

Spokane County
General Conditions
of
Progressive Design-Build Contract
Between Owner and Design-Builder
Liberty Lake and MeadowWood Golf Course
Maintenance Facility Project

DRAFT

Article 1

General

1.1 Mutual Obligations

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

1.2 Basic Definitions

1.2.1 *Additional Services* refers to those services defined or described in Section 2.3.1.8 of the Contract.

1.2.2 *Allowance Items* are specific portions of the Phase 2 Work set forth in the GMP Amendment with the cost for such Work estimated in an assigned dollar amount.

1.2.3 *Allowance Values* are the dollar amounts assigned to Allowance Items.

1.2.4 *Application for Payment* is the Design-Builder's request for payment prepared and submitted in compliance with Article 8 of the Contract and Article 6 of these General Conditions of Contract.

1.2.5 *Basis of Design Documents* are those documents specifically identified in the Phase 2 Proposal and GMP Amendment as being the "Basis of Design Documents" and shall include, but not be limited to, agreed upon modifications to the Owner's Initial Programming and Overview.

1.2.6 *Change Order* is defined or described in Section 9.1 of these General Conditions of Contract.

1.2.7 *Claim* is a demand or assertion by Design-Builder for itself or for the benefit of any Subcontractor or supplier of any tier seeking an adjustment of GMP or Contract Time, or both, or any other relief with respect to the terms of the Contract Documents.

1.2.8 *Construction Documents* are the documents, consisting of drawings and specifications, to be prepared and/or assembled by the Design-Builder consistent with the agreed Final Program unless an adjustment has been made and is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.9 *Construction General Conditions Price* is defined or described in Section 7.4 of the Contract for the performance of the Construction General Conditions Work.

1.2.10 *Construction General Conditions Work* includes all work set forth in **Exhibit C** to the Contract.

1.2.11 *Contract* refers to the Progressive Design-Build Contract between Owner and Design-Builder dated [REDACTED], (Modified DBIA 544), as negotiated.

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

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

1.2.14 *Contract Time(s)* are the dates for Substantial Completion and Final Completion set forth in, or calculable from, Article 6 of the Contract.

1.2.15 *Cost of the Phase 2 Work* is defined or described in Section 7.6 of the Contract.

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

1.2.17 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant (Engineer of Record), and Key Subcontractors (Key Firms) identified by the Design-Builder in its proposal in response to the Owner's Request for Proposals. The Key Firms are identified in Section 10.4 of the Contract.

1.2.18 *Design-Builder* is [REDACTED].

1.2.19 *Design-Builder's Contingency* is defined or described in Section 7.7.2 of the Contract.

1.2.20 *Design-Build Fee* is defined or described in Section 7.5 of the Contract.

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

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

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

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

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

1.2.26 *Final Application for Payment* is defined or described in Section 6.7 of these General Conditions of Contract and 8.4 of the Contract.

1.2.27 *Final Completion* is the date on which all Work, except for warranties, is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list and the submission of all documents set forth in Section 6.7.2 of these General Conditions of Contract.

1.2.28 *Force Majeure Events* are those unanticipated events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes (but not labor disputes involving Design-Builder), earthquakes, pandemics, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God. Force Majeure Events shall not include known events or conditions (and associated Legal Requirements) in existence at the time of execution of the GMP Amendment.

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

1.2.30 *GMP or Guaranteed Maximum Price* is defined or described in Section 7.7 of the Contract.

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

1.2.32 *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.

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

1.2.34 *Legal Requirements* are all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.35 *Notice to Proceed* is a formal written notice from Owner to Design-Builder instructing it to commence with all or some portion of the Work.

1.2.36 *Open-Book* means that all costs and expenses of any kind chargeable to the Owner shall be open and transparent to Owner. Owner has the right, directly or through agents or representatives of its choosing, to access and audit all information used or obtained by Design-Builder in formulating the price in Article 7 of the Contract. Any adjustment to price throughout the Project shall be made on an Open-Book basis as well. Open-Book pricing and payment procedures will not apply to a Lump Sum payment structure.

1.2.37 *Owner* is Spokane County.

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

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

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

1.2.41 *Pass-Through Costs* is defined or described in Section 7.6.3 of the Contract.

1.2.42 *Phase 1 Work* is that portion of the Work to be defined and described in the **Phase 1 Amendment**.

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

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

1.2.45 *Project* is the Liberty Lake and MeadowWood Golf Course Maintenance Facility Project.

1.2.46 *Scheduled Substantial Completion Date* is the date set forth in the GMP Amendment and is subject to adjustment in accordance with these General Conditions of Contract.

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

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

1.2.49 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.50 *Substantial Completion* or *Substantially Complete* means the Work, except for agreed punch list items, is sufficiently complete in accordance with the Contract Documents such that Owner can occupy and use the Project or a portion thereof for its intended purposes, and Design-Builder has provided all documentation and other information as is required by Section 6.6 of these General Conditions.

1.2.51 *Validation Phase Work* is that portion of the Work defined and described in **Exhibit A (Validation Phase Work)**.

1.2.52 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

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

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

Article 2

Design-Builder's Work and Responsibilities

2.1 General Work.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and Owner's Project Manager and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Project Manager shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Project Manager, or any Key Staff, may be replaced only with the mutual agreement of Owner and Design-Builder. Design-Builder shall be lawfully licensed, bonded, and insured in the jurisdiction where the Project is located. The Design-Builder shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Design-Builder is not authorized to enter into any agreements or undertakings for or on behalf of Owner or to act as or be an agent or employee of Owner.

2.1.2 Design-Builder shall provide Owner's Project Manager with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of all costs and expenses of the Project to the extent provided for in the Contract; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work, within the GMP, for the Contract Price and within the Contract Time(s).

2.1.3 Pursuant to Section 2.3.1.4 of the Contract, Design-Builder shall prepare and submit a schedule for the execution of the Phase 2 Work for Owner's review and response (Project

Schedule). The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

2.3.1 Design-Builder shall cause all design professional services to be performed with the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. In addition, Design-Builder is responsible for furnishing design services and Construction Documents that satisfy the express requirements, performance criteria, scope, program, code, durability, operational, maintenance, and other requirements of the Contract Documents. Owner's review, comment, acceptance, or approval of design submissions shall not relieve Design-Builder of these obligations.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1 hereof and Section 2.1.1 of the Contract. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3 hereof, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The

Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Owner's review, comment, acceptance, or approval shall not constitute approval of means, methods, sequences, techniques, safety precautions, code compliance, constructability, completeness, or coordination, and shall not waive any requirement of the Contract Documents.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project, except as listed in the GMP Amendment as Owner responsibility or legally required to be obtained by Owner.

2.7 Design-Builder's Phase 2 Work.

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

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed in the state of Washington and qualified to perform the Work consistent with the Contract Documents. Owner approves Subcontractors identified in Section 10.3 of the Contract as Key Firms and Key Personnel. Owner may reasonably object to Design-Builder's selection of any Subcontractor. The GMP 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, except where Owner's objection is due to failure to meet responsibility, licensing, safety, debarment, insurance, or contract requirements.

2.7.3.1 The Design-Builder shall include the language of this sub-paragraph in each of its first-tier subcontracts and shall require each of its Subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of Owner, Design-Builder shall promptly provide documentation to Owner demonstrating that the Subcontractor meets the subcontractor responsibility criteria below. The requirements of this subsection apply to all subcontractors regardless of tier. At the time of subcontract execution, Design-Builder shall verify that each of its first tier Subcontractors meets the following bidder responsibility criteria:

- a) If applicable, have a current certificate of registration as a contractor in compliance with Chapter 18.27 RCW, which must have been in effect at the time of subcontract award (RCW 39.04.350(1)(a)).
- b) Have a current Washington Unified Business Identifier (UBI) number (RCW 39.04.350(1)(b)).
- c) If applicable, have:
 - i. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW (RCW 39.04.350(1)(c));
 - ii. A Washington Employment Security Department number, as required in Title 50 RCW (RCW 39.04.350(1)(c));
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW (RCW 39.04.350(1)(c));
 - iv. Not been found out of compliance by the Washington State Apprenticeship and Training Council under chapter 49.04 RCW for the one (1) year immediately prior to award (RCW 39.04.350(1)(e));
 - v. Receive training on the requirements related to public works and prevailing wages under Chapters 39.04 and 39.12 RCW (RCW 39.04.350(1)(f)); and
 - vi. For the 3-year period immediately preceding the date of award, it has not been determined by final and binding citation from Department of Labor and Industries to have willfully violated the provisions of RCW 49.48, 49.46, or 49.52. (RCW 39.04.350(1)(g)).
- d) No serious safety violations within the last three years, as reflected in Washington State Department of Labor & Industries records.
- e) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3) (RCW 39.04.350(1)(d)).
- f) If federal funds are used or federal requirements apply, registration in the federal System of Awards Management (SAM.gov), has a current Unique Entity ID, and are eligible for federal award with no active suspensions or debarments.

- g) If applicable hold an electrical contractor license, if required by Chapter 19.28 RCW.
- h) If applicable hold an elevator contractor license, if required by Chapter 70.87 RCW.
- i) If applicable hold a plumbing contractor license, if required by Chapter 18.106 RCW.
- j) Attests that the business has not been found non-compliant with apprenticeship requirements under state law for the two-year period immediately preceding the date of award.
- k) Evidence of bonding and insurance required by the Contract Documents.
- l) Attestation of no conflicts of interests with Owner or Owner staff.

Design-Builder shall not permit any Subcontractor or Sub-Subcontractor to perform Work unless the applicable responsibility criteria have been verified. Design-Builder shall maintain written verification records and shall provide them to Owner upon request. Design-Builder shall be responsible for any cost, delay, claim, substitution, reprocurement, or enforcement action arising from Design-Builder's failure to verify responsibility criteria or from the use of a Subcontractor or Sub-Subcontractor that is not responsible, licensed, eligible, or qualified to perform the Work.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.7.7 Prevailing Wages. The Design-Builder shall comply with chapter 39.12 RCW and all applicable regulations and policies of the Washington State Department of Labor and Industries relating to prevailing wages. The prevailing rates of wage shall be the rates established by the Industrial Statistician of the Washington State Department of Labor and Industries for the applicable trade or occupation and locality. Design-Builder shall certify compliance with prevailing wage requirements before any payment is made by Owner, and Owner may withhold payment to the extent permitted by the Contract Documents and applicable law for noncompliance or lack of required documentation.

The prevailing rate of wages to be paid to all workers, laborers, or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of chapter 39.12 RCW, and any amendments thereto. The rules and regulations of the Department of Labor

and Industries and the Schedule of Prevailing Wage Rates for the locality or localities where this contract will be performed as determined by the Industrial Statistician of the Department of Labor and Industries are by reference made a part of this contract as though fully set forth herein.

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

The Design-Builder shall acquaint itself with all conditions affecting labor rates and impending negotiations for labor agreements. The Design-Builder shall pay new schedules, when and if required, without additional cost to Owner.

Forms may be obtained from the Department of Labor & Industries. The fees for each "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" shall accompany each form submitted to the Department of Labor & Industries. The Design-Builder is responsible for payment of these fees and shall make all applications directly to the Department of Labor & Industries. Such application, and any supplemental statements which may be necessary, shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.

Prior to commencing work, each Design-Builder and each and every Subcontractor (subject to prevailing wage) shall file a sworn "Statement of Intent to Pay Prevailing Wages" (L&I Form #F700-029-000) with the Department of Labor and Industries certifying the rate of hourly wages to be paid each classification of laborers, workers, or mechanics employed upon the work by the Design-Builder or Subcontractor which shall be not less than the prevailing rate of wage. Fringe benefits for each job classification to be utilized shall also be included.

Prior to any payment, the Design-Builder and each Subcontractor shall submit to Owner a "Statement of Intent to Pay Prevailing Wages" approved by the Washington State Department of Labor & Industries.

Each voucher claim or invoice submitted by a Design-Builder for payment on a project shall state: "Prevailing wages have been paid in accordance with the pre-filed Statement of Intent to Pay Prevailing Wages on file with the public agency in accordance with RCW 39.12.040". Each invoice shall list sales tax as a separate line item.

Retainage shall be held by Owner in accordance with Chapter 60.28 RCW.

For projects over \$10,000, the Design-Builder must post an approved copy of the Statement of Intent, (listing the labor classification and wages used on the project) at the job site. In the event the Statement of Intent has not been approved by the Department of Labor & Industries before work begins, the complete listing of prevailing wage rates may be posted and distributed in lieu of the approved Statement of Intent.

The Design-Builder shall, within ten days after it receives a written request, file a certified copy of the payroll records with Owner.

Upon completion of work, the Design-Builder and each and every Subcontractor (subject to pay prevailing wage) shall file a sworn "AFFIDAVIT OF WAGES PAID" (L&I Form #F700-007-000) with the Department of Labor and Industries certifying the rate of hourly wages paid each classification of laborers, workers, or mechanics employed upon the work by the Design-Builder or subcontractor which shall be not less than the prevailing rate of wage. Fringe benefits for each job classification to be utilized shall also be included.

Upon completion of this contract, Owner must receive from the Design-Builder and each and every Subcontractor (subject to prevailing wage) a copy of the "Affidavit of Wages Paid" approved by the Department of Labor & Industries. Retainage (or any retainage bond accepted by Owner) will be released upon receipt of all necessary documentation (including but not limited to releases from the Department of Labor & Industries, Department of Employment Security and, when applicable, Department of Revenue), the settlement of any liens, and in accordance with Chapter 60.28 of the Revised Code of Washington.

Owner is required by RCW 39.12.030 to include a provision stating the required prevailing rate(s) in the solicitation and contract documents. To comply with this requirement, Owner is providing the following applicable prevailing wage rate information:

A. State of Washington prevailing wage rates published by the Washington State Department of Labor and Industries (L&I) are obtainable from the L&I website address:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

B. This project is located in Spokane County; therefore, Spokane County wage rates must be used.

C. The effective prevailing wage date for any Early Work Package (or other pre-GMP construction Work) shall be the execution date of the amendment incorporating such work into the Contract. The effective prevailing wage date for the Phase 2 Work shall be the Execution Date of the GMP Amendment.

A copy of the applicable prevailing wage rates are also available for viewing at Owner's office located at [REDACTED].

Upon request, Owner will mail a hard copy of the applicable prevailing wage rates for this Project.

2.8 Design-Builder's Responsibility for Project Safety.

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

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.8.4 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work.

2.8.5 The Design-Builder shall comply with the pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Ch. 296-155 WAC, "Safety Standards for Construction Work."

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

2.9 Warranties and Guaranty.

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

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents or otherwise unacceptable to Owner ("Defective Work"), including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Final Completion or within such longer period to the extent required by any specific warranty included in the Contract Documents.

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

Owner may review and accept the corrective action plan for purposes of confirming contractual compliance, without assuming responsibility for means, methods, or safety. If Design-Builder fails to start corrective action within seven (7) business days, or as otherwise approved by Owner, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder's surety with written notice of the Defective Work and Design-Builder's failure to timely commence corrective action. The conditions of the Performance Bond will be enforced.

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

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

2.11 Non-Discrimination.

2.11.1 Design-Builder shall not discriminate on the grounds of race, color, sex, national origin or any other class protected by applicable law in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. Design-Builder shall not participate either directly or indirectly in such discrimination, including discrimination in employment practices.

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

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

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

2.12 Apprenticeship.

2.12.1 Pursuant to RCW 39.04.320, Design-Builder shall achieve any apprentice participation specified in the Contract Documents or as otherwise required by law. Design-Builder shall not be required to exceed the apprenticeship utilization requirements as established herein.

2.12.2 Apprentice hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.

2.12.3 "Labor hours" for purposes of this Section 2.12 means the total hours of workers receiving an hourly wage who are directly employed on the Project site of the public works project. "Labor hours" includes hours performed by workers employed by Design-Builder and all Subcontractors working on the Project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of Chapter 39.12 RCW.

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

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

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

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

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

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

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

2.12.5 Design-Builder shall report apprentice participation to Owner at least quarterly, on forms provided or approved by Owner. In addition, copies of quarterly certified payroll records may be requested to document the goal. The reports will include:

2.12.5.1 The name of the Project;

2.12.5.2 The dollar value of the Project;

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

2.12.5.4 The name of each apprentice and apprentice registration number;

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

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

2.12.5.7 The number, type, and rationale for the exceptions granted.

2.12.6 The Contractor shall be entitled to additional compensation, in the amount of _____ (\$ _____), should it meet or exceed apprentice utilization required by this Contract. Should the Contractor not meet apprentice utilization by this Contract, Design-Builder shall incur a monetary penalty of _____ (\$ _____), which may be deducted from the final contract price.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations, and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the Project Schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1. Owner Provided Information. To the extent Owner provides Owner Provided Information to Design-Builder, it does so for information only. Design-Builder understands and agrees that Owner shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by Design-Builder by reason of any use of any information contained in the Owner Provided Information or any action or forbearance in reliance thereon. Design-Builder further acknowledges and agrees that (a) if and to the extent Design-Builder or anyone on Design-Builder's behalf uses any of the information in the Owner Provided Information in any way, such use is made on the basis that Design-Builder, not Owner, has approved and is responsible for such information, and (b) Design-Builder is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement such information, and that any use of such information is entirely at Design-Builder's own risk and at its own discretion.

3.2.2 Except as otherwise provided in the Contract Documents, Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Owner's Representative.

3.3.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions, or defects in the performance of the Work. Provided, however, that the failure of Owner's Representative to provide such notice shall not relieve Design-Builder from the obligation to perform the Work and deliver the Project in a manner consistent with its obligations under the Contract Documents. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.4 Owner's Separate Contractors.

3.4.1 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's performance to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or

quasi-government entities with jurisdiction over the Project or Site.

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

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 Owner shall be responsible for Hazardous Conditions existing at the Site before Design-Builder's commencement of Work, except to the extent such Hazardous Conditions were identified in the Contract Documents, reasonably discoverable through the Validation Phase Work or other investigations required by the Contract Documents, introduced by Design-Builder or anyone for whom Design-Builder is responsible, or exacerbated, disturbed, released, migrated, mishandled, or negligently managed by Design-Builder or anyone for whom Design-Builder is responsible. Subject to the foregoing limitations, Design-Builder may be entitled to an adjustment in Contract Price or Contract Time as provided in the Contract Documents for impacts caused by pre-existing Hazardous Conditions that are not Design-Builder's responsibility. Owner shall not be required to indemnify Design-Builder, Design Consultants, Subcontractors, or any other person for claims, losses, damages, liabilities, costs, or expenses to the extent caused by the negligence, breach of contract, violation of Legal Requirements, or willful misconduct of Design-Builder or anyone for whom Design-Builder is responsible.

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

4.1.7 Training and Reporting

4.1.7.1 All workers onsite who are involved in demolition, construction, installation, or excavation activities must have current Asbestos Awareness Training, as required by WAC 296-62-07722(6).

4.1.7.2 Prior to bringing onsite any chemicals listed in 6 CFR part 27, Appendix A, the Design-Builder shall submit for itself and for all Subcontractors a completed "Contractor Declaration and Reporting Form for Department of Homeland Security – Chemicals of Interest."

4.1.8 General Requirements When Design-Builder Performs Hazardous Conditions Abatement

4.1.8.1 SUPERVISORY AUTHORITY: Design-Builder assumes all responsibilities

and shall perform all required work under applicable regulations related to its supervisory authority over Subcontractors and personnel performing work related to hazardous materials.

4.1.8.2 ACCESS RESTRICTIONS: Work described in the Contract Documents includes restriction of access to work areas during hazardous materials activities. Access to various work areas by the general public, Subcontractors, and other individuals will not be possible during certain hazardous materials work sequences, as specified in the Contract Documents. Design-Builder shall coordinate the Work to facilitate access by Subcontractors while enforcing work area restrictions and shall minimize disruption to building occupants and services.

4.1.8.3 WORKING HOURS: No hazardous materials work shall occur when building users have access to work areas. Schedule all hazardous materials work to occur in accordance with schedule requirements outlined elsewhere in the Contract Documents, and when work areas have been vacated by building users.

4.1.8.4 EMERGENCY CONTACTS: Designated qualified representatives of the Design-Builder and specific hazardous materials Subcontractors are to be available on a 24-hour emergency basis for the duration of the Work. Provide contact information to Owner's Representative for inclusion in the Project emergency contact list.

4.1.8.5 GENERAL HAZARDOUS MATERIALS SUBMITTALS: Design-Builder shall review the scope of work and submittal requirements outlined in the Contract Documents. Design-Builder shall submit and require all subcontractors performing the work of handling or disposing of any hazardous materials to submit, pertinent information required by the Contract Documents. Examples of work and impact may include abatement, demolition, saw cutting, roto-hammering, welding, sanding, drilling, scraping or other remodeling and metals-related impact, impact of asbestos-containing joint compound or other material with <1% asbestos, PCB ballast removal or light tube removal and disposal.

4.1.8.6 REGULATIONS, LAWS, and ORDINANCES: Design-Builder shall comply with all applicable regulations, laws and ordinances concerning the impact, removal, handling, storage, disposal, monitoring and protection against exposure or environmental pollution related to hazardous or regulated materials and conditions. Impacts to hazardous or regulated materials that may be required by the Work may include, but are not limited to: manual demolition, mechanical demolition, cutting, sawing, drilling, sanding, scraping, welding, power-washing or torch-cutting. Confirm required impacts with other applicable specification sections and drawing sheets. Design-Builder shall furnish all labor, materials, equipment, services, and insurance that is specified, shown, or reasonably implied for the removal and handling of hazardous materials as part of the Work.

4.2 Differing Site Conditions.

4.2.1 Differing Site Conditions. If Design Builder encounters conditions that were concealed physical conditions that could not have reasonably been discovered, which differ materially from those indicated in the Validation Report, Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents (collectively, a "Differing Site Condition"), then Design Builder shall give written notice to Owner within 24 hours after becoming aware of or having encountered such condition. Design-Builder shall not perform any Work in connection therewith (except for an emergency) until receipt of written order to do so. After receipt of such written notice, Owner will promptly review the pertinent condition. Design-Builder shall not be entitled to an adjustment for any condition that

was disclosed in the Contract Documents, reasonably inferable from the Contract Documents, observed or reasonably observable during the Validation Phase Work, reasonably discoverable through investigations required by the Contract Documents, or that Design-Builder failed to timely identify and address before execution of the GMP Amendment.

4.2.2 Possible GMP and Contract Time Adjustments

4.2.2.1 If Design-Builder seeks to have the GMP or the Contract Time, or both, adjusted due to the existence of a Differing Site Condition, Design-Builder shall comply with the provisions of Article 9 in addition to the requirements of this Section 4.2.

4.2.2.2 Design-Builder **shall not** be entitled to any adjustment in the Contract Price or Contract Time if:

- a) Design-Builder knew of the existence of such conditions at the time Design-Builder and Owner negotiated this Contract; or
- b) Design-Builder failed to give the written notice as required by Section 4.2 and/or comply with Article 9.
- c) Design-Builder knew, or should have known, of such conditions during Validation/Phase 1 of the Project but failed to identify such conditions, document such conditions in the Contract Documents, or otherwise take into account the conditions when designing the Project.

4.2.2.3 If Design-Builder complies with the provisions of Article 9 and this Section 4.2 and Owner and Design-Builder are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the GMP or Contract Time, or both, a Claim may be made by Design-Builder as provided in Article 10.

Article 5

Insurance and Bonds

5.1 Insurance. The Design-Builder shall provide insurance consistent with and in accordance with the requirements of Article 11 of the Contract.

5.2 Bonds. The Design-Builder shall provide performance and payment bonds consistent with and in accordance with the requirements of Article 11 of the Contract.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 The Design-Builder shall submit a Schedule of Values at least 15 days prior to submitting its first Application for Payment. The Schedule of Values shall reasonably allocate the Contract Sum among the various portions of the Work; be complete; be organized to include detailed breakdown of each major unit of the Work; be organized to correspond to Design-Builder's schedule; break down the Contract Sum showing the value assigned to each part of the Work; be so organized as to facilitate assessment of work and payment of Subcontractors; and be

balanced. To the greatest extent possible, the breakdown shall use the same tasks or units as the Design-Builder's Master Project Schedule. Design-Builder shall provide documentation substantiating the cost allocation if asked by Owner. Upon acceptance of the Schedule of Values by Owner, it shall be used as a basis for all requests for payment.

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

6.2 Payments.

Owner shall make payments for Validation Work, Phase 1 Work, and Phase 2 Work in accordance with Section 8 of the Contract.

6.3 Withholding of Payments.

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

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

6.4 Design-Builder's Payment Obligations.

6.4.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.5 Substantial Completion.

6.5.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice (and all required documents and information), Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion. Design-Builder's notice shall include the following documents and information:

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

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

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

6.5.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion, and subject to the Retainage requirements of RCW 60.28 and Section 8.3 of the Contract.

6.5.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 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.

6.6 Final Payment.

6.6.1 After receipt of a Final Application for Payment from Design-Builder, together with all information required by Section 6.7.2 below, Owner shall make final payment by the time required in the Contract if Design-Builder has achieved Final Completion.

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

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

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

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

6.6.2.4 All reports, records, training and operating manuals, warranties and other deliverables required by the Contract Documents; and

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

6.6.3 Deficiencies in the Work discovered after Substantial Completion, whether such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided,

however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend, with counsel reasonably acceptable to Owner, any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information, and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses incurred by or awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after Substantial Completion. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner

from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

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

7.4.1 The sole negligence or willful misconduct of Design-Builder or any of its Design Consultants or Subcontractors or Suppliers of any tier, or the agents or employees of same (collectively, the "Design-Build Parties");

7.4.2 The concurrent negligence of the Design-Build Parties, but only to the extent of the negligence of the Design-Build Parties;

7.4.3 A breach of this Contract by the Design-Build Parties;

7.4.4 The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.

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

Pursuant to RCW 4.24.115, to the extent any claim, suit, or action results from the concurrent negligence of the Indemnified Parties and the Design-Build Parties, the indemnity provisions in this Section shall be valid and enforceable only to the extent of the Design-Build Parties' negligence.

In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Design-Builder, its consultants of any tier, Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or any consultant or Subcontractor under Title 51 RCW, the Industrial Insurance Act, or any other employee benefit acts. In addition, Design-Builder waives immunity as to Owner only, in accordance with Title 51 RCW. The Design-Builder intends to indemnify, defend and hold Owner harmless to the fullest extent allowed by applicable law, and, therefore, any limitation on indemnity shall automatically be deemed amended without further act by either party so as to remove any of the restrictions contained in this Section no longer required by then applicable law. To the extent that applicable law invalidates any portion of this Section, the remainder shall be construed to provide the broadest protection to Owner allowed by applicable law. The parties acknowledge that the foregoing waiver of Title 51 RCW immunity was mutually negotiated and that the provisions of this Section shall survive expiration or termination of this Contract by either party for any reason. The Design-Builder shall similarly require that each subcontractor it retains in connection with the project comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for

actions brought by employees of the subcontractor.

The Design-Builder shall bear sole responsibility for damage to completed portions of the project and to property located off the project caused by erosion, siltation, runoff, or other related items during the construction of the project. The Design-Builder shall also bear sole responsibility for any pollution of rivers, streams, ground water, or other waters that may occur as a result of construction operations.

The Design-Builder shall exercise all necessary precautions throughout the life of the Project to prevent pollution, erosion, siltation, and damage to property.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 6 of the Contract. By executing the Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. Delays attributable to and within the control of a Subcontractor or supplier shall be deemed to be delays within the control of Design-Builder. By way of example, events that may entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events. Design-Builder shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

8.2.2 Design-Builder is not entitled to a change in Contract Time unless the progress of the Work on the critical path is delayed and completion of the Work within Contract Time is delayed. A Request for a Change Order that includes a request for an adjustment in the Contract Time shall be delivered to Owner in accordance with Article 9 herein and, in addition to any requirements in Article 9, shall:

- a. Include a clear explanation of how the event or conditions specifically impacted the critical path and overall construction schedule and the amount of the adjustment in Contract Time requested.
- b. Demonstrate that the delay could not have been avoided by re-sequencing of the Work or other reasonable alternatives.
- c. Be limited to the change in the critical path of a construction schedule, and any updates, attributable to the event or conditions which caused the request for adjustment.

8.3 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may also be entitled to an appropriate adjustment of the GMP; except that the GMP shall not be adjusted for Force Majeure Events.

Article 9

Changes to the GMP and Contract Time

9.1 Authorized Changes in the Work

9.1.1 General. After execution of the Contract, Changes in the Work are effective solely by Change Order or Work Change Directive.

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

9.1.2.1 The scope of the change in the Work;

9.1.2.2 The amount of the adjustment to the GMP, if any; and

9.1.2.3 The extent of the adjustment to the Contract Time(s), if any.

A Change Order shall constitute full payment and final settlement of all Claims for Contract Time adjustment and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either recovered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.

9.1.3 Design-Builder Request for Change Order. Change Order requests may be initiated by Design-Builder in accordance with this subsection 9.1.3.

9.1.3.1 If Design-Builder believes that it is entitled to relief for any event or condition arising out of or related to the Work or Project, Design-Builder shall provide to Owner a written Notice of Intent to Submit a Request for Change Order no later than seven (7) days after the event or condition giving rise to the claim for relief.

9.1.3.2 Unless Owner's Representative issues written notice authorizing Design-Builder additional time to submit the Request for Change Order, Design-Builder shall provide a written Request for Change Order to Owner's Representative no later than 21 days after delivery of the Notice of Intent to Submit a Request for Change Order. The Request for Change Order must include (a) a description of the request, rationale, and specific provisions of the Contract Documents, (b) specific dollar amount of the requested change to GMP, covering all costs associated with the requested Change Order; (c) specific request for change in Contract Time (number of days); and (d) all documentation supporting the Request for a Change Order, including but not limited to all cost records, schedule analysis, and the documents identified in the Contract Documents, that are in any way relevant to the Design-Builder's Request for Change Order.

9.1.3.3 Pending resolution of Design-Builder's Request for a Change Order, Design-Builder shall continue to perform all Work including, at the written request of Owner, the work associated with the pending Request for Change Order.

9.1.3.4 A Request for Change order that is not accepted by Owner within 30 days after

receipt by Owner is deemed denied.

9.1.3.5 If Design-Builder disagrees with denial of a Request for Change Order, the Design-Builder's sole remedy shall be to file a fully documented Claim in accordance with Article 10 within 30 days after Design-Builder's receipt of the denial or within thirty (30) days after the denial is deemed to have occurred under Section 9.1.3.4 above.

9.1.4 Unilateral Change Order. Owner may unilaterally issue a Change Order at any time, without invalidating the Contract and without notice to sureties. If any such Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Work, Owner may make an adjustment in the GMP, Contract Time, or both, in accordance with the Contract Documents. If Design-Builder disagrees with the adjustment to the GMP or Contract Time as indicated in a Unilateral Change Order, Design-Builder's only remedy shall be to file a fully documented Claim in accordance with Article 10. Regardless of any such disagreement, the Design-Builder is required to continue with performance of all Work, including work associated with the Unilateral Change Order.

9.1.5 Owner Change Order Proposal. Change requests may be initiated by Owner through a Change Order Proposal submitted to Design-Builder. Such a request is for information and pricing only and is not an instruction to execute changes or to stop work in progress, unless issued as a Work Change Directive. Upon receipt of Owner Change Order Proposal, the Design-Builder shall promptly submit its proposed costs and pricing. If Owner and Design-Builder agree to the terms of the cost and pricing for the proposed change, they shall execute a mutually acceptable Change Order to authorize the change.

9.2 Work Change Directives.

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

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

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the GMP and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 GMP Adjustments and Pricing.

9.4.1 For the Design-Builder, the value of any changed Work or of any Claim for an increase or decrease in the GMP or Contract Sum shall be limited to the Cost of the Work and the Fee and markups set forth in the Contract. For Subcontractors of any tier, the total cost of any changed Work or of any other increase or decrease in the GMP or Contract Sum, including a Claim, shall be established based on lump sum quotations whenever possible. If the parties are unable to

agree upon such lump sum costs, then reimbursable costs shall be limited to the following components:

9.4.1.1 Direct labor costs: Actual labor costs determined by the number of additional craft hours and the hourly costs necessary for the Subcontractor to perform the Change in the Work. The hourly cost shall be based upon the following:

- .1 Basic wages and fringe benefits:** The hourly wage (without markup or labor burden) and fringe benefits paid by the Subcontractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Subcontractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Subcontractors shall provide to the Owner copies of payroll records, including certified payroll statements upon the Owner's request.
- .2 Workers' insurances:** Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
- .3 Federal insurances:** Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

9.4.1.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the Change in the Work. The unit cost 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 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.

9.4.1.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment necessary and appropriate for the Work is used solely on the change at the site times the applicable rental cost as established in **Exhibit D** and if not established therein, then by the lower of the local prevailing rate published in The Rental Rate Blue Book by EquipmentWatch, Atlanta, Georgia, as modified by the latest edition of the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. Mobilization and standby costs shall not be charged for equipment already present on the site. If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the change are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for providing all oil, lubrication, repairs, maintenance, and insurance. No gas surcharges shall be charged to Owner unless charged to Design-Builder by the vendor. Equipment not of modern 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 longer than one (1) week) on the changed Work shall be fifty percent

(50%) of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. 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.

9.4.1.4 Costs of Lower-Tier Subcontractors: These are payments a Subcontractor makes to lower-tier Subcontractors for changed Work performed by such lower-tier Subcontractors. Such Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section.

9.4.1.5 Subcontractor's Fee: This is the percentage amount for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, other engineers (except design engineers), estimator, and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, layout and control, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally provided by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim and Change preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise), added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements of Subcontractor claims by the Owner after Substantial Completion. The Fee shall be limited in all cases to the following schedule:

- .1 A Subcontractor of any tier shall receive 12% of the cost of any materials supplied or work properly performed by that Subcontractor's own forces.
- .2 A Subcontractor of any tier shall receive 8% of the amount owed (less fee) directly to a lower-tier Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier.
- .3 A Subcontractor of any tier shall receive no more than 5% of any amounts owed (less fee) to any remote, sub-tier subcontractors which are within the lines of contractual responsibility but not in privity of contract with such Subcontractor, for work performed by that remote, sub-tier subcontractor.
- .4 The cost to which this Fee is to be applied shall be determined in accordance with Sections 9.4.1.1 through Sections 9.4.1.4. None of the fee percentages authorized in this Section 9.4.1.5 may be compounded with any other fee percentage or percentages authorized in this paragraph.
- .5 The total summed Fee of the first-tier Subcontractor and all lower-tier Subcontractors shall not exceed 25%. If the Fee would otherwise exceed 25%, the Design-Builder shall proportionately reduce the Fee percentage for the Design-Builder and all Subcontractors except for the Subcontractor supplying material or performing work with its own forces. None of the fee percentages authorized in this Section 9.4.1.5 may be compounded with any other fee percentage or percentages authorized in this Section.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section are higher than the fees and overhead normally included in determining the Subcontractor's subcontract price; that these higher percentages are a sufficient amount to

compensate the Subcontractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Subcontractor for some Changes compensates the Subcontractor for any Changes for which the Subcontractor believes the percentage is otherwise insufficient.

9.4.1.6 Cost of change in insurance or bond premium: This is added to the sum of the amounts specified in Sections 9.4.1.1 through 9.4.1.5 and is defined as:

- .1 Subcontractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance, subject to audit, and not to exceed 1.25%) of any changes in the Subcontractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability, subject to audit, and not to exceed 1.0%) of the change in the Subcontractor's premium for any statutorily or contractually required performance and payment bond arising directly from the changed Work.

Upon request, the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any claimed cost.

9.4.1.7 The costs reimbursable to Design-Builder and Subcontractors of any tier may not include consultant costs, attorneys' fees, or Claim preparation expenses as such matters are not recoverable from the Owner.

9.5 Emergencies.

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

Article 10

Claims and Disputes

- 10.1 Condition Precedent to Filing a Claim.** The following actions are a mandatory condition precedent to filing a Claim: (a) a Request for Change Order is denied or deemed denied by Owner or (b) a Unilateral Change Order is issued by Owner.
- 10.2 Claim Deadline.** Unless otherwise agreed to in writing by Owner, a fully documented Claim shall be received by Owner within thirty (30) days after the denial or deemed denial of a Request for Change Order, or, in the case of a Unilateral Change Order, Design-Builder's receipt of Owner's decision regarding Contract Time or GMP adjustments pursuant to the Unilateral Change Order. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the Design-Builder, on behalf of itself and its Subcontractors and suppliers, of the Unilateral Change Order or Owner's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order or Unilateral Change Order.
- 10.3 Design-Builder's Obligation to Continue Work.** Pending final decision of a Claim hereunder, the Design-Builder shall proceed diligently with the performance of the Work, including that work

associated with the Claim, and maintain its progress with the Work. Failure to proceed as required herein shall constitute grounds for termination for cause under Article 11.

- 10.4 Information Required in a Fully Documented Claim.** Every Claim must be submitted by Design-Builder, in writing and clearly designated by Design-Builder as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:

10.4.1 A detailed factual statement of the Claim providing all necessary details, locations, and items of Work affected;

10.4.2 The date on which facts arose that gave rise to the Claim;

10.4.3 The name of each person employed or associated with Design-Builder, Subcontractors, suppliers, and/or Owner with knowledge about the event or condition which gave rise to the Claim;

10.4.4 Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;

10.4.5 The specific provisions of the Contract Documents on which the Claim is based;

10.4.6 If an adjustment in the GMP is sought, the exact amount sought, calculated in accordance with the Contract Document and accompanied by all records supporting the Claim;

10.4.7 If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reason Design-Builder believes an adjustment in the Contract Time should be granted; and Design-Builder's analyses of its construction schedule, any specific schedule analysis as required by the Contract Documents, and all updates to demonstrate the reason for the adjustment in Contract Time; and,

10.4.8 A statement certifying, under penalty of perjury, that after the exercise of reasonable diligence and investigation the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Design-Builder's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the GMP or Contract Time for which Design-Builder believes Owner is liable.

- 10.5 Cooperation/Claims Audit.** Design-Builder shall cooperate with Owner or its designee in the evaluation of its Claim and provide all information and documentation requested by Owner or its designee. Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Design-Builder, or Subcontractors of any tier, to maintain and retain reasonably sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Design-Builder, or Subcontractors of any tier, shall constitute a waiver of that part of the Claim and shall bar any recovery on that part of the Claim.

- 10.6 Owner Evaluation of Claim.** After Design-Builder has submitted a fully documented Claim that complies with Article 10, Owner shall respond, in writing, to Design-Builder within sixty (60) days from the date the fully documented Claim is received with a decision regarding the Claim. The Claim shall be deemed denied upon the 61st day following receipt of the Claim by Owner. Any Claims not fully resolved must be submitted to Dispute Resolution in accordance with Section 10.7.

- 10.7 Dispute Avoidance and Resolution.**

10.7.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other through the life of the Project, to avoid or minimize disputes or disagreements.

If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work. If a matter cannot be resolved through the Design-Builder, Owner, and Owner's Owner Representative, Design-Builder's Principal-In-Charge/Signatory and Owner's Signatory, upon the request of any party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve any issue.

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

The mediation shall be conducted by a mutually agreeable impartial mediator. If the parties have not reached an agreement on a mediator within thirty (30) days of the request, either party may submit the unresolved claims or disputes to JAMS, Seattle, Washington, or such other alternative dispute resolution service to which the parties mutually agree, for appointment of a single mediator. The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held near the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.8 Litigation. Any Claims, disputes or controversies between the parties arising out of or relating to the Contract, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.7 above shall be decided by litigation, unless the parties mutually agree in writing otherwise. All unresolved Claims of Design-Builder shall be waived and released unless Design-Builder has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion of all the Work designated in writing by Owner or (b) 60 days after Final Completion. This requirement cannot be waived except by an explicit written waiver signed by Owner and Design-Builder. The pendency of mediation shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or 30 days after the last mediation session ended with no further sessions scheduled by the mediator.

10.9 CONSEQUENTIAL DAMAGES.

10.9.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.9.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING. Costs and damages for which Owner shall not be liable under any circumstances include but are not limited to: (a) borrowing or interest costs, charges, or expenses of Design-Builder; (b) alleged lost profit or overhead on any other project; and (c) Design-Builder's failure or inability to obtain other work.

10.9.2 The consequential damages limitation set forth in Section 10.9.1 does not waive and does not otherwise affect (1) any payment of liquidated damages that may be established by the parties, and which would be intended, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential; or (2) Owner's entitlement to actual direct damages arising out of or related to breach of this Contract by the Design-Builder.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-BUILDER in writing to stop and suspend the Work.

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

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-BUILDER persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-BUILDER that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-BUILDER's receipt of such notice. If Design-BUILDER fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-BUILDER of its intent to terminate within an additional seven (7) day period. If Design-BUILDER, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Contract terminated for default by providing written notice to Design-BUILDER of such declaration.

11.2.3 Upon declaring the Contract terminated pursuant to Section 11.2.2 above, Owner may enter the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-BUILDER hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Design-BUILDER shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. If the Contract establishes a Guaranteed Maximum Price, Design-BUILDER will only be entitled to be paid for Work performed under this Contract. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-BUILDER shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-BUILDER's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Contract for cause, the termination for cause will be considered a termination for convenience in accordance with the provisions of Article 9 of the Contract.

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

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

11.3.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to Force Majeure Events, the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

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

11.3.2 Upon the occurrence of an event set forth in Section 11.3.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within thirty (30) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Contract terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Contract for its convenience under Article 9 of the Contract.

11.4 Bankruptcy of Design-Builder.

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

11.4.1.1 The Design-Builder, its trustee or other successor, shall furnish, upon request of Owner, adequate assurance of the ability of the Design-Builder to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.4.1.2 The Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Design-Builder fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Contract, declare the Contract terminated and pursue any other recourse available to Owner under this Article 11.

11.4.2 The rights and remedies under Section 11.4.1 above shall not be deemed to limit the ability of Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Contract, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated, or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 5 of the Contract. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally, or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

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

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular

purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Public Records. This Contract and all public records associated with this Contract shall be available from Owner for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Design-Builder are needed for Owner to respond to a request under the Act, as determined by Owner, the Design-Builder agrees to make them promptly available to Owner. If the Design-Builder considers any portion of any record provided to Owner under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, the Design-Builder shall clearly identify any specific information that it claims to be confidential or proprietary. If Owner receives a request under the Act to inspect or copy the information so identified by the Design-Builder and Owner determines that release of the information is required by the Act or otherwise appropriate, Owner's sole obligations shall be to notify the Design-Builder (a) of the request and (b) of the date that such information will be released to the requester unless the Design-Builder obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Design-Builder fails to timely obtain a court order enjoining disclosure, Owner will release the requested information on the date specified. Owner has, and by this section assumes, no obligation on behalf of the Design-Builder to claim any exemption from disclosure under the Act. Owner shall not be liable to the Design-Builder for releasing records not clearly identified by the Design-Builder as confidential or proprietary. Owner shall not be liable to the Design-Builder for any records that Owner releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

13.2 Assignment. Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship. Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors, and assigns.

13.4 Governing Law. The Contract and all Contract Documents shall be governed by the laws of the State of Washington without giving effect to its conflict of law principles. Exclusive venue for any dispute arising out of this Contract shall be in Spokane County Superior Court. Design-Builder shall include a "Stipulation of Venue in Spokane County" in all subcontracts hereunder. Should the Design-Builder or any member of the Design-Build Team be a non-resident of Washington State, each shall designate a Washington resident as agent upon whom process may be served before commencing work under this Contract.

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

13.6 No Waiver. The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall

not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

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

13.8 Notice. Whenever the Contract Documents require that notice be provided to the other party, notice shall be provided consistent with Section 12.4 of the Contract.

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

-END OF GENERAL CONDITIONS-

DRAFT