of the 40 percent design but no later than 60 percent design and any other Basis of Design Documents upon which the parties may agree. Design-Builder shall submit a proposal to Owner (the "Phase 2 Proposal") that includes completion of design, permitting, bidding, construction, special inspections/testing, commissioning, closeout and warranty services for the Project, and associated work, and for the Contract Price. The Contract Price in the Phase 2 Proposal shall be based on the Design-Build Fee (Section 7.4), the Construction General Conditions Costs (Section 7.3), Pass-Through Costs (Section 7.5.3) plus the Cost of the Phase 2 Work (Section 7.5.1) as provided in Article 7 hereof, presented on an open-book basis, all subject to a Guaranteed Maximum Price (GMP).

2.3.1 The Phase 2 Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The Contract Price, subject to a GMP, shall be the sum of:

- i. Construction General Conditions Costs as defined in Section 7.3 hereof;
- ii. Design-Builder's Fee as defined in Section 7.4 hereof;
- iii. The Cost of the Phase 2 Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2 hereof;
- iv. Pass Through Costs as defined in Section 7.5.3 hereof.

2.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria (**Exhibit B**), which are set forth in detail and are attached to the Phase 2 Proposal;

2.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

2.3.1.4 The Scheduled Substantial Completion Date upon which the Phase 2 Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

2.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

2.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Phase 2 Proposal, and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s);

2.3.1.9 An expiration date for the Phase 2 Proposal provided that Design-Builder shall not make the Phase 2 Proposal subject to expiration or withdrawal for at least ninety (90) days after submission and Owner shall provide its initial review and comment on the Phase 2 Proposal within thirty (30) days of submission;

2.3.1.10 A Permits and Approvals list detailing the permits and governmental approvals not otherwise addressed in the Contract Documents that Owner and Design-Builder will need and assigning responsibility for each;

2.3.1.11 A preliminary training plan;

2.3.1.12 A project-specific construction safety and accident prevention plan; and

2.3.1.13 A project-specific construction quality assurance/quality control plan.

2.3.1.14 A project-specific plan for outreach to and inclusion of underutilized firms as subcontractors and suppliers in accordance with the provisions of Chapter 39.10 RCW and the requirements of the Office of Minority and Women's Business Enterprises ("OMWBE").

2.3.1.15 Design-Builder's Owned Equipment Rate Schedule, which shall be incorporated herein as **Exhibit F** and shall include adequate identifying information such as use, manufacturer, make, model, dimensions/length, blade size, capacity, fuel usage, horse power, voltage/ampage, weight, etc., such that accurate identification can be determined. These descriptors shall match Contractor's owned equipment rental log. Exhibit F shall include replacement values and approved rates for each item.

2.3.2 Review and Adjustment to Phase 2 Proposal.

2.3.2.1 After submission of the Phase 2 Proposal, Design-Builder will discuss and review it with Owner. Owner may require modifications to the Phase 2 Proposal that Design-Builder shall in good faith attempt to accommodate. Owner must approve the Phase 2 Proposal, as originally submitted or as modified, and enter into a GMP Amendment incorporating the agreed Phase 2 Proposal in order for the Design-Builder to proceed to Phase 2.

2.3.2.2 Acceptance of Phase 2 Proposal. If Owner accepts the Phase 2 Proposal, as may be modified, the Contract Price and its basis shall be set forth in an amendment to this Contract (GMP Amendment). Once the parties have agreed upon the GMP Amendment and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as described in the GMP Amendment. Design-Builder acknowledges and agrees that Owner's acceptance and execution of the GMP Amendment is subject to approval by the Owner's Board of Directors. Design-Builder further acknowledges and agrees that its execution of the GMP Amendment constitutes certification 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 Phase 1 Services through the date of the GMP Amendment that will in any way affect Owner's interests.

2.3.2.3 Failure to Accept Phase 2 Proposal. If Owner rejects the Proposal, or if at any time the Owner and the Design-Builder are unable to agree upon: a satisfactory price GMP for completing the project that the City determines to be fair, reasonable and within the available budget; a schedule to complete the project; or the scope and character of the project, , Owner and Design-Builder shall meet and confer as to how the Project will proceed, and the Owner at its sole discretion shall have the right to exercise the following options:

- i. Terminate this Contract and pay Design-Builder for all Work performed through the date of termination;
- ii. Terminate this Contract, pay Design-Builder for all Work performed through the date of termination and contract directly with the Design Consultant and Design Sub-Consultants, if any, for completion of the Phase 1 Scope of Services for the agreed upon Contract Price for Phase 1 Services set forth at Section 7.1 minus payments for all Work performed through the date of termination;
- iii. Require Design-Builder to proceed with remaining Phase 1 Scope of Services for the agreed upon Contract Price for Phase 1 Services set forth at Section 7.1 minus payments for all Work performed through the date of termination;
- iv. Require Design-Builder to perform any specific portion of the Work under this Contract based on the Design-Build Fee (Section 7.4), the Construction General Conditions Costs (Section 7.3), Pass-Through Costs (Section 7.5.3) plus the Cost of the Phase 2 Work (Section 7.5.1) as provided in Article 7 hereof without a GMP Amendment, in which case all references in this Contract to the GMP Amendment shall not be applicable; or
- v. Require Design-Builder to continue to proceed with the Work, until further notice (reserving the right to terminate this Contract pursuant to Section 2.3.2.3(i) on the basis of the Design-Build Fee (Section 7.4), the Construction General Conditions Costs (Section 7.3), Pass-Through Costs (Section 7.5.3) plus the Cost of the Phase 2 Work (Section 7.5.1) as provided in Article 7 hereof without a GMP Amendment, in which case all references in this Contract to the GMP Amendment shall not be applicable.

2.3.2.4 Should the Owner choose to exercise its termination rights set forth in Section 2.3.2.3(i) or (ii), such cancellation will be effective upon issuance of written notification to the Design-Builder and the Design-Builder will not be reimbursed for time and effort related to the price negotiations.

2.3.2.5 Should the Owner choose to exercise its termination rights set forth in Section 2.3.2.3(i) or (ii), Owner shall maintain ownership of the conceptual/schematic design developed during Phase 1 Services and reserves the right, at its sole discretion, to either cancel the Project, move forward with the Project utilizing the services of another Design-Builder or to move forward with the project through a design-bid-build delivery process or in any other way that it deems appropriate.

2.3.2.6 If Owner fails to exercise any of the options set forth in Section 2.3.2.3, Design-Builder shall continue the Work as if Owner had elected to proceed in accordance with Item 2.3.2.3.v above, and be paid by Owner accordingly, unless and until Owner notifies Design-Builder in writing to stop the Work.

Article 3

Contract Documents

The Contract Documents are comprised of the following, which are incorporated herein by this reference. In the event of a conflict or discrepancy among or in the Contract Documents that cannot be resolved by interpreting the Contract Documents as a single, integrated document and giving effect to each provision therein, interpretation shall be governed in the following priority

3.1 All written and fully executed modifications, amendments, minor changes, and Change Orders to this Contract issued in accordance with the General Conditions;

3.2 The GMP Amendment including the Basis of Design Documents;

3.3 This Contract, including all exhibits and attachments but excluding the Reference Documents identified in **Exhibit A**. The Reference Documents are not Contract Documents, and are provided for information only;

3.4 The General Conditions;

3.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions;

3.6 Owner's Request for Qualifications, its Request for Proposals, and Addenda thereto, if any; and

3.7 Design-Builder's Statement of Qualifications, Proposal, and Addenda thereto.

Article 4

Interpretation and Intent

4.1 Design-Builder and Owner, at the time of acceptance of the Phase 2 Proposal by Owner in full, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the GMP Amendment.

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve

any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Article 3 herein.

4.3 Terms, words, and phrases used in the Contract Documents, including this Contract, shall have the meanings given them in the General Conditions.

4.4 Design-Builder may propose modifications to and expansion of the Owner's Project Criteria. Prior to presenting its Phase 2 Proposal, the Design-Builder shall identify any items in the Owner's Project Criteria that conflict with or in any way impede Design-Builder's ability to meet any Performance Standards set forth in the Owner's Project Criteria.

4.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

4.6 In the event of an ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them, and as such, nothing shall be construed against or in favor of one party based on its being deemed the sole author.

4.7 Changes in the Legal Requirements. The Owner and Design-Builder acknowledge that numerous aspects of the Project are governed by federal, state, and local laws, rules, and regulations and that the intent is to complete all Work in compliance with the Legal Requirements. Design-Builder is required to account for applicable changes in the Legal Requirements that occur during Phase 1 in its Phase 2 Proposal, the GMP Amendment, and the Phase 2 schedule. Changes in the Legal Requirements that become effective prior to execution of the GMP Amendment shall in no event form the basis for an adjustment of Design-Builder's compensation and/or time of performance for Phase 1 Services. Changes in the Legal Requirements that become effective after execution of the GMP Amendment may form the basis for an adjustment to Contract Time, in accordance with the requirements and conditions of Section 8.2 of the General Conditions but shall in no event form the basis for an adjustment to the Contract Price and/or GMP.

Article 5

Ownership of Work Product

5.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions, furnished by Design-Builder to Owner under this Contract ("Work Product") have been specially ordered or commissioned by the Owner for use as a contribution to a collective work and will be considered "works made for hire" (as that term is defined under U.S. copyright law), in all stages of completion, with the Owner being the author of them. To the extent the Work Product includes material subject to copyright, patent, trademark, trade secret, or any other proprietary rights protection, and any rights therein are not owned by the Owner as a "work made for hire" pursuant to the preceding sentence, the Design-Builder hereby irrevocably and unconditionally assigns to the Owner, its successors, and assigns, all rights (including sublicensing rights), title, and interest in and to the Work Product. To the extent any of the Design-Builder's rights in the Work Product, including any moral rights, are not capable of assignment under applicable law, the Design-Builder hereby irrevocably and unconditionally waives all enforcement of those rights to the maximum extent permitted under applicable law.

5.2 Owner's Indemnification for Use of Work Product. Owner shall defend, indemnify, and hold harmless the Design-Builder from and against all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from Owner's (1) use of the Work Product in connection with another project; or (2) modification of the Work Product undertaken after termination of the Design-Builder on this Project.

Article 6

Contract Time

6.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Contract unless the parties mutually agree otherwise in writing.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ () calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

6.2.2 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions.

6.2.3 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions.

6.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. By executing the Agreement the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

6.4 Liquidated Damages. Liquidated damages, if any, shall be established in the GMP Amendment.

Article 7

Price

7.1 Phase 1 Price. For completion of the Phase 1 Scope of Services (**Exhibit C**), Owner shall pay Design-Builder in accordance with Article 8 of this Contract and Article 6 of the General Conditions a sum not to exceed _____ Dollars (\$). Phase 1 Services shall be billed at the all-inclusive billing rates and labor categories set forth in **Exhibit E** which rates shall not be subject to increase for any Phase 1 services. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation excludes Washington State and local Sales Tax but includes all other taxes mandated by applicable Legal Requirements.

7.2 Phase 2 Price. For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 8 of this Contract and Article 6 of the General Conditions a contract price ("Contract Price") set forth in the GMP Amendment which shall be equal to the Pass-Through Costs (as defined in Section 7.5.3 hereof), plus Design-Build Fee as defined in Section 7.4, plus the Cost of the Phase 2 Work (as defined in Section 7.5.1 hereof), plus the Construction General Conditions Costs (as defined in Section 7.3 hereof). The Contract Price shall be subject to and shall not exceed the GMP established in the GMP Amendment and governed by Section 7.6 hereof, subject to any adjustments made in accordance with the General Conditions.

7.3 Construction General Conditions Costs. Owner shall reimburse Design-Builder for the actual and reasonable costs ("Construction General Conditions Costs") incurred in performing the Construction General Conditions Work as defined in the General Conditions and as set forth in **Exhibit D**. The Construction General Conditions Costs shall cover all Construction General Conditions Work, regardless of whether the work is completed by the Design-Builder, a Key Firm, or Subcontractor. The basis and

amount of the General Conditions Costs shall be agreed upon and memorialized in the GMP Amendment.

7.4 Design-Build Fee.

7.4.1 Design-Build Fee shall be [REDACTED] percent ([REDACTED]%) of the Cost of the Phase 2 Work.

7.4.2 The Design-Build Fee for any changes in the Work as set forth in a Change Order and in accordance with the requirements of Article 9 of the General Conditions shall be the same percentage established in Section 7.4.1.

7.4.3 The Design-Build Fee is intended to compensate Design-Builder for **all** costs and expenses not specifically included in the Pass-Through Costs (as defined in Section 7.5.3 hereof), the Cost of the Phase 2 Work (as defined in Section 7.5.1 hereof) and the Construction General Conditions Costs (as defined in Section 7.3 hereof). The Design-Build Fee shall compensate Design-Builder for all other costs, including but not limited to the following:

7.4.3.1 Contractor's profit on all self-performed work.

7.4.3.2 Profit Margins or similar mark-ups on cost for work performed by related parties or entities of the design builder.

7.4.3.3 Costs associated with support, administrative and operations staff normally stationed in the Design builder's home office, such as HR, accounting, IT etc., unless specifically approved in advance by the Owner.

7.4.3.4 Cost of centralized and generally shared information technology, equipment, enterprise software and data processing.

7.4.3.5 Cost associated with bonuses, stock options, profit sharing and other discretionary incentive programs.

7.4.3.6 Discretionary costs, such as clothing, awards or similar expenses.

7.4.3.7 All taxes including Business and ~~Occupancy~~ Occupation (B&O) Taxes and excluding state and local sales tax.

7.5 Cost of the Phase 2 Work.

7.5.1 Cost of the Phase 2 Work includes only those items expressly defined in this Section 7.5.1 that are reasonably incurred by Design-Builder in the proper performance of the Phase 2 Work. The Cost of the Phase 2 Work shall not include any Pass-Through Costs (as defined in Section 7.5.3 hereof), Construction General Conditions Work (as defined in Section 7.3 hereof), or costs intended to be covered by the Design-Build Fee (as defined in Section 7.4 hereof). For the avoidance of doubt, any confusion about the categorization of cost items between the Cost of the Phase 2 Work and Pass-Through Costs shall be resolved in favor of Pass-Through-Costs. Further, any confusion about the categorization of cost items between the Cost of the Phase 2 Work and Construction General Conditions Costs or Design-Build Fee shall be resolved in favor of Construction General Conditions Costs and Design-Build Fee, respectively. The Cost of the Phase 2 Work shall include only the following:

7.5.1.1 Except for those supervisory and administrative personnel who are covered by the General Conditions Costs (**Exhibit D**) and employees billed at all-inclusive billing rates (**Exhibit E**), the actual paid and incurred wages of direct employees of Design-

Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site.

7.5.1.2 Except for those supervisory and administrative personnel who are covered by the General Conditions Costs (**Exhibit D**) and employees billed at all-inclusive billing rates (**Exhibit E**), the actual paid and incurred wages or salaries of Design-Builder's personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

7.5.1.3 Except for those supervisory and administrative personnel who are covered by the General Conditions Costs (**Exhibit D**) and employees billed at all-inclusive billing rates (**Exhibit E**), the actual paid and incurred wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent such personnel perform tasks directly associated with the Project and are approved in advance by the Owner.

7.5.1.4 Actual costs paid and incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on actual base wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof. Costs associated with bonuses, stock options, profit sharing and other discretionary incentive programs are not to be reimbursable as a cost of the work. For employees not covered by collective bargaining agreements vacation, sick leave and other paid time off, including holidays are to be calculated as the individual employee's actual benefit. For those not full-time on the project a pro-rata share may be charged based on hours directly associated with the project.

Worker's compensation shall be reimbursed at the contractor's specific Washington State L&I rate, net of employee deductions with the contractor's specific EMF applied. For self-insured companies, the actual state classification rate net of employee deduction with a .5 EMF applied.

7.5.1.5 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work.

7.5.1.6 Costs, including acquisition, transportation, inspection, testing, storage, and handling of materials, furnishings, equipment, and supplies incorporated or reasonably used in completing the Work.

- .1** Small tools purchased by the project are to be inventoried, tracked and residual value credited to the project at completion. Small tools are defined as those items with \$500 value.
- .2** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work. All equipment and items greater than \$500 (including electronic computer equipment and software) are to be rented to the project from the lowest available source, whether 3rd Party or from the Design-Builder's own equipment yard.

Design-Builder's Owned Equipment Rate Schedule (**Exhibit F**) shall include adequate identifying information such as use, manufacturer, make, model, dimensions/length, blade size, capacity, fuel usage, horsepower,

voltage/amperage, weight, etc., such that accurate identification can be determined. These descriptors shall match Design-Builder's owned equipment rental log. **Exhibit F** shall include replacement values and approved rates for each item.

The rental equipment rates for equipment owned by Design-Builder shall be charged at the lower of seventy-five percent (75%) the current AED Green Books/NECA/any other published rates, actual rental rates charged by a local third-party rental agency or the current Contractor's Owner-approved rates as listed in the equipment rental Exhibit F ("Equipment Rate Schedule.") Recovery periods should reflect useful life for each category of equipment.

Design-Builder owned equipment rental rates shall be based on monthly rates but prorated on a daily basis (30.4 days per month). Days used to prorate monthly rates to daily should be consistent with the calculation of days to charge each piece of rental equipment.

All rental equipment owned by Design-Builder that has been used to construct the Project and has accumulated rental charges equal to seventy-five percent (75%) of the Design-Builder's current replacement value shall be provided for the remainder of the Project at no additional rental cost and shall remain as property of the Design-Builder. Replacement value on piece of equipment may not be modified during the term of the Agreement.

The Design-Builder's owned equipment rental log shall include a unique equipment identification number, a definitive equipment description exactly matching **Exhibit F** date on site, date off site, replacement cost, monthly rate prorated to daily, days billing per month, this month billing calculation and cumulative billing to date, maximum rental allowed for each rented item. The Design-Builder's owned equipment rental log shall be available in excel format if requested by Owner.

7.5.1.7 Costs of removal of debris and waste from the Site.

7.5.1.8 All fuel and utility costs incurred in the performance of the Work.

7.5.1.9 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

7.5.1.10 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

7.5.1.11 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property except to the extent caused by Design-Builder's negligence.

7.5.1.12 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

7.5.1.13 Site security, temporary fencing, signage and similar security and safety measures for active construction areas.

7.5.1.14 Costs for agreed-upon Allowance Items as described and defined in Section 7.7 herein.

7.5.1.15 All costs for completion of design incurred after execution of the GMP Amendment.

7.5.1.16 All costs for or related to permitting of the Work;

7.5.1.17 All costs for special inspections/testing and commissioning of building systems.

7.5.1.18 Any costs that are identified and approved as contingency items under Section 7.6.2 herein.

7.5.1.19 Any costs that are identified and approved as Allowance Values under Section 7.7 herein.

7.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Phase 2 Work:

7.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in connection with Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3, costs associated with Construction General Conditions Work, items intended to be covered by the Design-Build Fee, and Pass-Through Costs.

7.5.2.2 General expenses not specifically provided for herein.

7.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

7.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

7.5.2.5 Any profit sharing, stock options, bonuses or incentive pay that is the obligation of Design-Builder to pay.

7.5.3 Pass-Through Costs. The following costs shall be passed through and paid without mark-up or any added Design-Build Fee:

7.5.3.1 Premiums for insurance and bonds required by this Contract or the performance of the Work.

7.5.3.2 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

7.5.3.3 Costs for permits, royalties, licenses, tests, and inspections.

7.5.3.4 Costs for the work of any personnel charged at all-inclusive, market-based billing rates as set forth in **Exhibit E**.

7.6 The Guaranteed Maximum Price (GMP).

7.6.1 Design-Builder guarantees that it will not exceed any GMP that may be established in the GMP Amendment. Documents used as basis for the GMP shall be identified in the GMP Amendment. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item(s) for its general project management and general conditions costs ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs more than the General Conditions Cap, as well as be responsible for all costs of completing the Work which

exceed the GMP, as said general conditions line item(s) and the GMP may be adjusted in accordance with the Contract Documents.

7.6.2 Design Builder's Contingency. The GMP shall include the Design-Builder's contingency, an amount that shall be no less than two point five percent (2.5%) and no more than five percent (5%) of the estimated Cost of the Work, which will be negotiated between the Design-Builder and the Owner as a part of the GMP negotiations. The percentage shall depend upon the level of completion of the Design-Build Documents and certainty of subcontractor pricing at that time and depending upon any other risk factors agreed upon between the Construction Manager and the Owner.

The final amount of the contingency shall be stated in the GMP Amendment and included in the GMP amount. The contingency is a sum established for the Design-Builder's sole use to cover the Design-Builder's costs that are properly reimbursable as a Cost of the Work but not the basis for a Change Order, such as, for example, design errors and omissions, buy-out or estimating error, post-GMP unanticipated market conditions, trade scope gaps, coordination between trades, missed work, acceleration, failure of a Subcontractor of any tier, pandemic or epidemic, costs to address safety items, discrepancies with the Design Builders Construction Documents pertaining to applicable building or life/safety code requirements, Design-Builder coordination errors or expediting costs for critical materials.

The following may also be considered, at the Owner's sole discretion if the Owner believes such expenditures to be in the Owner's best interests, valid Construction Contingency items: (1) overtime and premium time, (2) costs to address safety items, (3) costs overruns not covered by allowances; (4) costs of corrective work not provided for elsewhere, (5) areas of damage that may occur between trades during construction but cannot be attributed to a specific subcontractor, (6) implementation of any Recovery Plan and (7) for other items requested by the Contractor if approved by the Owner and in the Owner's sole discretion.

The Design-Builder shall use the contingency only with the Owner's prior written consent, which shall not be unreasonably withheld or delayed. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.

Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency. If, upon Final Completion of the Project, funds are remaining in the Design-Builders Contingency, such funds shall remain unspent and shall accrue 100% to the Owner.

7.6.3 Pricing. Pricing payable for the use of Contingency shall be as described in Article 7.5 of the Agreement for the Design-Builder.

7.6.4 Savings. If the sum of the actual Design-Build Fee (as defined in 7.4 hereof), the Construction General Conditions Costs (Section 7.3), Pass-Through Costs (Section 7.5.3) plus the Cost of the Phase 2 Work (Section 7.5.1) as provided in Article 7 hereof is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall accrue 100% to the Owner.

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, shall be set forth in the GMP Amendment.

7.7.2 Design-Builder and Owner will work together to review the Allowance Items and Allowance Values based on design information then-available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

7.7.3 No Work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project Schedule approved with the GMP Amendment, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes (excluding local and state sales tax), bonds and insurance associated with the applicable Allowance Item.

7.7.4.1 The actual cost payable for the use of an Allowance shall be as described in Article 7 of the Agreement for the Design-Builder, and pursuant to Article 7.6 of the General Conditions for Subcontractors.

7.7.5 Whenever the actual cost for an Allowance Item is more than or less than the stated Allowance Value, the Design-Builder shall report such difference to Owner so that Owner can maintain a running tally of Allowance Item costs against Allowance Values. Prior to final payment, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for all Allowance Items and the total Allowance Value.

Article 8

Procedure for Payment

8.1 Phase 1 Payments. Phase 1 Services shall be paid by Owner based on the not-to-exceed Phase 1 price and the all-inclusive billing rates and labor categories both set forth in **Exhibit E** (Supporting Pricing Information). No markups beyond those included in **Exhibit E** shall be added to billings from any subconsultants or subcontractors for Phase 1 services. All-inclusive billing rates and labor categories shall not be subject to any overtime pay obligations incurred by Design-Builder nor any rate increases during Phase 1.

8.2 Phase 2 Payments.

8.2.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the Application in accordance with the following procedure and requirements:

8.2.1.1 Draft Application. Design-Builder shall submit to Owner a report on the current progress of the Work as compared to Design-Builder's Construction Schedule, and a draft, itemized application for payment for work performed during the current calendar month on a form supplied or approved by Owner. This shall not constitute a payment request. Design-Builder and Owner shall confer regarding the current progress of the Work and the amount of payment to which Design-Builder is entitled. Owner may on occasion request Design-Builder to provide data substantiating Design-Builder's right

to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents.

8.2.1.2 Payment Request. After Design-Builder and Owner have met and conferred regarding the updated draft application, and Design-Builder has furnished all progress information required and all data requested by Owner under 8.2.1.1 above, Design-Builder shall submit Design-Builder's Application for Payment for Work completed during the previous month in accordance with Article 6 of the General Conditions on a form supplied or approved by Owner. Among other things, the Application shall state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with Owner and that all payments due Subcontractors of any tier from Owner's payment the prior month have been made.

8.2.1.3 Disputed Amounts. If Design-Builder believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, Design-Builder may, also by the tenth day of the month, submit to Owner along with the approved payment request a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, Design-Builder and all Subcontractors shall file with Owner by the tenth day of the month certified copies of all payroll records relating to the additional amount due.

8.2.1.4 Validity of Payment Requests. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

8.2.1.5 Subcontractor Payment Statement. The Application shall state that all payments due Subcontractors of any tier from the Owner's prior payment have been made. No payment request shall include amounts the Design-Builder does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Design-Builder discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of lower tier Subcontractors), the Design-Builder may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and the Owner written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for payment to the Subcontractor, and pay the Subcontractor within eight (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

8.2.1.6 Stored Materials. Unless otherwise provided in the Design-Build Documents, payments shall be made on account of Project-specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment and otherwise to protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site.

8.2.1.7 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be

free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Subcontractors of any tier, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

8.2.1.8 Decision to Withhold Payment. The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Contract Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including but not limited to loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims (except where an insurer has unconditionally accepted coverage) filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Subcontractors or for design services labor, materials or equipment, or for failure of such Subcontractors to make payments properly to Subcontractors of any tier;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .5 damage to the Owner or a separate contractor (except where an insurer has unconditionally accepted coverage);
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 unsatisfactory prosecution of the Work by the Design-Builder, including but not limited to failure to carry out the Work in accordance with the Design-Build Documents;
- .8 delay by the Design-Builder and/or its Subcontractor(s) of any tier, or failure to comply with the Design-Builder's Project schedule requirements, or the imposition of liquidated damages;
- .9 failure to submit any documents required by statute;
- .10 failure to submit a properly updated Project schedule;
- .11 failure to comply with a requirement of the Design-Build Documents in which the Owner has reserved the right to withhold payment;
- .12 damages for failure to meet timely and proper completion of the Contract, including the assessment of liquidated damages;
- .13 failure to properly maintain as-built records;
- .14 failure to properly submit daily construction records; or
- .15 failure to properly submit certified payrolls.

When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

8.2.1.9 Prevailing Wages. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," the Design-Builder will not receive any payment until the Design-Builder and all Subcontractors of any tier for whom payment is sought have submitted State-approved "Statements of Intent to Pay Prevailing Wage" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries

before it is submitted to the Owner. The statement must include the Design-Builder's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Design-Builder agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Design-Builder and the respective Subcontractors of any tier shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

8.2.2 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, and it has been approved by the Owner, the Owner shall make payment within 30 days after Owner's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made, less retainage, and less amounts properly withheld under Section 6.3 of the General Conditions.

8.3 Retainage on Phase 2 Progress Payments.

8.3.1 Pursuant to Chapter RCW 60.28, the Owner will retain five percent of each approved Application for Payment to be retained as a trust fund for the protection and payment of the claims of any person arising under the contract and the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due from Design-Builder. The moneys reserved may, at the option of Design-Builder, be retained in accordance with the provisions of Chapter 60.28 RCW.

8.3.2 Sixty days after Final Acceptance of the entire Work, which is an action by the Board of Directors, Owner shall release to Design-Builder all retained amounts in accordance with chapter RCW 39.12 and chapter RCW 60.28, provided that Design-Builder has submitted: (1) pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from Design-Builder and from each Subcontractor of any tier certified by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by Design-Builder or Subcontractor of any tier, (2) pursuant to RCW 60.28.021, certificates from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries. If there are either unpaid taxes or unsatisfied claims of lien against the retained percentage, disbursement of retainage funds will be made in accordance with state law.

8.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within 30 days after Owner's receipt of the Final Application for Payment, provided that (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions and (b) Owner shall have the right to withhold all amounts to which Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions.

8.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payments, shall bear interest as specified by RCW 39.76.

8.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Contract is to be administered on an open-book arrangement relative to the Cost of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, and using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents.

During the performance of the Work and for a period of six (6) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase

orders, vouchers, memoranda, and other data relating to the Work, all of which Design-BUILDER shall preserve for a period of six (6) years after Final Payment.

Such inspection shall take place at Design-BUILDER's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-BUILDER as part of this Contract are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Contract, but the composition of such multiplier or markup is not subject to audit.

Design-BUILDER shall incorporate Design-BUILDER's obligations (including the obligations to keep and maintain records and provide opportunity to Owner to inspect such records) under this Section 8.6 in each of its agreements with its Subcontractors.

Article 9

Termination for Convenience

9.1 In addition to Owner's other termination rights in the General Conditions to Contract, Owner may terminate the Contract for convenience. Upon ten (10) days' written notice to Design-BUILDER, Owner may, for its convenience and without cause, elect to terminate this Contract or any portion of this Contract. In such event, Owner shall (subject to the limitation set forth in Section 8.3 above) pay Design-BUILDER for that portion of the Contract Price that corresponds to the percentage of completion of Work in accordance with the Contract Documents, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages whatsoever (including without limitation fee or profit on terminated Work).

9.2 The total sum to be paid to Design-BUILDER under this Article 9 shall not exceed the Contract Price as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to Design-BUILDER shall exclude the fair value of property not under Owner's control which is destroyed, lost, stolen or damaged to become undeliverable to Owner.

9.3 Any claim, request for equitable adjustment or other demand for extra compensation or time extension by Design-BUILDER arising from or related to acts, events, occurrences, or omissions prior to the effective date of the convenience termination shall continue to be subject to and resolved in accordance with the rules (contractual or legal, express or implied) in effect prior to the termination. The convenience termination will not convert this Contract into a cost reimbursement contract.

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.7.2 of the General Conditions to the extent permitted by the Legal Requirements:

_____.

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.3 of the General Conditions to the extent permitted by the Legal Requirements:

10.2 Design-Builder's Representatives.

10.2.1 Design-Builder designates the individual listed in the table in Section 10.3 below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.7.2 of the General Conditions.

10.2.2 Design-Builder designates the individual listed in the table in Section 10.3 below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions.

10.3 Key Personnel. Design-Builder has been selected for this Project based on not only its qualifications as a corporate entity, but also upon the basis of the qualifications of the key personnel it intends to employ to perform the Work. Design-Builder agrees to provide all professional personnel necessary, at adequate staffing levels, to perform the required services under this Contract, including the key personnel identified below:

Position Title	Name of Individual
Design-Build Senior Representative (Design-Build Project Executive)	
Design-Build Representative (Design-Build Project Manager)	
Construction Superintendent	
Construction Project Manager	
Construction Project Engineer	
QA/QC Manager	
Cost Estimator	
Scheduler	
Safety Manager	

These key personnel, all of whom were named in Design-Builder's proposal submitted in response to the Owner's Request for Qualifications and Proposals for the Project, will be assigned to the Project. Except in the event of the death of the employee or their termination of employment with Design-Builder, these key personnel shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the Owner in its sole discretion.

In the event Design-Builder **proposes to substitute** any of the key personnel due to death or employment termination, the individual(s) proposed must demonstrate the qualifications indicated in the Request for Proposals for their respective role(s), and experience as required to successfully perform such duties. Owner shall have the sole right to determine whether key personnel proposed as substitutes are qualified to work on the Project. Design-Builder will remove from the Project any personnel assigned to the Project if, after the matter has been thoroughly considered by Owner and Design-Builder, Owner considers such removal necessary and in the best interest of the Project, and Owner so notifies Design-Builder in writing and allows a reasonable period for the transition to different personnel.

10.4 Key Firms. Design-Builder has been selected for this Project on the basis of not only its qualifications as a corporate entity, but also upon the basis of the qualifications of the key firms it intends to engage to perform the Work. Design-Builder agrees to engage such firms to perform the required services under this Contract, including the key firms identified below:

Firm	Role

These key firms, all of whom were named in Design-BUILDER proposal submitted in response to the Owner's Request for Qualifications and Proposals for the Project, will be engaged on the Project. These key firms shall be engaged for the complete scope identified in the Design-BUILDER's proposal. In the event Design-BUILDER proposes to substitute any of the key firms, Design-BUILDER shall demonstrate that the replacement firm possesses sufficient qualifications to perform the Work in question. Owner shall have the sole right to determine whether key firm proposed as substitutes is qualified to work on the Project.

Article 11

Bonds and Insurance

11.1 Design-Builder's Insurance. Unless a longer period of coverage is specified elsewhere in this Article 11, Design-Builder shall obtain and keep in force the following insurance coverages for a period of 365 days from Substantial Completion of all Work with insurance companies approved by the State Insurance Commissioner pursuant to Title 48 RCW.

All policies will name the Owner, its officers, board members, employees, and agents as additional insureds, with the exception of the Design-Builder's Professional Liability policy. Prior to Design-Builder commencing any work, Design-Builder shall provide the Owner with copies of insurance certificates and additional insured endorsements, all in a form acceptable to the Owner. The insurance provided must be with an insurance company with a rating of A-: VII or higher in the A.M. Best's Key Rating Guide, which is licensed to do business in the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). Owner reserves the right to approve the security of the insurance provided, the company, terms and coverage, the certificates of insurance, and endorsements and reserves the right to obtain copies of all policies from Design-Builder upon request.

11.1.1 Coverages and Limits. The insurance shall provide the minimum coverages and limits set forth below. Owner shall be provided 45 days written notice of cancellation. Owner does not warrant or represent that such coverages and limits are appropriate or adequate to protect Design-Builder. Neither Owner's specification or approval of the insurance in this Contract, nor of its amount, nor providing coverage in these stated minimum limits shall be construed to relieve Design-Builder from liability more than such limits. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. Design-Builder may, at its expense, purchase larger coverage amounts.

The cost of any claim payments falling within the deductible shall be the sole responsibility of Design-Builder. Design-Builder's insurance shall be primary and non-contributory as respects the Owner, and any self-insurance or any other insurance maintained by the Owner shall be excess and not contributing insurance with the Design-Builder's insurance. Design-Builder shall submit upon execution of this Contract Certificates of Insurance acceptable to Owner as evidence of all insurance required herein:

11.1.1.1 Commercial General Liability Insurance. A policy of Commercial General Liability Insurance on an industry standard insurance occurrence form: (CG 00 01) or equivalent, with limits of at least \$1,000,000 per occurrence / \$2,000,000 aggregate, including all coverage known as:

Per Project Aggregate endorsement (CG2503)

Premises/Operations Liability

Products/Completed Operations—for a period of six years following Substantial Completion

Personal/Advertising Injury

Contractual Liability

Independent Contractors Liability

Stop Gap or Employers Contingent Liability

11.1.1.2 Employers Liability:

- (1) \$1,000,000 Each Accident
- (2) \$1,000,000 Disease - Policy Limit
- (3) \$1,000,000 Disease - Each Employee

11.1.1.3 Automobile. Commercial Automobile Liability with a combined single limit of not less than \$1,000,000 for each accident and including coverage for transportation of pollutants. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

11.1.1.4 Excess or Umbrella Liability. \$10 million per occurrence and aggregate during construction and with Product/Completed Operations coverage for a period of six years following Substantial Completion.

11.1.1.5 Contractors Pollution Liability. A policy providing coverage for claims involving remediation, disposal, or other handling of pollutants arising out of Design-Builder's operations for others; from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos. Such Pollution Liability policy shall provide at least \$2,000,000 per occurrence coverage for Bodily Injury and Property Damage.

11.1.1.6 Design-Builder's Professional Liability. The Design-Builder, the Design-Builder's Engineer, other design consultants, and any design-build Subcontractors of any tier will maintain for at least six (6) years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than \$2,000,000 per claim and annual aggregate (deductible of up to \$50,000 permitted). The Design-Builder, the Design-Builder's Engineer, other design consultants, and any design-build Subcontractors of any tier will promptly notify the Owner of any material changes to, interruption of, or termination of this insurance, and will immediately procure replacement coverage. The Design-Builder, the Design Builder's Engineer, other design consultants, and any design-build Subcontractor of any tier will either maintain active policy coverage, or an extended reporting period, providing coverage for claims first made and reported to the insurance company within six (6) years of Substantial Completion or termination of the Work under this Contract, whichever occurs first. The Owner may modify these insurance requirements for certain entities, on a case-by-case basis, by providing written agreement of such modifications.

11.1.1.7 Worker's Compensation. Worker's Compensation coverage, as required by RCW Title 51. If Design-Builder is qualified as a self-insurer in accordance with RCW 51.14, Design-Builder shall so certify by letter signed by a corporate officer indicating that it is a qualified self-insured, and setting forth the limits of any policy of excess insurance covering its employees.

11.1.1.8 Builder's Risk Insurance. The Design-Builder shall procure and maintain during the life of the Contract, or until acceptance of the project by Owner, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake. The policy shall be endorsed to cover the interests, as they may appear, of the Owner, Design-Builder and subcontractors of all tiers with the Owner and sub-contractors listed as a Named Insured. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Contract and acceptance of the project by the Owner, the Design-Builder shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Design-Builder or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

11.1.2 Self-Insurance. At its sole option and in its sole discretion, Owner may accept Design-Builder's self-insurance for liability coverage in lieu of insurance from a commercial insurer. Design-Builder must provide a letter from its Corporate Risk Manager or appropriate Finance Officer representing and warranting the following minimum information: whether the self-insurance program is actuarially funded; the fund limits; any excess declaration pages to meet the contract requirements; a description of how Design-Builder would protect and defend Owner as an Additional Insured in their Self-Insured layer; and claims-handling directions in the event of a claim. Any amounts due to, sought by, or paid to third party claimants shall be the sole responsibility of Design-Builder, irrespective of whether such amount falls wholly within the level or amount of Design-Builder's self-insured retention.

11.1.3 Waiver of Subrogation. Design-Builder and the Owner waive all rights against each other any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent of proceeds paid by the Builder's Risk insurance or other property insurance obtained pursuant to the Contract Documents. The policies shall provide such waivers by endorsement or otherwise.

11.1.4 Design-Build Exclusions. Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in this Contract. Design-Builder's liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project. Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project.

11.1.5 Subcontractors. Except as otherwise agreed by the Owner in writing: the Design-Builder shall furnish separate evidence of insurance as stated above for each Subcontractor; and all coverage for Subcontractors shall be subject to all requirements stated herein (including specifically that the Owner be named as an additional insured on such insurance).

11.2 Performance and Payment Bond. Design-Builder shall secure from a surety company acceptable to Owner, admitted and licensed in the State of Washington, and shall pay for performance and payment bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the GMP plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." The bond shall be on a form provided by Owner. The bond must be executed by a duly licensed surety company that is listed in the latest Circular 570 of the United States Treasury Department as being acceptable as surety on federal bonds. No surety's liability on the bond shall exceed the underwriting limitations for the respective surety specified in Circular 570. The scope of the bond or the form thereof prescribed in these Contract Documents shall in no way affect or alter the liabilities of Design-Builder to Owner as set forth herein. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond. The bond shall cover all Change Orders without further consent from the surety.

Article 12

Other Provisions

12.1 Contract Exhibits. The Exhibits to this Contract, incorporated herein by reference, are as follows:

Exhibit A, List of Reference Documents;

Exhibit B, Owner's Project Criteria

Exhibit C, Phase 1 Scope of Services;

Exhibit D, Work included in Construction General Conditions;

Exhibit E, Design-Builder Phase 1 Billing Rate / Fee Schedule;

Exhibit F, Design-Builder's Owned Equipment Rate Schedule

12.2 CPARB Reporting. Design-Builder shall provide the Owner and the Capital Projects Advisory Review Board ("CPARB") any project information required to be submitted by the Design-Builder in accordance with the provisions of Chapter 39.10 RCW and the requirements of CPARB.

12.3 OMWBE Reporting. Design-Builder shall track and provide the Owner and the Office of Minority and Women's Business Enterprises ("OMWBE") any project information required to be submitted by the Design-Builder in accordance with the provisions of Chapter 39.10 RCW and the requirements of OMWBE.

12.4 Notices. All notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and delivered to the party hereto by (a) hand-delivery, (b) established express delivery service that maintains delivery records, or (c) certified or registered U.S. mail, postage prepaid, return receipt requested at the following addresses, or at such other address as the parties hereto may designate pursuant to this Section.

Owner:

Design-Builder:

Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee. Notices and communications given by mail hereunder shall be deemed to have been given seventy-two (72) hours after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

In executing this Contract, Owner and Design-Builder each represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

City of Snoqualmie

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

**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 _____.

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 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:

<http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>

Printed copies of the current prevailing wage rates are available for viewing at [REDACTED]. 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. No 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.

2.8.7 A Site-specific Covid-19 safety plan is required. The Design-Builder shall prepare and implement a Site-specific Covid-19 safety plan, which complies with applicable construction job site requirements as established by the state of Washington's Phased Business Activity Guidelines. The Covid-19 safety plan must be available at the job site and readily available upon request for inspection by state and local authorities. The Design-Builder shall designate a supervisor in its Site-specific Covid-19 safety plan. The Design-Builder shall fully implement the safety plan and provide regular status updates relative to compliance at each progress meeting.

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, 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 __** 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.