

**City of Republic
Republic Childcare Facility, Library & Community Center
Progressive Design Build RFQ – June 16, 2026**

**ADDENDUM No. 2
June 30, 2026**

The document entitled “**Request for Qualifications – Republic Childcare Facility, Library & Community Center**”, is hereby amended as follows:

1. Questions & Answers

No	Reference Section/s	Question	Answer
1	N/A	I just attended the Teams meeting and wondering if it is possible to include the slide show in the next addendum as it included some additional information that I cannot locate in the original RFQ.	Yes. Included in this addendum.
2	N/A	I attended the pre-proposal meeting last Thursday and asked about the procurement method for commissioning (Cx) services. The design-build advisor team indicated that this is still under consideration, and I have not seen any follow-up RFI documents addressing questions from the meeting. Has the City decided whether the Cx services will be procured directly, or through the selected design-build team? We are interested in pursuing the Cx services for this project and would appreciate clarification on the procurement path. Specifically, should we expect a separate RFQ from the City, or where can we find information on the highest-scoring finalist design-build team after August 21, 2026, so we may reach out regarding potential Cx opportunities if the services are procured through the DB team?	The City has not yet finalized the procurement approach for commissioning (Cx) services. To the extent such services are required to be procured directly by the City, the City will advertise for those services at the appropriate time and in accordance with applicable procurement requirements. Information regarding the selected Design-Builder will be publicly available following completion of the selection process. Firms interested in potential subcontracting opportunities may contact the selected Design-Builder directly at that time.

2. RFQ Section 11 is amended as follows:

11.0 ATTACHMENTS

EXHIBIT A – Contractor Verification

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

3. Draft Progressive Design-Build Contract

The draft Progressive Design-Build Contract is being provided with this Addendum for the Republic Childcare Facility, Library & Community Center Project. Proposers with contract-specific questions may submit them through the end of the day on July 2, 2026.

At this stage, questions should be limited to matters that may affect a Proposer's decision to participate in this procurement (i.e., go/no-go considerations). Shortlisted Proposers will have an opportunity during the RFP phase to review the draft contract in greater detail and submit additional questions and comments regarding the contract documents.

4. Attachments

- i. Preproposal Meeting Attendee Sign-In
- ii. Preproposal Meeting Slides
- iii. Draft progressive Design Build Contract

End of Addendum No. 2

ADDENDUM No. 2

Attachment i – Pre-Proposal Meeting Attendee Sign-In



City of Republic
Republic Childcare Facility, Library & Community Center
Progressive Design-Builder Services
Non-Mandatory Pre-Submittal Meeting Attendee Sign-In
Thursday, June 25, at 9:00 a.m.



<u>Name</u>	<u>Company</u>	<u>Email Address</u>
Amy Brown-Minden	Design West Architects	<i>Not provided</i>
Anjali Grant	AGC	anjali@agrantdesign.com
Bernie Hansen	HBHansen Construction	Bernie@hbhansen.com
Boone Helm	Walker Construction	bhelm@walkerconstructioninc.com
Boyd Lusarreta	MMEC Architecture & Interiors	boyd@mmecarchitecture.com
Bret Miche	Graham Construction	<i>Not provided</i>
Chris Martindale	Sellen Construction	chrism@sellen.com
Christopher Spadafore	BCRA	cspadafore@bcradesign.com
Christine Baldwin	HKP Architects	cbaldwin@hkpa.com
Chuck Curulla	Holmberg	chuck.curulla@holmbergco.com
David Nimmo	Stantec	david.nimmo@stantec.com
Debbie Bravo	Architects West	debbieb@architectswest.com
Emily Burt	Friends of Republic Library	emilyb@forl@gmail.com
Eric Dixon	Coughlin Porter Lundeen	ericd@cplinc.com
Eric Halme	Halme Cascade	eric@halmecascade.com
Eric Murphy	Cushing Terrell	ericmurphy@cushingterrell.com
Eric Olson	Absher Construction	eric.olson@absherco.com
Erik Fuentes	True Edge Engineering (Minority Owned)	erik@trueedgeengineering.com
Erin Mayer	Absher Construction	erin.mayer@absherco.com
Garret Frerichs	Ethos Civil	garret@ethoscivil.com
Heidi Maki	MMEC Architecture & Interiors	heidi@mmecarchitecture.com
Hunter Chambers	Walker Construction	hchambers@walkerconstructioninc.com
Jake Huang	P2S Commissioning	jake.huang@p2sinc.com
Jason Lane	Howard S. Wright	jlane@hswc.com
Jason Solie	TRICO Companies	jason@tricompanies.com
Jerry Burk	Turner & Townsend Heery	jerry.burk@turntown.com
John Faley	Cushing Terrell	johnfaley@cushingterrell.com
Josh Roeter	Rimmer & Roeter Construction	josh@rimmerandroeter.com
Julie Blazek	HKP Architects	jblazek@hkpa.com
Justin Robertson	Ginno Construction	jrobertson@ginnoconstruction.com

<u>Name</u>	<u>Company</u>	<u>Email Address</u>
Kayla Golden-Baker	Halme Cascade	kaylag@halmecascade.com
Ken Murphy	ALSC Architects	kmurphy@alscarchitects.com
Lucas Johnson	Ethos Civil	lucas@ethoscivil.com
Luis Martinez	Howard S. Wright	martinezl@hswc.com
Makana Walker	CB Const, Inc.	bidding@cbconst.us
Matt Offe	Absher Construction	matt.off@absherco.com
Melissa McFadgen	NAC Architecture	mmcfadgen@nacarchitecture.com
Michell Kaminski	Design West Architects	mkaminski@designwestpnw.com
Nicky Poole-Duris	BCRA	npool-duris@bcradesign.com
Nicole Mecum	Cushing Terrell	nicolemecum@cushingerrell.com
Peter Firth	Apollo, Inc.	pete.firth@apollo-gc.com
Renee Giroux	Graham Construction	renee.giroux@grahamus.com
Scott Nicks	NAC Architecture	snicks@nacarchitecture.com
Spencer Helfrich	Howard S. Wright	helfrichs@hswc.com
Susan Willhoft	Pacific Landscape Architecture	susanwillhoft@paclarch.com
Tom Stirling	Syntier Engineering	Tom@syntierengr.com
Troy Johnson	Graham Construction	troy.johnson@grahamus.com
William Thompson	Ethos Civil	william@ethoscivil.com

ADDENDUM No. 2

Attachment ii – Pre-Proposal Meeting Slides



Progressive Design-Build Request for Qualifications

Preproposal Meeting

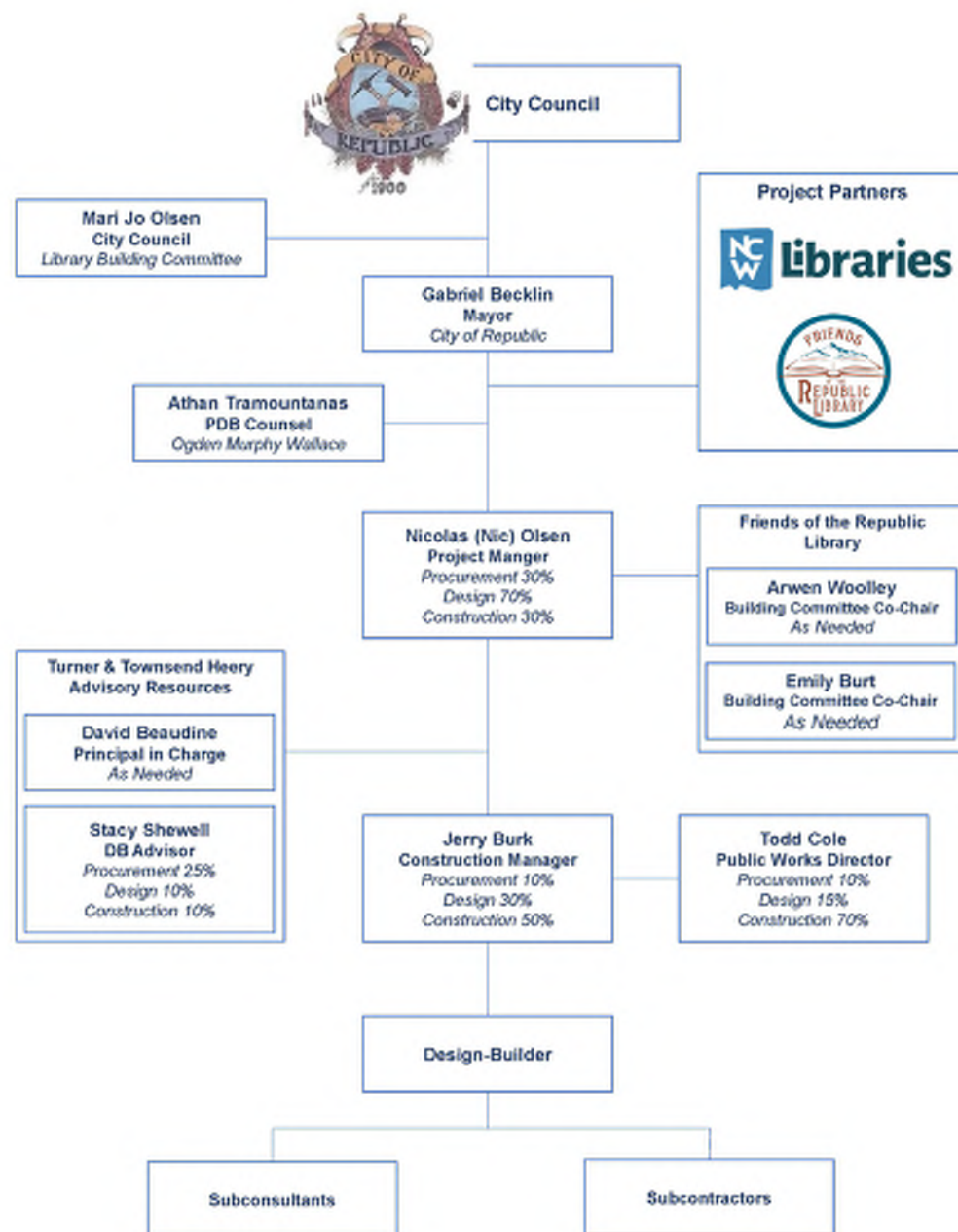
June 25, 2026

Introductions

- Nic Olsen
Project Manager
- Emily Burt
Friends of the Republic Library
- Jerry Burk
Project Manager
- Stacy Shewell
PDB Advisor



Project Team



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Project Stakeholders



Project Background



Project Scope

~14,000 SF multi-use civic facility:

- Public Library (~5,000 SF)
- Childcare / Early Learning (~5,200 SF)
- Community / Flexible Space (~3,200

Serves as a central hub for:

- Education
- Family services
- Community activities



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Budget

Costs for Professional Services (A/E, Legal etc.)	\$1,200.000
Estimated project construction costs (including contingencies)	\$10,500,000
Subtotal Estimated Design-Builder GMP	\$11,700,000
Equipment and furnishing costs	\$750,000
Off-site costs	-
Contract administration costs (owner, legal, cm etc.)	\$400,000
Contingencies (owner)	\$1,200,000
Other related project costs (land acquisition, initial site prep.)	\$1,000,000
Sales Tax	\$950,000
Total	\$16,000,000



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Schedule

Description	Status/Duration
Procure Management Consultant (including DB Advisor)	Completed
Procure Design-Build Legal Services	Completed
PDB Procurement	
PDB RFQ Advertisement #1	Completed
PDB RFQ Advertisement #2	Completed
Pre-Proposal Meeting	6/25/2026
PDB SOQ Due	7/9/2026
Selection Committee SOQ Review and Scoring	7/9/2026-7/16/2026
Notify Shortlisted Finalist Teams	7/20/2026
Issue RFP to Finalists	7/24/2026
PDB Interactive Meetings	8/3/2026-8/4/2026
PDB Management Plan and Fee Proposal Due	8/13/2026
Management Plan and Fee Review and Scoring	8/14/2026-8/20/2026
Announce Apparent Successful Proposer	8/21/2026
Design-Builder NTP	September 2026
Design and Construction <i>(anticipated, to be refined with DB)</i>	
Project Validation Period	Oct. 2026 – Dec. 2026
Design	Jan. 2027 – June 2027
Construction	May 2027 – Aug. 2028
Closeout	Aug. 2028 – Oct. 2028



Why Progressive Design-Build?

- Early cost modeling is critical to right-sizing the building for a rural community
- Co-locating three distinct programs requires real-time design tradeoffs
- Rural location and limited local contractor capacity increase delivery risk
- Complex site conditions benefit from builder input before design is fixed
- Must align budget with scope & early cost certainty
- Time to market and expedited schedule
- Single point of responsibility for Owner



Progressive Design-Build Process

1. Validation

- Align Scope, Cost and Schedule Expectations

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

← Shortlist, 2-4 teams

Step 2 – Request for Proposals

Interactive Meeting

Management Plan

Fee Proposal



Step 1 - Evaluation

CRITERIA

Proposed Team - 40 pts

Relevant Project Experience - 35 pts

Past Performance MWBE - 5 pts

We are looking for:

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



SOQ Requirements

Questions

- All questions are to be directed to **Nic Olsen** @ email listed in the SOQ
- Last day for questions: **June 29, 2026**

Format

- Double-sided A3 (11x17)
- Resumes limit to 2 pages each, no more than 7 key personnel may be included
- Digital submission

Due Date

- **July 9, 2026, 3:00 PM**



Thank you!



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ADDENDUM No. 2

Attachment iii – Draft Progressive Design-Build Contract

Progressive Design- Build Agreement



Progressive Design-Build Agreement

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____ in the year of 20_____, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

DESIGN-BUILDER:

(Name and address)

PROJECT:

Republic Childcare Facility, Library & Community Center, City of Republic, Washington

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

Article 1

Design-Builder's Services and Responsibilities

1.1 General Services.

1.1.1 Owner shall provide Design-Builder with initial information and requirements for the Project as set forth in Exhibit A. The parties intend to replace Exhibit A with the Project Criteria, developed by the Design-Builder in conjunction with the Owner as part of its Phase 1a Services, described in Section 1.2.1.

1.1.2 The Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. The Project Criteria may also include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.

1.2 Phased Services.

1.2.1 Phase 1 Services. Design-Builder's Phase 1 Services shall consist of two portions: validation services ("Phase 1a Services") and balance of design services to establish scope and contract price for Phase 2 ("Phase 1b Services") (Phase 1a Services and Phase 1b Services are collectively the "Phase 1 Services"). The initial scope of work under this Agreement at the time of execution is the Phase 1a Services. If the Owner and Design-Builder have validated the Project's viability to the satisfaction of the Owner during the Phase 1a Services, the Owner will release the Design-Builder to perform Phase 2 Services by issuing an amendment to this Agreement that incorporates the Project Criteria as Exhibit A to this Agreement and adds Phase 1b Services scope to Exhibit B. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised by mutual agreement of Owner and Design-Builder, as set forth in Exhibit B, Phase 1 Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.1.1 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Phase 1 Scope of Services (either as a percentage of design completion or by defined deliverables).

1.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the GMP Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Section 1.3.

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

1.2.4 Phase 2 Proposal. Design-Builder may develop a Phase 2 Proposal at any point following completion of the 30 percent design and any other Basis of Design Documents upon which the parties may agree. Design-Builder shall submit a proposal to Owner (the "Phase 2 Proposal") for the completion of the design and construction for the Project for the Contract Price, which shall be

based on Design-Builder's Fee, the Construction General Conditions Costs plus the Cost of the Phase 2 Work with a Guaranteed Maximum Price (GMP).

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

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

- i The General Conditions Cap as defined in Section 6.3 hereof
- ii Design-Builder's Fee as defined in Section 6.4.1 hereof;
- iii The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.2 hereof; and
- iv If applicable, any prices established under Section 6.1.3 hereof;

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

1.2.5.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Phase 2 Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

1.2.5.4 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 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

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

1.2.5.6 If applicable, a schedule of alternate prices;

1.2.5.7 If applicable, a schedule of unit prices;

1.2.5.8 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 Contract Price and/or Contract Time(s);

1.2.5.9 If applicable, a Savings provision;

1.2.5.10 If applicable, Performance Incentives;

1.2.5.11 The time limit for acceptance of the Phase 2 Proposal; and

1.2.5.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

1.3 Review and Adjustment to Phase 2 Proposal.

1.3.1 After submission of the Phase 2 Proposal, Design-Builder and Owner shall meet to discuss and review the Phase 2 Proposal. If Owner has any comments regarding the Phase 2 Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Phase 2 Proposal. Upon request, the Design-Builder shall provide all underlying data, cost analysis, pricing, designs, and specifications it relied upon in preparing the Phase 2 Proposal.

1.3.2 Acceptance of Phase 2 Proposal. If Owner accepts the Phase 2 Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (GMP Amendment). The Owner has sole discretion to decide whether to enter the GMP Amendment. If the parties have agreed upon the Phase 2 Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the GMP Amendment, as it may be revised.

1.3.3 Failure to Accept the Phase 2 Proposal. If Owner rejects the Phase 2 Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Phase 2 Proposal 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 Phase 2 of the Project will proceed, with Owner having the following options:

- i Owner may suggest modifications to the Phase 2 Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Phase 2 Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2 above;
- ii Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii Owner may terminate this Agreement for convenience in accordance with Article 8 hereof, but not to exceed the amount stated in Section 6.1.1, as may have been modified by the Contract Documents. The Design-Builder waives any right to seek additional compensation, remedies, or damages in that event.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 1.3.3 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to any additional payments provided for in Section 8 hereof (if any); or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.3 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 1.3.3 iii, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of the General Conditions of Contract Between Owner and Design-Builder* (2022 Edition), as modified ("the General Conditions of Contract");

2.1.2 The Guaranteed Maximum Price (GMP) Amendment or the Phase 2 Proposal accepted by Owner in accordance with Section 1.3 above.

2.1.3 This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the GMP Amendment;

2.1.4 The General Conditions of Contract;

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

2.1.6 The following other documents, if any:

2.1.6.1 Owner's Request for Qualifications, its Request for Proposals, and its Request for Best and Final Proposals, and Addenda thereto, if any; and

2.1.6.2 Design-Builder's Statement of Qualifications, Proposal, Best and Final Proposal, and Addenda thereto.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, at the time of acceptance of the Phase 2 Proposal by Owner in accordance with Section 1.3 hereof, 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 Agreement, or if applicable, prior to Owner's acceptance of the Phase 2 Proposal.

3.2 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 so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Phase 2 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 Section 2.1 hereof.

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

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled 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 such inaccurate design specification.

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

3.6 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 Design-Builder's compensation and/or time of performance for Phase 1 Services. Changes in the Legal Requirements that become effective after execution of the GMP Amendment may form the basis for an adjustment to Contract Time, in accordance with the requirements and conditions of Section 8.2 of the General Conditions but shall in no event form the basis for an adjustment to the Contract Price and/or GMP.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder 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 4.2 through 4.5 below.

4.2 Owner's Limited 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 (a) grants Owner a limited license to use the Work Product in connection with Owner's use of the Project, and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights, and patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically delegate those portions of the Work Project for which ownership in the Work Product shall not be transferred. The grant and transfer of interests under this Section are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.3 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.4 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein, Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 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 Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.

Article 5

Contract Time

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

5.2 Substantial Completion and Final Completion.

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

5.2.2 Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.9 of the General Conditions of Contract.

5.2.3 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Liquidated damages, if any, shall be established in the GMP Amendment for Substantial and Final Completion.

5.5 Any liquidated damages for delay damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any), or Final Completion. The liquidated damages amounts agreed to by the parties shall be cumulative and shall be calculated based on the entire Project.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 **Phase 1 Price.** For completion of the Phase 1a Services, Owner shall pay Design-Builder in accordance with Article 7 of this Agreement and Article 6 of the General Conditions a sum not to exceed _____ Dollars (\$_____). If Owner elects to proceed with Phase 1b Services, the amendment authorizing those services shall state the not to exceed amount for Phase 1b Services. Phase 1 Services shall be billed at the all-inclusive billing rates and labor categories set forth in Exhibit D, which rates shall not be subject to increase for any Phase 1b Services. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation excludes Washington State Sales Tax but includes all other taxes mandated by applicable Legal Requirements.

6.1.2 **Phase 2 Price.** For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 and 7 of this Agreement 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 6.5.3 hereof), plus Design-Build Fee as defined in Section 6.4, plus the Cost of the Phase 2 Work (as defined in Section 6.5 hereof), plus the Construction General Conditions Costs (as defined in Section 6.3 hereof). The Contract Price shall be subject to and shall not exceed the GMP established in the GMP Amendment and governed by Section 6.6 hereof, subject to any adjustments made in accordance with the General Conditions.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 9.4.1. of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee as set forth in Sections 9.2 and 9.4.1 of the General Conditions of Contract.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall be calculated as set forth in Sections 9.2 and 9.4.1 of the General Conditions of Contract.

6.3 Construction General Conditions Costs. Owner shall reimburse Design-Builder for the actual and reasonable costs (“Construction General Conditions Costs”) incurred in performing the Construction General Conditions Work as defined in the General Conditions and as set forth in Exhibit C. Such actual Construction General Conditions Costs shall be presented on an open book basis, and shall be submitted paid, and administered in accordance with the requirements of Article 8 herein. Design-Builder’s General Conditions Costs shall in no event exceed the amount stated in the GMP Amendment (the “General Conditions Cap”). The Construction General Conditions Costs shall cover all Construction General Conditions Work, regardless of whether the work is completed by the Design-Builder, a Key Firm, or Subcontractor.

6.4 Design-Builder’s Fee.

6.4.1 Design-Builder’s Fee shall be _____ percent (_____ %) of the Cost of the Work, as adjusted in accordance with Section 6.4.2 below.

6.4.2 The Design-Build Fee is intended to compensate Design-Builder for all costs and expenses not specifically included in the Pass-Through Costs (as defined in Section 6.5.3 hereof), the Cost of the Phase 2 Work (as defined in Section 6.5.1 hereof) and the Construction General Conditions Costs (as defined in Section 6.3 hereof). The Design-Build Fee shall compensate Design-Builder for all other costs, including but not limited to the following:

6.4.2.1 Contractor’s profit on all self-performed work.

6.4.2.2 Profit Margins or similar mark-ups on cost for work performed by related parties or entities of the Design-Builder.

6.4.2.3 Costs associated with support staff normally stationed in the Design-Builder’s home office, such as HR, accounting IT etc. unless specifically approved in advance by the Owner.

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

6.4.2.5 Cost associated with bonuses or profit sharing.

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

6.4.2.7 Business and Occupancy (B&O) Taxes.

6.5 Cost of the Phase 2 Work.

6.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.5.1.1 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 or, if applicable, those rates set forth in an exhibit to this Agreement.

6.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative 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.

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit D and performing the function set forth in said Exhibit.

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

6.5.1.5 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; provided, however, that such costs shall not exceed the applicable federal per diem rates established by the U.S. General Services Administration (GSA) for the relevant travel destination and period, as published at www.gsa.gov/perdiem, or such successor source as GSA may designate.

6.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was not caused by the negligence, mistake, or inadvertence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

6.5.1.9 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.

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

6.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of postage and express delivery charges, telephone service, and photocopying.

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

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

The rental equipment rates for equipment owned by Design-Builder shall be charged at the lower of seventy-five percent (75%) the current AED Green Books/NECA/any other published rates or the current Contractor's rates as listed in the equipment rental Exhibit ("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 current replacement value shall be provided for the remainder of the Project at no additional rental cost and shall remain as property of the Design-Builder. Replacement value on piece of equipment may not be modified during the term of the Agreement.

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

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

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

6.5.1.15 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.5.1.16 Costs for tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.5.1.17 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.

6.5.1.18 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

6.5.1.19 Accounting and data processing costs related to the Work.

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

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

6.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.1.1, 6.5.1.2, and 6.5.1.3 hereof.

6.5.2.2 Costs associated with Construction General Conditions Work, items intended to be covered by the Design-Build Fee, and Pass-Through Costs.

6.5.2.3 Overhead and general expenses, except as provided for in Section 6.5.1 hereof, or which may be recoverable for changes to the Work.

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

6.5.2.5 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.

6.5.2.6 Any bonuses or incentive pay that is the obligation of Design-Builder to pay.

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

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

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

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

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

6.6 The Guaranteed Maximum Price (GMP).

☒ If the parties execute a GMP Amendment, Design-Builder guarantees that it shall not exceed the GMP stated in the GMP Amendment. Documents used as basis for the GMP shall be identified as the GMP Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line

item for its general project management and general conditions costs and as set forth in the GMP Amendment ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth in Section 6.3 herein.

6.6.1 The GMP shall include a Contingency that is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those qualifying events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. 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 of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.6.2 Savings. If the sum of the actual Design-Build Fee (as defined in Section 6.4 hereof), the Construction General Conditions Costs (Section 6.3), Pass-Through Costs (Section 6.5.3) plus the Cost of the Phase 2 Work (Section 6.5.1) as provided in Article 6 hereof is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall accrue 100% to the Owner.

6.7 Allowance Items and Allowance Values.

6.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Amendment or the Phase 2 Proposal.

6.7.2 Design-Builder and Owner have worked 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.

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

6.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

Article 7

Procedure for Payment

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

7.2 Phase 2 Payments.

7.2.1 Design-Builder shall submit to Owner on the _____ (____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Phase 2 Payments. Owner will retain five percent (5%) of each Application for Payment as required by RCW 60.28, as a trust fund for the protection and payment of claims of any person arising under the Agreement and for taxes imposed pursuant to Title 82 RCW which may be due from Design-Builder. Retainage shall be administered in accordance with Section 10.2 of this Agreement and Section 5.4 of the General Conditions of Contract. The moneys reserved may, at the option of Design-Builder, be: (a) retained in a fund by Owner until forty-five (45) days following Final Acceptance; (b) deposited by Owner in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until forty-five (45) days following Final Acceptance with interest to Design-Builder; or (c) placed in escrow with a bank or trust company until forty-five (45) days following Final Acceptance, by Owner's joint check to the bank or trust company and Design-Builder to be converted into bonds and securities chosen by Design-Builder, as approved by Owner, and held in escrow, with interest on the bonds and securities paid to Design-Builder as it accrues. Design-Builder may alternatively submit a retainage bond in compliance with RCW 60.28.011(6).

7.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied all requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract, including without limitation: (a) an affidavit that all payrolls, Subcontractors, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied; (b) consent of surety to final payment; (c) a certificate

evidencing that required insurance remains in effect; (d) pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from Design-Builder and from each Subcontractor, certified by the Industrial Statistician of the Department of Labor and Industries, with fees paid; (e) a certified statement that Design-Builder has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to the Project; (f) all warranties, guarantees, O&M manuals, certificates, spare parts, and other documents required by the Contract Documents; and (g) a hard copy of as-built drawings and specifications delivered in a clear, clean, and legible condition.

7.5 **Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Design-Builder agrees to make available for inspection, audit, and reproduction (including electronic reproduction) all such records to Owner and its representatives. These requirements shall apply to each Subcontractor of any tier and shall be included in each subcontract and purchase order. Because of the importance of such records, if Design-Builder or any Subcontractor fails to fully comply with these requirements with regard to any claim, such claim shall be deemed to be waived. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit. Design-Builder agrees, on behalf of itself, its representatives, and Subcontractors of any tier and their respective representatives, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by Design-Builder or a Subcontractor of any tier or any of their representatives shall initiate an equivalent right to disclosures from Design-Builder and Subcontractors of any tier for the benefit of Owner.

Article 8

Termination for Convenience

If Design-Builder is terminated for convenience pursuant to Section 11.5 of the General Conditions of Contract, Owner shall pay Design-Builder the amounts set forth in Section 11.5.1 of the General Conditions of Contract.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 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 10.2.3 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

_____.

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

_____.

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

_____.

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

_____.

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

Position Title	Name of Individual

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

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

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

Firm	Role

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

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages required under Article 5 of the General Conditions of Contract. Design-Builder shall at minimum maintain the insurance coverages, in the amounts and subject to the terms, set forth in Section 5.1 of the General Conditions of Contract, including the requirement that all insurance be obtained from carriers admitted to do business in the State of Washington possessing a Best's policyholder's rating of A- or better and a financial rating of no less than VIII, and that Design-Builder's insurance policies specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Owner shall maintain the coverages set forth in Sections 5.2 and 5.3 of the General Conditions of Contract. Owner may withhold payment pending receipt of all certificates of insurance required under the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Pursuant to Section 5.4 of the General Conditions of Contract and RCW 39.08, Design-Builder shall provide payment and performance bonds in the full amount of the dollar value of the contracted construction portion of the Contract plus applicable sales tax, secured from a surety company licensed to do business in the State of Washington possessing a Best's policyholder's rating of A- or better and a financial rating of no less than VIII. Performance and payment bonds are not required for the portion of the contract that includes design services, preconstruction services, and other non-construction services. Design-Builder shall deliver evidence of its bondability to Owner within five (5) days of selection, and shall deliver the original bonds to Owner within seven (7) days of entering into the Agreement. Owner may withhold its Notice to Proceed and/or withhold payment to Design-Builder until such surety bonds are received. Notwithstanding the bond election checkboxes below, payment and performance bonds are mandatory on this Project as required by RCW 39.08. In addition, pursuant to RCW 60.28, Owner will reserve five percent (5%) retainage from amounts Design-Builder earns on estimates during the progress of the Work, as set forth in Article 7.3 above and Section 5.4.3 of the General Conditions of Contract.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows.

11.1.1 Notwithstanding any provisions in the General Conditions of Contract referring to arbitration, the parties agree that all disputes arising out of or related to this Agreement that are not

resolved through the dispute avoidance and resolution procedures of Section 10.2 of the General Conditions of Contract shall be resolved by litigation in Ferry County Superior Court, State of Washington, in accordance with Sections 10.3.1 through 10.3.4 of the General Conditions of Contract. The parties hereby waive any right to arbitration.

11.1.2 Underutilized Business Inclusion. In compliance with RCW 39.10.320(1)(f), Design-Builder shall submit to Owner, prior to execution of the GMP Amendment, a written plan for the inclusion of underutilized firms as subcontractors and suppliers on the Project ("Inclusion Plan"). The Inclusion Plan shall address, at a minimum, Design-Builder's specific outreach efforts, strategies, and plans for inclusion of the following:

- (a) Washington State Office of Minority and Women's Business Enterprises certified businesses;
- (b) Washington State Department of Veterans Affairs certified businesses; and
- (c) Small businesses as otherwise recognized under applicable state and federal law.

The Inclusion Plan shall describe the specific scopes of work or supply opportunities for which Design-Builder intends to seek participation by underutilized firms.

11.1.3 Submission of Information. In compliance with RCW 39.10.320(1)(e), Design-Builder, its consultants, and all subcontractors of any tier shall submit to the Washington State Capital Projects Advisory Review Board ("CPARB"), or through Owner to CPARB as directed, all project information required by CPARB in connection with this Project and the alternative public works contracting procedure used herein. The obligation to submit project information applies throughout the performance of the Work and for such period after Final Completion as CPARB may require.

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

11.1.5 This Project is partially funded through the Washington State Community Development Block Grant (CDBG) Program utilizing federal funds provided by the U.S. Department of Housing and Urban Development (HUD). All Work performed under this Contract shall be subject to the higher of the applicable federal or Washington State prevailing wage rates.

11.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Initial Project Information and Requirements; to be replaced with Owner's Project Criteria through Amendment
 Exhibit B – Phase 1a Scope of Services
 Exhibit C – Work included in the General Conditions
 Exhibit D – Supporting Pricing Information (from Design-Builder's Proposal)
 Exhibit E – Design-Builder's Owned Equipment Rate Schedule
 DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition), as modified (the "General Conditions of Contract")

Article 12

Limitation of Liability

12.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, liabilities,

costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed the Contract Price. The parties agree that specific consideration has been given by Design-Builder for this limitation and that it is deemed adequate.

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

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

Exhibit A

Republic Childcare Facility, Library & Community Center Project

**Initial Project Information and Requirements; to be replaced with Owner's Project
Criteria through Amendment**

To be added prior to contract execution

Exhibit B

Republic Childcare Facility, Library & Community Center Project

Phase 1a Scope of Services

Section 1. Relationship to Agreement

This Exhibit identifies the minimum services and deliverables to be provided by the Design-Builder during Phase 1a Validation Services. The Validation Phase is intended to confirm the Project scope, budget, schedule, procurement approach, technical requirements, and overall feasibility of the Project. This Exhibit is not intended to modify, expand, or limit the rights, obligations, compensation provisions, or other requirements established in the Progressive Design-Build Agreement and Contract Documents. In the event of any inconsistency between this Exhibit and the Contract Documents, the Contract Documents shall control.

Section 2. Validation Phase Objectives

The Design-Builder shall perform all services necessary to validate the Project and provide the Owner with sufficient information to determine whether the Project is ready to proceed into Phase 1b Services, subsequent design phases, and Guaranteed Maximum Price (GMP) development.

The Validation Phase shall include evaluation and confirmation of:

- Project goals and objectives
- Project program and space requirements
- Site development requirements and constraints
- Technical and performance requirements
- Schedule feasibility
- Construction sequencing and phasing requirements
- Cost and budget alignment
- Project risks and mitigation strategies
- Procurement and packaging strategies
- Opportunities to maximize participation by local businesses, workforce, suppliers, and underutilized firms, consistent with applicable procurement requirements
- Opportunities for value optimization and constructability enhancements

Section 3. Validation Phase Deliverables

As part of the Project Validation Phase, the Design-Build Team shall develop and submit deliverables sufficient to validate the Project scope, budget, schedule, risks, and technical approach. Deliverables shall include, at a minimum:

1. **Project Validation Report.** Summarizing findings, recommendations, assumptions, decisions, and actions necessary to advance the Project.
2. **Project Program and Space Requirements.** Confirmation and refinement of operational requirements, space needs, adjacencies, and functional goals.
3. **Basis of Design Report.** Documenting architectural, civil, structural, mechanical, electrical, plumbing, technology, security, telecommunications, fire protection, and life-safety recommendations.
4. **Site Development and Utility Assessment.** Evaluation of existing conditions, utility availability, site constraints, access, circulation, and site development considerations.
5. **Conceptual Site Plan and Building Layout Alternatives.** Concepts sufficient to evaluate functionality, constructability, schedule, and cost implications.
6. **Design Progress Documents.** Conceptual and preliminary design information sufficient to support scope validation and cost estimating.
7. **Project Schedule.** Identifying major milestones, permitting activities, procurement activities, long-lead items, and anticipated construction sequencing.
8. **Target Value Design (TVD) Plan:**
 - a. Establishment of target cost values for major building systems and project elements.
 - b. Cost-management process and reporting procedures.
 - c. Design-to-budget methodology.
 - d. Budget reconciliation protocols.
 - e. Roles and responsibilities for budget management.
9. **Detailed Cost Model and Budget Reconciliation including:**
 - a. Cost information organized by major building systems, site development components, and project phases.
 - b. Identification of assumptions, exclusions, allowances, contingencies, escalation, and pricing risks.
 - c. Reconciliation of the cost model to the Owner's available funding.
 - d. Value Analysis and Constructability Review Report: Evaluating opportunities for value enhancement, cost optimization, and improved constructability.
10. **Risk Register.** Identifying project risks, opportunities, constraints, assumptions, mitigation strategies, risk ownership, schedule impacts, budget impacts, and contingency recommendations.
11. **Sustainability and Energy Performance Evaluation.** Assessment of sustainability goals, energy performance opportunities, and lifecycle considerations.
12. **Procurement and Packaging Strategy.** Identification of major subcontract packages, long-lead procurement items, bid package strategy, and early work opportunities.
13. **Underutilized Business Inclusion Plan.** Development of a preliminary Inclusion Plan identifying proposed outreach efforts, anticipated subcontracting opportunities, and strategies to support participation by OMWBE-certified businesses, veteran-owned businesses, and small businesses, and qualified local businesses.

14. **GMP Development Plan.** Identifying the proposed methodology, estimating milestones, design completion expectations, trade partner involvement, procurement assumptions, contingency development approach, reconciliation procedures, and process for establishment of the Guaranteed Maximum Price.

15. **Validation Phase Executive Summary and Recommendation.** Providing recommendations regarding readiness to advance into design development and GMP negotiations.

Deliverables are intended to provide sufficient information for validation of scope, budget, schedule, procurement strategy, risk allocation, and project feasibility, and are not intended to represent completed design documents.

Section 4. Validation Completion and Owner Decision Point

Upon completion of the Validation Phase Deliverables, the Design-Builder shall present its findings and recommendations to the Owner. Completion of the Validation Phase shall not obligate the Owner to proceed into Phase 1b Services, GMP development, or Phase 2 Services. The Owner shall have sole discretion to determine whether the Project has been sufficiently validated and whether to authorize advancement into subsequent phases of the Project.

Exhibit C

Republic Childcare Facility, Library & Community Center Project

Work Included in Construction General Conditions

Section 1. Relationship to Construction General Conditions Costs

The Construction General Conditions Costs identified in Section 6.3 of the Progressive Design-Build Contract shall be the sole reimbursement for all costs and expenses associated with the Construction General Conditions Work regardless of whether such work is provided directly by Design-Builder or General Contractor (if not the Design-Builder, or indirectly via subcontract or vendor agreement).

Cost of the Phase 2 Work as identified in Section 6.5 of the Progressive Design-Build Contract shall not include any Construction General Conditions Work identified in this Exhibit C.

Section 2. Contract Interpretation and Relationship to Agreement

The categories of Construction General Conditions Work identified in this Exhibit are intended to clarify the types of costs that may be reimbursable as Construction General Conditions Costs. This Exhibit is not intended to modify, expand, or limit the rights, obligations, reimbursable costs, non-reimbursable costs, or other requirements established in the Progressive Design-Build Agreement and Contract Documents. The allowability, reimbursement, documentation, and administration of any cost identified in this Exhibit shall be governed by the Contract Documents, including without limitation the provisions governing Construction General Conditions Costs, Design-Builder's Fee, Cost of the Work, and the GMP. In the event of any inconsistency between this Exhibit and the Contract Documents, the Contract Documents shall control.

Section 3. Construction General Conditions Work

Design-Builder shall be responsible for all required Construction General Conditions Work, in connection with the Phase 2 Work, as well as the performance of the related obligations, as described below. All Construction General Conditions Costs identified herein shall be reimbursable only to the extent actually incurred, reasonable, properly documented, and otherwise allowable under the Contract Documents.

- **Supervisory and Administrative Personnel** (also includes General Contractor if Design-Builder is not the General Contractor) Wages and salaries of the contractors' supervisory and/or administrative personnel approved in advance by the Owner, are to be reimbursed at actual cost excluding bonuses/incentives or any other adders.
 - All Design-Builder's supervisory and administrative personnel engaged in the on-site performance of Phase 2 Work, including **but not limited** to the Design-Build Project Manager, Construction Manager, Construction Superintendent(s), and those responsible for managing and implementing Design-Builder's scheduling, cost control, billing, health and safety, QA/QC, and expenses. **For clarity, only the Design-Builder's craft labor shall be excluded from this category; any other on-site personnel provided by the Design-Builder (or General Contractor if Design-Builder is not acting as the General Contractor) shall be included as General Conditions and covered by the Design-Builder's General Conditions Costs.**
 - The personnel identified in this section are intended to be compensated through Construction General Conditions Costs and shall not be separately charged to the Cost of the Phase 2 Work.
 - Time of Design-Builder's supervisory and administrative personnel engaged off of the Project

Site to support the Phase 2 Work, including visits to suppliers and manufacturing locations, attendance at workshops, travel, and other activities required for coordination of the production or transportation of material or equipment necessary for the Phase 2 Work, but only to the extent specifically dedicated to the Project and adequately documented.

- Time of the Design-Builder's personnel stationed at the Design-Builder's principal or branch offices and performing Phase 2 Work with the Owner's prior approval. **For clarity, this does not include time of the Engineer of Record associated with providing submittal reviews, responding to RFIs, and other activities necessary to ensure the construction complies with the design intent.**
 - Employee benefits, premiums, taxes, insurance, contributions and assessments for all personnel covered by the General Conditions Costs, and as required by law and collective bargaining agreements. For personnel covered by the General Conditions Costs but not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions paid by the Design-Builder, to the extent such costs are based on wages and salaries paid to supervisory and administrative personnel of the Design-Builder. All payroll taxes are subject to capping. Bonuses and other discretionary payments are not reimbursable directly but are to be recovered by the Design Builder's Fee.
 - The reasonable cost of vehicles, travel, accommodations, and meals for the Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Phase 2 Work, subject to the Owner's prior approval and any limitations contained elsewhere in the Contract Documents. Commuting costs are not reimbursable.
- **Field Office(s) for Design-Builder Staff** (also for General Contractor if Design-Builder is not the General Contractor). All work associated with establishing, operating, and demobilizing Design-Builder's Site Office including, but not limited to:
 - Design-Builder field office mobilization and demobilization
 - Office trailer rental
 - Office furniture and equipment
 - Office janitorial
 - Office supplies
 - Office Computers, software, and maintenance.
 - High speed internet service
 - All jobsite communication tools, equipment, and services for the Project including:
 - Cellular phones, and cellular phone service, including long-distance calls
 - Telephones, and telephone service, including long-distance calls
 - Jobsite radios
 - Copy machines, fax machines, printers, scanners, and paper shredders for onsite document reproduction
 - Document reproduction services (off-site or custom)
 - Postage, courier, and express delivery

- Accounting and data processing costs directly associated with this project. Home office IT, centralized data processing, corporate cloud services etc. are to be recovered by fee.
- Job travel, including fuel and vehicle.
- Scheduling expenses
- Job meeting expenses necessarily incurred.
- **Construction Supplies and Support Areas**
 - Temporary parking and laydown areas both on and/or off-site, including rental areas
 - Storage facilities, both on and off site, whether owned or rented as substantiated for square footage, with owner's advance approval if owned by the Design-Builder.
 - Incidental construction equipment, small tools, tool sheds, and consumables not customarily owned by workers and required for the performance of the Work, except where such items are separately treated as rental equipment under the Contract Documents.
 - Fuel for onsite equipment
 - Surveying equipment and supplies
 - Project specific signage
- **Temporary Amenities and Utilities** (includes hookup, metering, and consumption costs)
 - Drinking water
 - Temporary toilets
 - Temporary water distribution and meters
 - Temporary fire protection
 - Temporary power
 - Temporary and emergency lighting
 - Temporary construction facilities and services
 - Temporary heat and ventilation
 - Temporary weather protection
- **Site Maintenance and Site Cleanup**
 - Site security
 - Fencing, barricades, partitions, protected walkways, and other measures used for traffic control on site
 - Site erosion control
 - Daily site cleanup, dumpsters, and garbage/recyclables disposal
 - Cleanup at Substantial Completion
- **Health and Safety**
 - Personal protective equipment (PPE) for staff and visitors
 - Confined space entry, including personnel protective and monitoring equipment, standby personnel, and all related costs

- Handwashing stations, hand soap, and handwashing signage
- Alcohol-based hand sanitizer
- First aid
- Fall protection
- Safety program administration and training
- Drug testing
- Safety signage
- **Project Documentation**
 - Photographs to document pre-field investigation and pre-construction conditions
 - Project progress photos
 - Reference manuals
 - Project redline drawings
- **Design-Builder owned equipment**
 - Computers, vehicles, Radios or phones or any other Design Builder owned Equipment is subject to the provisions contained Section 7.5.1.6 of the Contract.
 - Electronic Equipment: Hardware to be included in the Owned Equipment rental log, and rental rates based on 2 year estimated useful life. All software rates to be evaluated and negotiated prior to being charged to the project and shall be based on specific project use for individuals on the project. CAD Machine rental to be based on CAD machine operator hours. Computer hardware and software located in the Home office or other offsite office not to be reimbursable.

Exhibit D

Republic Childcare Facility, Library & Community Center Project

Supporting Pricing Information

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To be added prior to contract execution

Exhibit E

Republic Childcare Facility, Library & Community Center Project

Design-Builder's Owned Equipment Rate Schedule

To be added at GMP Amendment

Standard Form of General Conditions of Contract Between Owner and Design-Builder

(Modified)



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Article 1

General

1.1 Mutual Obligations.

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

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement* (2024 Edition), as modified or amended.

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 *Basis of Design Documents* are as follows: For DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement*, the Basis of Design Documents are Owner's Project Criteria, Design-Builder's Proposal, and the Deviation List, if any.

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

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

1.2.7 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.8 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.9 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

1.2.10 *Final Acceptance* is the date on which the City's governing body accepts the Work as meeting all contractual requirements for Final Completion and all statutory requirements for completion of the Project.

1.2.11 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.12 Force Majeure Events are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.13 General Conditions of Contract refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition), as modified.

1.2.14 GMP Proposal or Proposal means that proposal developed by Design-Builder in accordance with Section 1.3 of DBIA Document No. 544, *Progressive Design-Build Agreement*.

1.2.15 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.

1.2.16 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.

1.2.17 Owner's Project Criteria will be developed in the Phase 1a Services by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

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

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

1.2.20 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.

1.2.21 Substantial Completion or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.22 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.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the

mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account or amounts to the extent provided for in the Agreement, and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The 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 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 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 Agreement 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.

2.2.2 Design-Builder shall employ or retain only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, 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. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.3 Standard of Care for Design Professional Services.

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 applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth on the Basis of Design Documents.

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.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design 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, 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.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

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 Contract 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. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

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.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

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

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility (if any).

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. 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. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

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 means, methods, 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.

2.9 Design-Builder's Warranty.

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. 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, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, 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 not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

2.11 Prevailing Wages.

2.11.1 Pursuant to RCW 39.12, no worker, laborer, or mechanic employed in the performance of any part of this Agreement shall be paid less than the "prevailing rate of wage" as determined by the Industrial Statistician of the Washington State Department of Labor and Industries. The schedule of Washington State prevailing wage rates for the locality or localities where the Work will be performed is applicable as of the bid or proposal date for the county in which the Project is located, and is available at the Department of Labor and Industries website.

2.11.1.1 This Project is partially funded through the Washington State Community Development Block Grant (CDBG) Program utilizing federal funds provided by the U.S. Department of Housing and Urban Development (HUD). All Work performed under this Contract shall be subject to the higher of the applicable federal or Washington State prevailing wage rates.

2.11.1.2 Design-Builder shall provide respective Subcontractors with a schedule of the applicable prevailing wage rates.

2.11.2 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries, whose decision therein shall be final and conclusive and binding on all parties involved in the dispute.

2.11.3 Design-Builder shall defend, indemnify, and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation of RCW 39.12 ("Prevailing Wages on Public Works")

and RCW 51 ("Industrial Insurance"), including without limitation RCW 51.12.050, by Design-Builder, any Subcontractor of any tier, or any person performing Work on behalf of Design-Builder or any Subcontractor of any tier.

2.11.4 Owner will not make any payment until Design-Builder and all Subcontractors have submitted a "Statement of Intent to Pay Prevailing Wage" approved by the Industrial Statistician of the Department of Labor and Industries. Approved copies must be posted where workers can easily read them. Before Final Payment, Design-Builder and each Subcontractor shall provide a certified "Affidavit of Wages Paid" approved by the Industrial Statistician of the Department of Labor and Industries, with required fees paid by Design-Builder or the applicable Subcontractor.

2.12 Apprenticeship.

2.12.1 If the Work is estimated to cost one million dollars or more, then this Section 2.12 and RCW 39.04.320 shall apply. This Section 2.12 shall not apply and shall have no effect upon work or projects that are not estimated to cost one million dollars or more.

2.12.2 Pursuant to RCW 39.04.320, no less than fifteen percent (15%) of the Labor Hours shall be performed by apprentices, unless a different amount is permitted or otherwise required by law. Apprenticeship hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.

2.12.3 "Labor Hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor Hours" includes hours performed by workers employed by Design-Builder and all Subcontractors working on the Project. "Labor Hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of RCW 39.12.

2.12.4 During the term of this Agreement, Owner may adjust the apprenticeship labor hour requirement upon its finding or determination that includes:

2.12.4.1 A demonstration of lack of availability of apprentices in the geographic area of the Project;

2.12.4.2 A disproportionately high ratio of material costs to labor hours that does not make feasible the required minimum levels of apprenticeship participation;

2.12.4.3 Demonstration by participating contractors of a good faith effort to comply with the requirements of RCW 39.04.300, 39.04.310, and 39.04.320;

2.12.4.4 Small contractors or subcontractors (e.g., small or emerging businesses) would be forced to displace regularly employed members of their workforce;

2.12.4.5 The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required level (e.g., the number of skilled workers required and/or limitations on the time available to perform the Work preclude utilization of apprentices); or

2.12.4.6 Other criteria Owner deems appropriate, which are subject to review by the office of the Governor.

2.12.5 Design-Builder shall report apprentice participation directly to the Washington State Department of Labor and Industries ("L&I") at least monthly, on forms provided or approved by L&I. In addition, copies of monthly certified payroll records may be requested to document the goal, including copies with any birthdates, social security numbers, and other sensitive personal information redacted so that such copies may be used to respond to any public records requests. The reports will include:

2.12.5.1 The name of the Work or Project;

2.12.5.2 The dollar value of the Work or Project;

2.12.5.3 The date of Design-Builder's notice to proceed;

2.12.5.4 The name of each apprentice and apprentice registration number;

2.12.5.5 The number of apprentices and labor hours worked by them, categorized by trade or craft;

2.12.5.6 The number of journey level workers and labor hours worked by them, categorized by trade or craft;

2.12.5.7 The number, type, and rationale for any exceptions granted; and

2.12.5.8 Such other information as L&I may require.

2.12.6 To comply with RCW 39.04.320, the following provisions also apply to ensure apprenticeship goals are met:

2.12.6.1 Owner shall provide a monetary incentive of Five Hundred Dollars (\$500) for meeting these goals;

2.12.6.2 Design-Builder shall pay a monetary penalty of Five Hundred Dollars (\$500) for not meeting these goals;

2.12.6.3 Owner is not in a position within existing resources to identify an expected cost value to be included in the Contract Price associated with meeting these goals; and

2.12.6.4 Design-Builder and its Subcontractors are not required to exceed the apprenticeship utilization requirements set forth herein.

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 Design-Builder's 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 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following:

3.2.1.1 Existing surveys describing the property, boundaries, topography and reference points, including existing service and utility lines;

3.2.1.2 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.3 A legal description of the Site;

3.2.1.4 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 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 [Intentionally Omitted]

3.4 Owner's Representative.

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. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Owner's Permit List (if any), which may be attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses.

3.6 Owner's Separate Contractors.

3.6.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to those of the Contract Documents.

3.6.2 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control; provided however, Design-Builder has the responsibility to coordinate its Work with such separate contractors and the Owner's own forces in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 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, and the Design-Builder has provided a Notice of Claim and otherwise complied with the requirements of Article 10.

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.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, so long as Design-Builder complies with the notice requirements in Section 4.2.2, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide a Notice of Claim under Section 10.1.1 within seven (7) days after such condition has been encountered, and before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder shall purchase from and maintain during the life of this Agreement, at its own cost, in a company or companies admitted to do business in the State of Washington, possessing a Best's policy holder's rating of A- or better and a financial rating of no less than VIII, and reasonably acceptable to Owner, the following insurance coverage:

5.1.1.1 Commercial General Liability (occurrence-based), including premises and operations, independent contractors, completed operations and products, and contractual liability, in the amount of \$1,000,000 per occurrence with a per-project aggregate limit of at least \$2,000,000. This policy shall name Owner and its employees as additional insureds (Additional Insured Owner's Form B) for Work performed under this Agreement and shall be designated as primary coverage for both defense and indemnity, with any Owner policies as excess;

5.1.1.2 Commercial Auto Liability, bodily injury and property damage, in an amount of at least \$1,000,000 Combined Single Limit, covering owned, non-owned, and hired vehicles;

5.1.1.3 Contractor's Pollution Liability, including non-owned disposal sites, for creation of new or exacerbated conditions, in the amount of \$2,000,000;

5.1.1.4 Workers' Compensation (Industrial Insurance) in the Washington State statutory amount, and Employer's Liability with coverage of at least \$1,000,000/\$1,000,000; and

5.1.1.5 Umbrella/Excess Liability providing excess limits over the primary layer in an amount not less than \$5,000,000.

5.1.6.6 Professional Liability (Errors and Omissions), covering claims arising out of any negligent act, error, or omission in the performance of professional design and engineering services in connection with this Agreement, including design services performed by Design-Builder and any design subconsultant at any tier, in an amount not less than \$2,000,000 per claim and \$2,000,000 in the aggregate (deductible of up to \$50,000 permitted). Such policy shall be written on a claims-made basis with a retroactive date no later than the date on which Design-Builder or any of its design subconsultants first commenced design services for the Project. Design-Builder shall require all design subconsultants to maintain Professional Liability insurance with limits commensurate with the scope, complexity, and risk of their respective design services, and shall provide Owner with evidence of such coverage upon request.

All limits of liability insurance shall have per-project general aggregate provisions. Coverage shall include underground, collapse, and explosion exposures.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. THE OWNER MAY WITHHOLD PAYMENT PENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE. Failure to withhold payment shall not constitute a waiver. If Owner is damaged by the failure of Design-Builder to maintain any of the above insurance or to so notify Owner, Design-Builder shall

bear all costs properly attributable thereto.

5.1.3 Before commencing any construction services hereunder and in any event within seven (7) days after Owner has issued its notice of intent to award the Agreement, Design-Builder shall provide Owner with signed Certificates of Insurance as evidence that all insurance obligations required by the Contract Documents are in full force and effect and will remain in effect for the duration required by the Contract Documents. Coverages afforded under the policies shall not be materially altered, allowed to expire, or canceled without Design-Builder first giving forty-five (45) days' written notice by certified mail to Owner. Design-Builder shall furnish to Owner copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage or limits. Completed operations coverage, including additional insured completed operations, shall remain in force for three (3) years after Final Acceptance.

5.2 Owner's Liability Insurance.

Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in this Article 5 to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance shall include physical loss or damage to the Work, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement. The Owner does not waive any subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

5.4 Bonds and Other Performance Security.

5.4.1 Pursuant to RCW 39.08, Design-Builder is required to submit payment and performance bonds for Phase 2 Services, secured from a surety company licensed to do business in the State of Washington. Design-Builder shall pay for the bonds in the full amount of the dollar value of the contracted amount of the construction portion of the contract plus applicable sales tax. Performance and payment bonds are not required for the portion of the contract that includes design services, preconstruction services, and other services that are not public works construction included in the contract.. Design-Builder shall deliver evidence of its bondability to Owner within five (5) days of selection, and shall provide the bonds before the start of construction and no later than 10 days after requested by Owner. Within seven (7) days of entering into the Agreement, Design-Builder shall deliver the originals of the bonds to Owner. OWNER MAY DECLINE TO ENTER INTO OR PROCEED WITH THE AGREEMENT IF EVIDENCE OF BONDABILITY IS NOT RECEIVED, AND

OWNER MAY WITHHOLD ITS NOTICE TO PROCEED AND/OR WITHHOLD PAYMENT TO DESIGN-BUILDER UNTIL SUCH SURETY BONDS ARE RECEIVED.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the State of Washington and shall possess a Best's policy holder's rating of A- or better and a financial rating of no less than VIII. If Owner is damaged by Design-Builder's failure to maintain or deliver the bonds required above, Design-Builder shall bear all costs properly attributable thereto. Failure to withhold payment shall not constitute a waiver of Owner's rights under this Section 5.4.

5.4.3 Pursuant to RCW 60.28, Owner will reserve five percent (5%) retainage from the amounts Design-Builder earns on estimates during the progress of the Work, to be retained as a trust fund for the protection and payment of claims of any person arising under the Agreement and for taxes imposed pursuant to Title 82 RCW which may be due from Design-Builder. The moneys reserved may, at the option of Design-Builder, be: (a) retained in a fund by Owner until forty-five (45) days following Final Acceptance; (b) deposited by Owner in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until forty-five (45) days following Final Acceptance with interest to Design-Builder; or (c) placed in escrow with a bank or trust company until forty-five (45) days following Final Acceptance, by Owner's joint check to the bank or trust company and Design-Builder to be converted into bonds and securities chosen by Design-Builder, as approved by Owner, and held in escrow, with interest on the bonds and securities paid to Design-Builder as it accrues. Design-Builder may alternatively submit a retainage bond in compliance with RCW 60.28.011(6).

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

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

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof. The Application for Payment shall also include a statement that prevailing wages have been paid as required by the Contract Documents.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials

are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought. No Application for Payment shall include any amounts that the Design-Builder does not intend to pay to a Subcontractor.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, that prevailing wages have been paid (as applicable), and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due (less retainage). If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

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

6.4 Limited Right to Stop Work.

If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement. In the event of any other dispute, Design-Builder shall continue performing Work on the Project subject to Section 10.4, below.

6.5 Design-Builder's Payment Obligations.

6.5.1 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.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, 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, as determined by Owner, 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.

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

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has met the requirements for Final Acceptance.

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

6.7.2.1 An affidavit that all payrolls, Subcontractors, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible or encumbered, have been paid or otherwise satisfied,

6.7.2.2 consent of surety to final payment,

6.7.2.3 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least *30 days*' prior written notice has been given to the Owner,

6.7.2.4 a written statement that the Design-Builder knows of no substantial reason why the insurance will not be renewable to cover the period required by the Contract Documents,

6.7.2.5 other data establishing payment or satisfaction of or protection (satisfactory to the Owner) against all obligations, such as receipts, releases and waivers of liens arising out of the Agreement, satisfactorily demonstrating to the Owner that the claims of Subcontractors, material suppliers, and laborers who have filed claims have been paid,

6.7.2.6 pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Design-Builder and from each Subcontractor certified by the Industrial Statistician of the Department of Labor and Industries, with fees paid by the Design-Builder or Subcontractor,

6.7.2.7 a certified statement that the Design-Builder has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project (including, without limitation, city/county building departments, health districts and utility

6.7.2.8 all warranties, guarantees, O&M manuals, certificates, spare parts, specified excess material, and other documents or items required by the Contract Documents, and

6.7.2.9 a hard copy of as-built drawings and specifications, delivered in a clear, clean and legible condition.

If any Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may retain in the fund, account, or escrow funds such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount. If any such lien remains unsatisfied after all payments are made, the Design-Builder shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Acceptance of final payment by the Design-Builder shall constitute a waiver of Claims except those previously made in writing and identified in writing as unsettled on the final Application for Payment.

6.7.5 Deficiencies in the Work discovered after Substantial Completion, whether or not 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.

6.7.6. The Design-Builder warrants and guarantees that title to Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner no later than the time of payment free and clear of liens. The Design-Builder shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors). The Design-Builder shall furnish to the Owner such releases of claims and other documents as may be requested by the Owner from time to time to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Design-Builder until such documents are so furnished. The Design-Builder shall indemnify and hold harmless the Owner from any liens, including all expenses and attorneys' fees.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall promptly and fully defend 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 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

expense (and based on Owner's preference), (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. 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.

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.

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

7.4 Design-Builder's General Indemnification.

7.4.1 Subject to the following conditions and to the fullest extent permitted by law, including RCW 4.24.115, Design-Builder shall defend, indemnify, and hold harmless Owner and its respective officers, directors, agents, employees, consultants, successors, and assigns ("Indemnified Parties") from and against all claims, damages, losses, and expenses, direct and indirect, or consequential, including but not limited to costs and attorneys' fees incurred on such claims and in proving the right to indemnification, arising out of or resulting from or connected to the performance of the Work, any act or omission of Design-Builder, its agents, Design Consultants, Subcontractors of any tier, and anyone directly or indirectly employed by Design-Builder or Subcontractors of any tier ("Indemnitor"), but only to the extent caused by the negligent acts or omissions of the Indemnitor. Design-Builder will defend, indemnify, and hold harmless the Indemnified Parties for the concurrent negligence of the Indemnitor to the extent of the Indemnitor's proportionate share of negligence. Design-Builder shall have no obligation to defend, indemnify, or hold harmless the Indemnified Parties to the extent that any claim, damage, loss, or expense is caused by or results from the sole negligence of any Indemnified Party. This limitation is required by RCW 4.24.115, and any provision of this Agreement purporting to require Design-Builder to indemnify an Indemnified Party against that party's own negligence is void and unenforceable. Design-Builder agrees to being added by Owner as a party to any mediation, arbitration, or litigation with third

parties in which Owner alleges indemnification or contribution from an Indemnitor. Design-Builder agrees that all of its Subcontractors of any tier will, in the subcontracts, similarly stipulate; in the event any does not, Design-Builder shall be liable in place of such Subcontractor(s). To the extent a court strikes any portion of this indemnification provision for any reason, all remaining provisions shall retain their vitality and effect. The provisions of this Section shall survive the expiration or termination of this Agreement.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, including RCW 4.24.115, shall indemnify, defend, and hold harmless Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) arising out of or resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable, but only to the extent caused by the negligent acts or omissions of the Indemnitor. Design-Builder will defend, indemnify, and hold harmless Owner for concurrent negligence to the extent of the Indemnitor's proportionate share of negligence. Design-Builder shall have no obligation to indemnify Owner to the extent any claim arises from the sole negligence of Owner or its agents, as required by RCW 4.24.115.

7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation, or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. After mutual negotiation of the parties, Design-Builder waives immunity as to the Owner and its consultants only under Title 51 RCW, "Industrial Insurance." IF THE DESIGN-BUILDER DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE WRITTEN NOTICE TO THE OWNER PRIOR TO EXECUTION OF THIS AGREEMENT, OR THE DESIGN-BUILDER WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY. The provisions of this Section shall survive the expiration or termination of this Agreement.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with the Agreement. Time is of the essence for Design-Builder's performance of the Work. THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time; however, it would be difficult if not impossible to determine the amount of such damages. Consequently, the Agreement includes provisions for liquidated damages. Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. If the Agreement does not include liquidated damages, then Owner may pursue its actual damages resulting from delay.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path 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, including acts or omissions of Owner or anyone

under Owner's control, changes in the Work, Differing Site Conditions, or Hazardous Conditions not attributable to Design-Builder, the Contract Time(s) for performance shall be reasonably extended by Change Order. Design-Builder (including Subcontractors) shall be entitled to a time extension as provided herein, but shall be entitled to compensation for delay only where Owner's own actions or inactions were the actual, substantial cause of the delay and where Design-Builder could not have reasonably avoided the delay by the exercise of due diligence. If a delay was caused by Design-Builder, a Subcontractor of any tier, or anyone acting on behalf of any of them, Design-Builder is not entitled to an increase in the Contract Time or Contract Price. Design-Builder shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

8.2.2 Design-Builder shall have the right to a time extension for events set forth in Section 8.2.1, but not for an adjustment of the Contract Price for Force Majeure Events (those events that are beyond the control of both Design-Builder and Owner, including war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God). Compensation for delays shall be limited solely to those delays directly and substantially caused by Owner's own acts or inactions as provided in Section 8.2.1.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including without limitation all incidental and indirect costs, and all time extensions associated change.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

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), or in absence of an agreement to a Change Order.

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. If the parties are unable to reach total agreement on a Change Order, the Owner shall issue a Work Change Directive to facilitate completion of the Design-Builder's Work.

9.2.3 If the parties cannot agree on the cost or credit to Owner from a change in the Work, whether from a Change Directive or otherwise, Design-Builder shall keep and present, in such form as Owner may prescribe, an itemized accounting together with supporting data limited to the following recoverable cost categories:

9.2.3.1 Direct labor costs: The effective Washington Department of Labor and Industries prevailing hourly wage for the laborers, journeymen, and foremen performing and/or directly supervising the changed Work on the site. The premium portion of overtime wages may not be included unless pre-approved in writing by Owner. The hourly cost shall be based upon basic wages and mandatory fringe benefits and workers' insurances.

9.2.3.2 Direct material costs: An itemization of the quantity of materials necessary to perform the change in the Work and the net cost therefor.

9.2.3.3 Construction equipment usage costs: An itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the changed Work at the Site, at the lower of the actual rental receipt or applicable current state, NECA, Equipment, or MCA rental cost. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change. The rate for equipment necessarily standing by for future use shall be 50% of the rate established above.

9.2.3.4 Cost of any change in insurance or bond premium, supported by documentation upon request.

9.2.3.5 Subcontractor costs: Payments Design-Builder makes to Subcontractors for changed Work performed by Subcontractors of any tier, determined in the same manner as prescribed in this Section 9.2.3.

Any request for Change Order or claim submitted to Owner that does not include itemized costs per subsections 9.2.3.1 -9.2.3.5 above is not acceptable and shall be a basis for rejection by Owner.

9.3 Minor Changes in the Work.

Minor changes in the Work do not involve an adjustment in the Contract Price 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 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, limited to those cost categories in Section 9.2.3, plus Fee. Fee is the allowance for all combined overhead, profit, and other costs, including all office, home office, extended and site overhead (including project manager, project engineer, superintendent, and general foreman time), and all delay and impact costs of any kind, added to the total cost to Owner of any Change Order or any claim for additional work or extra payment of any kind on this Project, and shall be strictly limited to the following schedule:

- (i) For Design-Builder, for any materials or work performed by Design-Builder's own forces, 15% of the direct cost.
- (ii) For Design-Builder, for materials or work performed by its Subcontractors, 6% of the amount due the Subcontractor
- (iii) For each Subcontractor (including lower-tier subcontractor involved), for any materials or work performed by its own forces, 15% of the direct cost.
- (iv) For each Subcontractor, for materials or work performed by its sub-subcontractors of any lower tier, 6% of the amount due the sub-subcontractor.

Design-Builder (including Subcontractors of any tier) shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.2 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined under Section 9.4.1.3 above, limited to the reasonable expense and savings in the performance of the Work resulting from the change, including Fee, as determined in the Owner's discretion, subject to Design-Builder's rights under Article 10.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.5 Emergencies.

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 Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If Design-Builder believes that it is entitled to relief for any event arising out of or related to the Work or Project, Design-Builder shall provide written notice to the Owner of the basis for its claim for relief ("Notice of Claim" or "Notice"). Such Notice shall, if possible, be made prior to incurring any cost or expense related to the event. Design-Builder must give the written Notice of Claim within seven (7) days after the occurrence giving rise to the claim for relief or after the Design-Builder reasonably should have recognized the event or condition giving rise to the request,

whichever is later. The Design-Builder shall provide more complete information with respect to the Notice of Claim within fourteen (14) days of the Notice of Claim. The more complete information shall include a clear description of the claim, any and all changes in cost and time to which the Design-Builder and its Subcontractors of any tier may be entitled, and data supporting the claim. For changes in time, the Design-Builder shall include a time impact analysis showing the impacts to the critical path on the Project Schedule. Failure to comply with these requirements shall constitute a waiver of the claim. No act, omission, or knowledge, actual or constructive, of the Owner shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written claim unless the Owner provides Design-Builder with an explicit, unequivocal written waiver.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. Design-Builder shall diligently carry on the Work and maintain the progress schedule during any dispute resolution procedure, including any claim resolution or litigation proceedings, unless the parties mutually agree in writing otherwise.

10.2.2 Design-Builder and Owner will first attempt to resolve claims, disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within Twenty (20) days of the initial written Notice of Claim provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise. If Owner has not made a written determination on the claim within twenty (20) days of submission of the claim, the claim shall be deemed rejected.

10.2.3 Owner's determination on the claim under Section 10.2.2 shall be final and binding on the Design-Builder unless Design-Builder requests a meeting of Senior Executives within fourteen (14) days of the Owner's written determination or deemed denial under Section 10.2.2. If Design-Builder makes such a request, Design-Builder's Senior Representative and Owner's Senior Representative shall meet as soon as conveniently possible, but in no case later than fourteen (14) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If the parties are unable to resolve the claim at this meeting, Owner may request additional information from the Design-Builder after the meeting to assist the Owner's evaluation of the claim, which the Design-Builder must timely provide. After review of the provided information, the Owner will issue a "Determination on Claim After Senior Executive Meeting." If the Design-Builder disagrees with the Determination on Claim After Senior Executive Meeting and wishes to pursue the claim further, the Design-Builder must, within thirty (30) days of receipt of the Determination on Claim After Senior Executive Meeting, provide the Owner with a written request for mediation pursuant to Section 10.2.4.

10.2.4 Design-Builder may bring no litigation against the Owner unless the claim is first subject to nonbinding mediation under the Construction Mediation Rules of the American Arbitration Association ("AAA"). Design-Builder is responsible for initiating the mediation process on a claim as required under Section 10.2.3. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Design-Builder. To initiate the mediation process, Design-Builder shall submit a written mediation request to the Owner within thirty (30) days of the Determination on Claim After Senior Executive Meeting. If the parties are unable to agree to a mediator, either party may submit a request for mediation to the AAA. A senior representative of each party having full authority to settle the claim (subject only to ratification by the Owner's governing board, if applicable) must attend the mediation session. Unless the Owner and Design-Builder mutually agree in writing otherwise, all unresolved claims in the Project shall be considered at a single mediation session which shall occur prior to Final Acceptance by the Owner.

10.3 Litigation.

10.3.1 Design-Builder may bring no litigation on claims unless such claims have been properly raised and considered in the dispute resolution procedures of Sections 10.2.1 through 10.2.4 above. All unresolved claims of the Design-Builder shall be waived and released unless the Design-Builder has strictly 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 designated in writing by the Owner, or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Design-Builder. The pendency of a mediation (calculated as the period from the written request for mediation through the day following the mediation proceeding) shall toll these filing requirements. The exclusive venue for any such litigation shall be Ferry County Superior Court, State of Washington.

10.3.2 Any judgment entered by a court of competent jurisdiction in connection with a dispute under these Contract Documents shall be final and binding upon the parties, subject to applicable rights of appeal. Judgment may be enforced in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any litigation pursuant to this Section 10.3 may be joined or consolidated with any action involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to permit such joinder or consolidation.

10.3.4 Design-Builder expressly acknowledges and agrees that Design-Builder's failure to timely submit required notices or timely submit claims has a substantial impact upon and prejudices the Owner, including but not limited to the inability to fully investigate or verify the claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost, and quantities. For these and other reasons, the parties stipulate that the Owner is prejudiced by the Design-Builder's failure to timely submit notices or claims as required by the Contract Documents. The fact that the Owner and the Design-Builder may continue to discuss or negotiate a claim that is or may have been defective or untimely under the Contract shall not constitute waiver of the provisions of the Contract Documents unless the Owner and Design-Builder sign an explicit, unequivocal written waiver.

10.4 Duty to Continue Performance.

Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 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.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination

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. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

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

11.2 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 Agreement 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 Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, the Design-Builder shall be compensated as set forth in Section 11.6, below.). If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.5 hereof.

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

11.3.1 Design-Builder may terminate the Agreement 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 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 pay undisputed amounts, or 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.

11.3.2 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 Agreement unless the problem cited is cured, or commenced to be cured, within fourteen (14) 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 Fourteen (14) day period. If Owner, within such second fourteen (14) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement 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 Agreement for its convenience under Section 11.5, below.

11.4 Bankruptcy of Owner or Design-Builder.

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

11.4.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party 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 Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party 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 the non-Bankrupt Party 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 or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

11.5 Termination for Convenience.

11.5.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

11.5.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

11.5.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

11.5.1.3 The amount set forth in Article 8 of the Agreement (if any).

11.5.2 If Owner terminates this Agreement pursuant to Section 11.5.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement.

11.6 Effect of Termination.

11.6.1 Unless the Owner directs otherwise, after receipt of a Notice of Termination from the Owner pursuant to Sections 11.2 or 11.5, the Design-Builder shall promptly:

11.6.1.1 Stop Work under the Agreement on the date and as specified in the Notice of Termination;

11.6.1.2 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;

11.6.1.3 Procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;

11.6.1.4 Assign to the Owner all of the right, title and interest of the Design-Builder under all orders and subcontracts, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

11.6.1.5 With the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;

11.6.1.6 Transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;

11.6.1.7 Take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Design-Builder in which the Owner has an interest; and

11.6.1.8 continue performance only to the extent not terminated.

11.6.2 In arriving at any amount due the Design-Builder after termination, the following deductions

shall be made:

11.6.1.1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Agreement;

11.6.1.2 any claim which the Owner may have against the Design-Builder; and

11.6.1.3 an amount necessary to protect the Owner against outstanding or potential liens or claims.

11.6.3 The Design-Builder shall refund to the Owner any amounts the Owner paid to the Design-Builder in excess of costs reimbursable under Section 11.5, above.

11.6.4 The damages and relief from termination by the Owner specifically provided in Article 11 shall be the Contractor's sole entitlement in the event of termination.

Article 12

Electronic Data

12.1 Electronic Data.

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 Agreement, 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 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

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

Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

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

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

Article 13

Miscellaneous

13.1 Confidential Information.

Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project. Notwithstanding the foregoing, Owner is subject to the Washington Public Records Act, Chapter 42.56 RCW (the "Public Records Act"), and Owner's obligations of confidentiality under this Section 13.1 are limited to the extent permitted by the Public Records Act. Owner shall not be in breach of this Section 13.1 by reason of any disclosure required by law or compelled pursuant to the Public Records Act. In the event that Owner receives a public records request that may encompass or include Confidential Information of Design-Builder, Owner shall provide Design-Builder with prompt written notice of such request, to the extent permitted by law and practicable under the applicable response deadline, so that Design-Builder may seek a protective order, injunction, or other appropriate legal relief to protect its interests. Owner shall reasonably cooperate with Design-Builder in connection with any such legal action, provided that Owner shall not be obligated to incur any costs or liabilities in connection therewith.

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 Agreement and all Contract Documents shall be governed by the laws of the State of Washington, without giving effect to its conflict of law principles. The exclusive venue for any litigation regarding this Agreement shall be in Ferry County Superior Court.

13.5 Severability.

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

13.6 No Waiver.

The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

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

13.8 Notice.

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

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

13.10 Washington Statutory Compliance.

13.10.1 Design-Builder shall abide by the provisions of all applicable Washington statutes. The statutory references in the Contract Documents are not a complete list and should not be relied upon as such. Design-Builder acknowledges that Owner is subject to the Washington Public Records Act ("PRA"), Revised Code of Washington Chapter 42.56, and to the Washington Open Public Meetings Act ("OPMA"), Chapter 42.30 RCW. Nothing in this Agreement shall be construed as creating any right of confidentiality or nondisclosure that contravenes or is otherwise inconsistent with Owner's legal obligations under the PRA, the OPMA and/or any other applicable Washington law(s).

13.10.2 Registration. Pursuant to RCW 39.06, Design-Builder shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. Design-Builder shall: have a current state unified business identifier number; have industrial insurance coverage for its employees working in Washington as required in Title 51 RCW; have an

employment security department number as required in Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW; and not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).

13.10.3 Law Against Discrimination. Design-Builder shall comply with pertinent statutory provisions relating to public works under RCW 49.60.

13.10.4 Provisions for Aged and Handicapped Persons. Design-Builder shall comply with pertinent statutory provisions relating to public works under RCW 70.92.

13.10.5 Safety Standards. Design-Builder shall comply with pertinent provisions of Chapter 296-155 WAC, "Safety Standards for Construction Work."

13.10.6 Hours of Labor. Design-Builder shall comply with all applicable provisions of RCW 49.28.

13.10.7 Hazardous Chemicals. Pursuant to RCW 49.70 and WAC 296-62 et seq., Design-Builder shall provide Owner copies of and have available at the Project site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Design-Builder or any Subcontractor at the Project site.

13.10.8 Drug-Free Workplace. Design-Builder and all Subcontractors shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-Free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work.

13.10.9 Tobacco-Free Environment. Smoking or use of any kind of lighted pipe, cigar, cigarette, any other lighted smoking equipment or material, or smokeless tobacco products is prohibited on all of Owner's property.

13.10.10 Unemployment Compensation. Pursuant to RCW 50.24 in general and RCW 50.24.130 in particular, Design-Builder shall pay contributions for wages for personal services performed under this Agreement or arrange for a bond acceptable to the applicable commissioner.

13.11 Records Retention and Audit Rights.

13.11.1 Design-Builder shall maintain and preserve for at least six (6) years from the date of Final Payment books, ledgers, records, documents, estimates, bidding documents, correspondence, logs, schedules, electronic data, and other evidence relating or pertaining to the costs incurred by Design-Builder in connection with or related to the Agreement and/or performance of the Work ("Records") to such extent and in such detail as will properly reflect and fully support compliance with the Contract Documents and all costs, charges, and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. Design-Builder agrees to make available at all reasonable times at Design-Builder's office all such Records for inspection, audit, and reproduction (including electronic reproduction) by Owner and its representatives. These requirements shall be applicable to each Subcontractor of any tier and included in each subcontract and purchase order issued with respect to the Work. Because of the importance of such records to Owner in the case of a claim, if Design-Builder or any Subcontractor fails to fully comply with the requirements of this Section with regard to any claim, such claim shall be deemed to be waived.

13.11.2 Design-Builder agrees, on behalf of itself, its representatives, and Subcontractors of any tier and their respective representatives, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by Design-Builder or a Subcontractor of any tier or any of their representatives shall initiate an equivalent right to disclosures from Design-Builder and Subcontractors of any tier for the benefit of Owner.