ATTACHMENT F
PROPOSED DRAFT PROGRESSEIVE DESIGN-BUILD AGREEMENT
AND GENERAL CONDITIONS OF CONTRACT
CITY OF BOTHELL
FIRE STATIONS 42 AND 45 REPLACEMENT

PROGRESSIVE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE

Note: This document has been modified from the DBIA Form. A redlined copy will be provided upon request.

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Progressive Design-Build Agreement Between Owner and Design-Builder – Cost Plus Fee with a Guaranteed Maximum Price

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 10th day of November in the year of 2015, by and between the following parties, for services in connection with the Project identified below:

OWNER:
(Name and address)

City of Bothell
18415 101st Ave NE
Bothell, WA 98011

DESIGN-BUILDER:
(Name and address)

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

Fire Stations 42 and 45 Replacement

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

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Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

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 General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as amended) ("General Conditions of Contract"), including but not limited to the GMP Amendment in accordance with Section 6.6.2 herein, provided such Amendment is executed between the parties, the most recent documents governing over previous documents;

2.1.2 This Agreement, including all exhibits but excluding the GMP Amendment:

.1 Exhibit A: Insurance Requirements;
.2 Exhibit B: Form of Performance and Payment Bond;
.3 Exhibit C: Phase 1 and 2 Scope of Services
.4 Exhibit D: Initial Basis of Design Documents
.5 Exhibit E: Phase 1A Level of Effort and Hourly Rates and Allowance Items
.6 Exhibit F: Form GMP Amendment
.6 Exhibit G: Form Change Order
.7 Exhibit H: Travel Reimbursement Policy

2.1.3 The General Conditions of Contract; and

2.1.4 Interim Design Submissions, the Design Log, and Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, the most recent approved documents governing over previously approved documents.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Initial 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.

3.2 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

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Documents are discovered after execution of the Agreement or after the parties' execution of the GMP Amendment, 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 the Initial Basis of Design Documents contain design or prescriptive specifications, the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in the Initial Basis of Design Documents, including any performance specifications, for the purposes of developing Phase 1A Not to Exceed Amount and the Design-Builder's Fee Percentage. However, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner during Phase 1A. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Initial and Final Basis of Design Documents as well as all applicable Legal Requirements. Provided Design-Builder complies with other requirements set forth in this Agreement such as those regarding notice of claims to Owner and identification of differing site conditions, Design-Builder shall be entitled to an adjustment in Phase 1A Not to Exceed Amount and/or the Design-Builder's Fee Percentage, but only to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design or prescriptive specifications that are inconsistent with meeting the performance requirements.

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.

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 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 service of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of engineering design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer 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 below.

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 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due

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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:

4.3.1 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 below, and

4.3.2 Owner shall not be required to pay Design-Builder additional compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 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. 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 such 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.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion, and Final Completion.

5.2.1 The Design-Builder shall establish a Scheduled Substantial Completion Date for the entire project as part of Phase 1 Deliverables ("Scheduled Substantial Completion Date").

5.2.2 The Owner and Design-Builder shall establish Interim Milestone Dates for the achievement of Substantial Completion of each station as part of Phase 1 Deliverables ("Scheduled Interim Milestone Dates").

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.12 of the General Conditions of Contract.

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5.2.4 All of the dates set forth in this Article 5 (collectively the "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. Design-Builder understands that if Substantial Completion associated with any Interim Milestone Date is not attained by the Scheduled Interim Milestone Dates, Owner will suffer damages which are difficult to determine and accurately specify. Therefore, the parties shall establish a liquidated damages rate in Phase 1A for each day that Substantial Completion extends beyond any Scheduled Interim Milestone Date. Each station will have its own liquidated damages rate.

The liquidated damages amounts agreed to by the parties shall be cumulative and shall be calculated based on each station and/or the entire project. By way of example, if Design-Builder fails to achieve Substantial Completion for one of the stations by the Scheduled Interim Milestone Date for that substation, the Design-Builder shall pay the liquidated damages amount set forth above. If Design-Builder fails to achieve Substantial Completion for both stations, then the liquidated damages amount set forth above shall be assessed for each substation and multiplied by 2 until such time Substantial Completion is achieved for each station, as applicable. As each station achieves Substantial Completion, the amount of Liquidated Damages assessed shall be reduced by the Liquidated Damages associated with that station.

5.5 Any liquidated damages assessed pursuant to this Agreement for delay damages 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 the Contract Time(s).

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Subject to the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.6 of the Agreement. Design Builder's Compensation shall be subject to Phase 1A NTE, the Phase 1 NTE, and the GMP, as applicable, and Phase 1A NTE, the Phase 1 NTE, and the GMP, as applicable, shall be the maximum amount that the Design Builder may be compensated for the applicable Contract Phase. The maximum amount that the Design Builder may be compensated pursuant to this Agreement for any given phase shall also be referred to as the Contract Price ("Contract Price"). The elements of the Design Builder's Compensation, subject to the Contract Price are set forth herein. If the sum of the Design-Builder's Compensation is less than Phase 1A NTE, the Phase 1 NTE, and/or the GMP, the savings shall go to the Owner.

6.2 Design-Builder's Fee Percentage and Lump Sum Fee.

6.2.1 Design-Builder's Fee Percentage shall be:

_____ percent (_____%). During Phase 1A, the Design-Builder's Fee Percentage shall be calculated as a percentage of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below. However, the Design-Builder shall not receive the Design-Builder's Fee Percentage on the cost of any long lead materials ordered during Phase 1A unless the parties do not enter into the Phase 1B Amendment. Unless otherwise agreed to in writing by the parties, the parties shall establish a Lump Sum Fee as set forth

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in Section 6.2.3 below, which shall not be changed except by written Change Order pursuant to the General Conditions.

The Fee Percentage and any Lump Sum Fee shall include the following costs, which shall not be charged as a Cost of the Work:

.1 All profit of the Design-Builder for this Project; and

.2 All regional and home office overhead expenses.

6.2.2 Prior to the execution of the GMP Amendment, Design-Builder's Fee Percentage will only be adjusted pursuant to Section 3.4 of this Agreement.

6.2.3 If the Parties enter into the Phase 1B Amendment, Design-Builder shall be paid a Lump Sum fee (the "Lump Sum Fee") determined by multiplying the Fee Percentage by the estimated Cost of the Work included in the GMP plus the cost of any long lead materials purchased during Phase 1A. With the exception of the cost of any long lead materials purchased during Phase 1A, the calculation to establish the Lump Sum Fee shall not include any Cost of the Work incurred during Phase 1. The Lump Sum Fee will be earned and paid on a monthly basis following execution of the GMP Amendment on a percentage of completion basis, specifically taking into account payments previously made after the completion of Phase 1A. The following costs shall be excluded from the Cost of the Work when calculating the Lump Sum Fee:

.1 Owner Directed NTEs, as defined in Section 6.4.2.5;

.2 Owner Directed Allowances, as defined in Section 6.4.1.6; and '

.3 The Design Builder's Contingency as defined in Section 6.4.4.1.b.

6.2.4 If the Parties do not enter into the Phase 1B Amendment and the Agreement is terminated pursuant to Section 6.6.1.7, the Design-Builder shall be paid an amount equal to the Design-Builder's Fee Percentage multiplied by the cost of long lead materials that were ordered during Phase 1 and for which Design-Builder did not receive a mark up for the Design-Builder's Fee Percentage.

6.2.5 If the Owner exercises its option to enter into Phase 1B and the parties enter into the Phase 1B Amendment, the Lump Sum Fee shall not be subject to modification unless the GMP varies, either upward or downward, by more than fifteen percent (15%) from the original GMP established in the GMP Amendment ("Original GMP").

.1 If the GMP increases by more than fifteen percent (15%) above the Original GMP, the Lump Sum Fee shall be increased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is in excess of one hundred fifteen percent (115%) of the Cost of the Work set forth in the Original GMP.

.2 If the GMP decreases by more than fifteen percent (15%) below the Original GMP, the Lump Sum Fee shall be decreased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is less than eighty-five percent (85%) of the Cost of the Work set forth in the Original GMP.

.3 The following costs shall be excluded from the Cost of the Work when calculating adjustments to the Lump Sum Fee:

a. Owner Directed NTEs, as defined in Section 6.4.2.5;

b. Owner Directed Allowances, as defined in Section 6.4.1.6; and '

c. The Design Builder's Contingency as defined in Section 6.4.4.1.b.

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

6.3.1 Design-Builder's Labor W a g e s and salaries excluding bonuses/incentives for all labor actually spent performing the Work shall be at the lesser of (i) actual cost incurred by Design-Builder or (ii) the rates (the "**Labor Rates**") forming part of the relevant Exhibit ("**Labor Rates Schedule**"). Labor costs will be reconciled in accordance with the foregoing to actual cost incurred by Design-Builder at the end of each calendar year and upon completion of the Work in advance of the final billing. No charges will be accepted by Owner for any salaried staff labor classification or rate not listed in the approved Labor Rates Schedule. Any amendments thereto must be executed by Owner and Design-Builder in writing. All such costs will be substantiated and reconciled to actual cost (without utilizing composite rates) incurred at the completion of the Project and for multi-year projects only, at the end of each calendar year. Billed cost will be for actual time spent and actually paid to nonexempt and other hourly employees only, plus associated labor burden, and may exceed eight hours in any calendar day. Hourly union employees are to be paid per the terms and conditions of collective bargaining agreements, or the terms and conditions negotiated for a new collective bargaining agreement. When direct field labor costs are amended per the collective bargaining agreement, such changes, if any, shall be reimbursable at actual cost incurred by Design-Builder. Nonexempt administrative (nonunion) employees are paid in accordance with their offer letter and subsequent periodic raises.

.1 Owner Must Approve Design-Builder's Staffing Plan. In order to be eligible for payment by Owner, Design-Builder's staffing plan must be approved by Owner's Representative in advance.

.2 Offsite Personnel. In order to be eligible for payment for Work performed by personnel at Design-Builder's home office or other offsite location, Design-Builder must submit a detailed written estimate for the cost of such Work to Owner for Owner's advance written approval. Design-Builder's estimate must include the actual names of such personnel, their title, general work description and estimated hours for their work on the Project. If approved by Owner, Design-Builder may only charge for approved offsite Work in accordance with Design-Builder's detailed and approved written estimate. For Design-Builder's employees stationed in the Design-Builder's home office, only those positions as may be necessary for the proper conduct of the Work and also identified in the Owner's written approval will be reimbursable. All employees who are not approved by Owner shall not be reimbursable and, if appropriate, any prior payment shall be reversed in the subsequent Application for Payment. If requested by Owner's Representative, Design-Builder must provide timesheets, in a form approved by Owner, that demonstrate that those approved offsite personnel's actual time spent on the Project is in accordance with the estimated hours.

.3 Meal and Rest Breaks. Any waiver or deviation of the Project's lunch hour or rest period requirements allowed under applicable law must be approved in advance and in writing by Owner's Representative.

.4 Overtime. In order to be eligible for payment, all overtime must be approved in advance and in writing by Owner's Representative.

a. Authorized overtime will be charged at the lesser of (a) actual costs or (b) the overtime rates set forth in the Labor Rates Schedule and applied in accordance with the laws of the State of Washington. Design-Builder's employees' hours worked on projects other than Owner's shall not be credited hours for the purpose of calculating overtime eligibility.

b. Unless required by the terms of the applicable collective bargaining agreement, Design-Builder shall not pay shift differential for swing (evening) or graveyard (night) shifts) unless expressly authorized by

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Owner's Representative's prior written consent.

c. Design-Builder will not be reimbursed for any overtime premium if the occasion for such overtime is the result of the negligence of Design-Builder or anyone for whom the Design-Builder is responsible.

d. Overtime shall be deemed to include payroll taxes and insurance premiums actually incurred. All overtime shall be subject to the approval of Owner and such approval may include authorization for overtime required for specific construction phases or to accomplish specified goals. All overtime incurred by Design-Builder with approval by Owner shall be reviewed on a two-week basis by Owner and Design-Builder.

6.3.2 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 Section 6.3 hereof.

.1 Payroll Burdens. Design-Builder's Labor Rates Schedule must contain a detailed breakdown of all mark-ups of or additions to base wages for all payroll burdens ("**Payroll Burdens**") including but not be limited to, workers' compensation, employment insurance, benefits and other taxes and insurances measured by payroll. The Payroll Burdens may only be billed to Owner at the lessor of (i) the estimated mark-up on base wages in the Labor Rates Schedule or (ii) actual cost. Payroll Burdens will be reconciled to actual cost incurred along with the labor reconciliation at the end of each calendar year and at the end of the project before the final billing. Worker's compensation shall be reimbursed at the Design-Builders specific State L&I rate, net of employee deductions with the Design-Builder's specific EMF applied. For self-insured companies, the actual state classification rate net of employee deduction with a .5 EMF applied.

.2 Employee Benefits Expense. Design-Builder's Labor Rates Schedule must contain an estimate of all mark-ups of base wages for all employee benefits expenses ("**EBE**"). The EBE may only be billed to the Owner at the lesser of (i) the estimated mark- up on base wages in the Labor Rates Schedule or (ii) actual cost. Since EBE is a part of payroll burden, the EBE will be reconciled to actual cost incurred along with the labor reconciliation at the end of each calendar year and at the end of the project before the final billing. The term "EBE" means those employee benefits as submitted by Design-Builder and approved by Owner's Representative, in advance and in writing. Should Design-Builder fail to submit such a listing, it will be assumed that Design-Builder is accepting reimbursement for such expenses as a portion of the Design-Builder's Fee and any Payroll Burden for EBE will be removed from the Labor Rates Schedule

.3 PTO Expense. An amount equal to no more than ten percent (10%) of the total direct base labor cost paid to Design-Builder's salaried employees as part of the Cost of Work, but that is not included in the hourly rates for such employees, to compensate Design-Builder for paid vacation days, sick leave or other paid time off, and Design-Builder paid holidays (collectively, "**PTO**") (and associated employer taxes and benefits) to be taken or accrued by those employed on the Work. PTO pay for Design-Builder's salaried employees shall not be otherwise reimbursable. The following terms shall apply: PTO (and associated employer taxes and benefits) to be taken or accrued by those employed on the Work taken shall be direct charged to the Cost of Work and be reimbursed as a Cost of Work. If Design-Builder's employee is not working full time on the Project, PTO actually taken will be direct-charged on a pro-rata share basis. If Design-Builder has a

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corporate policy whereby PTO can be carried over to the following year, Design-Builder will include PTO within the burden rate applied to Design-Builder staff labor costs and those costs shall not be direct charged to a project except as follows. Design-Builder shall submit staff billing rates based on actual cost to be recovered over annual billable hours. These rates are subject to prior approval by Owner and will not include any items specifically excluded by Section 6.5 below. Labor is to be reconciled to actual cost incurred at the end of each project. Washington State Paid Sick Leave is a contingent accrual and is to be direct charged as taken, with the limitation that no amount greater than that which has been earned on the project may be taken and charged as a Cost of the Work.

6.3.3 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. The costs for those employees performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those Hourly Rates set forth in Exhibit E. Contracts to Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld

6.3.4 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

6.3.5 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.

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

6.3.7 Design-Builder's Travel Expenses. All travel expenses must be approved by Owner in writing in advance of the travel. Pre-approved travel will be reimbursed as follows: Expenses of reasonable travel by representatives of Design-Builder incurred in obtaining or inspecting materials, or for other purposes applying to the Work, and by mechanics or laborers and Design-Builder's staff employees in the case it is necessary to secure them at a distance from the site are referred to as "**Travel Expenses**." Travel Expenses will be reimbursed in accordance with the guidelines set forth in Exhibit H.

.1 Per Diem Expense. Unless specifically authorized in writing by the Owner, Design-Builder shall not charge Owner for any per diem or other living expenses offered to its personnel.

.2 Relocation Expense. Unless specifically authorized in writing by the Owner, Design-Builder shall not charge Owner for any relocation expenses offered to its personnel.

6.3.8 Rental Charges. Rental Charges shall be reimbursed as follows:

.1 General provisions. 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-

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Builder or others, and incurred in the performance of the Work. Rental equipment shall be obtained from the lowest cost rental source whether it is the Design-Builder or a third party. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modem design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modem design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks') shall be 50% of the rate established above. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

.2 Design-Builder Owned Rental Equipment. The cost of all Design-Builder owned rental equipment (with a cost > $500), materials or temporary structures including any repair and maintenance costs except normal wear and tear. Repair and/or maintenance of the Design-Builder's equipment is not intended to restore the equipment to a condition better than it was when it initially came to the Project. If the Design-Builder rents equipment from a third party, then the rate shall be the lowest available rate. Design-Builder shall use its best efforts to maintain and repair all tools and equipment and to safeguard said tools and equipment from loss, vandalism, and theft. Design-Builder shall develop and maintain an Owned

a. Design-Builder shall provide an Owned Equipment Rental Log as required in Exhibit C that shall list each piece of Design-Builder Owned Equipment that is being rented to the Project, as well as the following information:

1. A unique number and the use of each piece of equipment shall be tracked by that number on Design-Builder's Owned Equipment Rental Log for the Project

2. Adequate identifying information such as use, manufacturer, make, model, dimensions/length, blade size, capacity, fuel usage, horse power, voltage/amperage, weight, etc., such that accurate identification can be determined.

3. A definitive equipment description, date on site, date off site, replacement cost, monthly rate pro-rated to daily, days billing per month, this month billing calculation and cumulative billing to date, maximum rental allowed for each rented item.

4. The rental rates for each piece of equipment.

b. The rental equipment rate for equipment owned by Design-Builder shall be charged at the lower of seventy-five percent (75%) of the following:

1. The current AED Green Books (published by Equipment Watch);

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2. NECA;

3. Any other published rate; or

4. 100% of the current rate as listed in the Design-Builder's equipment rental schedule identified in the Owned Equipment Rental Log.

c. The Design-Builder's Owned Equipment Rental Log shall be updated as the use of Design-Builder's Owned Equipment changes throughout the Project and shall available in Excel format if requested by Owner.

d. 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 are 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.

e. With respect to Design-Builder's owned equipment, rental shall be based on monthly rates but prorated on a daily basis (monthly rate divided by 30.4). Days used to prorate monthly rates to daily should be consistent with the calculation of days to charge each piece of rental equipment.

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

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

6.3.10 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work; however, Washington State Sales Tax shall be paid as a Cost of the Work, but it shall be calculated outside the GMP or Phase 1 NTE.

6.3.11 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

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

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

6.3.14 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design Builder's Contingency, Design Builder's Fee Percentage, the Lump Sum Fee, or any Lump Sum Amount.

6.3.15 General Conditions Costs. The following costs are considered to be "General Conditions Costs."

.1 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.

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.2 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 approved in advance of the performance of the Work in writing by the Owner.

.4 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

.5 Premiums for insurance and bonds required specifically by this Agreement or the performance of the Work by the Design Builder.

.6 On site accounting and data processing costs related to the Work.

.7 Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician and the determination of the locality of the work to confirm the appropriate classification of work. In order to receive this reimbursement, the Design-Builder will be required to submit to Owner a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

.8 General administrative costs not specifically listed in Sections 6.3.1 through 6.3.14 above, including but not limited to the following:

a. Shop Drawing Reproduction

b. Construction Schedule & Updates

c. Safety/Security

d. Field Office Set-up (mobilization/demobilization)

e. Office Supplies

f. Telephone System

g. Telephone Service Charge

h. On site computer Network/System Set-up

i. Courier Service

j. Postage (Fed-X, USPS)

k. Furniture/Equipment

l. Office Cleaning

m. Project Superintendent Vehicle

n. Computers

o. Copy Machine

p. Temporary Electric Hook-up/Removal

q. Temporary Electric Material

r. Project Signage

s. Temporary Water Hook-up/Removal

t. Drinking Water & Supplies

u. Chemical Toilets

v. O&M Manuals

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w. Project Record Documents

x. Field Engineering/Layout Survey

6.4 Other Methods of Compensation

Within the Phase 1 NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder's Compensation

6.4.1 Allowance Items and Allowance Values.

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Exhibit E or the GMP Amendment and are included within the Phase 1 NTE and GMP, as applicable.

.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.

.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 on an Allowance Item 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.

.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with the applicable Allowance Item. With the exception of Owner Directed Allowances, all other costs, including design fees, Design-Builder's General Conditions Costs, Fee Percentage and Lump Sum Fee are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

.5 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, however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. 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.

.6 The Owner and the Design Builder may designate certain Allowances as "Owner Directed Allowances." Design Builder shall be compensated for Owner Directed Allowances for the Cost of the Work associated with such allowances plus the Fee Percentage. Items designated as "Owner Directed Allowances" shall not be included in the calculation to determine the Lump Sum Fee.

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6.4.2 Not To Exceed Sums

.1 The Owner and Design Builder may establish Not to Exceed ("NTE") Sums for specific scopes of the Work ("NTE Scope of Work"). Any such NTE Sum will be negotiated between the Owner and Design-Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

a. A specific description of the NTE Scope of Work;

b. An updated Schedule of Values that incorporates the NTE Sum; and

c. Any milestone dates associated with the NTE Scope of Work.

.2 For each NTE Scope of work, the Design-Builder shall be reimbursed for the NTE Scope of Work as a Cost of the Work; however, Design-Builder's compensation for the NTE Scope of Work shall not exceed the NTE Sum without a written Change Order.

.3 Design-Builder shall not request reimbursement for costs subject to the NTE Scope of Work or NTE Sum, unless those costs are identified in the Payment Application as subject to the NTE Sum.

.4 NTE Sums and NTE Scopes of Work may only be modified by Change Order pursuant to the General Conditions.

.5 The Owner and the Design Builder may designate certain NTEs as "Owner Directed NTEs." Design Builder shall be compensated for Owner Directed NTEs for the Cost of the Work associated with such NTEs plus the Fee Percentage. Items designated as "Owner Directed NTEs" shall not be included in the calculation to determine the Lump Sum Fee.

6.4.3 Lump Sums

.1 The Owner and Design-Builder may establish a Lump Sum for specific scopes of the Work ("Lump Sum Scope of Work"). Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

a. A specific description of the Lump Sum Scope of Work;

b. An updated Schedule of Values that incorporates the Lump Sum; and

c. Any milestone dates associated with the Lump Sum Scope of Work.

.2 For each Lump Sum Scope of Work, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth in Section 6.4.3.1.b above based on the percentage of the Lump Sum Scope of Work that has been completed.

.3 Design-Builder shall not request reimbursement for costs subject to the Lump Sum, unless those costs are identified in the Payment Application as subject to the Lump Sum.

.4 Lump Sums may only be modified via Change Order pursuant to the General Conditions

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6.4.4 Contingencies

.1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for Design Builder's exclusive use for the following unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Contingency Items include the following costs, which are subject to written approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.

a. Cost of the Work Contingency. The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:

i. Trade buy-out differentials;

ii. Escalation of materials

b. Design-Builder's Contingency. The Design-Builder's Contingency is available to the Design-Builder for items that are not excluded by Section 6.5 hereof and include but are not limited to the following items:

i. Overtime or acceleration;

ii. Costs incurred by Design Builder in repairing or correcting defective, damaged or nonconforming Work (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, 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 its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained; or

iv. Subcontractor or other tier defaults, to the extent not compensated by any surety or bond.

.2 The Design Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3 of the Agreement; however, Design Builder's Compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design Builder's Contingency in the applicable NTE or GMP without a written Change Order. However, Design Builder shall not be entitled to any Fee Percentage for items reimbursed under Section 6.4.4.1.b as the Design-Builder's Contingency. Amounts included in the Design Builder's Contingency shall also be excluded from the calculation to establish the Lump Sum Fee and from the calculation set forth in Section 6.2.3 of this Agreement to determine whether the GMP has changed.

.3 Prior to the final accounting, the Contingencies set forth above are not available to Owner for any reason, including, but not limited to, changes in scope or any other item which would enable Design Builder to increase an NTE or GMP under the Contract Documents.

.4 Design Builder shall provide Owner notice of all anticipated charges against the Contingencies and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Contingencies, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.

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.5 Design Builder agrees that with respect to any expenditure from the Contingencies 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. Design-Builder may only utilize a Contingency to cover such costs when: (1) the Contingency has not already been expended, and (2) the cost occurs prior to Final Completion. The Design-Builder may not, however, use a Contingency for items or costs that arise as a result of the Design-Builder's negligence or that are covered by the Fee Percentage, Lump Sum Fee.

.6 At the conclusion of the Project, all savings from any Contingency shall go to the Owner.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as expressly provided for in Section 6.3 hereof.

.2 Overhead, profit and general expenses, except as provided for in Section 6.3 hereof.

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

.4 Costs that would cause the Phase 1 NTE, the GMP, or any other NTE or Lump Sum, as adjusted in accordance with the Contract Documents, to be exceeded.

.5 Profit margins or similar mark-ups on costs for Work performed by subsidiaries or other related entities of the Contractor unless specifically disclosed to and approved by the Owner.

.6 Costs associated with bonuses, incentives, incentive compensation, stock options, deferred compensation and similar employee programs, regardless of where the employee is stationed for the Work.

.7 Discretionary costs intended to be incentives or recognition for Project team members such as lunches, parties, clothing, awards and similar expenses, unless approved in advance by the Owner.

.8 Any accrual cost not identified in the Cost Of the Work under article 6.

.9 Costs of centralized and generally shared data processing, information technology and communications equipment, systems and networks maintained at or from the Contractor's home office, except as specifically approved in Article 6.

.10 Legal, mediation, and arbitration costs including attorney fees related to disputes or actions between the Contractor and its employees, Subcontractors, Suppliers and other third parties (including Owner), unless approved in advance by the Owner.

.11 Accrued costs or contingent costs to cover self insurance, self insured retention or insurance deductibles.

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.12 Costs the Contractor may incur that are not a reimbursable Cost of the Work or costs that exceed the Guaranteed Maximum Price as adjusted by Change Orders.

6.6 The Project Phases.

6.6.1 Phase 1

.1 **Phase 1A Not To Exceed Amount.** Design-Builder guarantees that it shall not exceed Phase 1A Not to Exceed Amount ("Phase 1A NTE") of _____ ($_____). Documents used as a basis for the Phase 1A NTE shall be identified in Exhibit C to this Agreement. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the Phase 1A NTE, as adjusted in accordance with the Contract Documents. The Phase 1B NTE shall be determined during Phase 1A.

.2 The Phase 1A NTE includes the following sublimits the scope of which are further defined in Exhibit E:

.3 Exhibit E includes the hourly rates of all Key Team Members. Design-Builder may not change the hourly rates of the Key Team Members set forth in Exhibit E, as it may be amended, without a Change Order.

.4 **Phase 1A Completion Date.** Phase 1A Completion Date is_____.

.5 **Design Builder's Phase 1A Compensation.** Design Builder's compensation for Work performed in Phase 1A shall consist of the following:

a. The Cost of the Work as set forth in Section 6.3 of the Agreement for Work performed in Phase 1A. The Cost of the Work includes the following:

i. the Design Builder's Phase 1A Cost of the Work Contingency; and

ii. any Not to Exceed or Lump Sum Amount established as part of the Cost of the Work;

b. The Design-Builder's Fee Percentage, which shall be multiplied by the Cost of the Work for Phase 1, less the Design Builder's Contingency;

c. The Design-Builder's Contingency; and

d. Any Allowances and Owner Directed Allowances established by the Parties.

.6 **Phase 1A Report**. At the conclusion of Phase 1A, the Design-Builder shall produce a Phase 1A Report that will contain the deliverables set forth in Exhibit C.

.7 **Owner's Option to Enter Into Phase 1B**

a. After submission of the Phase 1A Report, Design Builder and Owner shall meet to discuss and review the Phase 1A Report. The Owner shall make its best efforts to provide such comments within thirty (30) days of the Owner's receipt of the Phase 1A Report, unless the Owner provides notification that it requires additional time for review. If Owner has any comments regarding the Phase 1A Report or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice to Design Builder of such comments or findings in a reasonably prompt manner. If appropriate, Design Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Phase 1A Report. To assist in the Owner's review of the Phase 1A Report, the Design Builder shall, upon the Owner's Request, provide

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all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the Phase 1A Report. The Owner shall make its best efforts to review any revised Phase 1A Report within thirty (30) days of receipt of the revised Phase 1A Report.

b. The Owner, at its sole discretion, may exercise its option to enter into Phase 1B of the Agreement.

   i. If the Owner accepts the Phase 1A Report, the parties shall enter into the Phase 1B Amendment. The total compensation paid to Design Builder for Phase 1B shall not exceed the Phase 1B Not to Exceed Amount.

   ii. The Owner may suggest modifications to the Phase 1A Report, whereupon, if such modifications are accepted in writing by Design Builder, the Phase 1A Report shall be deemed accepted and the Parties shall proceed in accordance with subsection i above.

c. If Owner decides not to exercise its option to enter into Phase 1B and/or rejects the Phase 1A Report or fails to notify Design Builder in writing on or before the date specified in the Phase 1A Report that it has exercised its option to enter into Phase 1B, the Phase 1A Report shall be deemed withdrawn and of no effect. In such event, Owner and Design Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

   i. Owner may authorize Design Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.6.1.5 hereof; however, Design Builder may not exceed any NTE or Lump Sum that may be established between the Parties; or

   ii. Owner may elect not to exercise its option to enter into Phase 1B. In such case, the Design-Builder shall be compensated for the amount incurred pursuant to Section 6.6.1.5 above, as supported by Design-Builder's Payment Applications and subject to Phase 1A Not to Exceed Amount. The compensation set forth herein shall be the Design-Builder's sole compensation for the Project if the Owner elects not to exercise its option to enter into Phase 1B, and the Design Builder hereby agrees that it will not seek any other compensation, remedy or damages of any kind whatsoever if the Owner elects not to exercise its option to enter into Phase 1B.

d. The Design Builder shall not perform any Work after the submission of the Phase 1A Report unless the Owner exercises its option to enter into Phase 1B and has approved and signed the Phase 1A Report, as negotiated between the parties, unless the Design Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent.

e. If the Design Builder performs Work after the submission of the Phase 1A Report but before the Parties enter into the Phase 1B Amendment, Design Builder shall be compensated pursuant to Section 6.6.1.5 of the Agreement; however, in no case shall the Design Builder be entitled to be paid in excess of the Phase 1B NTE, as amended by the Parties.

.8 Design Builder's Phase 1B Compensation. Design Builder's compensation for Work performed in Phase 1B shall consist of the following:

a. The Cost of the Work as set forth in Section 6.3 of the Agreement for Work performed in Phase 1B. The Cost of the Work includes the following:

   i. the Design Builder's Phase 1B Cost of the Work Contingency; and

   ii. any Not to Exceed or Lump Sum Amount established as part of the Cost of the Work;

b. The Design-Builder's Lump Sum Fee;

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c. The Design-Builder's Contingency; and

d. Any Allowances and Owner Directed Allowances established by the Parties.

.9 GMP Proposal. At the conclusion of Phase 1B, the Design Builder will submit a GMP Proposal and a GMP Report pursuant to the requirements set forth in Exhibit C. Unless the Parties agree otherwise, the GMP Proposal shall include the deliverables set forth in Exhibit C and the time limit for the Owner to exercise its option to enter into Phase 2, such time limit shall not be less than 90 days.

.10 Owner's Option to Enter Into Phase 2

a. After submission of the GMP Proposal, Design Builder and Owner shall meet to discuss and review the GMP Proposal. The Owner shall make its best efforts to provide such comments within thirty (30) days of the Owner's receipt of the GMP Proposal, unless the Owner provides notification that it requires additional time for review. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice to Design Builder of such comments or findings in a reasonably prompt manner. If appropriate, Design Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner's review of the GMP Proposal, the Design Builder shall, upon the Owner's Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner shall make its best efforts to review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

b. The Owner, at its sole discretion, may exercise its option to enter into Phase 2 of the Agreement.

   i. If the Owner accepts the GMP Proposal, the parties shall enter into the GMP Amendment. The total compensation paid to Design Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract.

   ii. The Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design Builder, the GMP Proposal shall be deemed accepted and the Parties shall proceed in accordance with subsection i above.

c. If Owner decides not to exercise its option to enter into Phase 2 and/or rejects the GMP Proposal or fails to notify Design Builder in writing on or before the date specified in the GMP Proposal that it has exercised its option to enter into Phase 2, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

   i. Owner may authorize Design Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.6.1.8 hereof; however, Design Builder may not exceed any NTE or Lump Sum that may be established between the Parties; or

   ii. Owner may elect not to exercise its option to enter into Phase 2. In such case, the Design-Builder shall be compensated for the amount incurred pursuant to Section 6.6.1.8 above, as supported by Design-Builder's Payment Applications and subject to Phase 1 Not to Exceed Amount. The compensation set forth herein shall be the Design-Builder's sole compensation for the Project if the Owner elects not to exercise its option to enter into Phase 2, and the Design Builder hereby agrees that it will not seek any other compensation, remedy or damages of any kind whatsoever if the Owner elects not to exercise its option to enter into Phase 2.

d. The Design Builder shall not perform any Work after the submission of the GMP Proposal unless the Owner exercises its option to enter into Phase 2 and has approved

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and signed the GMP Proposal unless the Design Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent.

e. If the Design Builder performs Work after the submission of the GMP Proposal but before the Parties enter into the GMP Amendment, Design Builder shall be compensated pursuant to Section 6.6.1.8 of the Agreement; however, in no case shall the Design Builder be entitled to be paid in excess of the Phase 2 NTE, as amended by the Parties.

6.6.2 Phase 2, Post GMP Period.

.1 Commencement and Scope of Work. Phase 2 shall commence when the Owner exercises its option to enter into Phase 2 and both Parties sign the GMP Amendment. Phase 2 is the final phase of the Contract. The scope of Work for Phase 2 will be developed during Phase 2 and set forth in the GMP Amendment, but it will, at a minimum, include the services set forth in Exhibit C, including but not limited to the following:

a. Completion of the design services and the development of Construction Documents for the Project,

b. Performance and completion of construction Work, start-up, testing and commissioning and closeout of the Project in accordance with the requirements of the Contract Documents; and

c. Any ongoing contractual obligations after Final Completion, such as guarantees, warranty services, and/or obligations to provide insurance and indemnity to the Owner.

.2 Guaranteed Maximum Price. The GMP Amendment shall establish a binding GMP between the Parties. Design Builder agrees that it will be responsible for paying all costs of completing the Phase 2 Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Execution of the GMP Amendment constitutes Design Builder's representation and agreement to the following:

a. The Project is adequately defined, that the Basis of Design Documents are sufficiently defined to provide an accurate Guaranteed Maximum Price;

b. The Project is sufficiently clear and understandable for the Design Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP and within the Project Schedule; and

c. If the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design Builder, and Design Builder hereby assumes liability for such costs without reimbursement by the Owner.

.3 Project Schedule. The Substantial and Final Completion Dates will be set forth in the GMP Amendment. By entering into the GMP Amendment, the Design-Builder makes the following representations:

a. The Project Schedule is sufficient time to complete the Project in accordance with the GMP Amendment and the Contract Documents.

b. If the Design-Builder fails to achieve Substantial Completion by the date set forth in the GMP Amendment, the Design-Builder will pay liquidated damages in the amount set forth in Section 5.4 of the Agreement and during Phase 1A and the GMP Amendment as agreed compensation to the Owner for the cost of delay and not as a penalty.

.4 Design Builder's Compensation. Design Builder shall be compensated for Phase 2 for the following costs up to the established GMP. Any costs incurred in excess of the GMP shall be the responsibility of the Design Builder.

a. The Cost of the Work as set forth in Section 6.3 of the Agreement for Phase 2 Work. The Cost of the Work also includes the following:

i. the Design-Builder's Contingency set forth in Section 6.4.4.1.a; and

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ii. any Not to Exceed Amount established as part of the Cost of the Work;

b. The Design-Builder's Lump Sum Fee allocated to Phase 2 Work, calculated pursuant to Section 6.2 of the Agreement;

c. Any additional Lump Sum Amounts established by the Parties in the GMP Amendment;

d. Design-Builder's Contingency set forth in Section 6.4.4.1.b;

e. Any Allowances and Owner Directed Allowances established by the Parties in the GMP amendment; and

f. Any Incentive Payments established by the Parties in either the GMP Amendment or the GMP Amendment.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty fifth (25th) 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. Applications for Payment shall include the Contract Number and shall be addressed as follows:

7.1.2 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.

7.1.3 If Design-Builder's Fee under Section 6.2.3 hereof is a Lump Sum 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 Lump Sum Fee.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage pursuant to RCW Chapter 60.28, and Owner shall release such retainage pursuant to state law. Pursuant to RCW Chapter 60.28, the Design-Builder may submit a bond in lieu of the retainage that the Owner would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form provided with these Contract Documents (see Exhibit "B"). In the event the Design-Builder fails at any time to pay persons protected under RCW Chapter 60.28 or the Owner has reason to believe that the Owner or other obligee under the bond has a claim against the retainage or for other good cause, the Owner may, at its option, resume retaining from monies earned by the Design-Builder in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the Owner's resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Design-Builder. After the Design-Builder has paid protected persons or otherwise cured any default, the Owner may, at its option, again release retainage pursuant to the terms of the bond. Any costs associated with the Bond in Lieu of Retainage shall be included in the Total Bid Price.

7.3 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-

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Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Sections 6.7.2 and 6.7.3 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the statutory rate of interest per month until paid.

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, Owner's accountants, the Washington State Department of Commerce and the Washington State Auditor shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for allowable costs and subject to any established Not to Exceed Amount or GMP:

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

8.1.2 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

8.1.3 Design-Builder's Fee Percentage on items 8.1.1 and 8.1.2. Design-Builder shall not be entitled to Fee on unperformed Work.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 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 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

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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 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)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of Phase 1A NTE in the form set forth as Exhibit B. Upon Execution of the Phase 1B Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the Phase 1B Amendment in the form set forth as Exhibit B. Upon Execution of the GMP Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the GMP Amendment in the form set forth as Exhibit B.

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Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.1.1 Design-Builder Representations. To induce the Owner to enter into this Agreement, the Design-Builder makes the following representations:

.1 Design-Builder has a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, such registration must have been in effect at the time of the submission of Design-Builder's Proposal.

.2 Design-Builder has a current Washington Unified Business Identifier (UBI) number.

.3 Design-Builder has a Washington Employment Security Department number, as required in Title 50 RCW.

.4 Design-Builder has a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW.

.5 Design-Builder has Industrial Insurance (worker's compensation) coverage for the Design-Builder's employees working in Washington, as required in Title 51 RCW.

.6 Design-Builder is not disqualified from bidding or proposing on any public works contract under RCW 39.06.010 or 39.12.065(3).

11.1.2 Lower Tier Contractor Responsibility. The Design-Builder shall include the language of this section in each of its first tier subcontracts and subconsultant agreements (collectively "Subcontracts") and shall require each of its Subcontractors to include the same language of this section in each of their sub-tier contracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, Design-Builder shall promptly provide documentation to the Owner demonstrating that each Subcontractor meets the Subcontractor responsibility criteria below, regardless of tier. At the time of subcontract execution, the Design-Builder shall verify that each of its Subcontractors meets the following bidder responsibility criteria:

.1 Have a current Washington Unified Business Identifier (UBI) number;

.2 If applicable, have

a. Industrial Insurance (workers' compensation) coverage for the Subcontractor's employees working in Washington, as required in Title 51 RCW;
b. A Washington Employment Security Department number, as required in Title 50 RCW;
c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
d. An electrical contractor license, if required by Chapter 19.28 RCW;
e. An elevator contractor license, if required by Chapter 70.87 RCW.
f. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

11.2 Wages.

11.2.1 Before payment is made by the Owner to the Design-Builder for any Work performed by Design-Builder or any Subcontractor, Consultant or Sub-Consultant whose work is included in the application for payment, the Design-Builder shall submit, or shall have previously submitted, to the

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Owner a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of employees, laborers, workers, or mechanics employed for the Work by Design-Builder, Consultants, Subcontractors and Sub-Consultants. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Design-Builder's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Design-Builder for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the City.

11.2.2 Design-Builder's Subcontractors required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.3 Prior to release of the retainage, the Design-Builder shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Design-Builder and every Consultant, Sub-Consultant, and Subcontractor of any tier that performed work on the Project.

11.2.4 Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

11.2.5 Each Application for Payment submitted by Design-Builder shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copied of the approved intent statements(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.6 In compliance with WAC Chapter 296-127, Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

11.2.7 Consistent with WAC 296-127-320, the Design-Builder and all Consultants, Sub-Consultants and Subcontractors shall submit a certified copy of payroll records if requested.

11.3 Hours of Labor

11.3.1 Design-Builder shall comply with applicable provisions of RCW Chapter 49.28, and such provisions are incorporated herein by reference.

11.3.2 RCW 49.28 permits entities performing public works contracts to enter into an agreement where employees work up to ten hours in a calendar day, subject to the provisions of the statute. No such agreement may provide that employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees.

11.3.3 All work required to be performed by Design-Builder shall normally be done between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, exclusive of Owner observed holidays see or as identified in the approved schedule. Design-Builder shall provide a minimum seventy two (72) hour notice to the Owner's Representative if at any time it becomes necessary or Design-Builder desires to work at times other than those specified herein or as approved in advance by the Owner. Approval of any proposed alternative work schedule shall be at the sole discretion of the Owner's Representative.

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11.4 Off Site Prefabricated Items.

11.4.1 In accordance with RCW 39.04.370, Design-Builder shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington as a part of the Affidavit of Wages Paid form filed with the Washington State Department of Labor and Industries.

11.5 Nondiscrimination. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

11.6 Business Registration Requirement. Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers are properly licensed to perform the work for which they are contracted and have all applicable business licenses, including but not limited to any licenses or registrations required by the State of Washington and any other regulatory authority. Design-Builder shall be solely responsible for contacting the State of Washington Business License Services at http://bls.dor.wa.gov or 1-800-451-7985 to obtain a business registration.

11.7 Contractor's Registration Requirement. Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW

11.8 Apprenticeship. The requirements for use of apprentices shall be in accordance with RCW 39.04.320.

11.9 No Liability. It is further agreed that no liability shall attach to the City of Bothell by reason of entering into this Contract, except as expressly provided herein.

11.10 Tax Reporting Requirements. The amount of tax reported and paid by the Design-Builder to the Washington State Department of Revenue due to any and all payments made to the Design-Builder for the work performed under this Contract shall be coded to the City of Bothell under Tax Code Location 69.091003. Additionally, the City of Bothell shall require all Subcontractors performing work under this Contract to use Tax Code Location 69.091003 in reporting tax to the Washington State Department of Revenue for the payments they receive from the Design-Builder. In order for the Contract Bond to be released, the Design-Builder shall provide to the City copies of all state tax returns showing that the tax has been reported in compliance with the requirements of this section.

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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.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written.

CITY OF BOTHELL

By _____
_____

Its City Manager

ATTEST:

_____
Laura K. Hathaway, City Clerk

APPROVED FOR FORM:

_____
_____, City Attorney

DESIGN-BUILDER

_____
Name of Design-Builder

By _____

Its _____

DESIGN-BUILDER'S ADDRESS AND PHONE:

_____

_____

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Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.
This document has been modified from the original DBIA version.

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CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ _____ of the corporation named as Design-Builder in Agreement attached hereto; that _____who signed said Agreement on behalf of the Design-Builder, was then_____ of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

By:_____

Title:_____

State

County of:_____

being duly sworn deposes and says that he/she is_____

of_____
(Name of Organization)

STATE OF WASHINGTON)
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the _____ of the _____, Company, that executed the within and foregoing instrument, and acknowledged the said corporation for the purposes therein mentioned, and an oath, stated that he was authorized to execute said instrument on behalf of said corporation, and the seal affixed thereto is the corporate seal of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, _____.

_____
NOTARY PUBLIC in and for the State of Washington, residing in _____.

My commission expires _____, 20___.

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GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Note: This document has been modified from the DBIA Form. A redlined version will be provided upon request.

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Document No. 535
Second Edition, 2010
© Design-Build Institute of America
Washington, DC

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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.

1.1.2 *Integrated Delivery:* The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

.1 Create a culture of open and honest communication throughout the course of the Project;
.2 Resolve disputes at the lowest possible level;
.3 Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;
.4 Utilize lean construction methods efficiently and effectively;
.5 Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and
.6 Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), as amended.

1.2.2 *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, Hourly Rate or Contract Time.

1.2.3 *Contingencies* are the amounts available for Design-Builder's use and are defined in Section 6.4.4 of the Agreement. The Cost of the Work Contingency is defined in Section 6.4.4.1.a. The Design-Builder's Contingency is defined in Section 6.4.4.1.b.

1.2.4 *Contract Time* consists of the dates set forth in Article 5 of the Agreement.

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

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

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

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

1.2.9 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Initial and Final Basis of Design Documents, as applicable.

1.2.10 *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, the Design-Builder: (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.11 *Final Basis of Design Documents* are the documents agreed upon by the Owner and Design-Builder at the conclusion of Phase 1B that comprise the performance and other requirements of the Project.

1.2.12 *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 and receipt of all documents set forth in Sections 6.7.2 and 6.7.3.

1.2.13 *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.

1.2.14 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.15 *GMP Amendment* means an amendment to the Agreement entered into the parties at the conclusion of Phase 1B that establishes the Final Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

1.2.16 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement.

1.2.17 *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.

1.2.18 *Initial Basis of Design Documents* are those documents identified in Section 2.1.2 of the Agreement.

1.2.19 *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 and includes Owner's Code of Ethics, a copy of which is available at Owner's offices.

1.2.20 *Owner Directed Allowances* are the amounts defined in Section 6.4.1.6 of the Agreement.

1.2.21 *Owner Directed Not to Exceed Amounts* are the amounts defined in Section 6.4.2.5 of the Agreement.

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1.2.22 *Project Schedule* is the schedule provided by the Design-Builder pursuant to Section 2.1.3 of the General Conditions.

1.2.23 *Reliable Design Decision* is a decision, development, or election that refines the Initial Basis of Design Documents or Final Basis of Design Documents, that is approved by the Owner and that is set forth in the 9Design Log. A Reliable Design Decision cannot change the Initial Basis of Design Documents or Final Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

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

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

1.2.26 *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 Design Sub-Consultants, materialmen and suppliers.

1.2.27 *Substantial Completion* or *Substantially Complete* means the date on which 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.

1.2.28 *Trend* is an issue identified in the Trend Log.

1.2.29 *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

1.2.30 *Phase 1* is that period of time identified in 2.12.1 of the General Conditions within which the Design-Builder must verify the information set forth in Section 2.12.1 and perform the services set forth in Exhibit C. Phase 1 is divided into Phase 1A and Phase 1B as set forth in Exhibit C.

1.2.31 *Phase 1B Amendment* means an amendment to the Agreement entered into the parties at the conclusion of Phase 1A that establishes the Phase 1B Not to Exceed Amount and the deliverables set forth in Exhibit C.

1.2.32 *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

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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

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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 Design-Builder shall provide Owner with the status reports set forth in Exhibit C detailing the progress of the Work, including but not limited to (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 accounts; 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 the Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit the schedules and deliverables set forth in Exhibit C, including but not limited to the Project a Schedule for the execution of the Work for Owner's review and response ("Project Schedule"). The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by conditions and progress of the Work and by Exhibit C, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project Schedule and other deliverables provided by the Design-Builder 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 any additional procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the information set forth in Exhibit C and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within two days of meeting.

2.1.6 Design Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design Builder and may not be withdrawn prior to Final Completion.

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. Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. "Material portions of the Work" shall, at a minimum, include the civil,

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structural, mechanical, electrical (including low voltage) and plumbing design. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.3 Standard of Performance for Professional Services.

2.3.1 The standard of care for all 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 in the Initial and/or Final Basis of Design Documents.

2.3.2 Design Builder shall perform all activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the Design Submissions set forth in the Contract Documents. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any additional 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.

.1 Interim and final Design Submissions shall be consistent with the Initial and Final Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1 and in Exhibit C, as well as the Commercial Terms. By submitting a design submission, the Design-Builder represents to the Owner that the design submission may be constructed for the then current Initial or Final Basis of Design Documents (as applicable) and the Commercial Terms. Notwithstanding the above, Design-Builder may propose designs that may alter the Initial or Final Basis of Design Documents, the Commercial Terms; however, Design-Builder must provide notice thereof in accordance with Article 9.

.2 Design-Builder shall provide the Design Submissions set forth in Exhibit C. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions.

.3 The Owner shall review and comment on such Design Submissions, providing any comments and/or concerns about such Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Schedule. The Design-Builder shall revise the Design Submissions (and any other deliverables) in response to the Owner's comments and incorporate said responses into the next Design Submission.

.4 If incorporation of the Owner's comments result in a design that is inconsistent with the Initial or Final Basis of Design Documents or otherwise give rise to a change in the Initial or Final Basis of Design Documents, or the Commercial Terms, the Design-Builder shall provide notice thereof in accordance with Article 9. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be

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processed in accordance with Article 9.

.5 The Design-Builder shall provide an updated cost model for the Project periodically throughout the Work and as required by Exhibit C. The cost model will be based on a detailed labor and material type cost estimate for the GMP and other Commercial Terms, consistent with Association for the Advancement of Cost Engineering (AACE) practices. The cost model shall be organized by the Construction Specifications Institute (CSI) division listing all materials, equipment, and systems necessary to construct the facilities. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarizes changes in the Design Submission that are scheduled Milestone dates and present an overview of cost model.

.6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes, will be maintained by the Design-Builder and provided to all attendees for review.

a. Both parties must agree to include a Reliable Design Decision in the Design Log.

b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.

c. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Interim or Final Basis of Design Documents.

d. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Interim or Final Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Article 9.

.7 Trend Log. If the Design-Builder does not know the extent to which a Design Submission will alter the GMP or Project Schedule, the Design-Builder shall request in writing for the Owner to agree to identify the Trend in the Trend Log.

a. The request to include a Trend in the Trend Log must include the following information:

i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;

ii. The estimated change in the applicable Commercial Term; and

iii. Potential impacts or changes to the Initial or Final Basis of Design Documents as a result of the Trend.

b. The Design-Builder must obtain the Owner's consent to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.

c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial or Final Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order.

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

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approved Construction Documents and shall submit two sets 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, the Design Log, the Trend Log, 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, the Design Log, the Trend Log 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, such time period shall not be less than two (2) weeks.

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.

2.4.5 The Design-Builder shall assemble and install all equipment according to the applicable manufacturer's installation instructions. Work that does not conform to the applicable instructions and/or any resulting errors in assembly or installation shall be corrected by the Design-Builder. If the Owner determines that the Design-Builder has incorrectly assembled, installed and/or damaged any such equipment, the Design-Builder shall, at its own expense, furnish a competent manufacturer's representative to assist, instruct and approve the Design-Builder's corrected work.

2.4.6 If any materials or equipment are stored by Design-Builder, they shall be stored so as to ensure the preservation of their quality and fitness. Materials and equipment shall be placed on platforms or other hard, clean surfaces, and not on the ground, and shall be placed under cover and heated adequately to prevent condensation, oxidation or freezing. Stored materials and equipment shall be located so as to facilitate observation. The Design-Builder shall be responsible for all damage or loss that occurs as a result of its fault or negligence in connection with the care and protection of all materials and equipment until acceptance by the Owner.

2.4.7 Design-Builder is responsible for verifying that any equipment supplied by the Owner is in working order and sufficient for the purposes for which it was intended in the Project. If equipment furnished by Owner is not in working order or is not sufficient for the Project, Design-Builder shall notify Owner immediately, and Owner shall either repair or replace the equipment, at Owner's sole discretion. Design-Builder is responsible for the proper installation of the equipment furnished by Owner.

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 Unless the parties have identified permits in an Owner's Permit List attached as either an exhibit to the Agreement or as part of the Initial or Final Basis of Design Documents, Design-Builder

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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.

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.

2.8 Subcontracts.

2.8.1 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall, prior to the start of construction, provide Owner with a list of all Subcontractors performing the work to Owner. 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 consent; such consent shall not be unreasonably withheld.

2.8.2 Design-Builder shall submit a Subcontracting Procurement Procedure during Phase 1 as required in Exhibit C, subject to the approval of the Owner. After approval by the Owner, Design-Builder may only modify the Subcontracting Plan upon obtaining written approval from the Owner. Design-Builder may not award any Subcontract on the basis of a lump sum price without obtaining prior written permission from the Owner, such permission shall not be unreasonably withheld.

2.8.3 All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with a Subcontractor Procurement Procedure established during Phase 1. Design-Builder shall identify the scope of subcontracted Work ("Subcontract Package") and shall identify qualified Subcontractors for each Subcontract Package.

2.8.4 Design-Builder must obtain prior, written approval from the Owner for the Design-Builder or the lead Constructor (if the lead Constructor is not also the Design-Builder) to self-perform construction Work.

1. For each scope of Work for which Design-Builder proposes self-performance, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:
   a. A detailed description of the scope of Work; and
   b. A detailed explanation of the effect of the self-performed construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project;
2. Design-Builder will provide the Owner with an estimate of the costs for all self-performed construction Work on an open book basis. In calculating the costs for self-performed construction Work, the following shall apply:

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a. The costs for self-performed construction Work shall not include costs that are also included in the General Conditions Amount.
b. Notwithstanding the above, Design-Builder may include in the costs for self-performed construction Work additional general conditions costs that are directly associated with the self-performed construction Work that Design-Builder would not have incurred but for the self-performed construction Work.

2.8.5 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.

2.8.6 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.

2.8.7 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 representing an Interim Milestone, 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.

2.9 Design-Builder's Responsibility for Project Safety.

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

2.9.2 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.

2.9.3 Design-Builder's responsibility for safety under this Section 2.9 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.

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2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. 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 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 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 2.10 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.

2.11.2 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.

2.11.3 The one-year period referenced in Section 2.11.1 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.

2.12 Contract Phases

2.12.1 Phase 1. Phase 1 shall commence upon the Notice to Proceed and shall end on the Phase 1 Completion Date, as set forth in the Agreement. Phase 1 is divided into Phase 1A and 1B as set forth in Exhibit C. During Phase 1A, the Design-Builder shall perform the services set forth in Exhibit C and shall carefully and thoroughly examine the information set forth in the Initial Basis of Design Documents, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities; necessary testing of existing facilities; and legal, permitting and regulatory requirements and restrictions.

.1 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner. Notwithstanding the above, the parties recognize that the Design-Builder relied on the Initial Basis of Design Documents to establish the Phase 1A NTE, and if the actual conditions differ materially from the Initial Basis of Design Document, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Phase 1A NTE.

.2 The Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents and during Phase 1A, agree upon the quantity and level of

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development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design Submissions shall be consistent with the Initial and Final Basis of Design Documents, as they may have been changed through the design process set forth in the Contract Documents.

.3 Design-Builder must verify the Owner Provided Information during Phase 1A. If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the Owner Provided Information, Design-Builder shall, at the conclusion of Phase 1A, provide Owner with written notice of any such material differences. A "Material Difference" is defined as one that would either a) impact the Initial Basis of Design Documents or Design-Builder's Fee Percentage or b) be considered a Differing Site Condition pursuant to Section 4.2.1 of the General Conditions. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1 of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1A.

.4 At the conclusion of Phase 1A, the Design-Builder will submit a Phase 1A Report pursuant to Section 6.6 of the Agreement. The parties will negotiate the Final terms of the Phase 1B Amendment, and if the parties agree, they will enter into the Phase 1B Amendment.

.5 At the conclusion of Phase 1B, the Design-Builder will submit a GMP Proposal pursuant to Section 6.6.2 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment.

.6 If the Design-Builder performs Work after the submission of the Phase 1A Report or the GMP Proposal but before the parties enter into the GMP Amendment pursuant to Section 6.6.2 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during Phase 1B; however, in no case shall the Design-Builder be entitled to be paid in excess of the Phase 1 NTE.

2.12.2 Phase 2. Phase 2 is the final phase of the Contract where the Design-Builder perform the services set forth in Exhibit C, including but not limited to the following: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, and (iii) undertakes any necessary warranty services for the Project. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

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.

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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 The Initial Basis of Design Documents sets forth the information provided by the Owner.

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 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. 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 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List 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 that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

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

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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. Unless working with the Hazardous Condition is part of the scope of the Work, 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 that are not set forth as part of the Work, 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 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

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

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.7 With respect to Hazardous Conditions that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation or regulatory agency regarding such Hazardous Conditions. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of, and/or remediate any Hazardous Conditions.

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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, 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. Notwithstanding the above, provided the parties sign the GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1 of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1A.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action regarding any Differing Site Condition.

4.3 Archaeological Resources

4.3.1 In the event the Contractor or any of its Subcontractors inadvertently discover archaeological resources at any time during the project, Contractor shall immediately notify the District Representative and suspend all excavation activities at the site.

4.3.2 "Archaeological Resource" shall mean any material remains of human life or activities which are of interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and paintings, and other implements and artifacts of any material or form.

4.3.3 The disturbance of any cairn or Native Indian grave is prohibited by the Indian Graves and Records Act (RCW 27.44).

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

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.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to

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performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 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 the Insurance Exhibit to the Agreement 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 from insurance companies authorized to do business in the state in which the Project is located 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 obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1 to the extent that Design-Builder, or any subcontractor or subconsultant for which it is liable is responsible for the claim against the builder's risk insurance.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, if requested, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Owner's builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

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5.3.5 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.

5.4 Bonds and Other Performance Security.

5.4.1 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide a payment bond and a performance pursuant to RCW Chapter 39.08 and pursuant to Section 10.2 of the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner and in compliance with Washington law. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval schedules of values for all of the Work as set forth in Exhibit C. 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. Design-Builder will furnish, as part of the Schedule of Values, adequate cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal and will update the preliminary Schedule of Values during the buy-out phase Subcontractors are contracted for the Work.

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

6.2 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.

6.2.2 If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

.1 The material will be placed in a warehouse that is structurally sound, dry, lighted and

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suitable for the materials to be stored;

.2 The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;

.3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);

.4 Design-Builder furnishes Owner a certificate of insurance extending Design- Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;

.5 The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;

.6 Owner shall at all times have the right of access in company of Design-Builder;

.7 Design-Builder and its surety assume total responsibility for the stored materials;

.8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and

.9 Upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances

6.2.3 All discounts offered by Subcontractor, 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.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, 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. 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 Right to Stop Work and Interest.

6.4.1 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

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Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

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 representing an Interim Milestone, has achieved Substantial Completion. 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 either the Design-Builder has achieved Substantial Completion in accordance with the requirements of the Contract Documents. If the Design-Builder has achieved Substantial Completion, Owner shall prepare and issue a Certificate of Substantial Completion (as applicable) that will set forth (i) the date of Substantial Completion of the Work, (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 Not used.

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

6.7 Final Payment.

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

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

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

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

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

.4 All operating manuals, warranties, record drawings and other deliverables required by the Contract Documents and Final Basis of Design drawing package, with any and all implemented changes, representing an "As-Built" or Final Record status. Any and all CAD (Computer Aided Design) electronic source files used in generation of said Final Basis of Design drawing package, and a copy of any dependent source computer file; and

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

6.7.3 After acceptance of the Project by the City Council, a Notice of Completion of Public Work Contract will be forwarded to the State Department of Revenue, and a Certificate of Completion will be issued by the Owner to the Design-Builder. Owner shall release the Contract Retainage pursuant to RCW 60.28.011. The retainage will be held by the Owner until the later of the following:

.1 Approval of release from the State has been received by the Owner;

.2 A 60 day period has elapsed;

.3 The Affidavit of Wages Paid for Design-Builder and all Subcontractors is on file with the Owner;

.4 The Owner has received a release from the Department of Labor and Industries releasing the City from further liability pursuant to RCW 51.12.050 and RCW 51.12.070;

.5 **T**he Owner has received a certificate that all taxes, increases and penalties due have been paid (RCW 60.28.050) from the Department of Revenue; and

.6 The Owner has received a certificate that all contributions, penalties and interest due under the Employment Security Act have been paid (RCW 50.24.130) from the Department of Employment Security.

6.7.4 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.

6.7.5 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 2.10 and 2.11 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.

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Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any

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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 option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

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

7.2 Not Used

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective its officers, directors, and employees (collectively "Indemnitees") from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent 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. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i)

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Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, it's agents or employees.

7.4.2 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 obligation set forth in Section 7.4.1 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. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the worker's compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

7.4.3 THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER RCW TITLE 51 WERE MUTUALLY NEGOTIATED.

OWNER'S INITIALS: (_____)
DESIGN-BUILDER'S INITIALS: (_____)

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

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8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

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:

.1 The scope of the change in the Work;

.2 The amount of the adjustment to the Contract Price; and

.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 but not limited to all incidental and indirect costs, and time extensions associated with the Change. Changes Orders will not be allowed unless there is an actual change to the Work.

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.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall work with Owner to adjust the remaining Work to meet as many of Owner's Project goals as reasonably possible. At Owner's sole discretion, it may remove Work from the Project rather than increase the GMP to equitably adjust for claims by Design-Builder pursuant to Article 10.

9.2 Work Change Directives.

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

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

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or

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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:

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

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

.3 Costs, fees and any other markups set forth in the Agreement; or

.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

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.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

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

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Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder, unless the parties specifically agree to allow the Design Log or Trend Log to operate as such written notice of claims. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

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.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such 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.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other binding dispute

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resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration 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 require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

10.4.1 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 to Design-Builder, 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 SECTIONS 10.5.2 AND 10.5.3 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.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

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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 i) its cost or time to perform the Work has been materially and adversely impacted by any suspension of stoppage of the Work by Owner, ii) the Design-Builder is entitled to the adjustment pursuant to the other provisions of the Contract Documents, and iii) the Design-Builder complies with all provisions of the Contract Documents regarding an adjustment to the Contract Price and/or Contract Time.

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, (vi) perform material obligations under the Contract Documents, or (vii) comply with the requirements regarding safety, 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, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. 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 reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

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11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder may not stop work unless it provides such written notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

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

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

.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.

.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the 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 Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 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:

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of

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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

.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.

11.5.2 The rights and remedies under Section 11.5.1 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.

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the 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.

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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 12.3.1 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.

13.1.1 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.

13.2 Assignment.

13.2.1 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.

13.3.1 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.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

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13.5.1 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.

13.6.1 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.

13.7.1 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.

13.8.1 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, or (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.

13.9 Amendments, Work Directives, and Change Orders.

13.9.1 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.

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