

**GENERAL CONDITIONS  
OF  
DESIGN-BUILD GMP CONTRACT  
BETWEEN OWNER AND DESIGN-BUILDER**

**Capitol Campus  
Child Care Center  
Project # 2018-035**

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## **Article 1 – General**

**1.1 Duty to Collaborate.** *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 Contract Documents.** The Contract Documents are comprised of the following which are incorporated by reference, and are in order of precedence:

- A. All written modifications, amendments, and change orders to the Contract;
- B. The Contract, including all attachments;
- C. These General Conditions;
- D. The Basis of Design Documents, including but not limited to, Request for Qualifications, Request for Proposals and any Addenda, Design-Builder's Statement of Qualifications and its Proposal submitted in response to the Owner's Request for Proposals, and Design-Builder's GMP Proposal, submitted in Phase 1 of this Contract, as accepted by Owner;
- E. Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions; and
- F. Contract Management Manual.

### **1.3 Basic Definitions**

- A. *Basis of Design Documents* are the Contract Documents as defined in Section 1.2.
- B. *Construction Documents* consist of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a revision from the Basis of Design Documents is specifically set forth in writing executed by both the Owner and Design-Builder.
- C. *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- D. *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.
- E. *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.
- F. *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any incomplete items identified in Section 8.3 and the submission of all documents set forth in Section 7.5.
- G. *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

- H. *GMP*. The Guaranteed Maximum Price is the Cost of the Work, Design-Builder's fee and allowances as described in Article 6.
- I. *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.
- J. *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.
- K. *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and sustainable design criteria and other Project-specific technical materials and requirements.
- L. *Site* is the land or premises on which the Project is located.
- M. *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.
- N. *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.
- O. *Substantial Completion or Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- P. *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2 – Design-Builder's Services and Responsibilities**

### **2.1 General Services.**

- A. Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.
- B. Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

- C. Unless a schedule for the execution of the Work has been attached to the Contract as an exhibit at the time the Contract is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.D., a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- D. 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.** 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.** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

**2.4 Services for Development of Design.**

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

Section 2.4.A 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.

- C. Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.
- D. 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.**

- A. 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.
- B. The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Contract Amendment establishing the GMP. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

- A. 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.
- B. Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services.**

- A. 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.
- B. Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- C. Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.
- D. 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.

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

## **2.8 Design-Builder's Responsibility for Project Safety.**

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

## **2.9 Design-Builder's Warranty.** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides

Owner with greater warranty rights than set forth in this Section or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

- A. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.
- B. Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.
- C. The one-year period referenced in Section 2.10.A. above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **2.11 Apprentice Utilization Requirements**

- A. The Design-Builder shall ensure that at least 15% of the total construction labor hours utilized on the project are performed by apprentices registered with the Washington State Apprenticeship and Training Council.
  - 1) Total labor hours include additional hours worked as a result of change orders.
  - 2) Total labor hours exclude hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements. However, total labor hours shall include the hours worked by supervisors, foremen, and superintendents if it is determined they are subject to prevailing wage requirements pursuant to Washington Administrative Code (WAC) 296-127-015.
  - 3) Total labor hours include all hours worked by the Design-Builder and all subcontractors on the Project.
- B. The Design-Builder shall meet or exceed the apprentice utilization requirements of the Contract Documents on all labor hours on the Project.
- C. The Design-Builder shall include the apprentice utilization requirements of this Section in all subcontracts executed for the Project.
- D. If, during the term of the Contract, the Design-Builder determines that it will be unable to meet the percentage utilization requirement in Paragraph A, above, the Design-Builder may make a written request to the Owner to reduce the required percentage. The request shall include documentation of:

- 1) The Design-Builder's good faith efforts to use registered apprentices; and/or
  - 2) The lack of availability of registered apprentices; and/or
  - 3) A disproportionately high ratio of material costs to labor hours, which makes infeasible the required minimum level of apprentice participation.
- E. The Owner shall evaluate the request, and if appropriate, a change order shall be prepared by the Owner reducing the utilization requirement.
- F. With its monthly Application for Payment, the Design-Builder shall submit the Apprentice and Journey Level Worker Utilization Report on the form provided by the Owner.

## 2.12 Prevailing Wages

- A. **Prevailing Wages** To the extent that any of the work of this Contract is subject to the payment of prevailing wages, the Design-Builder shall comply with all applicable provisions of RCW 39.12 concerning prevailing wages, shall provide the Owner with all documents required, and shall pay not less than the prevailing rate of wage to such laborers, workers, or mechanics in each trade or occupation required for the work whether performed by the Design-Builder, subcontractor, or other person doing or contracting to do the whole or any part of the work subject to prevailing wages and contemplated by this Contract. The effective date for any prevailing wages required to be paid under this Contract shall be the execution date of this Contract. In any case, the Contractor shall not pay any person less than the hourly minimum rate of wage.
- B. Before commencing the Work, Design-Builder shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Design-Builder and all Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
- C. **Disputes.** Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.
- D. **Applications for Payment.** Each Application for Payment submitted by Design-Builder shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the Site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- E. **Fees.** Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.
- F. **Intent to Pay Prevailing Wages.** Copies of approved Intents to Pay Prevailing Wages for Design-Builder and all Subcontractors shall be submitted with Design-Builder's first Application for Payment. As additional Subcontractors perform Work on the Project, their approved Intent forms shall be submitted with Design-Builder's next Application for Payment.
- G. **Certified Payroll Copies.** Design-Builder and all Subcontractors shall promptly submit to Owner certified payroll copies if requested by Owner.

- H. **Sanctions.** Failure to comply with any of the mandatory requirements of this part of the contract may subject the Design-Builder to sanctions or damages as provided for by RCW 39.19.090, or by other applicable laws.

## 2.13 Labor

- A. **Labor Relations Generally.** Design-Builder shall use reasonable efforts in the selection and continuing employment of labor and Subcontractors (whether directly or indirectly employed) so as to cause no conflict or interference with or between the various trades, or delay in performance of Design-Builder's obligations. Design-Builder shall be responsible for all labor relations matters relating to the Work and shall at all times use reasonable efforts to maintain harmony among unions and other personnel employed in connection therewith. Design-Builder shall coordinate all Work and the trades of all labor. Design-Builder shall at all times use its best efforts and judgment as an experienced Design-Builder to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. Design-Builder shall be solely responsible for any work stoppages, slowdowns, disputes and/or strikes at the Site and such shall not be deemed an Excusable Delay or entitle Design-Builder to a Change Order or an extension of the Guaranteed Completion Date(s), except as specifically provided in Section 8.2.
- B. **Hours of Labor.** Design-Builder shall comply with all applicable provisions of [RCW 49.28](#).
- C. **Notice to Owner of Labor Disputes.** If Design-Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Design-Builder immediately shall give notice, including all relevant information, to Owner.

## Article 3 – Owner's Services and Responsibilities

- 3.1 **Timely Reviews.** Owner commits to provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

### 3.2 **Furnishing of Services and Information.**

- A. To the extent they are available and already in existence, Owner shall provide:
- 1) Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  - 2) Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
  - 3) Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
  - 4) Record drawings of any existing structures at the Site; and
  - 5) Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.
- B. 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.** Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.
- 3.4 Government Approvals and Permits.**
- A. Owner shall obtain and pay for all zoning, zoning variances, and land-use permits required for the design and construction of the Work, as may be required by regulatory agencies having jurisdictions over the Project.
- B. All other permits, government charges inspection fees, and licenses required to perform and complete the Work, including but not limited to the plan check fees, building permits, occupancy permit, as well as any renewals and penalties, shall be the sole responsibility of Design-Builder. Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.
- 3.5 Owner's Separate Contractors.** Owner shall require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4 – Ownership of Work Product**

- 4.1 Instruments of service.** The Drawings (including original Construction Documents), Specifications, materials, models, sketches, renderings, surveys, reports, and other documents, including those prepared as 3D electronic models, using CAD, and existing in other electronic formats, prepared or provided by Design-Builder are instruments of service intended for use solely with respect to the Project. Owner shall be permitted to retain copies, including reproducible and originally stamped copies, of all instruments of service, and is granted an unlimited and royalty free license to utilize instruments of service to communicate about the Project, expand the Project, correct any deficiencies, make any renovations or repairs to the Project, or for future projects other than the construction of another building. Owner agrees to indemnify and hold Design-Builder harmless from any subsequent modification of the instruments of service by Owner and from Owner's use of the instruments of service on other projects.
- 4.2 Design-Builder to convey instruments of service to Owner.** Upon Owner's request if made during the Project or within five (5) years of Substantial Completion, Design-Builder shall be required to convey to Owner in whatever format Owner may designate instruments of service for the completion, use, updating, modernizing, and maintenance of the Project, conditioned upon Owner's agreement to indemnify and hold harmless the Design-Builder as set forth above.
- 4.3 Submission of instruments of service does not waive rights.** Submission or distribution of Design-Builder's instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of any rights reserved in this Section.

## **Article 5 – Insurance and Bonds**

### **5.1 Insurance Carried by Design-Builder**

- A. Coverage.** All insurance coverages required in this Article shall cover the interest of Owner, Design-Builder, and any Subcontractors, as their interests may appear.
- B. Owner as Additional Insured.** All insurance coverages in this Article shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the

Contract Documents, and all insurance certificates shall evidence Owner as an additional insured.

**C. Design-Builder's Liability Insurance.** Prior to commencement of the Work, Design-Builder shall obtain all the insurance required by the Contract Documents and provide copies of the entire policies and all addendums or other attachments to Owner. Review of Design-Builder's insurance by Owner shall not relieve or decrease the liability of Design-Builder. Companies writing the insurance to be obtained by this part shall be licensed to do business in the State of Washington. The Contract Price includes the cost of all insurance and bond costs required to complete the Work. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A. M. Best rating shall be indicated on the insurance certificates.

- 1) **Insurance Coverage.** Design-Builder shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Design-Builder shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 2.10. Coverage shall be in the amounts set forth in –this Section.
  - a) Commercial General Liability (CGL) on the ISO 1986 New Occurrence Form or its equivalent such as ISO Form CG 00 01 with limits of no less than \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This coverage shall include:
    - i. Completed operations/products liability;
    - ii. Explosion, collapse, and underground; and
  - b) Employer's liability coverage - limits no less than One Million dollars \$1,000,000 per accident for bodily injury or disease.
  - c) Automobile Liability – ISO Form Number CA 0001 covering Code 1 (any auto), with limits no less than Five Million dollars (\$5,000,000) per accident for bodily injury and property damage (Combined Single Limit).
- 2) **Scope of Coverage.** All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Design-Builder or any Subcontractor.
- 3) **Insurance.** Design-Builder shall furnish a copy of all insurance policies required in this Contract, and Certificate of Insurance form SF500A, dated July 2, 1992, or ACORD form, prior to commencement of the Work. All insurance policies and certificates shall name Owner as an additional insured and shall denote the Project by contract number(s) and Project title(s.) All insurance policies and certificates shall specifically require forty-five (45) days prior notice to Owner of cancellation or a material change, except thirty (30) days for surplus line insurance.

**D. Builder's Risk or Installation Floater (Course of Construction) Insurance.** Design-Builder shall purchase and maintain builder's risk property insurance in the amount of the Contract Price on a replacement cost basis until Substantial Completion. There shall be no coinsurance penalty provisions. For projects or portions of project not involving New Building Construction, "Installation Floater" is an acceptable substitute for the Builder's Risk Insurance.

- 1) **Insurance to be "All Risk".** Design-Builder's property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's and Owner's consultant's services and expenses required as a result of an insured loss. Design-Builder shall purchase and maintain boiler and machinery insurance covering insured objects during installation and testing until Substantial Completion. Such insurance shall name as additional insured Owner, Design-Builder, and all subcontractors

who perform applicable work.

2) **Waiver of Subrogation.** Owner and Design-Builder waive all subrogation rights against each other, any Subcontractors, Owner's Representative, Owner's Design-Build Consultant and Owner's Design-Build Consultant's subconsultants, and Owner's Separate Contractors, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**E. Errors and Omissions Professional Insurance.** Design-Builder shall maintain professional liability insurance for design services errors and omissions with minimum limits of no less than Two Million dollars (\$2,000,000) per claim, Four Million dollars (\$4,000,000) policy aggregate. The professional liability insurance set forth herein shall be renewed by Design-Builder for a period of no less than five (5) years after Final Completion. The insurance policy shall be endorsed to provide vicarious liability coverage.

**F. Contractor's Pollution Legal Liability and/or Asbestos Legal Liability.** Insurance involving environmental hazards with limits no less than One Million dollars (\$1,000,000) per occurrence or claim and Two Million dollars (\$2,000,000) policy aggregate. The Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions.

**5.2 Insurance Carried by Owner.** On and after Substantial Completion, Owner will carry insurance covering the Project in the types and amounts as Owner may from time to time deem prudent.

**5.3 Additional Insurance Provision.** For any claims related to this Project, Design-Builder's insurance coverage shall be primary insurance as respects the Owner, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees or volunteers shall be excess of Design-Builder's insurance and shall not contribute with it.

**5.4 Design-Builder's Performance and Payment Bonds.** Concurrently with execution of this Contract, Design-Builder shall provide Owner the following Surety Bonds: (1) performance bond, and (2) payment bond. The performance and payment bonds shall use the AIA Document A312 form and the principal amount of each bond shall be one hundred percent (100%) of the Contract Price plus Sales Tax. Bonds shall be duly executed by a responsible corporate surety (a) licensed as a surety and qualified to do business in the State of Washington; (b) in good standing on the list maintained by the United States Department of Treasury; and (c) having an A.M. Best rating of "A" or better. The costs for such bonds are included in the Contract Price. The bonds shall be provided when construction funding is available.

## **Article 6 – Contract Price and Taxes**

### **Contract Price and Taxes**

**6.1 Contract Price.** The Contract Price shall be the GMP which shall be paid to Design-Builder in accordance with this Article. The Contract Price shall be complete compensation for all Work to be performed by Design-Builder under the Contract Documents, and is subject to increases or decreases by Change Order only as specifically provided in this Contract.

**6.2 Taxes.** The Contract Price shall include all taxes imposed by law and properly chargeable to the Project, including: (a) withholding, payroll and any other employee-related taxes on employees of Design-Builder or Subcontractors; (b) taxes based on the income or revenues of Design-Builder or Subcontractors; (c) taxes related to construction consumables; and (d) taxes levied by any

Governmental Unit upon the services and labor provided by Design-Builder in connection with the Work, including Washington State Business and Occupation Tax.

**6.3 Washington State Sales Tax.** Notwithstanding Section 6.2 above, the Contract Price does not include Washington State Sales Tax (WSST). Owner will include applicable WSST in progress payments, and Design-Builder shall pay the WSST to the Department of Revenue and shall furnish proof of payment to Owner upon Owner's request.

**6.4 Design-Builder's Fee.**

- A. Design-Builder's Fee shall be established as a percentage of the Cost of the Work as submitted on Price Factor Form with Design-Builder's Proposal and incorporated by reference in this Contract.
- B. Design-Builder's Fee will be adjusted pursuant to Article 9 for any changes in the Work.

**6.5 Cost of the Work.** The Cost of the Work shall include only the following:

- A. Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site.
- B. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.
- C. Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a ten percent (10%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.
- D. Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder.
- E. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.
- F. Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.
- G. Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder.
- H. Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
- I. Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- J. Costs of removal of debris and waste from the Site.

- K. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- L. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.
- M. Premiums for insurance and bonds required by this Contract or the performance of the Work.
- N. All fuel and utility costs incurred in the performance of the Work.
- O. Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
- P. Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.
- Q. Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.
- R. The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.
- S. Deposits which are lost, except to the extent caused by Design-Builder's negligence.
- T. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- U. Accounting and data processing costs related to the Work.
- V. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner (including 3% of direct labor for small tools).

**6.6 Allowance Items and Allowance Values.** Allowance items and values, if applicable, are incorporated by reference in an attachment to the Contract.

**6.7 Non-Reimbursable Costs.**

The following shall not be deemed as Cost of the Work:

- A. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.
- B. Overhead and general expenses, except as provided for in Section 6.5, or which may be recoverable for changes to the Work.
- C. The cost of Design-Builder's capital used in the performance of the Work.
- D. Any costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

## 6.8 Guaranteed Maximum Price (GMP).

### A. GMP Established Upon Execution of the Amendment.

- 1) Design-Builder represents, warrants, and guarantees that it shall not exceed the GMP. Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it shall be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.
- 2) The GMP includes a Contingency in an agreed to amount is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include:
  - (a) Trade buy-out differentials;
  - (b) Overtime or acceleration;
  - (c) Escalation of materials;
  - (d) Correction of defective, damaged or nonconforming Work, design errors or omissions, however caused;
  - (e) Subcontractor defaults; or
  - (f) Those events under Article 9 of this Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price.
- 3) The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of a monthly status report of the Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.
- 4) Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

### B. GMP Adjustments.

- 1) **Review and Adjustment to GMP Proposal.** After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it promptly shall give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.
- 2) **Acceptance of GMP Proposal.** If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Contract.
- 3) **Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:
  - 4) Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the Parties shall proceed in accordance with Section 6.8.B.; or

- 5) Owner may terminate this Contract for convenience in accordance with Article 11; provided, however, in this event, this Contract will be terminated and Design-Builder will be paid the reasonable value of its documented services to the date of termination and will not be entitled to any other compensation, damages, loss of profits or payment of any other kind.

## **Article 7 – Payment**

- 7.1 Initial Invoice.** Design-Builder shall be entitled to submit to Owner, on or after the Contract Date, an initial invoice. This amount is considered part of the Contract Price and shall be considered full and complete compensation to Design-Builder for the design services performed prior to the Contract Date and furnished in the Proposal. Payment of the Initial invoice will be processed by Owner and paid in accordance with Sections 7.3 and 7.4, provided however, that no retainage will be withheld on such payment.
- 7.2 Schedule of Values.** Before submitting its first Application for Payment, Design-Builder shall submit to Owner for approval a Schedule of Values with breakdown allocating the total Contract Price to each principle category of work, in such detail as requested by Owner and established by the RFP Documents. The Schedule of Values will: (a) subdivide the Work into its respective parts; (b) include values for all items comprising the Work (inclusive of the Initial invoice payment amount); (c) contain appropriate amounts for demobilization, record drawings, and any other requirements for Project close-out; and (d) be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.
- 7.3 Applications for Payment**
- A. **Form of Application.** Design-Builder shall, on or before the twenty-fifth (25<sup>th</sup>) day of each month, submit to Owner an itemized Application for Payment, completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require. When Design-Builder submits its monthly Application for Payment, it shall include, in addition to other requirements a waiver and release of claims and mechanic's liens. Payments will not be considered due and payable by Owner unless these forms are properly completed and timely received by Owner.
  - B. **Certification.** By submitting an Application for Payment, Design-Builder: (a) certifies that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.010, as their interests appeared in the last preceding Application for Payment, if payment for the application has been paid to the Design-Builder more than 10-days prior to the current application; and (b) recertifies that Design-Builder's prior certifications are true and correct, to the best of Design-Builder's knowledge, as of the date of the Application for Payment.
  - C. **Reconciliation.** At the time it submits an Application for Payment, Design-Builder shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Project Schedule.
  - D. **Stored Materials.** If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:
    - 1) The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
    - 2) The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
    - 3) Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
    - 4) Design-Builder furnishes Owner a certificate of insurance extending Design-Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored,

- or in transit;
- 5) The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;
  - 6) Owner shall at all times have the right of access in company of Design-Builder;
  - 7) Design-Builder and its surety assume total responsibility for the stored materials; and
  - 8) Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site.

#### 7.4 Progress Payments

- A. **Payment.** Owner shall make progress payments, in such amounts as Owner determines are properly due, within thirty (30) days after receipt of the Initial invoice or a properly executed Application for Payment. Owner shall notify Design-Builder in accordance with Chapter 39.76 RCW if an Application for Payment does not comply with the requirements of the Contract Documents or if payment will be withheld.
- B. **Retainage.** Owner shall retain five percent (5%) of the amount of each progress payment due under an Application for Payment until at least forty-five (45) days after Final Acceptance and receipt of all documents required by Governmental Rule or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage; provided, however, that no amount shall be retained for those portions of the Contract Price that are for professional design services. In accordance with Chapter 60.28 RCW, Design-Builder may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Design-Builder. Owner may permit Design-Builder to provide an appropriate bond in lieu of the retained funds. Retainage shall be released in accordance with Governmental Rules.
- C. **Title to Work Covered by Progress Payments.** Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Design-Builder from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Design-Builder with the Contract Documents.

#### 7.5 Final Payment

- A. **Application for Final Payment.** Once Owner has issued a Certificate of Final Acceptance, Design-Builder shall be entitled to submit an Application for Final Payment, which application will include the following information:
  - 1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner might in any way be responsible have been paid or otherwise satisfied and that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, Equipment and Material, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
  - 2) a written notice of any outstanding disputes or claims between Design-Builder and any of its Subcontractors, including the amounts and other details thereof;
  - 3) a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims pending in accordance with Article 10;
  - 4) consent of Design-Builder's surety to final payment;
  - 5) certificates of insurance confirming that required coverages will remain in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, consistent with the requirements of the Contract Documents; and
  - 6) a written statement that Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.
- B. **Payment.** Within thirty (30) days after receipt of an acceptable Application for Final Payment,

Owner shall pay to Design-Builder the unpaid balance of the Contract Price (less any Retainage), reduced by any amounts owed by Design-Builder to Owner pursuant to this Contract which have not been paid by Design-Builder. Retainage funds shall be released pursuant to Chapter 60.28 RCW.

- C. **Continuing Obligations.** Neither Final Acceptance nor final payment shall release Design-Builder or its sureties from any obligations of these Contract Documents, or any bonds, or constitute a waiver of any claims by Owner arising from Design-Builder's failure to perform the Work in accordance with the Contract Documents.
- D. **Waiver and Release.** Acceptance of final payment by Design-Builder or any Subcontractor shall constitute a waiver and release to Owner of all claims by Design-Builder, or any such Subcontractor, for an increase in the Contract Price or Guaranteed Completion Date(s), and for every act or omission of Owner relating to or arising out of the Work, except for those claims made in accordance with Article 10.

#### 7.5 Owner's Right to Withhold Payment and Offset

- A. **Withholding of Payment.** Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including:
  - 1) Work not in accordance with the Contract Documents;
  - 2) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
  - 3) Work by Owner to correct defective Work or to complete the Work;
  - 4) Design-Builder's failure to perform in accordance with the Contract Documents; and
  - 5) Costs, claims, or liability that are the result of Design-Builder's failure to perform in accordance with the Contract Documents, including Liquidated Damages.
- B. **Owner's Offset Rights.** If, at the time any payment by Owner is due under this Article 6, Design-Builder is liable to Owner for any amounts in accordance with the provisions of the Contract Documents (including Liquidated Damages), Owner may deduct the outstanding amount of such claims against Design-Builder from the amount payable to Design-Builder.
- C. **Payment Disputes.** If Design-Builder disputes Owner's determination of payments due hereunder, or disputes any offsets or withholding by Owner, Design-Builder shall have the right to submit the dispute for resolution in accordance with Article 10. Pending resolution of any such dispute, Design-Builder shall continue its performance of the Work in accordance with the Contract Documents. Amounts determined by such resolution process to have been properly due shall be payable by Owner within thirty (30) days after (a) the effective date of the Parties' negotiated settlement or (b) absent such settlement, the arbitration award issued pursuant to Section 10.4.

**7.6 Interest.** Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in Chapter 39.76 RCW.

**7.7 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Contract is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Acceptance, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Acceptance. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed

to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Contract are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Contract, with the composition of such multiplier or markup not being subject to audit.

## **Article 8 – Time**

### **8.1 Obligation to Achieve the Contract Times.**

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

### **8.2 Delays to the Work.**

- A. If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.
- B. In addition to Design-Builder's right to a time extension for those events set forth in this Section, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, the Contract Price shall not be adjusted for Force Majeure Events.

### **8.3 Substantial Completion.**

- A. Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, 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.
- B. 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 8.3.A. 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.

### **8.4 Damages for Failure to Achieve Timely Completion.**

#### **A. Liquidated Damages**

- 1) **Reason for Liquidated Damages:** Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the

essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents.

- 2) **Calculation of Liquidated Damages amount:** The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
- 3) **Contractor responsible even if Liquidated Damages assessed:** Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

**B. Actual Damages**

- 1) **Reason for Liquidated Damages:** Actual damages will be assessed for failure to achieve Final Completion within the time provided.
- 2) **Calculation of Actual Damages:** Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

## **Article 9 – Changes to the Contract Price and Time**

### **9.1 Change Orders.**

- A. 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:
  - 1) The scope of the change in the Work;
  - 2) The amount of the adjustment to the Contract Price, if any; and
  - 3) The extent of the adjustment to the Contract Time(s), if any.
- B. All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.
- C. A Change Order shall constitute full payment and final settlement of all claims for time 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.

## 9.2 Field Authorization.

- A. The Owner may direct the Contractor to proceed with a change in the work through a written Field Authorization (FA) when the time required to price and execute a Change Order would impact the Project.

The Field Authorization shall describe and include the following:

- 1) The scope of work
  - 2) An agreed upon maximum not-to-exceed amount
  - 3) Any estimated change to the Contract Time
  - 4) The method of final cost determination in accordance with the requirements of the General Conditions
  - 5) The supporting cost data to be submitted in accordance with the requirements of the General Conditions
- B. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work.
- C. Upon satisfactory submittal by the Contractor and approval by the Owner of supporting cost data, a Change Order will be executed. The Owner will not make payment to the Contractor for Field Authorization work until that work has been incorporated into an executed Change Order.

## 9.3 Minor Changes in the Work.

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

## 9.4 Contract Price Adjustments.

- A. Adjustments in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
- 1) Unit prices set forth in the Contract or as subsequently agreed to between the parties;
  - 2) A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
  - 3) Costs, fees and any other markups set forth in the Contract; or
- B. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.5 Pricing Components.** The value of any changed Work that is compensable, of any disputed Work Change Directive and of any other increase or decrease in the Contract Price, including a Claim, shall be an agreed lump sum amount. If no such agreement is achieved, the value shall be limited to the following components:

- A. **Direct labor costs.** These are the labor costs determined by either the estimated or actual number of additional craft hours and the hourly cost necessary to perform the change in the Work, or the unit labor costs applied to the material quantities and extended, provided the unit

labor costs are developed from the above craft hour cost, whichever is applicable, according to industry practice. The hourly cost shall be based upon the following:

- 1)Basic wages: The hourly wage actually paid the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the Site. The premium portion of overtime wages is not included unless pre-approved by Owner.
  - 2)Fringe benefits: Fringe benefits paid by Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable.
  - 3)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.
  - 4)Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), and State Unemployment Compensation Act (SUCA).
  - 5)Small tool costs: 3% of Basic Wages in Clause 6.3.1.1 above.
  - 6)Travel expenses: Reasonable expenses of travel, to same extent as can be demonstrated were included in calculating the original Contract Price. Design-Builder's pre-approved off-site travel expenses. Travel expenses shall not exceed the State of Washington Office of Financial Management guidelines for travel costs.
- B. **Direct material costs.** This is an itemization, including material invoice, of the quantity and cost of additional materials necessary to perform the change in the Work. These costs shall be by the unit cost applied to the quantity and extended. The unit cost shall not include discounts or rebates so long as Owner was given a reasonable opportunity and declined to provide payment qualifying for such discount or rebate. The material costs may include normal freight costs; Owner must pre-approve express charges or special delivery costs.
- C. **Construction equipment usage costs.** This is an itemization of the actual length of time construction equipment other than small tools described in Clause 6.3.1.5 above, appropriate for the Work will be used solely on the change in the Work at the Site times the applicable rental cost as established by the lower of the prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, or the actual rate paid 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.

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 work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. 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 on the Work shall be fifty percent (50%) of the rate established above.

If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by Owner prior to performing the changed Work.

D. **Cost of change in insurance or bond premiums.** This is defined as:

- 1) **Design-Builders' liability insurance:** The cost (expressed as a percentage) of any changes in Design-Builder's liability (including professional errors and omissions) insurance arising directly from the changed Work; and
- 2) **Public works bonds:** The cost (expressed as a percentage) of the change in Design-Builder's premium for Design-Builder's bonds arising directly from the changed Work. Upon request, Design-Builder shall provide Owner with supporting documentation from its insurer or surety of any associated cost incurred.
- 3) **Subcontractor costs.** These are payments Design-Builder makes to Subcontractors for changed or extra Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section.
- 4) **Design Consultant costs.** These are payments Design-Builder makes to Design Consultants for additional services performed by Design Consultants arising out of a change in the Work.

**9.6 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, or for any other purpose, including Claims, and a lump sum is not agreed upon, the following markups shall be allowed on such adjustments as an allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, and superintendent, except for pre-agreed extra work they perform caused by acceleration or an extension in the Contract Time), taxes (except for sales tax), safety costs, and delay and impact costs of any kind, added to the total cost to Owner of any Change Order, Work Change Directive, Claim or any other claim of any kind on this Project:

- A. Design-Builder shall receive fifteen percent (15%) of fixed-price costs or ten percent (10%) of the time-and-material costs of any materials supplied and/or work properly performed by Design-Builder's own forces.
- B. Design-Builder shall receive eight percent (8%) of fixed-price costs or six percent (6%) of the time-and-material costs owed directly to a Subcontractor for materials supplied and/or Work properly performed by that Subcontractor or owed directly to a Design Consultant for services it properly performs.
- C. Each "lump-sum" Subcontractor of any tier shall receive fifteen percent (15%) of fixed-price costs or ten percent (10%) of the time-and-material costs of any materials properly supplied and/or Work properly performed by its own forces.
- D. Each "lump-sum" Subcontractor of any tier shall receive eight percent (8%) of fixed-price costs or six percent (6%) of the time-and-material costs owed directly to a lower-tier "lump-sum" Subcontractor for materials supplied and/or Work properly performed by that Subcontractor.

**9.7 Disagreement of Entitlement or Cost.** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed.

- 9.8 Emergencies.** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article or in accordance with provisions of the Contract applicable to Force Majeure events.

## **Article 10 – Contract Adjustments and Dispute Resolution**

### **10.1 Requests for Contract Adjustments and Relief.**

If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **10.2 Dispute Avoidance and Resolution.**

- A. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- B. Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.
- C. If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as possible, but in no case later than fifteen (15) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

### **10.3 Final Offer.**

If the Parties fail to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Price or Guaranteed Completion Date(s), Design-Builder, at any time, may request in writing a final offer from Owner. Owner shall provide its written response within thirty (30) days of Design-Builder's request. Owner also may provide Design-Builder with a final offer at any time. If Design-Builder rejects Owner's final offer, or the Parties are unable to reach agreement, Design-Builder's only remedy shall be to file a Claim in accordance with this Article.

### **10.4 Claims Process**

- A. **Claim Filing Deadline for Contractor.** Design-Builder shall file its Claim within the earlier of:
  - 1) one hundred twenty (120) days from Owner's final offer (if such an offer has been made), or

- 2) the date of Final Completion.
- B. Claim Must Cover All Costs and Be Documented.** The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Design-Builder may be entitled. It shall be fully substantiated and documented and, at a minimum, shall contain the following information:
- 1) A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
  - 2) The date on which facts arose which gave rise to the Claim;
  - 3) The name of each employee, agent or representative of Owner knowledgeable about the Claim;
  - 4) The specific provisions of the Contract Documents which support the Claim;
  - 5) The identification of any documents and the substance of any oral communications that support the Claim;
  - 6) Copies of any identified documents, other than the Contract Documents, that support the Claim;
  - 7) If an adjustment in the Guaranteed Completion Date(s) is sought, then: (a) the specific days and dates for which it is sought; (b) the specific reasons Design-Builder believes an extension in the Guaranteed Completion Date(s) should be granted; and (c) Design-Builder's analysis of its Project Schedule to demonstrate the reason for such an adjustment;
  - 8) If an adjustment in the Contract Price is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, Article 9; and
  - 9) A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of 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 Contract Price or Guaranteed Completion Date(s) for which Design-Builder believes Owner is liable.
- C. Time for Owner's Response to Claim.** After Design-Builder has submitted a fully documented Claim that complies with all applicable provisions of Section 10.4.B, Owner shall respond in writing to Design-Builder as follows:
- 1) If the Claim amount is less than \$50,000, Owner shall provide a decision within sixty (60) days from the date the Claim is received; or
  - 2) If the Claim amount is \$50,000 or more, Owner shall provide a decision within ninety (90) days from the date the Claim is received, or with notice to Design-Builder of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.
- D. Owner's Review of Claim & Finality of Decision.** To assist in the review of any Claim, Design-Builder shall provide any additional information requested by Owner. Design-Builder shall proceed with performance of the Work pending final resolution of any the Claim. Owner's written decision on a Claim shall be final and conclusive as to all matters set forth in the Claim, unless Design-Builder follows the procedures set forth in Section 10.5.
- E. Waiver of Design-Builder Rights for Failure to Comply with this Section.** Any Claim of Design-Builder against Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by Design-Builder unless timely made in accordance with the requirements of this Section 10.4.
- 10.5 Demand for Arbitration.** If Design-Builder disagrees with Owner's decision rendered in accordance with Section 10.4, Design-Builder shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) days after the date of Owner's decision on such Claim; failure to demand arbitration within said thirty (30) day period shall result in Owner's decision being final and binding upon Design-Builder and all Subcontractors.
- A. Filing of Notice for Arbitration.** Notice of the demand for arbitration shall be filed with

the American Arbitration Association (AAA), with a copy provided to Owner. The Parties shall negotiate or mediate under the Construction Industry Arbitration Rules & Mediation Procedures of the AAA (“AAA Rules”), or mutually acceptable service, before seeking arbitration in accordance with the then-applicable AAA Rules.

- B. **Arbitration Is the Forum for Resolving Claims.** All Claims arising out of the Work shall be resolved by binding arbitration in accordance with the then-applicable AAA Rules. The judgment upon the arbitration award may be entered, or review of the award may occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.
- C. **Owner May Combine Claims Into Same Arbitration.** Claims between Owner and Design-Builder and Design-Builder and its Subcontractors shall, upon demand by Owner, be submitted in the same arbitration or mediation.
- D. **Resulting Change Order.** If the Parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

**10.6 Continuation of Work.** Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder pending final resolution of any dispute or disagreement.

**10.7 Owner May Audit Claims.** All 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 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 the Claim and shall bar any recovery.

A. **Design-Builder to Make Documents Available.** In support of Owner audit of any Claim, Design-Builder shall, upon request, promptly make available to Owner the following documents:

- 1) Daily time sheets and supervisor’s daily reports;
- 2) Collective bargaining agreements;
- 3) Insurance, welfare, and benefits records;
- 4) Payroll registers;
- 5) Earnings records;
- 6) Payroll tax forms;
- 7) Material invoices, requisitions, and delivery confirmations;
- 8) Material cost distribution worksheet;
- 9) Equipment records (list of company equipment, rates, etc.);
- 10) Vendors’, rental agencies’, Subcontractors’, and agents’ invoices;
- 11) Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
- 12) Subcontractors’ and agents’ payment certificates;
- 13) Cancelled checks (payroll and vendors);
- 14) Job cost report, including monthly totals;
- 15) Job payroll ledger;
- 16) Planned resource loading schedules and summaries;

- 17) General ledger;
  - 18) Cash disbursements journal;
  - 19) Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
  - 20) Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
  - 21) If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
  - 22) All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Price or Contract Time sought by each Claim;
  - 23) Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
  - 24) Work sheets, software, and all other documents used by Contractor to prepare its bid.
- B. **Contractor to Provide Facilities for Audit and Shall Cooperate.** The audit may be performed by employees of Owner or a representative of Owner. Design-Builder, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Design-Builder, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors. All records shall be maintained for a period of six (6) years after final payment under this Contract.

## **Article 11 – Stop Work and Termination**

### **11.1 Owner's Right to Stop Work.**

- A. Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.
- B. Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner which is not caused by the acts of the Design Builder or its agents, Consultants or Subcontractors.

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

- A. 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.B. and 11.2.C. below.
- B. Upon the occurrence of an event set forth in Section 11.2.A. 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 (as determined by the Owner) 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 (as determined by the Owner) to cure, such problem, then Owner may declare the Contract terminated for default by providing written notice to Design-Builder of such declaration.

- C. Upon declaring the Contract terminated pursuant to Section 11.2.B. above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, and take over the contracts of any Subcontractor or Consultant all of which Design-Builder hereby transfers, assigns and sets over to Owner, if Owner so requests, for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Contract establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages.
- D. If Owner improperly terminates the Contract for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.3.

### **11.3. Owner's Right to Terminate for Convenience.**

- A. Owner Notice of Termination for Convenience: Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Contractor response to termination Notice: Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
- C. Cease Work: Stop performing Work on the date and as specified in the notice of termination;
- D. No further orders or Subcontracts: Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
- E. Cancel orders and Subcontracts: Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
- F. Assign orders and Subcontracts to Owner: Assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;

- G. Take action to protect the Work: Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
- H. Continue performance not terminated: Continue performance only to the extent not terminated
- I. Terms of adjustment in Contract Price if Contract terminated: If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.
- J. Owner to determine whether to adjust Contract Time: If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

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

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:

- 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.A. hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- 2) Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.A. hereof.

**11.5** Upon the occurrence of an event set forth in Section 11.4., 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 seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the 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 Section 11.3.

#### **11.6 Bankruptcy of Design-Builder.**

- A. If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Design-Builder's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:
  - 1) The Design-Builder, its trustee or other successor, shall furnish, upon request of the 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

- 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 Party 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 the Design-Builder under this Article.

- B. The rights and remedies under Section 11.5. above shall not be deemed to limit the ability of the 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.** 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.**

- A. Design-Builder shall comply with the requirements of DES CAD Standards, and Design-Builder and Owner 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.
- B. 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.
- C. By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4. 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.**

- A. 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.

- B. Electronic Data will be transmitted in the format agreed upon in Section 12.2.A. above, including file conventions and document properties, unless prior arrangements are made in writing.
- C. 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.
- D. 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 – Hazardous Conditions and Differing Site Conditions**

### **13.1 Hazardous Conditions.**

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

### **13.2 Differing Site Conditions.**

- A. If Design Builder encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the 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, then Design Builder shall give written notice to Owner, as described in Article 10. Conditions shall not be disturbed prior to such notice.
- B. If such conditions differ materially and cause a change in Design Builder's cost of, or time required for, performance of any part of the Work, the Design Builder may be entitled to an equitable adjustment in the Contract Time or Contract Price, or both, provided a request for equitable adjustment is made in accordance with Article 10.

## **Article 14 – Diverse Business Inclusion**

**14.1 Diverse Business Participation.** The state of Washington encourages participation in all of its contracts by Diverse Businesses. DES is committed to providing the maximum practicable opportunity for participation by Diverse Businesses through direct contracts with DES, subcontracts, sub-consulting, and supplier participation.

**14.2 Definition.** The Diverse Business definition includes Washington Small Business, micro-business, and mini-business as defined in RCW 39.26.010 (collectively Washington Small Business), Minority and Women Business Enterprises as defined in RCW 39.39.19 and WAC 326-20, and Veteran-owned businesses as defined in RCW 43.60A.010. If the proposed subcontractors are self-identified diverse businesses, the Design-Build Contractor will encourage and support state efforts for their certification with the appropriate Washington state agencies.

**14.3 Participation Goals.** Diversity goals for DES contracts are:

- A. 10% Minority Owned Business (MBE) certified by the Washington State Office of Minority and Women Business Enterprises
- B. 6%, Women Owned Business (WBE) certified by the Washington State Office of Minority and Women Business Enterprises
- C. 5% Veteran Owned Business (VOB) certified by the Washington State Department of Veterans Affairs
- D. 5% Washington Small Businesses self-identified in the Washington Electronic Business Solution  
<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx> (WEBS).

**Participation goals for this project are 10% for MBEs, 6% for WBEs, 5% VOB, and 5% for Washington Small Businesses.**

**14.4 Inclusion Plan.** The Diverse Business Inclusion Plan submitted as part of Design-Builder's

Proposal is incorporated by reference in the Attachment X. The Diverse Business Inclusion Plan includes Anticipated Certified Diverse Business Participation Goals identifying the percentage of diverse subconsultants, subcontractors, and suppliers performing professional services and commercially useful work on the project. These goals are voluntary. The Design Builder will commit to a good faith effort to achieve the Anticipated Certified Diverse Business Participation Goals and the Diverse Business Inclusion Plan.

- 14.5 Contact Information.** For information on certified firms, prime Proposers may contact:
- A. OMWBE at <http://www.omwbe.wa.gov/> or (360) 664-9750
  - B. DVA at <http://www.dva.wa.gov/BusinessRegistry/Search.aspx> or (360) 725-2200.
  - C. DES Public Works Diverse Business Manager, **Charles Wilson** [charles.wilson@des.wa.gov](mailto:charles.wilson@des.wa.gov) or **(360) 407-8455** for a list of self-certified Washington Small Businesses that downloaded this solicitation and selected to allow their contact information to be shared.
- 14.6 DES Diversity Compliance Program. The successful Proposer is required to register and create an account in the DES Diversity Compliance Program (B2Gnow) at <https://des.diversitycompliance.com>.** Every month for the duration of your contract, and while your contract is active in the B2Gnow system, submit and accurately maintain the following payment information through B2Gnow:
- A. Payments received by the prime contractor from the Agency
  - B. Payments paid to each subcontractor
  - C. Payments paid to each supplier
- 14.7 Maintenance of Records.** Design-Builder shall maintain, for at least six (6) years after Final Acceptance, relevant records and information necessary to document the level of utilization of Diverse Businesses and other businesses as Subcontractors on this Project, as well as any efforts Design-Builder made to increase the participation of Diverse Businesses. The Design-Builder shall also maintain, for at least six (6) years after Final Completion, a record of all quotes, bids, estimates, or proposals submitted to Design-Builder by all businesses seeking to participate as Subcontractors on this Project. Owner shall have the right to inspect and copy such records. If this Contract involves federal funds, Design-Builder shall comply with all record keeping requirements set forth in any federal Governmental Rules referenced in the Contract Documents.
- 14.8 Advertisements.** Design-Builder shall advertise opportunities for Subcontractors in a manner reasonably designed to provide Diverse Businesses capable of performing the work with timely notice of such opportunities, and all advertisements shall include a provision encouraging participation by Diverse Businesses. Advertising may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids directly from Diverse Businesses. The Design-Builder shall provide Diverse Businesses that express interest with adequate and timely information about plans, specifications, and requirements of the Project.
- 14.9 Non-Discrimination.** The Design-Builder shall not create barriers to open and fair opportunities for all businesses, including Diverse Businesses, to participate in all state contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Design-Builder shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental or physical disability in an otherwise qualified disabled person.
- 14.10 Violations.** Any violation of the mandatory requirements of this shall be a material breach of the Contract for which the Design-Builder may be subject to a requirement of specific performance, or damages and sanctions provided by contract, by RCW 39.19.090, or by other applicable laws.

## **Article 15 – Miscellaneous**

- 15.1 Assignment.** Design-Builder shall not assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents without the written consent of the Owner.
- 15.2 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.
- 15.3 Governing Law.** The Contract and all Contract Documents shall be governed by the laws of the State of Washington. Venue shall be in the Thurston County Superior Court.
- 15.4 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.
- 15.5 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.
- 15.6 Headings.** The headings used in these General Conditions, 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.
- 15.7 Notice.** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the Party's Representative designated in Article 9 of the Contract to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Contract, or (iii) if transmitted by facsimile or email, by the time stated in a machine generated confirmation that notice was received at the facsimile number or email address of the Representative.
- 15.8 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 15.9 Entire Agreement.** The Contract Documents forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Contract.

## **Article 16 – Indemnification**

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

- B. If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.
  - C. Sections 16.1.A. and 16.1.B. above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 16.1.A.
  - D. The obligations set forth in this Section shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.
- 16.2 Tax Claim Indemnification.** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.
- 16.3 Payment Claim Indemnification.** 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.
- 16.4 Design-Builder's General Indemnification.** Design-Builder shall defend, indemnify, and hold Owner 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:
- A. The sole negligence of Design-Builder or any of its Subcontractors;
  - B. The concurrent negligence of Design-Builder, or any Subcontractor, but only to the extent of the negligence of Design-Builder or such Subcontractor; and
  - C. 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.
  - D. In any action against Owner and any other entity indemnified in accordance with this Section, by any employee of Design-Builder, its 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 Subcontractor under RCW Title 51, the Industrial

Insurance Act, or any other employee benefit acts. In addition, Design-Builder specifically waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

## **Article 17 – Contract Management Manual**

The requirements for management of the Contract are contained in Attachment X and do not supersede any more specific provision in the Contract.

**End of General Conditions of Contract**

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