

ATTACHMENT 1

City of Snoqualmie Community Center Expansion Project

Progressive Design-Build Contract

This **Contract** is made and entered into as of _____, 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)

**Absher Construction, Inc
1001 Shaw Road
Puyallup, WA 98372**

PROJECT:

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

**City of Snoqualmie Community Center Expansion Project
35018 SE Ridge Street
Snoqualmie, WA 98065**

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/amperage, 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 governing body. 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 termination 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 July 30, 2025 or (575) calendar days after the Date of Commencement.

6.2.2 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable following Substantial Completion. 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 One Million Seven Hundred Thirty Four Thousand Five Hundred and Fifty Eight Dollars (\$1,734,558). 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 **Three point six eight percent (3.68%)** 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 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 C**), 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 C**), 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 C**), 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 C**) 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 C** 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 C** 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 C**.

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 C** (Supporting Pricing Information). No markups beyond those included in **Exhibit C** 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:

Jeff Hamlin, P.E., Snoqualmie City Engineer, Deputy Director of Parks and Public Works

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:

Doug Wiser, Parametrix, Inc.

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)	Curt Gimmestad
Design-Build Representative (Design-Build Project Manager)	Blaine Wolfe
Construction Superintendent	Joe Turner
Construction Project Manager	Keara Flynn
Construction Project Engineer	Jacob Rauvola
QA/QC Manager	Jason Gao
Cost Estimator	Adam Buckley
Scheduler	Dan McCooey
Safety Manager	Kent Lyndsay

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
ALSC Architects	Architect of Record
Ballard*King and Associates	ASSC Subconsultant Business and Staffing Plan

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.

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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, officials, 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:

Jeff Hamlin, City of Snoqualmie
38194 SE Mill Pond Road
PO Box 987
Snoqualmie, WA 98065

Design-Builder:

Curt Gimmestad and Blaine Wolfe, Absher Construction Co.
1001 Shaw Road
Puyallup, WA 98372

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: _____