



ADDENDUM #1

Progressive Design-Build Services

City of Kirkland Peter Kirk Pool

**City of Kirkland
Anneke Davis, Sr. Project Engineer-Public Works Department
123 5th Avenue
Kirkland, WA 98033**

RELEASE DATE: September 9, 2026

Qualifications Due: September 17, 2026 @ 3:00:00 p.m.

1. Questions & Answers

1. Question: In Section 1.4 [1], there is an empty bullet point preceding the "Construction Delivery and Safety" header. Please clarify if there is any missing text or an additional delivery goal intended for this section. Answer: Formatting error.
2. Question: In Section 4.2 [2] contains an empty bullet point immediately before the description of the "Management Plan" requirements. Could the City confirm if any text, requirement, or sub-component was omitted from this section? Answer: Formatting error.
3. Question: In Section 7.1 [3] states there is a limit of seven (7) Key Personnel, but only five (5) distinct responsibility areas are listed. Are there other specific key personnel roles or disciplines the City expects proposers to identify within this limit? Answer: The City intends to provide flexibility for proposing teams to identify the key personnel they consider critical to successful project delivery. The roles identified in Section 7.1 represent the minimum key personnel expected to be included in the SOQ. Proposers may identify up to seven (7) Key Personnel and may include additional roles they believe are important to the project, provided the total number does not exceed seven (7).
4. Question: 8.1 [4] notes that "required forms" are excluded from the fifteen (15) page limit for the SOQ. Aside from Exhibit A (Contractor Verification) [5], are there any other required forms that must be included with our submission? Answer: No.
5. Question: Section 11.0 [6] lists "EXHIBIT B – Design-Build Contract – Via Addendum." Could the City indicate the anticipated release date for the addendum containing this draft contract so that teams can begin their legal review? Answer: The contract is being issued with this addendum.
6. Question: Can we include additional people beyond the 7 required Key Personnel in our Org Chart? Answer: Yes
7. Question: Please share draft copy of prime agreement Answer: The prime agreement is the Design-Build Contract.
8. Question: Do the seven key personnel limit also apply to the organizational chart, or may additional team members be included in the organizational chart beyond the seven identified key personnel? Answer: Additional staff may be shown in the organization chart.

9. Question: On page 18 of the RFQ under the second bullet of section 7.3 we are directed to “Provide examples of deliverables to the owner that will assist in understanding the GMP development process.” In order to give the panel a clear enough representation of the multi-page deliverables we develop for this purpose, we would ask that these examples are excluded from the 15 max page count. Can you confirm?

Answer: See revision to RFQ herein.

10. Question: Reference is made to “required forms” on page 19 under the second bullet of section 8.1: “The SOQ shall be limited to 15 pages total, excluding the cover letter, table of contents, divider pages, resumes, and required forms.” I’m only seeing the Contractor Verification form included in the RFQ as Exhibit A, can you confirm whether there are other forms we need to submit as part of our statement of quals?

Answer: Contractor Verification is the only form.

11. Question: I believe you mentioned you’ll be posting addenda to the City’s website (rather than circulating to a DL), can you please confirm this is the page you’ll be posting to?:
<https://www.kirklandwa.gov/Government/Departments/Finance-and-Administration/Purchasing-Services/Doing-Business-with-the-City>

Answer: That is correct.

2. RFQ Section 4.4 is amended as follows:

4.4 Post-Award and Contract Structure

The City anticipates executing the Design-Build Contract with an initial contract value of \$300,000. ~~to be implemented in phases beginning with an initial Project Validation Phase.~~

The initial contract value is intended to support commencement of Project services following contract execution and may fund all or a portion of the activities required during the Validation Phase. The City reserves the right to determine the scope of services authorized under the initial contract amount.

As Project needs evolve, the City may amend the Design-Build Contract to authorize additional services and funding. Such amendments may include all or a portion of the remaining Validation Phase services, Design and Preconstruction Services, Early Work activities, or other services authorized under the Contract.

Following successful GMP negotiation, the Design-Build Contract may be further amended to authorize Construction Services (Phase Two). ~~Following successful completion and City acceptance of the Validation Phase Deliverables, the Design-Build Contract will be amended to authorize Design and Preconstruction (Phase 1) services, which will conclude with Guaranteed Maximum Price (GMP) negotiation. Following successful GMP negotiation, the Design-Build Contract will be amended to authorize Construction (Phase 2) services. The City may elect to authorize certain Early Work activities concurrent with Phase 1.~~

If the City and the Design-Builder are unable to reach agreement on a GMP that the City determines to be acceptable and within the available project budget, the City reserves the right to terminate negotiations and pursue other project delivery options. The City may use design and other work product developed during Validation and Phase 1 in accordance with the terms of the Design-Build Contract.

3. RFQ Section 5.0 is amended as follows:

5.0 SOLICITATION SCHEDULE

Activity	Date
RFQ Advertisement #1	August 27, 2026
RFQ Advertisement #2	Sept. 2, 2026
Non-Mandatory Pre-Submittal Meeting; Virtual at 10:00 AM	Sept. 3, 2026
Last day for RFQ Questions; Due by 5:00 PM	Sept. 10, 2026
Statement of Qualifications; Due by 3:00 PM	Sept. 17, 2026
Shortlisted Firms announced	Sept. 28, 2026
RFP Distributed to Shortlisted Firms	Oct. 5 <u>2</u> , 2026
Interactive Meetings	Oct. 12-13, 2026
Last day RFP Questions & Contract Comments; Due by 5:00 PM	Oct. 16, 2026
Management Plan and Fee Proposals; Due by 3:00 PM	Oct. 22, 2026
Highest Scoring Firm Announced	Nov. 2, 2026
Notice to Proceed	December 2026

**Dates are approximate and subject to change.*

4. RFQ Section 7.3 is amended as follows:

7.3 Progressive Design-Build Capability

- Describe the proposed Team's past performance with PDB, or similar integrated projects where:
 - The Team worked collaboratively with the owner and design team to develop project scope and budget within a fixed GMP.
 - The Team provided early constructability input to inform design of complex phased improvements in existing facilities.
- Discuss how the estimating and cost monitoring reporting process provided substantive and meaningful information to the owner. Provide examples of deliverables to the owner that will assist in understanding the GMP development process (include as attachment to RFQ, limit to three pages, excluded from page limit). Include a description of the tools and techniques used to develop the cost, scope, and schedule collaboratively with the owner.
- Discuss a situation where the Proposer leveraged the PDB process, or other similarly integrated delivery model, resulting in a project that maximized the scope within a set budget.
- Describe the most significant challenges and opportunities your team anticipates for the Peter Kirk Pool Renovation Project. For each, explain your proposed approach to managing risks, overcoming challenges, and leveraging opportunities to improve project outcomes, value, schedule, or operational performance.

5. RFQ Section 11 is amended as follows:

11.0 **ATTACHMENTS**

EXHIBIT A – Contractor Verification

EXHIBIT B – Draft Progressive Design-Build Contract ~~—Via Addendum~~

6. **Attachments**

- A. Preproposal Meeting Documentation (sign-in and slides)
- B. Draft Progressive Design-Build Contract

END OF ADDENDUM #1

ADDENDUM #1

Attachment A

Preproposal Meeting Documentation (sign-in and slides)



City of Kirkland
Peter Kirk Pool
Progressive Design-Builder Services
Non-Mandatory Pre-Submittal Meeting Attendee Sign-In
Thursday, September 3, 2026 at 10:00am



<u>Name</u>	<u>Company</u>	<u>Email Address</u>
Christopher Spadafore	BCRA	cspadafore@bcradesign.com
Kurt Boyd	Valley Electric	kurtb@velectric.com
Kayleah Sellgren	FORMA Constrution	kayleah.sellgren@formacc.com
Shiree Teixeira	INNOVA Architects	marketing@innovaarchitects.com
Kim Sherman	Fsi Engineers (MEPF, SBE)	kims@fsi-engineers.com
Nicole Doan	Coughin Porter Lundeen	nicoled@cplinc.com
Chris Colley	Swinerton Builders	chris.colley@swinerton.com
George Deines	Counselman-Hunsaker	georgedeines@chh2o.com
Richard Murakami	Rolluda Architects	richard@rolludaarchitects.com
Alex Niemi	FORMA Construction	alexn@formacc.com
Adam Hutschreider	SHKS Architects	adamh@shksarchitects.com
Mark Shields	Valley Electric	mshields@velectric.com
Matt Koberg	Anderson Construction	mkoberg@andersen-const.com
Kyle Hepper	Abbott Construction	kyle.hepper@abbottconstruction.com
Bethany Tackett	FORMA Construction	BethanyT@formacc.com
Danielle Tihon	Howard S. Wright	dtihon@hswc.com
Gar Hansen	HHJ	gar@hhjinc.com
Vu Nguyen	Howard S. Wright	NguyenV@hswc.com
Mara Dean	Auburn Mechanical	maradean@auburnmechanical.com
Michelle Maiura	INNOVA Architects	marketing@innovaarchitects.com
Heather Landis	Stemper AC	heather@stepmerac.com
Geoff Anderson, AIA	Schemata Workshop	geoff@schemataworkshop.com
Shannon Glover	Stantec (Lighting Design)	shannon.glover@stantec.com
Ryan Carlisle	Western Ventures Construction	rcarlisle@westernventures.com
Bill Fierst	AHBL	wfierst@ahbl.com
Scott Saladis	INNOVA Architects	ssaladis@innovaarchitects.com
Megan Bergstrom	PCS Structural Solutions	mbergstrom@pcs-structural.com
Rob Wettleson	FORMA Construction	robw@formacc.com
Lori Ceyhun	Miller Hayashi Architects	loriceyhun@millerhayashi.com
John Faley	Cushing Terrell	johnfaley@cushingterrell.com
Alexi Meuwissen	Scott Edwards Architecture	ameuwissen@seallp.com



City of Kirkland
Peter Kirk Pool
Progressive Design-Build Services
Non-Mandatory Pre-Submittal Conference Attendee Sign-In
Thursday, September 3, 2026 at 10:00am



<u>Name</u>	<u>Company</u>	<u>Email Address</u>
Melanie Cochrun	GLY Construction	melanie.cochrun@gly.com
Dani Karr	Valley Electric	danik@velectric.com
April Chang	Swinerton Builders	april.chang@swinerton.com
Flynn McNalley	Bayley Construction	flynn.mcnalley@bayley.net
Jeremy Doty	BCRA	jdoty@bcradesign.com
Amanda Dunn	Turner Construction	amadunn@tcco.com
Jennifer Marsicek	Scott Edwards Architecture	jennifer@seallp.com
Kevin Reed	GGLO	kreed@gglo.com
Ellen Hagen	Miller Hayashi Architects	ellenhagen@millerhayashi.com
Jeremy Richard	Design West Engineering	jrichard@designwesteng.com
Gabriela Vega	SHKS Architects	gabrielav@shksarchitects.com
Matthew Staley	BCRA	mstaley@bcradesign.com
Heidi Maki	SSF Structural Engineers	hmaki@ssfengineers.com
Payton Reed	GLY Construction	payton.reed@gly.com
Brooke Hanley	NAC Architecture	bhanley@nacarchitecture.com
Jora Lehrman	KPFF	jora.lehrman@kpff.com
Colin Reed	Swinerton Builders	colin.reed@swinerton.com
Alex Rolluda	Rolluda Architects	Alex@rolludaarchitects.com
Parker Duryea	Holmes US	parker.duryea@holmes.us
Tess Wakasugi-Don	GLY Construction	tess.wakasugi-don@gly.com

Please sign-in in the chat

Name, company, email





Peter Kirk Pool Project

Job# 32-26-PW

Request for Qualifications

Progressive Design-Build Services

Pre-Submittal Meeting – September 3, 2026

Introductions

City of Kirkland

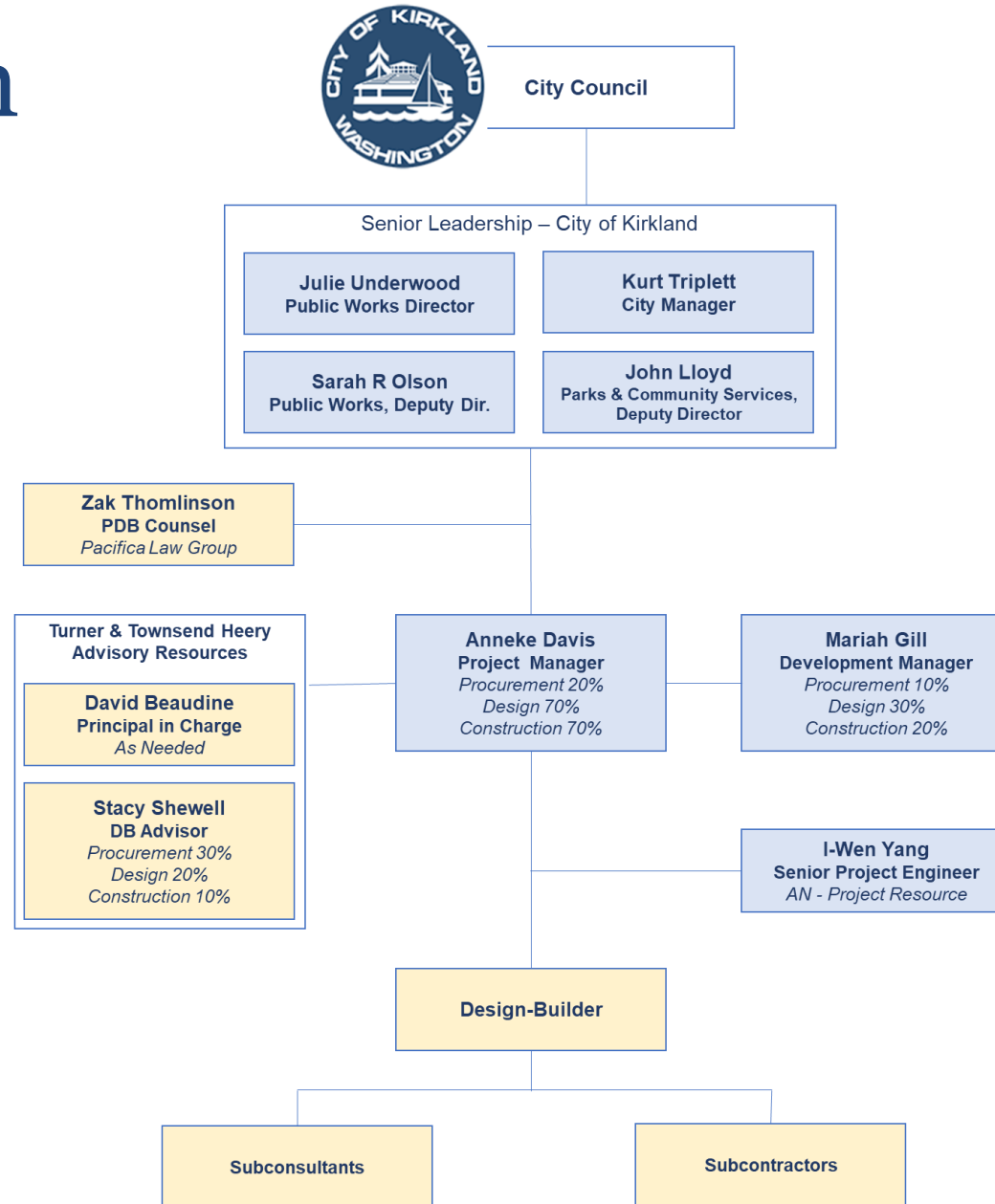
- Anneke Davis
Project Manager
- John Lloyd
Parks and Community
Services (PCS) Deputy Director
- Mariah Gill
PCS Development Manager

Turner & Townsend Heery

- Stacy Shewell
PDB Owner Advisor



Project Team



Project Background



Project Scope

- Pool Deck Repair/ Replacement
- Mechanical Upgrades & Separation of Pool Systems
- ADA Accessibility
- Building Structural and Interior Repairs
- Bathhouse Expansion
- Wading Pool Replacement



Budget

Estimated Design-Build GMP	\$9,459,500
Equipment and furnishing costs	\$165,500
Contract administration costs (owner, legal, cm etc.)	\$670,000
Contingencies (owner)	\$490,000
Sales Tax	\$900,000
Total	\$11,685,000



Schedule

PDB Procurement	
PDB RFQ Advertisement #1	8/27/2026
PDB RFQ Advertisement #2	9/2/2026
Pre-Proposal Meeting	9/3/2026
PDB SOQ Due	9/17/2026
Notify Shortlisted Finalist Teams	9/28/2026
Issue RFP to Finalists	10/2/2026
PDB Interactive Meetings	10/12/2026-10/13/2026
PDB Management Plan and Fee Proposal Due	10/22/2026
Announce Apparent Successful Proposer	11/2/2026
Contract Negotiations	November 2026
Contract Approval	November 2026
Design-Builder NTP	December 2026
Design and Construction <i>(anticipated, to be refined with DB)</i>	
Project Validation Period	Jan. 2027 – Feb. 2027
Design Completion	Mar. 2027 – Aug. 2027
Early Work	Mar. – May 2027
Construction	Sept. 2027 – May. 2028
Closeout	June 2028 – Aug. 2028

Why Progressive Design-Build

Early contractor involvement

- Improves constructability; pool mechanical systems require specialized coordination
- Contractor can evaluate existing conditions; reduced change orders
- Opportunities to identify cost savings
- The PDB contractors help identify key trade partners, such as aquatic specialists

Real-time cost validation

- Design and pricing develop together
- Better alignment of scope to available funding
- Reduces late-stage budget surprises

Transparency & owner control

- Open-book pricing
- Risk identified and managed early
- City involved in all key decisions throughout



Progressive Design-Build Process

1. Validation

- Align Scope, Cost and Schedule Expectations
- Plan early work scopes and timing

2. Design

- Advance and Refine

3. GMP

- Establish value at validation, execute GMP Amendment when design is adequately defined

4. Construction



Solicitation Process

Two-Step Progressive Design-Build

- Step 1 – Request for Qualifications ★ We are here
 - Step 2 – Request for Proposals
- ← Shortlist (Ideally 3 Teams)

Interactive Meeting

Management Plan

Fee Proposal



Step 1 - Evaluation

CRITERIA

Proposed Team - 40 pts

Relevant Project Experience - 30 pts

Progressive Design-Build Capability – 20 pts

Past Performance MWBE - 10 pts

We are looking for:

- Strong collaboration and integration mindset
- Proven experience with multi-stakeholder projects
- Experience on similar projects (civic, aquatic, urban, community focus)
- Ability to manage cost and scope proactively
- Experience with alternative delivery
- Commitment to small business engagement



SOQ Requirements

Questions

- Submit to: paccount@kirklandwa.gov & adavis@kirklandwa.gov
- Subject Line: 32-26-PW Question
- Last day for questions: **September 10, 2026; 5:00 PM PDT**

Format

- Digital submission: 36 MB limit
- Page limit: 15 (8.5"x11" format)
- Resumes limited to two pages and excluded from page count

Submittal

- Submit to: paccount@kirklandwa.gov & adavis@kirklandwa.gov
- Subject Line: 32-26-PW SOQ
- **September 17, 2026, 3:00 PM PST**



Thank you!



ADDENDUM #1

Attachment B – Draft Progressive Design-Build Contract

City of Kirkland

Progressive Design-Build Contract

Peter Kirk Pool Renovation Project

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

OWNER:

City of Kirkland

DESIGN-BUILDER:

PROJECT:

Peter Kirk Pool Renovation Project

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 this Contract and as otherwise provided in the *General Conditions of Progressive Design-Build 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 Initial Phase Work, Phase 1 Work, and Phase 2 Work) 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 Services.

- 2.1.1** Owner has provided Design-Builder with access to the Owner-Provided Information listed in Exhibit A (Owner-Provided Information). Owner provides such documents to Design-Builder for information only, and subject to the conditions and qualifications identified in Section 3.2.1 of the General Conditions.
- 2.1.2** If developed, Owner's Initial Programming and Overview describing Owner's preliminary program objectives for the Project are in Exhibit B (Owner's Initial Programming and Overview). If Owner's Initial Programming and Overview have not been developed prior to the execution of this Contract, Design-Builder will assist Owner in developing the final Project Program (the "Final Program") and Owner's Project Requirements ("OPRs"), which shall be added to this Contract via amendment as Exhibit B. The Design-Builder shall make recommendations to Owner for innovative approaches to the design and construction of the Project.

2.2 Phased Services.

- 2.2.1 Initial Phase Work.** If requested by Owner, Design-Builder shall perform initial work (the "Initial Phase Work") as set forth in Exhibit C. Design-Builder's Compensation for Initial Phase Work is set forth in Article 7 of this Contract.
- 2.2.2 Phase 1 Preconstruction and Design Work.** Design-Builder shall perform design, pricing, and other services for the Project (the "Phase 1 Work"), which shall be identified and described in the agreed-upon Phase 1 Proposal and Phase 1 Amendment. Phase 1 may overlap with Phase 2. The Contract Price and GMP for Phase 2 shall be developed during Phase 1 on an open-book basis. The basis for Design-Builder's Compensation for Phase 1 Work is set forth in Article 7 of this Contract and will be established by the Phase 1 Amendment.
- 2.2.3 Phase 2 Work.** Design-Builder's Phase 2 Work, which shall be identified and described in one or more agreed-upon Phase 2 Proposals and GMP Amendments, shall consist of, but not be limited to, ensuring continuous operations of Owner or other Services at the site, the procurement of all materials and equipment for the Project, the performance of

construction work for the Project, development of various documents associated with Phase 2, training of Owner's operations staff, Project closeout, and the provision of warranty services.

Owner and Design-Builder acknowledge that the Phase 2 Work may be performed in more than one phase, and that the parties may negotiate and execute more than one GMP Amendment to memorialize agreement on a scope of work for each individual phase.

2.2.4 Early Works Packages. Owner and the Design-Builder may agree to early work packages 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 Work Packages shall be negotiated and memorialized in a written executed Amendment prior to issuance of a notice to proceed. Pricing shall be conform to the pricing structure for Phase 2 set forth in Article 7 of this Contract and any General Conditions.

2.3 Phase 2 Proposal(s). Upon agreement by the parties, Design-Builder may develop a Phase 2 Proposal for all or a portion of the Phase 2 Work. Design-Builder shall submit a proposal to Owner (the "Phase 2 Proposal") for construction for the Project for the Contract Price. The Contract Price in the Phase 2 Proposal shall be based on the Design-Build Fee (Section 7.4) plus the Cost of the Work (Section 7.5) plus the Pass-Through Costs (Section 7.5.4), presented on an open-book basis, all subject to a Guaranteed Maximum Price (GMP). Applicable Washington State sales tax shall be paid in addition to and shall not be included within the 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, exclusive of applicable Washington State sales tax and subject to the applicable GMP, shall be the sum of:

- i. Design-Builder's Fee as defined in Section 7.4;
- ii. The Cost of the Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2; and
- iii. Pass-Through Costs as defined in Section 7.5.4.

2.3.1.2 The Basis of Design Documents in a form and state as agreed by Owner;

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;

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;
- 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 Safety Plan;
- 2.3.1.13 A plan for 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"); and
- 2.3.1.14 Design-Builder's Owned Equipment Rate Schedule, which shall be incorporated into the applicable GMP Amendment and shall include adequate identifying information such as use, manufacturer, make, model, dimensions/length, blade size, capacity, fuel usage, horsepower, voltage/amperage, and weight such that accurate identification can be determined and shall include replacement values and approved rates for each item. These descriptors shall match Contractor's owned equipment rental log.

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 (the "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 Work, 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 City of Kirkland City Council. 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 Initial Phase or Phase 1 Work 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 fails to notify Design-Builder in writing on or within ninety (90) days after submission that it accepts the Phase 2 Proposal, the Phase 2 Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet

and confer as to how the Project will proceed, with Owner having the following options:

- i. Terminate this Contract and pay Design-Builder for authorized Work properly performed through the effective date of termination, calculated in accordance with Article 7 and subject to the applicable Initial Phase not-to-exceed amount, Phase 1 not-to-exceed amount, and any previously executed GMP Amendment;
- 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 remaining Phase 1 Work to be compensated in accordance with Section 7.2 and subject to the remaining balance of the Phase 1 not-to-exceed amount;
- iii. Require Design-Builder to proceed with remaining Phase 1 Work to be compensated in accordance with Section 7.2 and subject to the remaining balance of the Phase 1 not-to-exceed amount;
- iv. If applicable (i.e., where the parties have executed multiple GMP Amendments) require Design-Builder to continue with Phase 2 Work already under contract under separate GMP Amendment(s);
- v. Require Design-Builder to perform any specific portion of the Work under this Contract based on the Design-Build Fee (Section 7.4), Pass-Through Costs (Section 7.5.4) plus the Cost of the Work (Section 7.5) 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
- vi. 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), Pass-Through Costs (Section 7.5.4) plus the Cost of the Work (Section 7.5) 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 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.vi above, and be paid by Owner accordingly, unless and until Owner notifies Design-Builder in writing to stop the Work.

Article 3

Contract Documents

3.1 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:

3.1.1 All written and fully executed modifications, amendments (including the GMP Amendment), and Change Orders to this Contract issued in accordance with the General Conditions, with more recent documents taking preference;

- 3.1.2** This Contract, including all exhibits and attachments but excluding (to the extent either is provided) the Owner's Initial Programming and Overview and Owner-Provided Information to this Contract. The Owner's Initial Programming and Overview and Owner-Provided Information are not Contract Documents, and are provided for information only;
- 3.1.3** The General Conditions;
- 3.1.4** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions;
- 3.1.5** Owner's Request for Qualifications, its Request for Proposals, and Addenda thereto, if any; and
- 3.1.6** Design-Builder's Statement of Qualifications, Proposal, and Attachments accepted by Owner.

Article 4

Interpretation and Intent

- 4.1** Design-Builder and Owner, at the time of acceptance of the Phase 2 Proposal by Owner, 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 of 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.
- 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** 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.
- 4.5** 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.
- 4.6** **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 the GMP and/or Contract Time for Phase 2 Work. Changes in the Legal Requirements that become effective after execution of the GMP Amendment

may form the basis for an adjustment to the GMP and/or Contract Time for Phase 2 Work, in accordance with the requirements and conditions of Section 8.2 of the General Conditions.

Article 5

Ownership of Work Product

- 5.1 Work Product.** All drawings, specifications, materials, models, renderings, calculations and other documents and electronic data, including such documents identified in the General Conditions, furnished or prepared by Design-Builder, Design-Builder's Design Consultant or Design-Builder's Engineer to Owner under this Contract ("Work Product") are deemed to be instruments of service and Design-Builder, Design-Builder's Design Consultant or Design-Builder's Engineer shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 5.2 through 5.5 below.
- 5.2 Owner's License upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a perpetual license to use the Work Product in connection with Owner's occupancy and maintenance of the Project. Owner shall hold Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties") harmless for any material alteration of the Work Product without the involvement of Design-Builder.
- 5.3 Owner's License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Contract for its convenience, or if Design-Builder elects to terminate this Contract in accordance with Section 11.3 of the General Conditions, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a perpetual license to use the Work Product to complete the Project and subsequently occupy and maintain the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above. Owner shall hold the Indemnified Parties harmless for any material alteration of the Work Product undertaken by Owner after the effective date of the termination.
- 5.4 Owner's License upon Design-Builder's Default.** If this Contract is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions, then Design-Builder grants Owner a perpetual license to use the Work Product to complete the Project and subsequently occupy and maintain the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 5.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Contract for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.

Article 6

Contract Time

- 6.1 Date of Commencement.** The Initial Phase Work or Phase 1 Work 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 Work ("Date of Commencement") if the Proposal is accepted and the GMP Amendment is executed.
- 6.2 Substantial Completion and Final Completion.**

- 6.2.1** Substantial Completion of the entire Work or identified portions of the Work shall be established in one or more GMP Amendments.
- 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 1.2.25 of the General Conditions.
- 6.3** All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions.
- 6.4** **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.
- 6.5** **Liquidated Damages.** Timely performance and completion of the Work is essential to Owner. Design-Builder acknowledges that Owner, the Work, and the Project will suffer significant and substantial damages that will be difficult if not impossible to quantify if Substantial Completion of the Work does not occur within the Contract Time. Consequently, if Design-Builder fails to achieve Substantial Completion by the time(s) required by the relevant GMP Amendment, Design-Builder shall pay Owner liquidated damages in the amount established by that GMP Amendment for each and every Calendar Day from the date when Substantial Completion should have been achieved to the date Substantial Completion is actually achieved. These liquidated damages are not intended to constitute a penalty, but damages for Design-Builder's breach of the Contract Documents. This amount is fixed and agreed upon between Design-Builder and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages Owner would incur in the event Design-Builder fails to achieve Substantial Completion as required by the Contract Documents. The amount is agreed to be construed as the actual amount of damages sustained by the Owner, and may be retained by Owner and deducted from progress payments owed to Design-Builder. Time-related liquidated damages assessed under this Contract shall constitute Owner's sole and exclusive monetary remedy for Design-Builder's failure to achieve Substantial Completion by the required date. The assessment of liquidated damages does not release Design-Builder from any further nonmonetary obligations or liabilities pursuant to the Contract Documents.

Article 7

Price

- 7.1** **Initial Phase Compensation.** If the Initial Phase is authorized, Owner shall compensate Design-Builder for the Initial Phase Work described in Exhibit C on an Open Book, cost-reimbursable basis, subject to a maximum amount not to exceed \$_____.

Compensation shall consist of:

- 7.1.1** compensation for labor performed by Design-Builder's personnel, calculated using agreed-upon billing rates and labor categories set forth in Exhibit C hereto; and
- 7.1.2** the actual, reasonable amounts properly paid or payable by Design-Builder to Owner-approved Design Consultants, Subcontractors, and other third parties for authorized Initial Phase Work; and
- 7.1.3** the Design-Build Fee applied to the costs identified in subsection 7.1.1 and 7.1.2.

The agreed-upon billing rates shall remain fixed and shall not be increased for the duration of the Initial Phase. No overtime premium or other increase to a billing rate shall be reimbursable unless

expressly authorized in advance by written amendment. The Initial Phase not-to-exceed amount includes the Design-Build Fee and all other compensation payable to Design-Builder for Initial Phase Work, except applicable Washington State sales tax. Design-Builder shall not perform or incur costs exceeding such amount without Owner's prior written authorization. Payment shall be made in accordance with Article 8.

- 7.2 Phase 1 Compensation.** Owner shall compensate Design-Builder for the Phase 1 Work on an Open Book, cost-reimbursable basis, subject to the not-to-exceed amount established in the Phase 1 Amendment.

Compensation shall consist of:

- 7.2.1** compensation for labor performed by Design-Builder's personnel, calculated using agreed-upon billing rates and labor categories set forth in the Phase 1 Amendment; and
- 7.2.2** the actual, reasonable amounts properly paid or payable by Design-Builder to Owner-approved Design Consultants, Subcontractors, and other third parties for authorized Phase 1 Work, and
- 7.2.3** the Design-Build Fee applied to the costs identified in subsection 7.2.1 and 7.2.2.

The agreed-upon billing rates shall remain fixed and shall not be increased for the duration of Phase 1. No overtime premium or other increase to an all-inclusive billing rate shall be reimbursable unless expressly authorized in advance by written amendment. The Phase 1 not-to-exceed amount includes the Design-Build Fee and all other compensation payable to Design-Builder for Phase 1 Work, except applicable Washington State sales tax. Design-Builder shall not perform or incur costs exceeding such amount without Owner's prior written authorization. Payment shall be made in accordance with Article 8.

- 7.3 Phase 2 Price.** For Phase 2 Work, 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 7.5.4), plus the Design-Build Fee (as defined in Section 7.4), plus the Cost of the Work (as defined in Section 7.5), subject to the GMP established in the GMP Amendment and governed by Section 7.6, and any adjustments made in accordance with the General Conditions.

7.4 Design-Build Fee.

- 7.4.1** Design-Build Fee shall be _____ % multiplied by the Cost of the Work.
- 7.4.2** The Design-Build Fee is intended to compensate Design-Builder for all costs and expenses not specifically included as a Cost of the Work or the Pass-Through Costs, including but not limited to the following:
 - 7.4.2.1** Profit on all work including self-performed work, except for agreed-upon all inclusive billing rates.
 - 7.4.2.2** Profit margins or similar mark-ups on cost for work performed by related parties or entities of the Design-Builder.
 - 7.4.2.3** General administration costs associated with Design-Builder's home office operations, support staff, such as executives, HR, accounting, IT, etc. unless specifically approved in advance by Owner.

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

7.4.2.5 Cost associated with bonuses or profit sharing.

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

7.4.2.7 Business and Occupancy (B&O) Taxes.

7.5 Cost of the Work.

7.5.1 The Cost of the Work includes only those items expressly defined in Section 7.5.2 that are reasonably incurred by Design-Builder in the proper performance of the Phase 2 Work. The Cost of the Work shall not include any Pass-Through Costs (as defined in Section 7.5.4) or costs intended to be covered by the Design-Build Fee (as defined in Section 7.4). For the avoidance of doubt, any confusion about the categorization of cost items between the Cost of the Work and Pass-Through Costs shall be resolved in favor of Pass-Through Costs.

7.5.2 The Cost of the Work shall include only the following:

7.5.2.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services.

7.5.2.2 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.

7.5.2.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's Project Office, but only to the extent such personnel perform tasks directly associated with the Project.

7.5.2.4 Actual costs paid and incurred by Design-Builder for employee benefits, premiums, taxes, contributions and assessments required by law, (subject to statutory payroll tax caps) collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.2.1 through 7.5.2.3 hereof. Bonuses, 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 employees' 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 Design-Builder's specific State L&I rate, net of employee deductions with the Design-Builder's specific EMF applied.

7.5.2.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

7.5.2.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work. Design-Builder shall obtain bids from Subcontractors and from Suppliers of materials or equipment fabricated especially for the Work. Unless otherwise agreed, the Design-Builder shall use reasonable best efforts to obtain a minimum of three competitive bids or proposals per category. Design-Builder shall maintain all such bids in an organized notebook by division and include a comparative analysis of the bids, the Design Builder's recommendations for award, the amount included in the Guaranteed Maximum Price for that part of the Work and other useful information to support a decision to award the work. These bid comparisons shall be available to the Owner for review and copying. Design-Builder shall determine the capability of all recommended Subcontractors and Suppliers to perform the Work, their financial capacity, their insurance coverage and whether the bids are complete and in compliance with the Contract Documents. Design-Builder shall determine, subject to the reasonable objection of the Owner, which bids will be accepted and obtain the Owner's approval as noted above. Design-Builder shall not be required to contract with anyone to whom Design-Builder has reasonable objection.

Unless otherwise stated in the relevant Subcontract, Design-Builder is responsible to ensure that the pricing of its Subcontractors complies with all of the cost reimbursement terms stated in this Contract. Design-builder shall pass down cost reimbursement terms to its Subcontractors.

For any Subcontracts awarded on a reimbursable basis, Design-Builder shall provide in the Subcontract for Owner to receive the same audit rights with regard to the Subcontractor as Owner has with regard to Design-Builder.

Design-Builder self-performed scopes of work must be approved in advance by Owner, with clear business case for utilization of Design-Builder's own forces.

If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Section 7.5.2.6. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party.

The term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with Design-Builder; any entity in which any stockholder in, or management employee of, Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of Design-Builder.

7.5.2.7 Costs, including acquisition, transportation, inspection, testing, storage, and handling of materials, furnishings, equipment, and supplies incorporated or reasonably used in completing the Work. Such costs are subject to the following requirements. 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 less than a \$500 value.

- 7.5.2.8** 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 shall provide an Owned Equipment Rate Schedule that 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. The Owned Equipment Rate Schedule 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 the following:

- seventy-five percent (75%) of the current AED Green Books/NECA/any other published rates
- the current Design-Builder's rates as listed in the Owned 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). 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 replacement cost as included in the Owned Equipment Rate Schedule 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.

Design-Builder shall maintain an owned equipment rental log, which shall include a unique equipment identification number, a definitive equipment description exactly matching the Owned Equipment Rate Schedule, 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. Design-Builder's owned equipment rental log shall be available in Excel format if requested by Owner.

- 7.5.2.9** Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

- 7.5.2.10** Costs of street cleaning, if any, and removal of debris and waste from the Site(s).

- 7.5.2.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.
- 7.5.2.12 All fuel and utility costs incurred in the performance of the Work.
- 7.5.2.13 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.
- 7.5.2.14 Deposits that are lost, except to the extent caused by Design-Builder's negligence.
- 7.5.2.15 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.
- 7.5.2.16 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
- 7.5.2.17 Site security, temporary fencing, signage and similar security and safety measures for active construction areas.
- 7.5.2.18 Costs for agreed-upon Allowance Items as described and defined in Section 7.7 herein.
- 7.5.3 **Non-Reimbursable Costs.** The following shall be excluded from the Cost of the Work:
 - 7.5.3.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in connection with Sections 7.5.2.1, 7.5.2.2, and 7.5.2.3, items intended to be covered by the Design-Build Fee, and Pass-Through Costs.
 - 7.5.3.2 General expenses not specifically provided for herein.
 - 7.5.3.3 The cost of Design-Builder's capital used in the performance of the Work.
 - 7.5.3.4 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, unless Owner has approved an Adjustment or Change Order.
 - 7.5.3.5 Any bonuses, stock options, employee profit sharing, or incentive pay that is the obligation of Design-Builder to pay.
- 7.5.4 **Pass-Through Costs.** The following costs shall be "passed through" and paid without mark-up or any added Design-Build Fee:
 - 7.5.4.1 Tariffs, duties, and taxes (other than applicable Washington State retail sales tax and Business and Occupancy (B&O) Taxes) incurred in the performance of the Phase 2 Work.
 - 7.5.4.2 Costs for permits, royalties, licenses, tests, and inspections.

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

7.5.5 Washington State Sales Tax. Applicable Washington State retail sales tax shall be separately stated in each Application for Payment and paid by Owner in addition to the applicable GMP. No Design-Build Fee or other markup shall be applied to such sales tax.

7.6 The Guaranteed Maximum Price.

7.6.1 GMP. Design-Builder guarantees that the Contract Price shall not exceed the Guaranteed Maximum Price ("GMP") established in the GMP Amendment. Documents used as basis for the GMP shall be identified in the GMP Amendment. Design-Builder agrees that it will be responsible for all costs of completing the Work which exceed the GMP, as it may be adjusted in accordance with the Contract Documents.

7.6.2 Contingency. The GMP shall include a Design-Builder's contingency, which will be negotiated between the Design-Builder and Owner as a part of the Phase 2 Proposal. 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 Design-Builder and Owner.

7.6.3 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, scope gaps, coordination between trades, overtime, acceleration, failure of a Subcontractor of any tier, pandemic or epidemic, or expediting costs for critical materials.

7.6.4 The Design-Builder shall keep Owner fully informed of the use and status of the contingency. The 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.

7.6.5 The 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. The Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

7.6.6 Savings. If the sum of the actual Design-Build Fee (as defined in 7.4 hereof), Pass-Through Costs (Section 7.5.4) plus the Cost of the Work (Section 7.5) 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 one hundred percent (100%) to Owner. The Owner may opt, at its sole discretion and direction, to utilize Savings for betterments, upgrades and any additional Work. The Design-Builder will keep Owner informed of the status of all costs and opportunities to increase the outcomes of the Project.

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. Allowances are included in the GMP due to uncertainty in scope, price and/or quantity at the time the GMP Amendment is executed.
- 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 advance authorization to proceed from Owner. Design-Builder shall keep Owner informed of the date that Owner must authorize use of the allowance to avoid schedule or cost impacts. 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, and transportation, associated with the applicable Allowance Item. The Design-Builder shall provide the Owner with documentation of the actual costs of allowance items in conformance with Section 9.4 of the General Conditions.
- 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. The Owner may opt, at its sole discretion and direction, to utilize unused Allowance Values for betterments, upgrades and any additional Work. Prior to final payment, the GMP 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 Payments.

- 8.1.1** 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:

8.1.1.1 Draft Application. Design-Builder shall submit to Owner an accounting of the current progress of the Work as compared to Design-Builder's Master Project Schedule, and a draft, itemized application for payment for work performed during the current payment period on a form supplied or approved by Owner. This shall not constitute a payment request. Design-Builder and Owner shall discuss the current progress of the Work and the amount of payment to which Design-Builder is entitled. With each monthly draft payment application, Design-Builder shall provide:

- .1 Substantiation summary. A summary cover sheet showing total actual substantiated costs compared to invoiced costs for the current month and job

to date. At a minimum, the summary sheet shall be itemized by cost type (i.e. cost of work, general conditions, etc.) to include labor, materials, equipment, subcontractors and markups.

- .2 Subcontractor Payment Applications and conditional lien releases.
- .3 A computer-generated transactional level Job Cost Report detailing project costs for the month.
- .4 Design-Builder's Owned Equipment Rental Log in Excel format.

8.1.1.2 Payment Request. After Design-Builder and Owner have met and agreed regarding the updated draft application, and Design-Builder has furnished all progress information required and all data requested by Owner under 8.1.1.1 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 attest 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.

8.1.1.3 Disputed Amounts. If Design-Builder believes it is entitled to payment for Work performed during the prior billing cycle in addition to the agreed-upon amount, Design-Builder may 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 certified copies of all payroll records relating to the additional amount due. Disputed Amounts are due ten (10) working days following the prior approved Payment Application.

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

8.1.2 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. In taking action on the Design-Builder's Applications for Payment the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder, and such action shall not be deemed to be a representation that (1) the Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted (2) that the Owner has made exhaustive or continuous on-site inspections; or (3) that the Owner has made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

8.2 Retainage on Phase 2 Progress Payments.

8.2.1 Pursuant to Chapter 60.28 RCW, 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.

- 8.2.2** If the Design-Builder elects to submit a retainage bond on behalf of itself or one or more of its Subcontractors in accordance with Chapter 60.28 RCW, each such bond must be issued on a form acceptable to Owner by a surety licensed to do business in the state where the Work is located with an A.M. Best rating of A-/IX or better on behalf of Design-Builder or A-/V on behalf of a Subcontractor. Design-Builder is responsible for submitting retainage bond(s) that meet these requirements to Owner on behalf of itself and/or any Subcontractor. Owner will not accept retainage bonds submitted directly to it by a Subcontractor.
- 8.2.3** Sixty (60) days after Final Acceptance of the entire Work, Owner shall release to Design-Builder all retained amounts in accordance with chapter 39.12 RCW and chapter 60.28 RCW, 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.
- 8.3** **Payment to Subcontractors.** Design-Builder shall ensure payment to any Subcontractor (or Sub-Subcontractor), at any tier every thirty (30) days for any Work satisfactorily completed and not disputed, regardless of being paid by Owner. The Design-Builder and Owner jointly commit to reviewing and agreeing eligible costs, back up and completed work as they become due and available for review.
- 8.4** **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.6 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 6.6.2 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 all pricing, compensation, costs, fees, and adjustments under this Contract shall be administered on an Open-Book basis, except to the extent a written amendment expressly establishes a lump-sum payment structure. The Design-Builder and each Subcontractor of any tier working on a cost-reimbursable basis or which submits a claim shall maintain books, ledgers, records, documents, estimates, correspondence, logs, schedules, bids and/or proposals, emails, and other tangible and electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("Records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature.

The Design-Builder and each Subcontractor shall preserve such Records during the course of the Work and for a period of six (6) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of Owner's request, the Design-Builder or a Subcontractor of any tier, as applicable, shall make available at its office during normal business hours all requested Records for inspection, audit and reproduction (including electronic reproduction) by Owner or its representatives; failure to fully comply with this requirement shall constitute a waiver of all claims related to the failure to comply and a material breach of contract.

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 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.

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.

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 Project Manager, 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 _____ 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 _____ (Initial Phase and Phase 1) and _____ (Phase 2) as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions.

10.2.3 Neither the Owner's nor the Design-Builder's Designated Representatives shall be changed without ten (10) days' written notice being given to the other party.

10.3 Key Team Member. 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 team members 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 team members identified below:

Position Title	Name of Individual

These key team members, 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 team members 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 team members 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 team members 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 which were named in Design-Builder's 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 firms proposed as substitutes are 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 Contract, prior to commencing Work, Design-Builder shall obtain at its sole expense 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, except for the Design-Builder's Professional Liability policy and workers' compensation. The insurance provided must be with an insurance company with a rating of A: VIII or higher in the A.M. Best's Key Rating Guide or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII, 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 complete 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 nor 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 Owner shall be excess and not contributing insurance with the Design-Builder's insurance. The Design-Builder's insurance coverage shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability. Design-Builder shall submit, upon execution of this Contract, Certificates of Insurance and additional insured endorsements 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

The CGL insurance shall not exclude XCU or subsidence perils

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 Excess or Umbrella Liability. \$10 million per occurrence and aggregate in excess of the primary CGL during construction and with Products/Completed Operations coverage for a period of six (6) years following Substantial Completion.

11.1.1.4 Automobile. Commercial Automobile Liability with a combined single limit of not less than \$5,000,000 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. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

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 work or 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 \$5,000,000 per occurrence coverage for Bodily Injury and Property Damage. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

11.1.1.6 Design-Builder's Professional Liability.

(1) The Design-Builder's lead Design Consultant 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 \$5,000,000 per claim and annual aggregate (deductible of up to \$150,000 permitted).

(2) All Design Sub-Consultants, and any other Subcontractor (including subcontractors of any tier) performing design services 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 \$150,000 permitted).

(3) All parties required to procure and maintain insurance under this Section 11.1.1.6 (the "Insured Parties") shall promptly notify Owner of any material changes to, interruption of, or termination of this insurance, and will immediately procure replacement coverage. The Insured Parties 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. Owner may modify these insurance requirements for certain entities, on a case-by-case basis, by providing written agreement of such modifications.

(4) If this policy is issued on a claims-made basis:

- a) The retroactive date must be shared and this date must be before the execution date of the contract or the beginning of contract work.
- b) Insurance must be maintained and evidence of insurance must be provided for at least six (6) years after completion of contract work.
- c) If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of six (6) years after completion of contract work.
- d) A copy of the claims reporting requirements must be submitted to the Entity for review.

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. Prior to the start of any construction work 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 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, and if applicable, 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 and flood and including Owner-furnished equipment valued at \$50,000,000.00. The policy shall include coverage for cost of making good for faulty workmanship and defective design (Leg 3 endorsement), and be endorsed to cover the interests, as they may appear, of Owner, Design-Builder, Subcontractor, and Subcontractors of all tiers with Owner and Subcontractors listed as a Named Insured. In the event of a loss to any or all 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 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 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 (at any tier). Design-Builder shall cause each Subcontractor to provide insurance that complies with all applicable requirements of the Design-Builder-provided insurance as set forth herein. Design-Builder shall have sole responsibility for determining the limits of coverage required, if any, to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Design-Builder shall also cause each Subcontractor to include Owner, its officers, officials, employees, and agents as additional insureds under each Subcontractor's Commercial General Liability and Commercial Automobile Liability policies.

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 aggregate GMP for all authorized Phase 2 Work (not including design services, preconstruction services, and other services that are not public works construction), including previously authorized Early Work incorporated into such GMP, plus applicable Washington State 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. Said bonds shall meet all requirements of RCW 39.08 and shall also be issued by a surety with an A.M. Best rating of A/IX or better. All reinsurers that may be called upon to support or share in a surety's obligations specified in connection with the performance and payment bond obligations required of Design-Builder by the Contract Documents must also have an A.M. Best rating of A/VIII or better. 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 Owner Provided Information

Exhibit B Owner's Initial Programming and Overview

Exhibit C Initial Phase Scope

12.2 Notices. All notices required to be given by any party to the other party under this Contract shall be in writing and shall be delivered either in person, by United States mail, to the individuals designated below. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid.

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.

In executing this Contract, Design-Builder declares under penalty of perjury under the law of Washington and in accordance with RCW 39.04.350(2) that within the three-year period immediately preceding the date of the Request for Qualifications issued in this matter, it has not been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

Owner: City of Kirkland

Signature: _____ **Date:** _____

Name: _____

Title: _____

City of Kirkland, Attorney Approved as to Form:

Design-Builder: _____

Signature: _____ **Date:** _____

Name: _____

Title: _____

City of Kirkland

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

DRAFT

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 Initial Programming and Overview.

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 and/or assembled by the Design-Builder consistent with the agreed Final Program unless an adjustment has been made and 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 *Contract* refers to the Progressive Design-Build Contract between Owner and Design-Builder dated [REDACTED], (Modified DBIA 544), as negotiated.

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

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

1.2.12 *Contract Time(s)* are the dates for Substantial Completion and Final Completion as defined in Article 6 of the Contract.

1.2.13 *Cost of the Work* is defined or described in Section 7.5 of the Contract.

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

1.2.15 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant (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.

1.2.16 *Design-Builder* is _____.

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

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

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

1.2.20 *Design-Builder's Principal-In-Charge* is defined or described in Section 10.2.1 of the Contract.

1.2.21 *Design Consultant* is the Key Team Member procured as part of the Design Builder's Team, and who shall be the licensed design professional or employed or retained to furnish design services required under this Contract. A Design Sub-Consultant is a party retained by the Design Consultant or another Design Sub-Consultant to furnish design services required under the Contract Documents. The Engineer of Record shall be a professional engineer licensed in the state of Washington.

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

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

1.2.24 *Final Application for Payment* is defined or described in Section 6.6 of these General Conditions of Contract and 8.4 of the Contract.

1.2.25 *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 set forth in Section 6.6.2 of these General Conditions of Contract.

1.2.26 *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, 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.

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

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

1.2.29 *GMP Amendment* is an amendment to the Contract contingent upon Owner's approval of the Phase 2 Proposal as defined or described in Section 2.3.2.2 of the Contract.

1.2.30 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.

1.2.31 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.

1.2.32 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.

1.2.33 Open-Book means that all costs and expenses of any kind chargeable to the 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.

1.2.34 Owner is the City of Kirkland.

1.2.35 Owner's Initial Programming and Overview are developed by or for Owner to describe Owner's program opportunities and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as other expectations or wants that may be used to evaluate the Design-Builder's performance of the Work. Owner's Initial Programming and Overview are set forth in **Exhibit B** to the Contract.

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

1.2.37 Owner's Project Manager is defined or described in Section 10.1.1 of the Contract.

1.2.38 Inclusion Plan is defined or described in Section 2.11.3 of these General Conditions of Contract.

1.2.39 Owner Provided Information means the documents itemized and linked in **Exhibit A** to the Contract.

1.2.40 Pass-Through Costs is defined or described in Section 7.5.4 of the Contract.

1.2.41 Phase 1 Work is that portion of the Work defined and described in the **Phase 1 Amendment**.

1.2.42 Phase 2 Work is that portion of the Work defined and described in the **GMP Amendment**.

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

1.2.44 Project is the Peter Kirk Pool Renovation Project.

1.2.45 Scheduled Substantial Completion Date is the date established in the applicable GMP Amendment and reflected in the Project Schedule, and subject to adjustment in accordance with these General Conditions of Contract.

1.2.46 Site is the land or premises on which the Project is located.

1.2.47 *Subcontractor* is any person or entity retained by the Project (Designer or Builder) as an independent contractor, or service provider, to perform a portion of the Work at any tier and shall include materialmen and suppliers.

1.2.48 *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.

1.2.49 *Substantial Completion* or *Substantially Complete* means the Work, except for agreed 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.

1.2.50 *Initial Phase Work* is that portion of the Work defined and described in **Exhibit C**.

1.2.51 *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.

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

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

Article 2

Design-Builder's Work and Responsibilities

2.1 General Work.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and Owner's Project Manager and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Project Manager shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Project Manager, or any Key Staff, 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 Owner or to act as or be an agent or employee of Owner.

2.1.2 Design-Builder shall provide Owner's Project Manager 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 all costs and expenses of the Project 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 care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

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 meeting 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 Except as otherwise agreed by the Parties in writing, 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 having jurisdiction over the Project.

2.7 Design-Builder's Work.

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 always 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) If applicable, 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 award
- 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. Not been found out of compliance by the Washington State Apprenticeship and Training Council under chapter 49.04 RCW for the one (1) year immediately prior to award;
 - v. Receive training on the requirements related to public works and prevailing wages under Chapters 39.04 and 39.12 RCW;
 - vi. For the 3-year period immediately preceding the date of award, it has not been determined by final and binding citation from Labor and Industries to have willfully violated the provisions of RCW 49.48, 49.46, or 49.52.
- d) No Serious safety violations in the last 3 years as posted under the Division of Occupational Safety;
- e) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
- f) If applicable hold an electrical contractor license, if required by Chapter 19.28 RCW;
- g) If applicable hold an elevator contractor license, if required by Chapter 70.87 RCW;
- h) If applicable hold a plumbing contractor license, if required by Chapter 18.106 RCW;
- i) Evidence of holding the appropriate level of bonding and insurance required by the Design-Builder related to the work of the subcontract and

- naming Owner as an additional insured with waiver of subrogation; and
- j) Attestation of no conflicts of interest with Owner or Owner staff.

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.

2.8 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. 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.

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

2.9 Warranties and Guaranty.

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

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents or otherwise unacceptable to Owner ("Defective Work"), including that part of the Work subject to Section 2.9 hereof, 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.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is Defective, submit a corrective action plan that details steps to correct Defective Work, including the correction, removal or replacement of the defective Work and any damage caused to other parts of the Work affected by the Defective Work.

2.10.3 Owner will review and approve a corrective action plan and provide authorization to commence corrective action. If Design-Builder fails to start corrective action within seven (7) business days, or as otherwise approved by Owner, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder's Bonding Agent with written notice of defective work and Design-Builder corrective action plan. The conditions of the Performance Bond will be enforced.

2.10.4 If Owner must correct the Defective Work, Design-Builder shall be responsible for all costs incurred by Owner in performing such correction. If the Defective Work creates an emergency requiring an immediate response, emergency response costs are also the responsibility of the Design-Builder.

2.10.5 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct Defective 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 Regulatory Requirements.

2.11.1 Prevailing Wages

2.11.1.1 Design-Builder and its Subcontractors shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of

the Early Work and Phase 2 Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the localities of the Construction Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Design-Builder's responsibility to verify the applicable prevailing wage rate.

- 2.11.1.2** Before commencing the Early Work or Phase 2 Work, Design-Builder and all Subcontractors shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid to each classification of laborers, workers, or mechanics employed upon the Construction Work by Design-Builder and its Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
- 2.11.1.3** All Statements of Intent to Pay Prevailing Wages, Affidavits of Wages Paid and Certified Payrolls, including a signed Statement of Compliance for federal-aid projects, shall be submitted to Owner and to the Washington State Department of Labor and Industries' online Prevailing Wage Intent & Affidavit (PWIA) system.
- 2.11.1.4** 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.
- 2.11.1.5** Each Application for Payment submitted by Design-Builder shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- 2.11.1.6** In compliance with Chapter 296-127 WAC, Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid that is submitted to the Department of Labor and Industries for certification.

2.11.2 Hours of Labor

- 2.11.2.1** Design-Builder shall comply with all applicable provisions of RCW 49.28, which are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Design-Builder, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work more than eight (8) hours in any one (1) Calendar Day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight (8) hours of each Calendar Day shall be not less than one and one-half (1.5) times the rate allowed for the same amount of time during eight (8) hours' service.
- 2.11.2.2** Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions to enter into an agreement with its employees in which the employees work up to ten (10) hours in a Calendar Day. No such agreement may provide that the employees work ten (10) hour days for more than four (4) Calendar Days per week. Any such agreement is subject to approval by the employees. The overtime

provisions of RCW 49.28 shall not apply to the hours, up to forty hours (40) per week, worked pursuant to any such agreement.

2.11.3 Apprentice Utilization

2.11.3.1 This Contract includes an Apprentice Utilization Requirement of fifteen percent (15%). This requirement establishes the minimum percentage of project Labor Hours that shall be performed by Apprentices.

2.11.3.2 Definitions. For the purposes of the Apprentice Utilization Requirement, the following definitions apply:

- i. Apprentice is an apprentice enrolled in an apprenticeship program approved or recognized by the Washington State Apprenticeship and Training Council (WSATC).
- ii. Apprentice Utilization Requirement is the minimum percentage of overall Labor Hours that must be worked by Apprentices for contracts subject to the Utilization Program.
- iii. Good Faith Effort (GFE) is a detailed description of the effort made by Design-Builder to meet the Apprenticeship Utilization Requirement for a project through good faith, including but not limited to specific steps as described elsewhere in this specification. If Design-Builder is not meeting the Apprenticeship Utilization Requirement but can demonstrate they have put in a good faith effort to do so, they can qualify for a reduction or waiver of the requirement.
- iv. Labor Hours are the total hours performed by all workers receiving an hourly wage who are directly employed for the Project, including hours performed by workers employed by Design-Builder and all Subcontractors. Labor Hours shall include additional hours worked as a result of a Contract adjustment or pursuant to an agreed-upon Change Order. Total labor hours exclude hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements. However, total labor hours shall include the hours worked by supervisors, foremen, and superintendents if it is determined they are subject to prevailing wage requirements pursuant to WAC 296-127-015. Total labor hours include all hours worked by Design-Builder and all Subcontractors on the Project.

2.11.3.3 Design-Builder shall meet or exceed the apprentice utilization requirements of the Contract Documents on all labor hours on the Project. Owner has determined a monetary incentive of \$1,000.00 for meeting the goals, and a monetary penalty of \$1,000.00 for not meeting the goals.

2.11.3.4 Design-Builder shall prepare and provide an Apprentice Utilization Plan as part of its Phase 2 Proposal. The Plan shall demonstrate how and when the Design-Builder intends to achieve the Apprentice Utilization Requirement. The Plan shall be in sufficient detail for Owner to track Design-Builder's progress in meeting the utilization requirements and shall be updated and resubmitted as the Work progresses or when ordered by Owner.

2.11.3.5 If Design-Builder is unable to demonstrate ability to meet the Apprentice Utilization Requirement in its Apprentice Utilization Plan, it must submit GFE documentation to Owner for review and comment with its Apprentice Utilization Plan. Design-Builder shall actively seek out opportunities to meet the Apprentice Utilization Requirement during the construction Work. The GFE shall describe in detail why Design-Builder is not or was not able to attain the Apprentice Utilization Requirement. The GFE documentation shall address one or more of the following areas:

- i. Correspondence on solicitation of Apprentices from a State-approved Apprenticeship Training Program(s), and the response from the solicited State-Approved Apprenticeship Training Program(s) when there is a lack of availability of Apprentices.
- ii. Provide documentation that shows Contract requirements for Special Training requirements affect the ability to obtain Apprentice Labor Hours on this Project.
- iii. Provide documentation demonstrating what efforts Design-Builder has taken to require subcontractors to solicit and employ Apprentices. Documentation could be posters placed on-site, emphasis in subcontracts about employing Apprentices, letters, memos or other correspondence from Design-Builder to subcontractor that put an emphasis on employing Apprentices.

2.11.3.6 If, during the term of the Contract, Design-Builder determines that it will be unable to meet the Apprentice Utilization Requirement, Design-Builder may make a written request to Owner to reduce the required percentage. The request shall include documentation of:

- i. Design-Builder's good faith efforts to use registered apprentices; and/or
- ii. The lack of availability of registered apprentices; and/or
- iii. A disproportionately high ratio of material costs to labor hours, which makes infeasible the required minimum level of apprentice participation.

2.11.3.7 Owner shall evaluate the request and, if appropriate, a Change Order shall be prepared by Owner reducing the utilization requirement. Owner reserves the right to ask for additional information or supporting documentation.

2.11.3.8 With its monthly Application for Payment, Design-Builder shall submit the Apprentice Utilization Report on the form provided by Owner. Owner reserves the right to request certified payrolls or other such reporting documentation electronically.

2.11.3.9 When using the Washington State L&I online PWIA system to submit payroll data, Design-Builder shall also submit on a monthly basis all information requested on the Utilization tab. Design-Builder shall complete the Report for itself and its subcontractors, including all sections related to the use of small businesses, women, minority and other disadvantaged business enterprises, and demographic information for apprentices.

2.11.3.10 Design-Builder shall include the apprentice utilization requirements of this Section in all Subcontracts executed for the Project.

2.11.4 Non Discrimination

2.11.4.1 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.

2.11.4.2 Design-Builder shall comply with all requirements of the federal Civil Rights Act.

2.11.5 Subcontracting and Inclusion Plan

2.11.5.1 Pursuant to the Design-Builder's proposed Subcontracting and Inclusion Plan, the Design-Builder shall actively and in good faith provide opportunities for underutilized, disadvantaged, and/or small businesses as subcontractors, subconsultants, and/or suppliers in the performance of the Work. As part of the Subcontracting and Inclusion Plan, the Design-Builder shall implement an outreach strategy. The Subcontracting and Inclusion Plan will outline the proactive strategies, resource commitments, and specific steps the Design-Builder will take to effectively engage these firms for utilization and performance on this Project. The Design-Builder shall furnish evidence of its compliance with the Subcontracting and Inclusion Plan with the monthly project report.

2.11.5.2 As used in this section, these firms may include, but are not limited to, firms certified by the Office of Minority and Women Owned Enterprises (OMWBE), the US Government, registered with other relevant agencies, or those that are self-identified and accepted by Owner..

2.11.5.3 Reporting Requirements

- A. On a monthly basis, Design-Builder shall submit to Owner an updated report indicating the names and amounts paid to Subcontractors, subconsultants, service providers, and suppliers it has utilized during the preceding month, and if they are Disadvantaged Business Enterprise.
- B. Design-Builder shall track and provide Owner and the OMWBE any Project information required to be submitted by Design-Builder in accordance with state law, including RCW 39.10 and as requested by OMWBE.
- C. Prior to Final Acceptance, Design-Builder shall submit a report of total dollar amounts paid to each Disadvantaged Business Enterprise.

2.11.6 CPARB Reporting. Design-Builder shall provide Owner and, if requested, 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.

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 Owner Provided Information. Owner has provided Design-Builder with access to Owner Provided Information (the "Owner Provided Information") listed in Exhibit A to the Contract. Owner provides such Owner Provided Information 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 Owner Provided Information 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 Owner Provided Information 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 Owner's Representative.

3.3.1 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.

3.4 Government Approvals and Permits.

3.4.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees for the Project, that are not required by law to be obtained by Owner.

3.5 Owner's Separate Contractors.

3.5.1 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 to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, 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.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification 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 of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. 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.

4.1.7 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 its 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 Design-Builder 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 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 Conditions. If Design Builder encounters conditions that were concealed physical conditions that could not have reasonably been discovered, which differ materially from those indicated in the Validation Report, 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 3 business days after becoming aware of or having encountered such condition. Design-Builder shall not 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 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; or
 - c) Design-Builder knew, or should have known, of such conditions during Initial/Phase 1 of the Project but failed to identify such conditions, document such conditions in the Contract Documents, or otherwise take into account the conditions when designing the Project.
- 4.2.2.3** 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 its first Application for Payment. 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; 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 Master Project Schedule. Design-Builder shall provide documentation substantiating the cost allocation if asked by Owner. Upon acceptance of the Schedule of Values by Owner, it shall be used as a basis for all requests for payment.

6.1.2 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. 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 Initial Work, Phase 1 Work, and Phase 2 Work 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, to resubmit disputed amounts.

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 Design-Builder's Payment Obligations.

6.4.1 Design-Builder will pay Design Consultants and Subcontractors, 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.

6.5 Substantial Completion.

6.5.1 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.

6.5.2 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.

6.5.3 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 6.5.1 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.

6.6 Final Payment.

6.6.1 After receipt of a Final Application for Payment from Design-Builder, together with all information required by Section 6.6.2 below, Owner shall make final payment by the time required in the Contract if Design-Builder has achieved Final Completion.

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

- 6.6.2.1** 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;
- 6.6.2.2** 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;
- 6.6.2.3** Consent of Design-Builder's surety, if any, to final payment;
- 6.6.2.4** All reports, records, training and operating manuals, warranties and other deliverables required by the Contract Documents;
- 6.6.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

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

6.6.2.7 A signed and stamped set of all calculations supporting the design of the Project.

6.6.3 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 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 Substantial Completion. 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 or 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.

Design-Builder's General Indemnification. In addition to any other indemnification of defense obligation that Design-Builder may have under the Contract Documents, Design-Builder shall defend, indemnify, and hold Owner, its officers, officials, employees, and agents (the "Indemnified Parties") harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

- 7.3.1.1** The sole negligence or willful misconduct of Design-Builder or any of its Design Consultants or Subcontractors or Suppliers of any tier, or the agents or employees of same (collectively, the "Design-Build Parties");
- 7.3.1.2** The concurrent negligence of the Design-Build Parties, but only to the extent of the negligence of the Design-Build Parties;
- 7.3.1.3** A breach of this Contract by the Design-Build Parties;
- 7.3.1.4** The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.

In addition to a remedy authorized by law, Owner may retain so much of the money due the Design-Builder as deemed necessary by Owner to ensure the defense and indemnification obligations of this section until disposition has been made of such suits or claims.

Pursuant to RCW 4.24.115, claims, suits, or actions result from the concurrent negligence of (a) the Indemnified Parties and (b) the Design-Build Parties the indemnity provisions provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the Design-Build Parties' negligence.

In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Design-Builder, its consultants of any tier, Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or any consultant or Subcontractor under Title 51 RCW,

the Industrial Insurance Act, or any other employee benefit acts. In addition, Design-Builder waives immunity as to Owner only, in accordance with Title 51 RCW. The Design-Builder intends to indemnify, defend and hold Owner harmless to the fullest extent allowed by applicable law. To the extent that applicable law invalidates any portion of this Section, the remainder shall be construed to provide the broadest protection to Owner allowed by applicable law. The parties acknowledge that the foregoing waiver of Title 51 RCW immunity was mutually negotiated and that the provisions of this Section shall survive expiration or termination of this Contract by either party for any reason. The Design-Builder shall similarly require that each subcontractor it retains in connection with the project comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subcontractor.

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.

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 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:

- 8.2.2.1** 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.
- 8.2.2.2** Demonstrate that the delay could not have been avoided by re-sequencing of the Work or other reasonable alternatives.
- 8.2.2.3** 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.

8.2.3 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.

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 Work 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 Request for Change Order. 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 Request for Change Order no later than seven (7) days after the event or condition giving rise to the claim for relief.
- 9.1.3.2** Unless Owner's Representative issues written notice authorizing Design-Builder additional time to submit the Request for Change Order, Design-Builder shall provide a written Request for Change Order to Owner's Representative no later than 21 days after delivery of the Notice of Intent to Submit a Request for Change Order. The Request for Change Order must include (a) a description of the request, rationale, and specific provisions of the Contract Documents, (b) specific dollar amount of the requested change to GMP, covering all costs associated with the requested Change Order; (c) specific request for change in Contract Time (number of days); and (d) 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 Request for Change Order.

- 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 Owner, the work associated with the pending Request for Change Order.
- 9.1.3.4** A Request for Change order 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 Request for Change Order, 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 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 Work Change Directive. Upon receipt of 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 Work Change Directives.

9.2.1 A Work 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 Work 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 and Pricing.

9.4.1 The value of any changed Work or of any Claim for an increase or decrease in the GMP or Contract Sum shall be calculated in accordance with Article 7 of the Contract.

9.4.2 Tariffs. The GMP and/or Contract Sum may be adjusted for tariffs, duties and/or other taxes that are assessed (or removed) after execution of the GMP Amendment. The value of any such increase or decrease in the GMP and/or Contract Sum shall be calculated and substantiated as follows:

Price increase: In the event of a materials price INCREASE that is actually and demonstrably due to assessment of tariffs, duties and/or other taxes, the GMP and/or Contract Sum shall be reasonably adjusted to reconcile the materials price INCREASE.

The Design-Builder shall not be entitled to an adjustment in the Design-Build Fee or the Contract Time.

Price decrease: In the event of a materials price DECREASE that is actually and demonstrably due to removal of previously-assessed tariffs, duties and/or other taxes, the GMP and/or Contract Sum shall be reasonably adjusted to reconcile the materials price DECREASE. The Design-Builder shall not be entitled to an adjustment in the Design-Build Fee or the Contract Time.

No adjustment for materials quantities: No adjustments will be made to changes in materials quantities. The intent of this document is to reconcile ONLY materials costs.

The Design-Builder shall in no event be entitled to an increase of the GMP and/or Contract Sum for any tariffs, duties and/or other taxes that were imposed or assessed prior to the date of the GMP Amendment.

The Owner shall have the right to conduct audits for the purpose of substantiating cost increases due to tariffs. These audits are intended to verify the validity and accuracy of the cost increase claims submitted by the Design-Builder and/or all other lower tier subcontractors (all referred to as "Design-Builder" in this section.) The Design-Builder shall provide the Owner or its designated auditors with access to all relevant records and documentation required for the audit. This includes providing timely access to records, responding to inquiries, and facilitating interviews with relevant personnel if needed.

The Design-Builder agrees to fully cooperate with the Owner or its designated auditors during the audit process. The Owner shall ensure that all information obtained during the audit is treated as confidential and used solely for the purpose of substantiating the cost increase due to tariffs. The Owner shall not disclose any confidential information to third parties without the Design-Builder's prior written consent, except as required by law.

Should the audit reveal any discrepancies or inaccuracies in the claimed cost increases, the Design-Builder shall bear the responsibility for any unsubstantiated costs and shall not be entitled to an adjustment in the contract price for those costs.

Any access needed shall be granted during normal business hours and upon reasonable notice. The audit shall include a review of all documentation and records related to the cost increases, including but not limited to:

- Official tariff notifications or announcements from relevant government authorities. The Design-Builder is required to provide copies of official tariff notifications or announcements issued by the relevant government authorities serving as verification that new tariffs have been implemented and are affecting material costs.
- Supplier price increase notices explicitly stating that the increase is due to tariffs. The Design-Builder must submit written documentation from suppliers indicating the new prices and explicitly stating that the increase is due to tariffs. Acceptable forms of documentation include letters, emails, or formal notices from suppliers.

- Contracts and agreements with suppliers that include price escalation clauses related to tariffs. The Design-Builder shall provide copies of contracts or agreements with suppliers that contain price escalation clauses related to tariffs outlining the conditions under which prices can be increased due to external factors like tariffs.
- Recent invoices and receipts showing the increased costs of materials. The Design-Builder is required to submit recent invoices and receipts that clearly show the increased costs of materials. The dates and amounts on these documents must reflect the impact of the tariff-related price increases.
- Receipts and Bills of Lading showing the actual costs incurred and the quantity of materials affected by the tariff increase.
- Historical Cost Data. Cost comparisons detailing specific material costs prior to the implementation of tariffs and after the tariff increase. Comparison detail shall include calculations showing the impact of the tariffs on the overall cost. These calculations shall be supported by material invoices of prior purchases, supplier increase notices, and purchase invoices detailed herein as justification of material price increase due to tariffs.
- Copies of proof of payment to suppliers for the materials at the increased cost. This includes but is not limited to canceled checks, receipts, and electronic payments involved in the purchasing of the materials.

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 Request for Change Order is denied or deemed denied by Owner or (b) a Unilateral Change Order is issued by Owner.
- 10.2 Claim Deadline.** Unless otherwise agreed to in writing by Owner, a fully documented Claim shall be received by Owner within thirty (30) days after the denial or deemed denial of a Request for Change Order, 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 Work Change Directive. 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 Owner's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order 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 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 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. Upon Owner's request, the Design-Builder shall provide at a minimum the following records electronically within a reasonable amount of time:

10.5.1 All documents itemized in Section 8.1.1.1 of the Contract.

10.5.2 Escrow bid documents, take off sheets, and calculations used to prepare the bid and/or quotes.

10.5.3 Take off sheets, calculations, purchase orders, vouchers quotes, other financial data to support Claims or any other request for damages or additional money.

10.5.4 Financial statements for all years during the Contract Time. In addition, the Owner may require, if it deems appropriate, additional financial statements for three (3) years preceding execution of the Contract and six (6) years following Final Acceptance of the Contract.

10.5.5 Depreciation records on all Design-Builder's and Subcontractor's equipment, whether these records are maintained by the Design-Builder and Subcontractor involved, its accountant, or others.

10.5.6 All documents establishing the actual cost of owning and operating equipment.

10.5.7 All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim.

10.5.8 Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractor, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

10.5.9 Worksheets, software, and all other documents used by the Design-Builder (a) to prepare its GMP Proposal or schedule(s) and/or (b) to prepare quotes and bids to the Design-Builder.

10.5.10 All schedule documents, including electronic versions, planned resource codes, or schedules and summaries, including but not limited to those that support the Design-Builder's request for change in the Contract Time.

10.5.11 All submittals.

10.5.12 All other documents, including email, related to the Project, Claims, or Change Orders.

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 through the life of the Project, to avoid or minimize disputes or disagreements.

10.7.2 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 to avoid unnecessary losses, delays, and disruptions to the Work. If a matter cannot be resolved through the Design-Builder, Owner, and Owner's Owner Representative, Design-Builder's Principal-In-Charge/Signatory (PIC) and Owner's Signatory, upon the request of any 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 any issue.

10.7.3 If after meeting the Design-Builder's PIC and Owner's Signatory, determine that the dispute cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting a formal Claim and request facilitated, non-binding mediation.

10.7.4 The mediation shall be conducted by a mutually agreeable impartial mediator. 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 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 near 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 Completion. 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.

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 does not waive and does not otherwise affect (1) any payment of liquidated damages that may be established by the parties, and which would be intended, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential; (2) Owner's rights of indemnification under the Contract; or (3) Owner's entitlement to actual direct damages arising out of or related to breach of this Contract by the Design-Builder.

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 or stoppage of the Work by Owner.

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.

11.2.4 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. 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 re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.9 hereof.

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

11.3.1 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:

11.3.1.1 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.

11.3.1.2 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.

11.3.1.3 Owner has failed to pay Design-Builder for properly submitted and approved accurate Applications for Payment in accordance with Section 8.1 of the Contract for undisputed amounts due and owing.

11.3.2 Upon the occurrence of an event set forth in Section 11.3.1 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.

11.4 Bankruptcy of Design-Builder.

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

11.4.1.1 The Design-Builder, its trustee or other successor, shall furnish, upon request of 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

11.4.1.2 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 non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Contract, declare the Contract terminated and pursue any other recourse available to Owner under this Article 11.

11.4.2 The rights and remedies under Section 11.4.1 above shall not be deemed to limit the ability of 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 Public Records.** This Contract and all public records associated with this Contract shall be available from Owner for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Design-Builder are needed for Owner to respond to a request under the Act, as determined by Owner, the Design-Builder agrees to make them promptly available to Owner. If the Design-Builder considers any portion of any record provided to Owner under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, the Design-Builder shall clearly identify any specific information that it claims to be confidential or proprietary. If Owner receives a request under the Act to inspect or copy the information so identified by the Design-Builder and Owner determines that release of the information is required by the Act or otherwise appropriate, Owner's sole obligations shall be to notify the Design-Builder (a) of the request and (b) of the date that such information will be released to the requester unless the Design-Builder obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Design-Builder fails to timely obtain a court order enjoining disclosure, Owner will release the requested information on the date specified. Owner has, and by this section assumes, no obligation on behalf of the Design-Builder to claim any exemption from disclosure under the Act. Owner shall not be liable to the Design-Builder for releasing records not clearly identified by the Design-Builder as confidential or proprietary. Owner shall not be liable to the Design-Builder for any records that Owner releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.
- 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. Design-Builder shall include a "Stipulation of Venue in King County" in all subcontracts hereunder. Should the Design-Builder or any member of the Design-Build Team be a non-resident of Washington State, each shall designate a Washington resident as agent upon whom process may be served before commencing work under this Contract.
- 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 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.

-END OF GENERAL CONDITIONS-

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