

Spokane County

Progressive Design-Build Contract

Liberty Lake and MeadowWood Golf Course Maintenance Facility Project

This **Contract** is made and entered into as of _____, 2026, by and between the following parties, for services in connection with the Project identified below:

OWNER:

Spokane County

DESIGN-BUILDER:

PROJECT:

Liberty Lake and MeadowWood Golf Course Maintenance Facility Project

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

Article 1

General

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

Article 2

Scope of Work

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

2.1 General Services.

2.1.1 Design-Builder will assist Owner in developing the final Project Program, with such service deemed to be the first task of Phase 1. The Design-Builder shall review the Owner's Initial Programming and Overview, including recommendations to Owner for innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Initial Programming and Overview and agree upon what revisions, if any, should be made.

2.2 Phased Services.

2.2.1 Validation Phase Work. Design-Builder shall perform validation work (the "Validation Phase Work") as set forth in **Exhibit A (Validation Phase Work)**.

2.2.2 Phase 1 Preconstruction and Design Work. Design-Builder shall perform design, pricing, and other services for the Project as may be revised in accordance with Section 2.1 hereof (the "Phase 1 Work") as set forth in a Phase 1 Amendment. The Phase 1 Work will include completion of Final Design Documents. However, Owner and Design-Builder may reach agreement on the GMP Amendment for Phase 2 at any point following Design-Builder's completion of the Basis of Design Documents, including incorporation of any Owner comments. As a result,

Phase 1 may overlap with Phase 2. The Contract Price and GMP for Phase 2 shall be developed during Phase 1 on an open-book basis. Design-Builder's Compensation for Phase 1 Work is set forth in Article 7 of this Contract.

2.2.3 Phase 2 Work. Design-Builder's Phase 2 Work, which shall be identified and described in the agreed-upon Phase 2 Proposal and GMP Amendment, shall consist of, but not be limited to, the procurement of all materials and equipment for the Project, the performance of construction work for the Project, development of various documents associated with Phase 2, training of Owner's operations staff, and the provision of warranty services.

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

2.3 Phase 2 Proposal. Design-Builder may develop a Phase 2 Proposal at any point following completion of the conceptual design and any other Basis of Design Documents upon which the parties may agree. Design-Builder shall submit a proposal to Owner (the "Phase 2 Proposal") for the construction of the Project and associated work, and for the Contract Price. The Contract Price in the Phase 2 Proposal shall be based on the Construction General Conditions Price (Section 7.4), the Design-Build Fee (Section 7.5), Pass-Through Costs (Section 7.6.3) plus the Cost of the Phase 2 Work (Section 7.6.1) as provided in Article 7 hereof, presented on an open-book basis, all subject to a Guaranteed Maximum Price (GMP).

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

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

- i. Construction General Conditions Price;
- ii. Design-Builder's Fee as defined in Section 7.5 hereof;
- iii. The Cost of the Phase 2 Work as defined in Section 7.6 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.7.2 hereof;
- iv. Pass-Through Costs as defined in Section 7.6.3 hereof.

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

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

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

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

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

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

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

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

2.3.1.11 A preliminary training plan;

2.3.1.12 A Project Specific Safety Plan;

2.3.1.13 A construction quality plan.

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

2.3.1.15 Design-Builder's Owned Equipment Rate Schedule, which shall be incorporated herein as **Exhibit D** and shall include adequate identifying information such as use, manufacturer, make and model such that accurate identification can be determined. These descriptors shall match Design-Builder's owned equipment rental log. **Exhibit D** shall include replacement values and approved rates for each item.

2.3.2 Review and Adjustment to Phase 2 Proposal.

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

2.3.2.2 Acceptance of Phase 2 Proposal. If Owner accepts the Phase 2 Proposal, as may be modified, the Contract Price and its basis shall be set forth in an amendment to this Contract (the "GMP Amendment"). Once the parties have agreed upon the GMP Amendment and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Work, all as described in the GMP Amendment. Design-Builder acknowledges and agrees that Owner's acceptance and execution of the GMP Amendment is subject to approval by the Spokane County Board of County Commissioners. Design-Builder further acknowledges and agrees that its execution of the GMP Amendment constitutes certification that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished, or incurred for or in connection with the Phase 1 Work through the date of the GMP Amendment that will in any way affect Owner's interests.

2.3.2.3 Failure to Accept Phase 2 Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or within ninety (90) days after submission that it accepts the Phase 2 Proposal, the Phase 2 Proposal shall be deemed withdrawn and of no effect.

In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i. Terminate this Contract and pay Design-Builder for all Work performed through the date of termination;
- ii. Terminate this Contract, pay Design-Builder for all Work performed through the date of termination and contract directly with the Design Consultant and Design Sub-Consultants, if any, for completion of the Phase 1 Scope of Services for the agreed upon price for Phase 1 Work set forth at Section 7.2 minus payments for all Work performed through the date of termination;
- iii. Require Design-Builder to proceed with remaining Phase 1 Work for the agreed upon price for Phase 1 Work set forth at Section 7.2 minus payments for all Work performed through the date of termination;
- iv. Require Design-Builder to perform any specific portion of the Work under this Contract based on the Design-Build Fee (Section 7.5), the Construction General Conditions Price (Section 7.4), Pass-Through Costs (Section 7.6.3) plus the Cost of the Phase 2 Work (Section 7.6.1) as provided in Article 7 hereof without a GMP Amendment, in which case all references in this Contract to the GMP Amendment shall not be applicable; or
- v. Require Design-Builder to continue to proceed with the Work, until further notice (reserving the right to terminate this Contract pursuant to Section 2.3.2.3.i.) on the basis of the Design-Build Fee (Section 7.5), the Construction General Conditions Price (Section 7.4), Pass-Through Costs (Section 7.6.3) plus the Cost of the Phase 2 Work (Section 7.6.1) as provided in Article 7 hereof without a GMP Amendment, in which case all references in this Contract to the GMP Amendment shall not be applicable.

2.3.2.4 If Owner fails to exercise any of the options set forth in Section 2.3.2.3, Design-Builder shall stop the Work and shall not proceed except as expressly authorized in writing by Owner.

Article 3

Contract Documents

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

- 3.1** All written and fully executed modifications, amendments (including the GMP Amendment), minor changes, and Change Orders to this Contract issued in accordance with the General Conditions, with more recent documents taking preference;
- 3.2** This Contract, including all exhibits and attachments;
- 3.3** The General Conditions;
- 3.4** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions;
- 3.5** Owner's Request for Qualifications, its Request for Proposals, and Addenda thereto, if any; and

3.6 Design-Builder's Statement of Qualifications, Proposal, and Attachments accepted by Owner.

Article 4

Interpretation and Intent

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

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Article 3 herein.

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

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

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

4.6 Changes in the Legal Requirements. The Owner and Design-Builder acknowledge that numerous aspects of the Project are governed by federal, state, and local laws, rules, and regulations and that the intent is to complete all Work in compliance with the Legal Requirements. Design-Builder is required to account for applicable changes in the Legal Requirements that occur during Phase 1 in its Phase 2 Proposal, the GMP Amendment, and the Phase 2 schedule. Changes in the Legal Requirements that become effective prior to execution of the GMP Amendment shall in no event form the basis for an adjustment of the GMP and/or Contract Time for Phase 2 Work. Changes in the Legal Requirements that become effective after execution of the GMP Amendment may form the basis for an adjustment to the GMP and/or Contract Time for Phase 2 Work, in accordance with the requirements and conditions of Section 8.2 of the General Conditions. As a condition precedent to any adjustment based on a change in Legal Requirements, Design-Builder shall provide written notice to Owner within seven (7) days after Design-Builder knew or should have known of the change and its potential effect on the Work. Design-Builder shall use commercially reasonable efforts to mitigate any increase in cost or time. No adjustment shall be allowed to the extent the impact was avoidable, was caused by Design-Builder's failure to comply with Legal Requirements already in effect, or was reasonably foreseeable and not disclosed before execution of the GMP Amendment.

Article 5

Ownership of Work Product

5.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions, furnished by Design-Builder to Owner under this Contract ("Work Product") 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 5.2 through 5.5 below.

5.2 Owner's License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a perpetual license to use the Work Product in connection with Owner's operation, use, maintenance, repair, renovation, modification, expansion, and replacement of the Project. Design-Builder shall not be responsible for Owner's material alteration of the Work Product after Project completion unless the claim, loss, or damage arises from an error, omission, inconsistency, code violation, or other defect in the Work Product as delivered by Design-Builder or from Design-Builder's failure to comply with the Contract Documents.

5.3 Owner's License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Contract for its convenience as set forth in Article 9 hereof, or if Design-Builder elects to terminate this Contract in accordance with Section 11.4 of the General Conditions, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a perpetual license to use the Work Product to complete the Project and for the subsequent operation, use, maintenance, repair, renovation, modification, expansion, and replacement of the Project. Design-Builder shall not be responsible for Owner's material alteration of the Work Product after Project completion unless the claim, loss, or damage arises from an error, omission, inconsistency, code violation, or other defect in the Work Product as delivered by Design-Builder or from Design-Builder's failure to comply with the Contract Documents.

5.4 Owner's License upon Design-Builder's Default. If this Contract is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions, Design-Builder grants Owner an irrevocable, perpetual, royalty-free license to use, reproduce, modify, and rely upon the Work Product to complete, operate, use, maintain, repair, renovate, modify, expand, and replace the Project. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Contract for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.

Article 6

Contract Time

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

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be established in the GMP Amendment.

6.2.2 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.27 of the General Conditions.

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

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

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

Article 7

Price

7.1 Validation Phase Price. For the completion of Validation Phase Work (**Exhibit A**), Owner shall pay the Design-Builder in accordance with Article 8 of this Contract for a sum not to exceed [\$] (the "Validation Phase Price").

7.2 Phase 1 Price. For completion of the Phase 1 Work, Owner shall pay Design-Builder in accordance with Article 8 of this Contract and as established in the Phase 1 Amendment. Phase 1 Work shall be billed at the all-inclusive billing rates and labor categories agreed to in the Phase 1 Amendment, and an agreed-upon not to exceed price. Any rates established shall not be subject to increase for any Phase 1 Work.

7.3 Phase 2 Price. For Phase 2 Work, Owner shall pay Design-Builder in accordance with Article 8 of this Contract and Article 6 of the General Conditions a contract price ("Contract Price") set forth in the GMP Amendment. The Contract Price = Cost of the Phase 2 Work + Design-Build Fee + Construction General Conditions Price + Pass-Through Costs, subject to the GMP.

7.4 Construction General Conditions Price. Owner shall pay the Construction General Conditions Price of [\$] for all Construction General Conditions Work as identified and defined in **Exhibit C (Construction General Conditions Work)**. The Construction General Conditions Price shall be paid monthly based on an Owner-approved schedule of values for Construction General Conditions Work, subject to verification of actual performance and continued progress. Owner may withhold or reduce payment of Construction General Conditions Price to the extent the associated Construction General Conditions Work has not been performed, is inadequately documented, or is not reasonably required due to delay, suspension, or demobilization caused by Design-Builder or any Subcontractor.

7.5 Design-Build Fee.

7.5.1 Design-Build Fee shall be [] percent ([] %) multiplied by the Cost of the Phase 2 Work.

7.5.2 The Design-Build Fee is intended to compensate Design-Builder for **all** costs and expenses **not specifically included** elsewhere. The Design-Build Fee shall compensate Design-Builder for all other costs, including but not limited to the following:

7.5.2.1 Profit on all work including self-performed work.

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

7.5.2.3 General administration costs associated with Design-Builder's home office operations, support staff, such as executives, HR, accounting, IT, etc. unless specifically approved in advance by Owner.

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

7.5.2.5 Cost associated with bonuses or profit sharing.

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

7.5.2.7 Business and Occupation (B&O) Taxes.

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

7.6 Cost of the Phase 2 Work.

7.6.1 Cost of the Phase 2 Work includes only those items expressly defined in this Section 7.6.1 that are reasonably incurred by Design-Builder in the proper performance of the Phase 2 Work. The Cost of the Phase 2 Work shall not include any Pass-Through Costs (as defined in Section 7.6.3), Construction General Conditions Work (as defined in Section 7.4 and Exhibit C), or costs intended to be covered by the Design-Build Fee (as defined in Section 7.5). For the avoidance of doubt, any confusion about the categorization of cost items between the Cost of the Phase 2 Work and Pass-Through Costs shall be resolved in favor of Pass-Through-Costs. Further, any confusion about the categorization of cost items between the Cost of the Phase 2 Work and Construction General Conditions Price or Design-Build Fee shall be resolved in favor of Construction General Conditions Fee and Design-Build Fee, respectively.

The Cost of the Phase 2 Work shall include only the following:

7.6.1.1 Except for those supervisory and administrative personnel who are covered by the Construction General Conditions Work (**Exhibit C**), wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site.

7.6.1.2 Except for those supervisory and administrative personnel who are covered by the Construction General Conditions Work (**Exhibit C**), wages or salaries of Design-Builder's personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

7.6.1.3 Except for those supervisory and administrative personnel who are covered by the Construction General Conditions Work (**Exhibit C**), wages or salaries of Design-Builder's personnel stationed at Design-Builder's Project Office, but only to the extent such personnel perform tasks directly associated with the Project.

7.6.1.4 A labor burden multiplier of _____ percent (____%) shall be applied to the wages and salaries of employees of Design-Builder covered under Sections 7.6.1.1 through 7.6.1.3. The multiplier shall include only payroll taxes, workers' compensation, unemployment insurance, health and welfare benefits, pension contributions, and other mandatory or documented fringe benefits actually incurred by Design-Builder. The multiplier shall not include profit, home office overhead, bonuses, discretionary benefits, vehicle allowances, cell phone allowances, severance, relocation costs, recruiting costs, or other costs included in the Design-Build Fee or Construction General Conditions Price. The multiplier and its components shall be subject to audit.

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

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

7.6.1.7 Costs of removal of debris and waste from the Site(s).

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

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

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

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

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

7.6.1.13 Costs for agreed-upon Allowance Items as described and defined in Section 7.8 herein.

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

7.6.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in connection with Sections 7.6.1.1, 7.6.1.2, and 7.6.1.3, costs associated with Construction General Conditions Work, items intended to be covered by the Design-Build Fee, and Pass-Through Costs.

7.6.2.2 General expenses not specifically provided for herein.

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

7.6.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded, unless Owner has approved an Adjustment or Change Order.

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

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

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

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

7.7 The Guaranteed Maximum Price.

7.7.1 GMP. Design-Builder guarantees that the Contract Price shall not exceed the Guaranteed Maximum Price ("GMP") established in the GMP Amendment. Documents used as basis for the GMP shall be identified in the GMP Amendment. ***Design-Builder does not guarantee any specific line item*** provided as part of the GMP. Design-Builder agrees that it will be responsible for all costs of completing the Work which exceed the GMP, as it may be adjusted in accordance with the Contract Documents.

7.7.2 Contingency. The GMP shall include a Design-Builder's contingency, in an amount that is no less than two-point five percent (2.5%) and no more than five percent (5%) of the estimated Cost of the Phase 2 Work, which will be negotiated between the Design-Builder and Owner as a part of the Phase 2 Proposal. The percentage shall depend upon the level of completion of the

Design-Build Documents and certainty of subcontractor pricing at that time and depending upon any other risk factors agreed upon between the Design-Builder and Owner.

The final amount of the contingency shall be stated in the GMP Amendment and included in the GMP amount. **The contingency is a sum established for the Design-Builder's sole use to cover the Design-Builder's costs that are properly reimbursable as a Cost of the Phase 2 Work but not the basis for a Change Order**, such as, for example, design errors and omissions, buy-out or estimating error, post-GMP unanticipated market conditions, scope gaps, coordination between trades, overtime, acceleration, failure of a Subcontractor of any tier, pandemic or epidemic, or expediting costs for critical materials.

Design-Builder shall provide Owner notice of all anticipated charges against the Contingency and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.

Use of the Design-Builder's Contingency shall not increase the GMP, Contract Price, Construction General Conditions Price, Design-Build Fee, or Contract Time. Design-Builder shall not use the Contingency for costs caused by Design-Builder's default, willful misconduct, failure to comply with Legal Requirements, failure to maintain insurance or bonds, rework of nonconforming Work, liquidated damages, fines, penalties, or costs expressly excluded from Cost of the Phase 2 Work. Owner's receipt of contingency reports or payment of amounts funded from the Contingency shall not waive Owner's right to audit or later disallow costs not permitted by the Contract Documents.

Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

7.7.3 Savings. If the sum of the actual Design-Build Fee, Construction General Conditions Price, Pass-Through Costs, and Cost of the Phase 2 Work is less than the GMP, as adjusted in accordance with the Contract Documents, the difference ("Savings") shall belong exclusively to Owner. Owner may, in its sole discretion and only by written amendment or Change Order, elect to apply all or part of the Savings to additional Project scope.

7.8 Allowance Items and Allowance Values.

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

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

7.8.3 No Work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Design-Builder represents that each Allowance Value included in the GMP Amendment is reasonable, complete, and consistent with the Basis of Design Documents, known Project conditions, market conditions, and information available to Design-Builder at the time of the GMP Amendment. Design-Builder shall not be entitled to an adjustment of the GMP or Contract Time for an Allowance Item except to the extent the actual

scope authorized by Owner materially differs from the scope, assumptions, or basis stated for that Allowance Item in the GMP Amendment.

7.8.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item.

7.8.5 Whenever the actual cost for an Allowance Item is more than or less than the stated Allowance Value, the Design-Builder shall report such difference to Owner so that Owner can maintain a running tally of Allowance Item costs against Allowance Values. Prior to final payment, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.8.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for all Allowance Items and the total Allowance Value.

Article 8

Procedure for Payment

8.1 Validation and Phase 1 Payments. Validation Work and Phase 1 Work shall be paid by Owner based on the not-to-exceed **Validation Phase Price** and **Phase 1 Price** at the all-inclusive billing rates and labor categories set forth in the **Validation Phase Amendment** and **Phase 1 Amendment**, respectively. All-inclusive billing rates and labor categories shall not be subject to any overtime pay obligations incurred by Design-Builder nor any rate increases during the Validation Phase or Phase 1.

8.1.1 Validation Work and Phase 1 Work may be invoiced to Owner on a monthly basis on the day agreed to during Partnering activities. Application for payment will be based on cost incurred during the previous billing cycle. Draft applications for payment will be reviewed and agreed during weekly project meetings to ensure that costs and expenses are paid as incurred and not held until a later billing period.

8.2 Phase 2 Payments.

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

8.2.1.1 Draft Application. Design-Builder shall submit to Owner an accounting of the current progress of the Work as compared to Design-Builder's Master Project Schedule, and a draft, itemized application for payment for work performed during the current payment period on a form supplied or approved by Owner. This shall not constitute a payment request. Design-Builder and Owner shall discuss regarding the current progress of the Work and the amount of payment to which Design-Builder is entitled. Owner may on occasion request Design-Builder to provide data substantiating Design-Builder's right to payment, such as, but not limited to copies of invoices from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents.

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

8.2.1.3 Disputed Amounts. If Design-Builder believes it is entitled to payment for Work performed during the prior billing cycle in addition to the agreed-upon amount,

Design-Builder may, submit to Owner along with the approved payment request a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, Design-Builder and all Subcontractors shall file with Owner certified copies of all payroll records relating to the additional amount due. Disputed Amounts are due ten (10) working days following the prior approved Payment Application.

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

8.2.2 Owner shall make payment within 30 days after Owner's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made, less retainage, and less amounts properly withheld under Section 6.3 of the General Conditions.

8.3 Retainage on Phase 2 Work Progress Payments.

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

8.3.2 If the Design-Builder elects to submit a retainage bond on behalf of itself or one or more of its Subcontractors in accordance with Chapter 60.28 RCW, each such bond must be issued on a form acceptable to Owner by a surety licensed to do business in the state where the Work is located with an A.M. Best rating of A-/IX or better on behalf of Design-Builder or A-/V on behalf of a Subcontractor. Design-Builder is responsible for submitting retainage bond(s) that meet these requirements to Owner on behalf of itself and/or any Subcontractor. Owner will not accept retainage bonds submitted directly to it by a Subcontractor.

8.3.3 Sixty (60) days after Final Acceptance of the entire Work, which is an action by the Spokane County Board of County Commissioners, Owner shall release to Design-Builder all retained amounts in accordance with chapter 39.12 RCW and chapter 60.28 RCW, provided that Design-Builder has submitted: (1) pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from Design-Builder and from each Subcontractor of any tier certified by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by Design-Builder or Subcontractor of any tier, (2) pursuant to RCW 60.28.021, certificates from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries. If there are either unpaid taxes or unsatisfied claims of lien against the retained percentage, disbursement of retainage funds will be made in accordance with state law.

8.4 Payment to Subcontractors. Design-Builder shall ensure payment to any Subcontractor (or Sub-Subcontractor), at any tier every thirty (30) days for any Work satisfactorily completed and not disputed. The Design-Builder and Owner jointly commit to reviewing and agreeing eligible costs, backup and completed work as they become due and available for review. Nothing in this Section creates any contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, makes Owner responsible for payment to any Subcontractor or Sub-Subcontractor, limits Owner's right to withhold payment from Design-Builder, or waives any defense, setoff, or audit right available to Owner.

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

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

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

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

Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. All multipliers, markups, labor burden rates, equipment rates, insurance charges, bond charges, and other percentage-based or formula-based charges are subject to audit to confirm both the proper application of the rate and the allowability, accuracy, and non-duplication of the components included in the rate, except to the extent the parties expressly agree in the GMP Amendment that a specific rate is fixed and not subject to component audit.

If an audit identifies an overpayment, duplicate charge, unallowable cost, mathematical error, unsupported cost, or cost charged contrary to the Contract Documents, Design-Builder shall promptly credit or refund the amount to Owner. If the aggregate overstatement exceeds two percent (2%) of the audited amount, Design-Builder shall reimburse Owner for the reasonable cost of the audit.

Article 9

Termination for Convenience

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

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

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

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

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

_____.

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

_____.

10.2 Design-Builder's Representatives.

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

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

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

Position Title	Name of Individual
Design-Builder Senior Representative	
Design-Builder Representative (Project Manager)	
Design-Builder Chief Estimator	
Design-Builder Architect of Record	
Design-Builder Design Principal	
Design-Builder Program Principal	
Design-Builder Superintendent	

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

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

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

Firm	Role
	Design
	Design

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

Article 11

Bonds and Insurance

11.1 Design-Builder's Insurance

Unless a longer period of coverage is specified elsewhere in this Contract, prior to commencing Work, Design-Builder shall obtain at its sole expense and keep in force the following insurance coverages for a period of 365 days from Substantial Completion of all Work with insurance companies approved by the State Insurance Commissioner pursuant to Title 48 RCW.

All policies will name the Owner, its officers, officials, employees, and agents as additional insureds, except for the Design-Builder's Professional Liability policy and workers' compensation. The insurance provided must be with an insurance company with a rating of A: VIII or higher in the A.M. Best's Key Rating Guide or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII., which is licensed to do business in the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). Owner reserves the right to approve the security of the insurance provided, the company, terms and coverage, the certificates of insurance, and endorsements and reserves the right to obtain complete copies of all policies from Design-Builder upon request.

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

The cost of any claim payments falling within the deductible shall be the sole responsibility of Design-Builder. Design-Builder's insurance shall be primary and non-contributory as respects the Owner, and any self-insurance or any other insurance maintained by Owner shall be excess and not contributing insurance with the Design-Builder's insurance. The Design-Builder's insurance coverage shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability. Design-Builder shall submit, upon execution of this Contract, Certificates of Insurance and additional insured endorsements acceptable to Owner as evidence of all insurance required herein:

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

Per Project Aggregate endorsement (CG2503)

Premises/Operations Liability

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

Personal/Advertising Injury

Contractual Liability

Independent Contractors Liability

Stop Gap or Employers Contingent Liability

The CGL insurance shall not exclude XCU or subsidence perils

11.1.1.2 Employers Liability:

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

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

11.1.1.4 Automobile. Commercial Automobile Liability with a combined single limit of not less than \$5,000,000 for each accident and including coverage for transportation of pollutants. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

11.1.1.5 Contractors Pollution Liability. A policy providing coverage for claims involving remediation, disposal, or other handling of pollutants arising out of Design-Builder's work or operations for others; from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos. Such Pollution Liability policy shall provide at least \$2,000,000 per occurrence coverage for Bodily Injury and Property Damage. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

11.1.1.6 Design-Builder's Professional Liability.

(1) The Design-Builder's Design Consultant and Engineer will maintain for at least six (6) years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than \$10,000,000 per claim and annual aggregate (deductible of up to \$150,000 permitted).

(2) The Design Sub-Consultants, and any other Subcontractor (including subcontractors of any tier) performing design services will maintain for at least six (6) years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than \$2,000,000 per claim and annual aggregate (deductible of up to \$150,000 permitted).

(3) All parties required to procure and maintain insurance under this Section 11.1.1.6 (the "Insured Parties") shall promptly notify Owner of any material changes to, interruption of, or termination of this insurance, and will immediately procure replacement coverage. The Insured Parties either maintain active policy coverage, or an extended reporting period, providing coverage for claims first made and reported to the insurance company within six (6) years of Substantial Completion or termination of the Work under this Contract, whichever occurs first. Owner may modify these insurance requirements for certain entities, on a case-by-case basis, by providing written agreement of such modifications.

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

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

date, the Contractor must purchase extended reporting period coverage for a minimum of six (6) years after completion of contract work.

d) A copy of the claims reporting requirements must be submitted to the Entity for review.

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

11.1.1.8 Builder's Risk. Prior to the start of any construction work the Design-Builder shall procure and maintain during the life of the Contract, or until acceptance of the project by Owner, whichever is longer, "All Risk" Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, and if applicable, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood and including Owner-furnished equipment valued at \$ [REDACTED]. The policy shall include coverage for cost of making good for faulty workmanship and defective design (Leg 3 endorsement), and be endorsed to cover the interests, as they may appear, of Owner, Design-Builder, Subcontractor, and Subcontractors of all tiers with Owner and Subcontractors listed as a Named Insured. In the event of a loss to any or all the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Contract and acceptance of the project by Owner, the Design-Builder shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Design-Builder or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

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

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

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

11.1.6 Subcontractors (at any tier). Design-Builder shall cause each Subcontractor to provide insurance that complies with all applicable requirements of the Design-Builder-provided insurance as set forth herein. Design-Builder shall have sole responsibility for determining the limits of

coverage required, if any, to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Design-Builder shall also cause each Subcontractor to include Owner, its officers, officials, employees, and agents as additional insureds under each Subcontractor's Commercial General Liability and Commercial Automobile Liability policies.

11.2 Performance and Payment Bond. Design-Builder shall secure from a surety company acceptable to Owner, admitted and licensed in the State of Washington, and shall pay for performance and payment bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the Phase 2 GMP plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." In the event the GMP is adjusted pursuant to the terms of the Contract Documents, Design-Builder shall secure performance and payment bonds covering the performance of the Contract in the full amount of the adjusted GMP, plus sales tax. For any Early Work Package or other pre-GMP construction Work, Design-Builder shall provide performance and payment bonds in the full amount of the authorized Early Work Package, plus applicable sales tax, before commencing such Work. Upon execution of the GMP Amendment, the Phase 2 performance and payment bonds shall include and supersede any bonded Early Work Package scope unless otherwise approved by Owner in writing.

The bond shall be on a form provided by Owner. The bond must be executed by a duly licensed surety company that is listed in the latest Circular 570 of the United States Treasury Department as being acceptable as surety on federal bonds. No surety's liability on the bond shall exceed the underwriting limitations for the respective surety specified in Circular 570. Said bonds shall meet all requirements of RCW 39.08 and shall also be issued by a surety with an A.M. Best rating of A/IX or better. All reinsurers that may be called upon to support or share in a surety's obligations specified in connection with the performance and payment bond obligations required of the Design-Builder by the Contract Documents must also have an A.M. Best rating of A/VIII or better. The scope of the bond or the form thereof prescribed in these Contract Documents shall in no way affect or alter the liabilities of Design-Builder to Owner as set forth herein. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond. The bond shall cover all Change Orders without further consent from the surety.

Article 12

Other Provisions

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

Exhibit A Validation Phase Scope

Exhibit B Phase 1 Scope (to be incorporated at Phase 1 Amendment)

Exhibit C General Conditions Scope

Exhibit D Equipment Rate Schedule (To be incorporated at GMP)

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

12.3 Subcontractor Reporting. Design-Builder shall submit plans for subcontracting, apprentices, and inclusion of underutilized firms as subcontractors and suppliers as requested by Owner. Design-Builder shall track and provide Owner and the Office of Minority and Women's Business Enterprises ("OMWBE") any project information required to be submitted by the Design-Builder in accordance with the provisions of Chapter 39.10, 39.12, or similar RCW and as requested by OMWBE.

12.4 Notices. All notices required to be given by any party to the other party under this Contract shall be in writing and shall be delivered by United States mail or electronic mail (email) to the individuals designated below. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

Owner:

Design-Builder:

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

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

OWNER:

DESIGN-BUILDER:

(Signature)

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

Date: _____

Exhibit A Validation Phase Scope

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Exhibit B Phase 1 Scope (to be incorporated at Phase 1 Amendment)

DRAFT

Exhibit C General Conditions Scope

DRAFT

Exhibit D Equipment Rate Schedule (To be incorporated at GMP)

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