Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price
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This AGREEMENT is made as of the ___________________________ day of ____________ in the year of 20____, by and between the following parties, for services in connection with the Project identified below:

OWNER:
(Name and address)
Western Washington University

DESIGN-BUILDER:
(Name and address)

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

WWU Student Development and Success Center (SDSC)

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.
Article 1
Scope of Work

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

Article 2
Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, Contract Amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition, as amended) (“General Conditions of Contract”), including but not limited to the GMP Amendment in accordance with Section 6.6 herein, provided such Amendment is executed between the parties;

2.1.2 This Agreement, including all exhibits but excluding, if applicable, the GMP Amendment;

.1 Exhibit A: Owner’s Project Criteria
.2 Exhibit B1: Insurance Exhibit – Design-Builder’s Insurance Requirements
.3 Exhibit B2: Payment Bond Form
.4 Exhibit B3: Performance Bond Form
.5 Exhibit C: Phase 1 and 2 Scope of Services
.6 Exhibit D: Validation Period Level of Effort
.7 Exhibit E: Hourly Rates, Unit Prices, and Allowance Items
.8 Exhibit F: Contract Amendment Forms
.9 Exhibit G: Change Order Forms
.10 Exhibit H: Business Equity Enterprise Inclusion Form

2.1.3 The General Conditions of Contract Between Owner and Design-Builder;

2.1.4 Initial Project Scope, Design Submissions, the Design Log, and the Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract and Exhibit C, the most recent approved documents governing over previously approved documents; and

2.1.5 Other documents as set forth in Exhibit C.

Article 3
Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including but not limited to the various documents comprising the Owner’s Project Criteria, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design
industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or after the parties’ execution of the GMP Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

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

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

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents. The Contract Documents may not be changed, modified, or altered except in writing signed by the parties.

3.6 Design-Builder was selected based in part on the qualifications of the Key Team Members identified in the Design-Builder’s Statement of Qualifications and Proposals. Design-Builder may not substitute the identified Key Team Members without written permission from Owner, such permission shall not be unreasonably withheld. Any substituted Key Team Member must possess the same or better qualifications as the previously approved Key Team Member.

**Article 4**

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner’s Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project, conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.
(collectively the “Indemnified Parties”), and on Owner’s obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner’s Limited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy, maintain, and furnish the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party, and on Owner’s obligation to provide the indemnity set forth in Section 4.5 below, and

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

4.4 Owner’s Limited License upon Design-Builder’s Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner’s Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys’ fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5
Contract Time

5.1 Date of Commencement. The Work shall commence within ten (10) days of Design-Builder’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 The Validation Period shall be completed no later than ________________. The parties will establish a date for Phase 1 Completion (“Phase 1 Completion Date”) at the conclusion of the Validation Period and the Phase 1 Completion Date will be memorialized in a Contract Amendment. The parties will establish Substantial Completion of the entire Work during Phase 1 and as part of the GMP Amendment (“Scheduled Substantial Completion Date”).

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work (“Scheduled Interim Milestone Dates”) shall be determined during Phase 1. The Parties may establish separate Substantial Completion Dates for portions of the Project. For each Substantial Completion Date, the parties will comply with the process established in Section 6.6 of the General Conditions of Contract.
Conditions. Substantial Completion of the Project shall occur when the last portion of the Project has achieved Substantial Completion.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2. of the General Conditions of Contract.

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

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. The parties have established liquidated damages for the failure to timely complete the Project as follows.

5.4.1 Liquidated Damages for Delay. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Design-Builder shall pay to Owner ___________ dollars ($__________) per day as liquidated damages for each day that Design-Builder fails to achieve Substantial Completion.

5.4.2 Other Liquidated Damages. The Owner and Design-Builder may establish liquidated damages for other remedies during Phase 1 or as a Change Order or Contract Amendment.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s) for which liquidated damages are established.

5.6 Owner’s Review Time. Unless otherwise set forth in the Contract Documents, the parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.6.1 Owner shall have a minimum of 14 days of receipt by Owner to review all Design Submissions, the Project Schedule and any updates thereto.

5.6.2 Owner shall make reasonable efforts to review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within 21 days of receipt by Owner. If Owner is unable to review and respond within the established timeline, Owner shall provide written notice to Design-Builder.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Provided the parties enter into the GMP Amendment, the Guaranteed Maximum Price (“GMP”) for this Project is $__________ dollars ($__________), not including Washington State Sales Tax, which shall be calculated outside of the GMP.

6.1.2 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price (“Contract Price”) as set forth herein.
.1 Subject to the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.6 of the Agreement. Design Builder's compensation shall be subject to the Validation NTE, the Phase 1 NTE and the GMP, as applicable. The Validation NTE, the Phase 1 NTE, and the GMP, as applicable, shall be the maximum amount that the Design Builder may be compensated for the applicable Contract Phase, as amended pursuant to this Contract. The maximum amount that the Design Builder may be compensated pursuant to this Agreement for any given phase shall also be referred to as the Contract Price ("Contract Price"). The elements of the Design Builder's compensation, subject to the applicable Contract Price, are set forth herein. If the sum of the Design-Builder's compensation is less than the Validation NTE< the Phase 1 NTE and/or the GMP, as applicable, the savings shall go to the Owner.

.2 The parties acknowledge that the scope of work for this Project is not fully developed at the time of execution of the Agreement. The Design-Builder shall develop the Basis of Design Documents and other deliverables in Exhibit C such that the total compensation to the Design-Builder shall not exceed the GMP, unless the parties agree in writing to increase the GMP or the Design-Builder is otherwise entitled to an increase to the GMP pursuant to the terms of the Contract Documents.

6.2 Design-Builder's Fee Percentage.

6.2.1 Design-Builder's Fee Percentage shall be: __________________________ percent (________________%) of the Cost of the Work, as adjusted in accordance with the Contract Documents.

6.2.1.1 The Design-Builder’s Fee Percentage shall include the following items, which shall not be charged as a Cost of the Work.

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

.2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental home office expenses attributed to Work on this Project; and

.3 Any additional costs not identified as reimbursable.

6.2.1.2 The Design-Builder’s Fee Percentage shall not be applied to the following:

.1 Design-Builder’s costs for insurance, bonding, taxes, or permits; and

.2 The Design-Builder’s Contingency as defined in Section 6.4.4.1.b.

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

6.3.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.3.2 Wages or salaries of Design-Builder’s supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.
6.3.3 Wages or salaries of Design-Builder’s personnel stationed at Design-Builder’s principal or branch offices, but only to the extent said personnel are identified in Exhibit E and performing the function set forth in said Exhibit.

6.3.4 Unless included in Lump Sum General Conditions, costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder’s personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be approved in writing by Owner in advance.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. Contracts with Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld. Payments to Subcontractors and Design-Consultants shall be consistent with the hourly rates set forth in Exhibit E.

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

6.3.8 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

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

6.3.10 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.

6.3.11 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. The rental charge shall be the applicable rental cost as established by the lower of the local prevailing rate published in an industry publication acceptable to both parties or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner’s prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When
rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs, and such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks) on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work. If the Design-Builder or its subsidiary rents equipment from a third party, the cost shall be limited to the actual cost of the rental plus the Design-Builder's Fee Percentage. Neither Design-Builder nor any subsidiary shall charge an additional fee, management charge, or other cost in addition to the actual cost of the rental plus the Design-Builder's Fee Percentage.

6.3.12 Premiums for insurance and bonds required by this Agreement or the performance of the Work are reimbursable; however, the Design-Builder’s Fee Percentage shall not be applied to the cost for insurance and bond costs.

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

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work; however, the Design-Builder’s Fee Percentage shall not be applied to the cost for taxes. Washington State Sales Tax shall be calculated outside of the GMP.

6.3.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents; however, the Design-Builder’s Fee Percentage shall not be applied to the cost of permits.

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

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

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

6.3.19 Accounting and data processing costs related to the Work.

6.3.20 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder’s Contingency pursuant to Section 6.4.4.1.b.

6.4 Other Methods of Compensation
Within the Phase 1 NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder’s compensation.

6.4.1 Allowance Items and Allowance Values

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Exhibit E or the GMP Amendment and are included within any established NTE and the GMP, as applicable.
Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

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

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

Whenever the actual cost for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.1.4; however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4.2 Not To Exceed Amounts

The Owner and Design Builder may establish Not to Exceed (“NTE”) Amounts for specific scopes of the Work (“NTE Scopes”). Any such NTE Amount will be negotiated between the Owner and Design-Builder pursuant to Section 6.6.1.5 of the Agreement and memorialized through an NTE Amendment in the form attached as Exhibit H.

For each scope of work for which a NTE Amount has been established, the Design-Builder shall be reimbursed for the NTE Scope as a Cost of the Work; however, Design-Builder’s compensation shall not exceed the NTE Amount without a written Change Order.

Design-Builder shall not request reimbursement for costs that are within the NTE Scope unless those costs are identified in the Payment Application as subject to the NTE Amount. Except as allowed in Section 6.4.4.1.b, costs that are within the NTE Scope that are in excess of the NTE Amount shall be the sole responsibility of the Design-Builder.

NTE Amounts and NTE Scopes may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

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

a. A specific description of the scope of the Work that is subject to the Lump Sum “Lump Sum Scope”;
b. An updated Schedule of Values that incorporates the Lump Sum; and

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

.2 For each Lump Sum Scope the parties have established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above based on the percentage of the Lump Sum Scope that has been completed, less the amount already paid to Design-Builder for the Work established in the Lump Sum.

.3 Design-Builder shall not request reimbursement for costs that are within the Lump Sum Scope unless those costs are identified in the Payment Application as subject to the Lump Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the Lump Sum Scope that are in excess of the Lump Sum shall be the sole responsibility of the Design-Builder.

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

6.4.4 Contingencies

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

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

(i) Trade buy-out differentials;

(ii) Escalation of materials; and

(iii) Other direct Costs of the Work that are not included in the Design-Builder’s Contingency, but only with the prior written consent of the Owner.

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

(i) Overtime or acceleration;

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

(iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or

(v) Costs that are in excess of an NTE Sum or Lump Sum.

.2 Except as set forth in Section 6.4.4.3 below, the Design-Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3 of the Agreement; however, Design-Builder’s compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design-Builder’s Contingency in the applicable NTE or GMP without a written Change Order.

.3 Design-Builder shall not be entitled to apply the Design-Builder’s Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder’s Contingency.

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

.5 Design-Builder shall provide Owner notice of all anticipated charges against the Contingencies and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from a Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.4.5 Lump Sum General Conditions Costs

.1 If the Parties enter into the GMP Amendment, the Parties shall establish an amount for the Lump Sum General Conditions Costs. The Parties shall determine the portions of the Cost of the Work set forth in Section 6.3 that are included in the Lump Sum General Conditions Costs, and the parties shall include a description of all such costs in the GMP Amendment. Unless the Parties agree in writing otherwise, the costs that will be included in the Lump Sum General Conditions Costs are as follows:

a. 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. Specifically, the following personnel are included in the Lump Sum General Conditions Amount:

   i. Project Executive
   ii. Project Manager
   iii. Superintendent and/or Construction Manager
   iv. Quality Control Manager
   v. Project Field Engineer and/or Design Manager
   vi. Project Controls
vii. Project Scheduler

viii. Safety Manager

b. Wages or salaries of Design Builder’s personnel stationed at Design Builder’s principal or branch offices, but only to the extent said personnel are approved in advance of the performance of the Work in writing by the Owner.

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

d. 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 and with the written consent of the Owner as set forth below:

i. Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at www.gsa.gov.

ii. Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed the Federal Per Diem maximum lodging rate for the location where the work is being performed.

iii. Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the United States Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car (including fuel), at cost, in the ratio of one mid-size class rental car for each three Contractor’s personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the Owner unless such options are approved in advance by the Owner’s Representative. Appropriate insurance coverage should be included in the Contractor’s insurance policies.

e. 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.

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

g. Accounting and data processing costs related to the Work.

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

i. General administrative costs not specifically listed in this subsection, including but not limited to the following:

i. Shop Drawing Reproduction
ii. Construction Schedule & Updates  
iii. Safety/Security  
iv. Field Office Set-up (mobilization/demobilization)  
v. Office Supplies  
vi. Telephone System  
vii. Telephone Service Charge  
viii. Computer Network/System Set-up  
ix. Courier Service  
x. Postage (Fed-X, USPS)  
xi. Furniture/Equipment  
xii. Office Cleaning  
xiii. Project Superintendent Vehicle  
xiv. Computers  
xv. Copy Machine  
xvi. Temporary Electric Hook-up/Removal  
xvii. Temporary Electric Material  
xviii. Project Signage  
ixix. Temporary Water Hook-up/Removal  
xx. Drinking Water & Supplies  
xxi. Chemical Toilets  
xxii. O&M Manuals  
xxiii. Project Record Documents  
xxiv. Field Engineering/Layout Survey

.2 For the Costs of the Work that are included in the Lump Sum General Conditions Costs, the Design-Builder shall no longer be entitled to be reimbursed for such costs as part of the Cost of the Work, and the Design Builder’s sole compensation for the costs set forth in the identified General Conditions shall be through the Lump Sum General Conditions Costs.

.3 The Owner shall have the right to examine the back-up documentation establishing the Lump Sum General Conditions Costs, including but not limited to all estimates, proposals, contracts and other financial documentation on a transparent basis.

.4 The Lump Sum General Conditions Costs shall only be modified if the Design-Builder is entitled to compensation for a delay in the Substantial Completion Date pursuant to Section 8.2 of the General Conditions. Any modification to the Lump Sum General Conditions Costs shall be calculated as follows:

  a. The Design Builder shall be entitled to receive a liquidated daily rate for extended General Conditions Costs (“Design-Builder’s Delay Rate”) for each day that the Contract Time for Substantial Completion is extended pursuant to Section 8.2 of the General Conditions.

     i. The Design-Builder’s Delay Rate shall be calculated by dividing the Lump Sum General Conditions Costs by the number of days in the Contract Time set forth in the GMP Amendment for Phase 2.
ii. Then, the Design-Builder’s Delay Rate is multiplied by the number of days that the Contract Time is extended for Design-Builder’s Delay, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.

iii. The result from the Design-Builder’s Delay Rate multiplied by the number of days the project is delayed pursuant to Section 8.2 of the General Conditions is the Extended General Conditions Costs which shall be added to the Lump Sum General Conditions Costs by Change Order and paid to the Design Builder pursuant to the Schedule of Values, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.

b. The Design-Builder’s Delay Rate shall not apply to delays occurring after Substantial Completion is achieved.

c. The Parties agree that determining the Design Builder’s damages for delay in Phase 2 would be extremely difficult or impracticable to determine and that the Design-Builder’s Delay Rate, as calculated in this Section 6.4.5.4, is a reasonable estimate of and reasonable sum for such damages; therefore, the Design-Builder’s Delay Rate shall be payable to the Design Builder as liquidated damages and not as a penalty.

6.4.6 Unit Prices and Hourly Rates

.1 Any Unit Prices and Hourly Rates shall be agreed upon in writing and set forth in Exhibit E to the Agreement. Design-Builder shall not charge more than a specified Unit Price or Hourly Rate than the amount set forth in Exhibit E, as modified through the Contract Documents.

.2 Once established, Unit Prices and Hourly Rates shall not be subject to audit and may only be changed by Change Order.

.3 Design-Builder must maintain a record of the number of Unit Prices and Hours billed using Hourly Rates for review by Owner.

6.5 Non-Reimbursable Costs.

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

.1 Compensation for Design-Builder’s personnel stationed at Design-Builder’s principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

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

.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Project Phases

6.6.1 Phase 1

.1 Compensation. During Phase 1, the Design Builder shall be compensated for the following:

a. The Cost of the Work set forth in Section 6.3;
b. Design-Builder’s Fee Percentage set forth in Section 6.2.1 multiplied by the Cost of the Work, less insurance and bonding costs and taxes costs which shall not be multiplied by the Design-Builder’s Fee Percentage; and

c. Contingency Items charged under Section 6.4.4.1.b.

.2 Validation Period. At the beginning of Phase 1 the Project, Design-Builder shall engage in Validation of the Project information as set forth in Exhibit C, Section 2.02 (the “Validation Period”).

a. Validation Period Not to Exceed Amount. The Validation Period Not to Exceed Amount is $____________________. Design-Builder guarantees that its compensation during the Validation Period of Phase 1 Project shall not exceed the Validation Period Not to Exceed Amount (“Validation Period NTE”) established by the Parties. Documents used as a basis for the Validation Period NTE shall be identified in an Exhibit. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the Validation Period NTE, as adjusted in accordance with the Contract Documents.

b. Validation Period Completion Date. The Validation Period Completion Date is ______________________.

c. Development of Phase 1 Commercial Terms. During the Validation Period, the parties will collaboratively develop the Phase 1 Not to Exceed Amount (“Phase 1 NTE”), Phase 1 Completion Date, the Phase 1 Scope of Work, a Target Budget, a Target Schedule, the Initial Project Scope, and other Submittals for the Project as set forth in Exhibit C. At the conclusion of the Validation Period, provided the parties agree on the terms, the parties shall enter into a Contract Amendment to establish the Phase 1 NTE, the Phase 1 Completion Date, the Target Budget, the Target Schedule, and the Initial Project Scope and to finalize the other Submittals required by Exhibit C.

.3 Design Development Period. Provided the parties enter into a Contract Amendment establishing the Commercial Terms of the Design Development Period, Design-Builder shall engage in the remainder of the Phase 1 activities as set forth in the Contract Documents and the Contract Amendment for the Project.

a. Compensation during the Design Development Period. Design-Builder shall be compensated during the Design Development Period in the same manner as the Validation Period set forth in Section 6.2.2.1 above. Design-Builder guarantees that its compensation for the remainder of Phase 1 shall not exceed the Phase 1 NTE in the Contract Amendment. Documents used as a basis for a Phase 1 NTE shall be identified as an Exhibit to the Contract Amendment. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceeds the Phase 1 NTE, as adjusted in accordance with the Contract Documents.

b. Development of the GMP Proposal. During the remainder of Phase 1, the parties will collaboratively develop the GMP Proposal for the Project pursuant to Exhibit C.

.4 GMP Proposal. On the date set forth in the Project Schedule, Design-Builder shall submit a GMP Proposal to Owner for the Project which shall include the deliverables set forth in Exhibit C, unless the parties mutually agree otherwise. The GMP Proposal shall include all Work necessary to complete the Project.
a. **Submission of the GMP Proposal.** Submission of the GMP Proposal constitutes Design-Builder’s representation and agreement that it has adequately investigated the site and the project parameters, the Project is adequately defined, the Basis of Design Documents are sufficiently defined to provide an accurate GMP and Project Schedule for the Project, and subject to the assumptions and clarifications in the GMP Proposal, the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the Original GMP of the Project, except as amended pursuant to the Contract Documents.

b. **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 shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner’s notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner’s review of the GMP Proposal, the Design Builder shall, upon the Owner’s Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner shall make its best efforts to review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

c. **Acceptance of GMP Proposal.** If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP Proposal shall be set forth in the GMP Amendment. At the Owner’s option, the GMP for the Project may be converted into a Lump Sum.

d. **Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

   i. Owner may 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 6.6.1.4.c above;

   ii. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof and Section 11.6 of the General Conditions.

e. **Performance of Work After Submission of GMP Proposal.** The Design-Builder shall not perform any Work after the submission of the GMP Proposal until the Owner has approved and signed the GMP Amendment unless the Design-Builder obtains the Owner’s prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent. If Design-Builder performs such Work, Design-Builder shall be compensated pursuant to the written approval of the Owner.

.5 **Early GMPs.** The parties may agree to establish a GMP for portions of the Work prior to establishing the GMP for the entire Project “Early GMP”. 
a. For each Early GMP, the Design-Builder will follow the process set forth in 6.6.1.5 above to establish the Early GMP, the scope associated with the Early GMP (the “Early GMP Scope”), and the schedule associated with the Early GMP Scope (“the Early GMP Schedule”).

b. For each Early GMP, the parties shall determine the deliverables applicable to each Early GMP Proposal prior to its submission.

c. Early GMPs will be established through an Early GMP Amendment, which shall follow the same form as Exhibit F.

6.6.2 Phase 2, Post GMP Period

.1 Compensation. During Phase 2 for the Project, the Design Builder shall be compensated for the following, all subject to the GMP for the Project:

a. The Cost of the Work set forth in Section 6.3;

b. Design-Builder’s Fee Percentage set forth in Section 6.2.1;

c. Any additional Lump Sum amounts established pursuant to Section 6.4.3;

d. Contingency Items charged under Section 6.4.4.1.b;

e. Design-Builder’s Lump Sum General Conditions Costs established pursuant to Section 6.4.5;

f. Any Allowances established by the Parties in the GMP Amendment

g. Any Incentive payments established by the Parties in the GMP Amendment.

.2 GMP The Guaranteed Maximum Price (“GMP”) is the total compensation to the Design-Builder as set forth in the GMP Amendment that shall establish a binding GMP between the Parties for the Project. Design Builder agrees that it will be responsible for paying all costs of completing the Phase 2 Work which exceed the GMP for the Project, as adjusted in accordance with the Contract Documents. Execution of a GMP Amendment constitutes Design Builder’s representation and agreement to the following:

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

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

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

.3 If the parties decide to convert any GMP into a Lump Sum, Design-Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.
6.6.3 Savings and Incentives.

1. If the sum of the actual Design-Builder’s Compensation established under Section 6.1.2 hereof is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference (“Savings”) shall go 100% to the Owner.

2. The Parties may establish Incentive payments to the Design-Builder as part of the GMP Amendment. The Owner anticipates establishing an Incentive program to incorporate Deferred Scope into the Project.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the fifteenth (15th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment in accordance with Article 6 of the General Conditions of Contract.

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

7.1.3 If the parties have established a Lump Sum, the Design-Builder shall be paid pursuant to Section 6.4.3.

7.2 Retainage on Progress Payments.

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

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.8 of the General Conditions of Contract. Owner shall make payment on Design-Builder’s properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.8.2 of the General Conditions of Contract.
7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the statutory rate of interest.

7.5 **Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an Open Book Basis relative to Costs of the Work and all other reimbursable costs set forth in the Agreement.

7.5.1 Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner and Owner’s accountants, the Washington State Auditor, and other governmental agencies entitled to audit the records shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

7.6 **Public Records Act.** The Owner is subject to the disclosure obligations of the Washington State Public Records Act of RCW 42.56. Design-Builder expressly acknowledges and agrees that Submittals by the Design-Builder pursuant to the Contract Documents as well the Statement of Qualifications and Proposal and any information Design-Builder submits with its Statement of Qualifications and Proposal is subject to public disclosure pursuant to the Public Records Act or other applicable law and the Owner may disclose Design-Builder’s Statement of Qualifications and Proposal and/or accompanying information at its sole discretion in accordance with its obligations under applicable law. If a public disclosure request pursuant to RCW 42.56 is made to Owner requesting Confidential Information designated by the Design-Builder under Section 13.1.1 of the General Conditions, Owner will provide written notice to Design-Builder within five Days of receipt of such public disclosure request. Design-Builder will be provided the opportunity to review the public disclosure request and provide a defense to disclosure of any Confidential Information that is designated by Design-Builder. Design-Builder will provide the defense to such disclosure at its sole expense, including but not limited to all costs, attorneys’ and expert witness fees, court costs and expenses, and any other cost associated with the defense of the disclosure of such Confidential Information. Design-Builder will be bound by any final determination made pursuant to RCW 42.56 regarding disclosure.

**Article 8**

**Termination for Convenience**

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

8.1.1 The Design-Builder’s Fee Percentage on the sum of items set forth in Section 11.6.1 of the General Conditions
8.1.2 The total amount to be paid to Design-Builder, exclusive of costs described in Section 11.6.1.2 of the General Conditions, shall not exceed the total GMP.

Article 9
Representatives of the Parties

9.1 Owner's Representatives.

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

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

9.2 Design-Builder's Representatives.

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

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

Article 10
Bonds and Insurance

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

10.2 Bonds and Other Performance Security. Upon execution of the Contract, Design-Builder shall provide performance and payment bonds pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the Validation NTE in the form set forth in Exhibit B. Upon execution of each Contract Amendment increasing the amount of a Not to Exceed Amount or the GMP, Design-Builder shall provide a performance and payment bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the increase of the Not to Exceed Amount or the GMP, as applicable, in the form set forth here in Exhibit B.

Article 11
Other Provisions

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

11.2 Wages.
11.2.1 The Design-Builder and its Subcontractors, Consultants and Sub-Consultants shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the applicable state prevailing wage rate required by (RCW Chapter 39.12). In the event the applicable wage rate(s) required to be paid by the Design-Builder and its Subcontractors, Consultants and Sub-Consultants change during the performance of this Contract, an adjustment shall be made so as to fully comply with any applicable state prevailing wage rate law (RCW Chapter 39.12). Notwithstanding the foregoing, the Owner shall not be required to make any adjustment in the Contract Price as a result of changes in either the state prevailing wage rate law, except as required by state law. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Design-Builder’s responsibility to verify the applicable prevailing wage rate.

11.2.2 Before payment is made by the Owner to the Design-Builder for any Work performed by Design-Builder or any Subcontractor, Consultant or Sub-Consultant whose work is included in the Application for Payment, the Design-Builder shall submit, or shall have previously submitted, to the Owner a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of employees, laborers, workers, or mechanics employed for the Work by Design-Builder, Consultants, Subcontractors and Sub-Consultants. The "Statement of Intent to Pay Prevailing Wages" shall, at a minimum, include: (1) the Design-Builder’s registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Design-Builder for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefilled statement or statements of intent to pay prevailing wages on file with the Owner.

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

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

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

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

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

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

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

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

11.4 Off Site Prefabricated Items.

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

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

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

11.7 Contractor’s Registration Requirement. Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 18.27.

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

11.9 Submission of Information Regarding Utilization and Inclusion

11.9.1 Design-Builder and its subcontractors and designers shall submit to Owner and project information required by RCW 39.10.320 regarding plans for inclusion of underutilized businesses as subcontractors and suppliers including, but not limited to, businesses certified by the Office of Minority and Women Business Enterprises (“OMWBE”), Veteran Certified Businesses, and Small Businesses.

11.9.2 Design-Builder shall submit to Owner and the Washington State Office of Minority and Women’s Business Enterprises its utilization of businesses certified by the OMWBE and Veteran Certified Businesses as required in RCW 39.10.330(8).

11.10 No Party is Drafter

Each party has had an opportunity to negotiate the provisions of this Agreement and its Exhibits and attachments, and neither party shall be construed as the drafter.
[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative dispute resolution clause.]

☐ Any claims, disputes or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.
In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:  

(Name of Owner)  

(Signature)  

(Printed Name)  

(Title)  

Date:  

DESIGN-BUILDER:  

(Name of Design-Builder)  

(Signature)  

(Printed Name)  

(Title)  

Date:  

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.
Questions? We’re here to help.

Contact us

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Article 1

General

1.1 Mutual Obligations.

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

1.2 Basic Definitions.

1.2.1 Agreement refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price (2022 Edition, as revised).

1.2.2 Basis of Design Documents are the documents set forth in Section 3.04.F of Exhibit C.

1.2.3 Commercial Terms are any documents that establish an agreement between the parties regarding a maximum cost, a scope of work, or a schedule, including but not limited to the GMP, an Early GMP, Not to Exceed Amount, Lump Sum, Hourly Rate, Contract Time, Target Budget, Target Schedule, Owner’s Project Criteria, Initial Project Scope, or Basis of Design Documents.

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

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

1.2.6 Contract Amendment is a written amendment to the Contract Documents that incorporates additional terms into the Contract Documents. Later Contract Amendments govern over earlier Contract Amendments.

1.2.7 Contract Price shall mean the maximum amount that the Design-Builder may be compensated pursuant to this Agreement for any given phase.

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

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

1.2.10 Design-Builder’s Fee Percentage is the amount set forth in Section 6.2.1 of the Agreement.

1.2.11 Design-Builder’s Delay Rate means the daily delay rate set forth in Section 6.4.5.4 of the Agreement if the Design-Builder is entitled to delay pursuant to Section 8.2 of the General Conditions.

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

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

1.2.14 Design Log is a log of Reliable Decisions agreed upon by the parties. The Design Log supplements the Owner’s Project Criteria, the Initial Project Scope, and Basis of Design
1.2.15 **Design Submission or Submittal** means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.16 **Early GMP** is a GMP for a portion of the Work that is established prior to the establishment of the GMP for the entire Work as set forth in Section 6.6.1.6 of the Agreement.

1.2.17 **Early GMP Schedule** is the Schedule for progress and completion of an Early GMP Scope.

1.2.18 **Early GMP Scope** is the Scope of Work for an Early GMP.

1.2.19 **Final Completion** of the entire Project shall be deemed to have occurred when all of the following have occurred:

   (a) All requirements for Final Completion of the Project have been achieved and Punch List Completion has been fully satisfied;
   (b) Owner shall have received and accepted a final certificate of occupancy allowing use and occupancy of the Project;
   (c) Owner shall have received and accepted all Construction Documents, Record Documents, as-built schedule, right-of-way record maps, surveys, test data and other deliverables required under the Contract Documents;
   (d) Design-Builder shall have delivered all operating manuals, warranties and other deliverables required by the Contract Documents;
   (e) All special tools, equipment, furnishings and supplies purchased and/or used by Design-Builder as provided in this Contract have been delivered to Owner and all replacement spare parts shall have been purchased and delivered to Owner free and clear of Liens;
   (f) All of Design-Builder’s obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Completion) shall have been satisfied in full or waived in writing by Owner;
   (g) Design-Builder shall have delivered to Owner a Notice of Final Completion for the Project; and
   (h) All other conditions to Final Completion in this Contract shall have been satisfied.

1.2.20 **Force Majeure Events** mean any of the following events (provided such events are beyond the reasonable control of the Design-Builder and are not due to an act or omission of the Owner) which materially and adversely affects the Design-Builder’s obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by the Design-Builder:

   (a) Any earthquake exceeding 3.5 on the Richter scale epicentered within 25 miles of the specific location of damage on the Site, any earthquake exceeding 5.0 on the
Richter scale epicentered within 50 miles from the specific location of damage on the Site, and any earthquake exceeding 6.5 on the Richter scale epicentered within 75 miles from the specific location of damage on the Site, based on the final determination regarding the location and magnitude of the earthquake published by the National Earthquake Information Center in Golden, Colorado;

(b) Any blockade, rebellion, or war;

(c) Any riot, act of terrorism, or civil commotion in the Project location;

(d) Any lawsuit seeking to restrain, enjoin, challenge or delay the construction of the Work or the granting of any Regulatory Approval of the Work that is not the result of a change set forth in Section 2.5 of the General Conditions;

(e) Except as set forth in Section 2.5 of the General Conditions, the suspension of Work at the Site ordered by a Governmental Entity due to an epidemic or pandemic;

(f) Unusually Adverse Weather; or

(g) Industry wide strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions that are not the result of Design-Builder’s actions.

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

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

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

1.2.24 Hazardous Materials, including “hazardous substances” and “hazardous waste,” means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq., each as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).

1.2.25 Initial Project Scope is the scope of the project that the parties collaboratively establish at the conclusion of the Validation Period that represents the parties’ best determination of an achievable project scope within the Target Budget.

1.2.26 Key Team Members mean those individuals and position descriptions identified by Design-Builder during the project procurement and other individuals identified as Key Team Members with the agreement of both parties, such agreement shall not be unreasonably withheld.

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

1.2.28 Liens mean any pledge, Lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement
to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).

1.2.29 **Nonconforming Work** is any Work that is found to not be in conformance with the Contract Documents.

1.2.30 **OMWBE** means the Washington State Office of Minority and Women Owned Businesses.

1.2.31 **Open Book Basis** means providing the Owner all underlying assumptions, price quotes and data associated with pricing or compensation (whether of the Design-Builder or the Owner) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by the Owner to satisfy itself as to the reasonableness of the amount.

1.2.32 **Original GMP** is the GMP set forth in the GMP Amendment.

1.2.33 **Owner’s Budget** is the amount of money set aside by the Owner for the Project.

1.2.34 **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, LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.35 **Owner Provided Information** is any document or information provided by the Owner at any time, including but not limited to the Request for Qualifications, Request for Proposals, or Owner’s Criteria.

1.2.36 **Project Schedule** is the schedule provided by the Design-Builder and approved by the Owner pursuant to the General Conditions and Exhibit C.

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

1.2.38 **Site** are those areas designated in writing by the Owner for performance of the Work and such additional areas as may, from time to time, be designated in writing by the Owner for the Design-Builder’s use in performance of the Work. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of equipment, the term “Site” shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project approved by the Owner, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by the Design-Builder or Subcontractors covered by the worker’s compensation policy included in the insurance described in Exhibit B, but excluding any permanent locations of Design-Builder or such covered Subcontractors.

1.2.39 **Small Businesses** are those defined by RCW 39.04.010.

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

1.2.41 **Sub-Subcontractor** is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor’s Work and shall include Design Subconsultants, materialmen and suppliers.
1.2.42 Substantial Completion or Substantially Complete means:

(a) The Design-Builder has completed the Work or designated portion of the Work, in accordance with the Contract, such that the Project is in a condition that it can be used in a normal and safe manner, subject only to Punch List items and other Work that do not affect the ability to occupy the Project or designated portion thereof for such normal use and operation;

(b) The Project or designated portion thereof is sufficiently completed in accordance with the Contract, as modified by any executed Change Orders, so that it can be used for its intended purpose;

(c) All conditions to acceptance by utility owners have been satisfied or waived, and any waivers approved by the Owner, in its sole discretion;

(d) The Design-Builder has completed commissioning the Work or designated portion thereof in accordance with the commissioning requirements in the Closeout Plan, and the commissioning tests have been successfully performed and satisfied (subject to such commissioning which is identified in the commissioning requirements to be conducted after Substantial Completion);

(e) To the extent applicable, all authorities having jurisdiction have confirmed (and issued all pertinent governmental approvals or other documents in respect thereof) that the building and structures on the Site applicable to the portion of the Work for which Substantial Completion is sought are ready for occupancy; and

(f) All other conditions to Substantial Completion in the Contract shall have been satisfied.

1.2.43 Target Budget is the estimate for the GMP that is collaboratively established by the parties after the conclusion of the Validation Period that represents the parties’ best determination of an achievable GMP.

1.2.44 Target Schedule is the estimated Project Schedule collaboratively established by the parties at the conclusion of the Validation Period that represents the parties’ best determination of an achievable Schedule.

1.2.45 Trend is an issue identified in the Trend Log

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

1.2.47 Underutilized Business means businesses that are traditionally underutilized in the construction industry including but not limited to businesses certified by OMWBE, Veteran Owned Businesses, as well as small, regional, and local businesses.

1.2.48 Unusually Adverse Weather means weather that satisfies all of the following conditions:

(a) Unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred and could not have been reasonably anticipated, documented by 10-year climatological data obtained by the U.S. National Oceanic and Atmospheric Administration from the nearest nationally recognized reporting station to the Site;

(b) Unanticipated for the time of year;

(c) Occurring at the Site; and

(d) Having a materially adverse effect on the scheduled Work.

1.2.49 Validation Period is the time period established in Section 6.6 of the Agreement to accomplish the tasks set forth in Exhibit C, Section 2.02 for the Project.

1.2.50 Veteran Owned Business is one certified by the Washington State Office of Veterans’
1.2.51 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, incidentals, and labor whether expressly required by or reasonably inferable from the Contract Documents.

1.2.52 Work Group is a team of individuals with representatives from both the Owner and Design-Build Team that are responsible for developing Design Submissions, updated estimates, and updated schedules for the applicable Design Submissions Package.

**Article 2**

**Design-Builder’s Services and Responsibilities**

2.1 General Services.

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

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

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

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

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

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

2.2 Design Professional Services.

2.2.1 Owner does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Agreement, Design-Builder acknowledges that Owner has no such intent. Design-Builder shall, consistent with applicable state licensing laws, furnish through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder’s selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner’s decision impacts Design-Builder’s cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner’s prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.2.3 Any references in the Contract Documents to Design-Builder’s responsibilities or obligations to “perform” the design portions of the Work shall be deemed to mean that Design-Builder shall “furnish” the design for the Project.

2.3 Standard of Care for Professional Services.

2.3.1 The standard of care for all professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner’s Project Criteria, the Initial Project Scope and/or the Basis of Design Documents.

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

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the Design Submissions set forth in the Contract Documents.
Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner’s Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1 as well as the Commercial Terms. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Commercial Terms, including but not limited to the Contract Price and Contract Time and are consistent with the Owner’s Project Criteria, the Design Log and Basis of Design Documents, as applicable. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Owner’s Project Criteria, the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents. If after the establishment of the Target Budget, the Target Schedule and the Initial Basis of Design Documents set forth in a Contract Amendment, Design-Builder does not provide such notice and the parties do not expressly incorporate a change in the Commercial Terms into a Change Order, Owner will not compensate Design-Builder for any re-design that is required to construct the Project within the Commercial Terms.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder’s schedule.

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

2.4.1.4 If incorporation of Owner’s comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner’s Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions. Design-Builder shall not include any design that is inconsistent with a Commercial Term without the written Change Order.

2.4.1.5 The Design-Builder shall provide an updated cost model for the Project periodically as required in Exhibit C. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.
2.4.1.6 Design Log. A Design Log, including a full listing of Reliable Decisions and all changes to the Initial Project Scope and Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

   a. Both parties must agree to include a Reliable Decision in the Design Log.
   b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
   c. Once a Reliable Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Initial Project Scope or Basis of Design Documents.
   d. The Design Log is for the sole purpose of tracking the development of the Design Submissions.
   e. If a Reliable Decision will cause a change in the Owner’s Project Criteria, the Initial Project Scope or Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Articles 9 and 10.

.7 Trend Log. If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.

   a. The request to include a Trend in the Trend Log must include the following information:
      i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
      ii. The estimated change in the applicable Commercial Term; and
      iii. Potential impacts or changes to the Initial Project Scope or Basis of Design Documents as a result of the Trend.
   b. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.
   c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial Project Scope or Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order. If the resolution does not change the Initial Project Scope or Basis of Design Documents and/or any Commercial Term, it shall be removed from the Trend Log.

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

.1 The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality, including its phasing and subcontracting mode. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. To the extent not prohibited by the Contract Documents or Applicable Code Requirements, and subject to written approval by the Owner, Design Builder may prepare Construction Documents for approved
Construction Packages 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 It is acknowledged by the parties hereto that inherent in a design build project, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Builder will limit the Construction Packages for Owner’s review to a reasonable number, not more than that stipulated in the Supplementary Conditions, unless approved in writing by the Owner. Contract Schedule shall indicate the times for the Owner to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

2.4.3 Owner’s review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner’s review nor approval of any Design Submissions, meeting minutes, the Design Log, the Trend Log, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner and Owner’s review shall not be deemed an approval or waiver by the Owner of any deviation from, or of the Design Builder’s failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been expressly identified as such in writing in the documents submitted by the Design Builder and approved by the Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

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

2.5 Legal Requirements.

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

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

2.6 Government Approvals and Permits.

2.6.1 Unless the parties have identified permits in an Owner’s Permit List attached either as an exhibit to the Agreement or as part of the Owner’s Project Criteria or Basis of Design Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

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

2.7 Design-Builder’s Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.
2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

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

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

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

2.7.6 Design-Builder shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, vandalism, theft, and loss to the Work, equipment and materials used to perform the Work, real property within the Site, and other property at or on the Site, whether owned by Design-Builder, Owner, or any other third party.

2.7.7 Design-Builder shall maintain, rebuild, repair, restore or replace all Work (including plans and specifications, and materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether the Owner has title thereto) that is injured or damaged prior to Substantial Completion. Following Substantial Completion, Design-Builder shall continue to have responsibility to maintain, build, repair, restore or replace all Work not 100% completed at Substantial Completion, until Owner accepts maintenance responsibility with respect to such Work. Except as provided in Section 2.7.7.2, all remaining elements of the Project shall be considered accepted for maintenance purposes as of the Final Acceptance Date. Maintenance responsibility under this Section 2.7.7 includes rebuilding, repairing and restoring all other property at the Project Site whether owned by Design-Builder, Owner or any other Person.

.1 With respect to Work on property not owned by Owner, Design-Builder’s obligations under this Section 2.7.7 shall terminate upon acceptance of such Work by the property owner and the Owner.

.2 During the period after Substantial Completion until Final Acceptance, the Owner may issue a Change Order under Article 9 requiring Design-Builder to continue to have responsibility for maintaining, rebuilding, repairing, restoring and replacing Work accepted by Owner, provided, however, no Change Order is required in connection with direction to proceed with Warranty Work.

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

2.7.8 Inspections. Design-Builder shall inform Owner of any part of the Work which is about to be covered and offer a full and adequate opportunity to Owner to inspect and test such part of the Work before it is covered. At all times before Final Completion, Design-Builder shall remove or uncover such portions of the finished construction Work as directed by Owner. After examination by the Owner Representative and any other Persons designated by Owner, Design-Builder shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Design-Builder’s cost and Design-Builder shall not be entitled to any adjustment to the Contract Price or any time extension or any other relief. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by Owner (if applicable) or without inspection in accordance with the Contract Documents may be ordered uncovered, removed or restored at Design-Builder’s cost and without an adjustment to the Contract Price or a time extension, or any other relief, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 2.7.8 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered an Owner-Caused Delay, and Design-Builder shall be entitled to a Change Order for the reasonable cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

2.7.9 Title. Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies provided, or to be provided, by it and its Subcontractors that become part of the Project or are purchased for Owner for the operation, maintenance, rebuild, repair or replacement thereof, free and clear of all Liens.

1. Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to Owner, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by Owner to Design-Builder of invoiced amounts pertaining thereto.

2. Notwithstanding any such passage of title, Design-Builder shall retain sole care, custody, and control of, and risk of loss with respect to, such materials, equipment, tools and supplies and shall exercise due care with respect thereto until Final Acceptance or until Design-Builder is removed from the Project. Passage of title shall not 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.

2.8 Subcontractors and Labor

2.8.1 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder’s selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner’s decision impacts Design-Builder’s cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner’s prior written consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

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

.1 All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with the Subcontractor Plan established pursuant to Exhibit C.

.2 Subcontractor Procurement. Unless approved in writing by the Owner, the procurement section of the Subcontract Plan shall comply with the following:
   a. All subcontracted work associated with performance of construction packages shall be awarded by the Design-Builder to Subcontractors in accordance with a best value selection process established between the parties. Unless otherwise agreed in writing by the parties, the best value selection process shall contain mutually acceptable evaluation criteria for the proposal and selection process that is clear and consistent and includes both qualifications and price.
   b. The Design-Builder may only modify the Subcontractor Procurement Procedure after obtaining written approval from the Owner. Any such modification shall be at the sole risk and responsibility of the Design-Builder and without any modification to any applicable Commercial Terms.
   c. The Design-Builder’s selection of Subcontractors shall comply with the following requirements, unless modified by the Subcontractor Procurement Procedure approved in writing by the Owner:
   d. The Design-Builder shall identify the scope of the Work to be subcontracted and shall identify at least three pre-qualified Subcontractors for such scope for written approval by the Owner.
   e. After approval of the pre-qualified Subcontractors by the Owner, the Design-Builder shall select from the three pre-approved Subcontractors for the identified scope of the Work, unless it obtains prior written approval from the Owner to select a different Subcontractor.
   f. If the Design-Builder cannot reasonably identify three pre-qualified Subcontractors, it shall inform the Owner in writing as to the reason for the inability to identify the Subcontractors and shall not proceed with the selection of a Subcontractor without the prior written approval of the Owner.
   g. The Design-Builder shall select Subcontractors on the basis of the best value to the Project. If in the Design-Builder’s determination, the Subcontractor who proposes the best value did not propose the lowest cost, the Design-Builder shall i) provide a written justification for the selection of the Subcontractor, and ii) obtain the Owner’s written approval prior to Design-Builder entering into the Subcontract.

.3 Self-Performed Construction Work. Self-Performed Construction Work means construction Work that would normally be performed by a subcontractor and does not include any costs associated with design, construction management, or Work that would be included in or described as part of any Lump Sum established by the Parties. Design-Builder must obtain prior, written approval from the Owner for the Design-Builder or the lead Constructor (if the lead Constructor is not also the Design-Builder) to perform Self-Performed Construction Work.
   a. For each scope of Work for which Design-Builder proposes Self-Performed Construction Work, Design-Builder must submit to the Owner a proposal that
contains the following minimum information as well as any other information reasonably requested by the Owner:

i. A detailed description of the scope of the Self-Performed Construction Work;

ii. The proposed Design-Builder’s Fee Percentage on the Self Performed Construction Work, which shall not be in excess of the Design-Builder’s Fee Percentage set forth in Section 6.2 of the Agreement; and

iii. A detailed explanation of the effect of the Self-Performed Construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project.

b. Design-Builder will provide the Owner with an estimate of the costs for all Self-Performed Construction Work on an open book and transparent basis. In calculating the costs for Self-Performed Construction Work, the following shall apply.

i. The estimate for costs for Self-Performed Construction Work may not include lump sum costs and must show all estimated labor, material, and equipment costs by unit.

ii. The costs for Self-Performed Construction Work shall not include costs that are also included in the General Conditions Amount or any Lump Sum.

iii. Notwithstanding the above, Design-Builder may include in the costs for Self-Performed Construction Work additional general conditions costs that are directly associated with the Self-Performed Construction Work that Design-Builder would not have incurred but for the Self-Performed Construction Work.

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

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

2.8.5 Design-Builder shall ensure that each Subcontract (at all tiers) shall include those terms that are specifically required by the Contract Documents to be included therein as well as such additional terms and conditions as are sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, including but not limited to the following provisions:

1. Effective procedures for timely resolution of claims and disputes, including an agreement by the Subcontractor to participate in any dispute proceeding pursuant to Section 18, if such participation is requested by Owner;

2. A standard of professional responsibility or a standard for quality equal to or better than the requirements of the Contract Documents;

3. A requirement to maintain usual and customary books and records for the type
and scope of operations of the business in which the Subcontractor is engaged;

.4 A provision permitting audits to be conducted by the Design-Builder and Owner according to the terms of the Contract;

.5 A requirement to provide progress reports to the Design-Builder appropriate for the type and scope of Work performed and to meet the requirements of Exhibit C;

.6 A requirement that the Subcontractor maintain all appropriate licenses and registrations;

.7 A provision prohibiting assignment of the Subcontract without the Design-Builder’s written consent;

.8 The following provision: “Nothing contained herein shall be deemed to create any privity of contract between Owner and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of Owner to the Subcontractor except those allowed under Washington law. In the event of any claim or dispute arising under the Subcontract and/or Design-Builder’s contract with Owner, the Subcontractor shall look only to Design-Builder for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against Owner arising out of the Subcontract or otherwise arising in connection with the Subcontractor’s Work.”; and

.9 Provisions in form and substance satisfactory to Owner, (a) Owner is a third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit, and (b) all guarantees and warranties, express or implied, shall inure to the benefit of Owner, and its respective successors and assigns.

2.9 Design-Builder’s Responsibility for Project Safety.

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

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

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

2.10.1 Design-Builder warrants to Owner that (i) 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, (ii) the Project shall be fit for use for the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from this Contract, and (iii) the Work shall meet all of the requirements of the Contract Documents. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents (“Nonconforming Work”), including that part of the Work subject to Section 2.10 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.11.2 Nonconforming Work rejected by Owner shall be removed and replaced so as to conform to the requirements of the Contract Documents, at Design-Builder’s cost and without any adjustment to the Contract Price or time extension or any other relief; and Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that Owner may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. Design-Builder shall, within seven (7) days of receipt of written notice from Owner of Nonconforming Work, 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 the correction of Nonconforming Work cannot be completed within such seven (7) day period, Design-Builder must (a) provide a schedule for correcting the Nonconforming Work and (b) commence and diligently prosecute such correction in accordance with the approved schedule to completion. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such Nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the Nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 Owner may agree to accept any Nonconforming Work without requiring it to be fully corrected. In such event, Owner shall be entitled to reimbursement of a portion of the Contract Price (which shall also reduce the GMP) in an amount equal to the greater of: (a) the amount deemed appropriate by Owner to provide compensation for future maintenance and/or other costs relating to the Nonconforming Work, or (b) 100% of Design-Builder’s cost savings associated with its failure to perform the Work in accordance with Contract requirements. Such reimbursement (plus an administrative charge equal to 10% of the costs and expenses) shall be payable to Owner within ten days after Design-Builder's receipt of an invoice therefor. Alternatively, Owner may deduct the amount of such costs and expenses (plus an administrative charge equal to 10% of the costs and expenses) from any sums owed by Owner to Design-Builder pursuant to this Contract. Design-Builder acknowledges and agrees that Owner shall have sole discretion regarding acceptance or rejection of Nonconforming Work and the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to Owner under this Section 2.10.3 shall be a condition precedent to the acceptance of the applicable Nonconforming Work.
2.10.4 The one-year period referenced in Section 2.11.1 above applies only to Design-Builder’s obligation to correct Nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder’s other obligations under the Contract Documents.

2.12 Contract Phases

2.12.1 Phase 1. Phase 1 shall commence upon Notice to Proceed from the Owner and shall end on the Phase 1 Completion Date as set forth in Agreement, Section 5.2. The services provided by the Design-Builder during Phase 1 shall be established in Exhibit C.

1. In Phase 1, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit C, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities; necessary testing of existing facilities; geotechnical and other site conditions; and legal, permitting and regulatory requirements and restrictions.

2. The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during Phase 1 as set forth in Exhibit C.

3. The Design-Builder shall provide the submissions set forth in Exhibit C on an open book and transparent basis. In addition, the Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design Submissions shall be consistent with the Commercial Terms, as they may develop through the design process set forth in the Contract Documents.

4. If the Design-Builder discovers or should have discovered with reasonable diligence Material Differences from the actual conditions at the Site or the Owner Provided Information, Design-Builder shall, upon discovery but no later than at the conclusion of Phase 1, provide Owner with written notice of any such Material Differences. A “Material Difference” is defined as one that would either a) impact the Owner’s Project Criteria, the Initial Project Scope, the Design-Builder’s Fee Percentage or a Commercial Term or b) be considered a Differing Site Condition. Design-Builder shall not be entitled to a Change Order for any Material Difference during Phase 2, including but not limited to for Differing Site Conditions, pursuant to Section 4.2.1 of the General Conditions, if the Material Difference could have been discovered, with reasonable diligence, during Phase 1 and was not disclosed pursuant to this Section.

2.12.2 Phase 2. Phase 2 is the final phase of the Contract where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, (iii) undertakes any necessary warranty services for the Project, and (iv) performs other services as set forth in Exhibit C, the GMP Amendment and any Early GMP Amendment.

Article 3

Owner’s Services and Responsibilities

3.1 Duty to Cooperate.

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

3.1.2 Owner shall provide timely reviews and approvals of Design Submissions and Construction
Documents consistent with the turnaround times set forth in in the Contract, by agreement of the
Owner and Design-Builder, or the approved Design-Builder’s schedule, as applicable.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be
defective or not in compliance with the Contract Documents, provided, however, Owner shall have
no liability to the Design-Builder for failure to notify the Design-Builder or failure to discover such
defects or noncompliant Work.

3.2 Furnishing of Services and Information.

3.2.1 The Owner’s Project Criteria sets forth the information provided by the Owner.

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

3.3 Financial Information.

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

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

3.4 Owner’s Representative.

3.4.1 Owner’s Representative shall be responsible for providing Owner-supplied information and
approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract
Documents. Owner’s Representative shall also provide Design-Builder with prompt notice if it
observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any
errors, omissions or defects in the performance of the Work. Owner’s Representative shall
communicate regularly with Design-Builder and shall be vested with the authority to act on behalf
of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for those permits, approvals, licenses, government charges
and inspection fees set forth in the Owner’s Permit List.

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

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

Article 4
Hazardous Materials, Differing Site Conditions and Archaeological Resources

4.1 Hazardous Materials.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Materials encountered at the Site that could have been reasonably discovered during the Validation Period. Unless working with Hazardous Materials is part of the scope of the Work, upon encountering any Hazardous Materials, Design-Builder will stop Work immediately in the affected area and duly notify Owner immediately thereof telephonically or in person, to be followed immediately by written notification, and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Materials that are not set forth as part of the Work or that could not have been reasonably discovered during the Validation Period, Owner shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Materials have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

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

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

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

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for any release or threatened release of a Hazardous Material (a) which was brought onto the Site by any DB-Related Entity, or (ii) which was negligently removed or handled by the Design-Builder, regardless of the source, origin or method of deposit of such Hazardous Materials (“Design-Builder Release of Hazardous Materials”). 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 any such release or threatened release.

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

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Owner Provided Information in Exhibit C or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as “Differing Site Conditions.” If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder’s cost and/or time of performance are adversely impacted by the Differing Site Condition. Notwithstanding the preceding, provided the parties sign the GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions if the Differing Site Condition was discovered or could have been discovered, with reasonable diligence, during Phase 1.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall immediately notify Owner thereof telephonically or in person, to be followed by written notification within five days. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder shall immediately stop Work in and secure the area pending further instructions.

4.2.3 If directed by Owner, Design-Builder shall promptly conduct such further investigation. If Design-Builder continues to believe that the material or condition falls within the scope of Section 4.2.1, Design-Builder shall at that time also advise Owner of any action recommended to be taken regarding the situation. Owner then will determine whether Design-Builder’s findings and proposed actions are acceptable and either approve, or require modification of, Design-Builder’s proposed actions. If the condition involves discovery of Hazardous Materials that are Owner’s responsibility under the Contract, Owner shall advise Design-Builder regarding its plans for Hazardous Materials Remediation and shall coordinate with Design-Builder in performance of such activities, in accordance with Section 4.1.

4.2.4 Owner shall have the right to require Design-Builder to recommence work in the area at any time, even though an investigation or other work may still be ongoing, so long as recommencing work would not violate any Legal Requirements. Design-Builder shall promptly recommence Work in the area upon receipt of notification from Owner to do so. On recommencing Work, Design-Builder shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such work, consistent with Owner’s determination or preliminary determination regarding the nature of the material or condition.

4.3 Archaeological Resources

4.3.1 In the event the Design-Builder or any of its Subcontractors inadvertently discover any archaeological, paleontological, biological, cultural, or other resources at any time during the project, Design-Builder shall immediately notify the Owner telephonically and suspend all excavation activities at the site.

4.3.2 Design-Builder shall follow the procedures set forth in Section 4.2 with respect to addressing the discovery of and shall be entitled to a Change Order as set forth therein, provided, however, that the Design-Builder shall not be entitled to a Change Order if the archaeological, paleontological, biological, cultural, or other resource was discovered or could have been discovered, with reasonable diligence, during Phase 1.

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

4.3.3 Any Archaeological Resources that may be discovered during progress of the Work shall, at Owner’s sole discretion, be the property of Owner.

Article 5

Insurance and Bonds

5.1 Design-Builder’s Insurance Requirements.

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

5.1.2 Design-Builder’s insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

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

5.1.4 The Design-Builder’s maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Design-Builder to the coverage provided by such insurance, or otherwise limit the Owner’s recourse to any remedy available at law or in equity. Design-Builder shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

5.1.5 If Design-Builder maintains higher insurance limits than the minimums shown above, Owner shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by Design-Builder, irrespective of whether such limits maintained by Design-Builder are greater than those required by this Agreement or whether any certificate of insurance furnished to the Owner evidences limits of liability lower than those maintained by Design-Builder.

5.1.6 Design-Builder’s insurance coverage shall be primary insurance with respect to Owner. Any insurance, self-insurance, or insurance pool coverage maintained by Owner shall be excess of Design-Builder’s insurance and shall not contribute with it.

5.1.7 Design-Builder shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of Design-Builder-provided insurance as set forth herein, except Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. Design-Builder shall ensure that the Owner is an
additional insured on each subcontractor’s Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

5.1.7 Failure on the part of the Design-Builder to maintain the insurance as required shall constitute a material breach of contract, upon which the Owner may, after giving as least five business days’ notice to Design-Builder to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Owner on demand, or at the sole discretion of the Owner, offset against funds due Design-Builder from the Owner.

5.2 Owner’s Liability Insurance.

5.2.1 Owner participates in the State of Washington Self Insurance Liability Program as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner’s obligations under the Contract Documents or Owner’s conduct during the course of the Project to the extent allowed under the State of Washington Tort Claims Act.

5.3 Builder’s Risk Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder’s risk insurance on an “all risk” or equivalent policy form upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal, testing and start-up of building systems, reasonable compensation for architect’s, engineer’s and contractor’s services and expenses as a result of a loss, and other perils or causes of loss as called for in the Contract Documents. A copy of the builder’s risk policy shall be made available to the Owner. The builder’s risk insurance shall include physical loss or damage to the Work, including temporary buildings, debris removal, and damage to materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder’s Application for Payment and approved by Owner. Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner’s insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days’ prior written notice is given to Design-Builder. Owner’s property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.2 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

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

5.3.5 Owner and Design-Builder waive against each other and Owner’s separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the
proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner’s separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

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

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner’s review and approval a schedules of values for all of the Work as set forth in Exhibit C. The Schedule of Values will (i) subdivide the Work into its respective parts based on the project’s Work Breakdown Structure (WBS); (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation on an Open Book Basis so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

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

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner’s review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment.

6.2.2 Prior to submitting an invoice Design-Builder will provide to the Owner on the 10th day of each month a proposed progressed Primavera Schedule and progress reports for owners review for 1 week.

6.2.3 After the monthly Schedule progress and progress reports are reviewed and approved Design-Builder will provide to the Owner on the 25th day of each month an invoice and Schedule of Values, along with the Primavera Schedule and progress reports provided fifteen (15) days prior. Invoices from the Design-Builder will be based on the actual time and reimbursable expenses incurred to complete the work for items included in the Cost of the Work. General Conditions will be invoiced as required pursuant to the Agreement. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and shall be in a form acceptable to Owner, including but not limited to the following information:
.1 An Invoice Cover Sheet that will include the following items:
   a. Project name and title;
   b. Invoice number (numbered consecutively, starting with “1”);
   c. Period covered by the invoice (specific beginning and ending calendar days);
   d. Total amount authorized;
   e. Total amount invoiced through last period;
   f. Current invoice amount;
   g. Total invoiced to-date;
   h. Percent invoiced;
   i. Remaining Contract Price (exclusive of the Allowance amounts), GMP, and remaining Allowance amounts;
   j. Retainage withheld;
   k. Net amount due Design-Builder
   l. Total amount earned to date for the Project as a whole;
   m. Authorized signature, title of signer and date of signature; and
   n. Signatures of Design-Builder and Design-Builder’s Quality Control Manager

.2 An itemization of the costs incurred pursuant to the Contract, including but not limited to:
   a. The detailed amounts spend for the Cost of the Work incurred during the period of the Application for Payment and the back-up documentation for the Cost of the Work, including but not limited to timesheets, invoices, purchase orders, or any other document that evidences the Cost of the Work or any other cost for which Design-Builder requests reimbursement;
   b. The Design-Builder’s Fee Percentage on the Cost of the Work;
   c. Contingency Items charged under Section 6.4.4. of the Agreement;
   d. Any Lump Sums established pursuant to Section 6.4.3;
   e. Design-Builder’s Lump Sum General Conditions Costs incurred, if applicable.

.3 The monthly periodic deliverables in Exhibit C for the relevant Phase of the Work;

.4 Certification by the Design-Builder’s Quality Control Manager certifying that
   a. The Work has been performed in accordance with the approved quality Control Program; and
   b. the elements of the approved Quality Control Program and all the measures and procedures provided for therein are functioning properly and are being followed.

.5 A Conditional Waiver and Release on Progress Payment, in the statutory form, signed by Design-Builder and each Subcontractor or supplier that provided services, materials or equipment included in the invoice.

.6 An Unconditional Waiver and Release Upon Progress Payment, in the statutory form, signed by Design-Builder and each Subcontractor or supplier that provided materials or equipment included in any preceding invoice and for which Design-Builder received payment.

.7 Other supporting documents as requested by Owner to facilitate its determination of the amount payable including but not limited to:
a. Hours and rates for sole sourced work.
b. Material and equipment purchase orders and delivery backup.
c. Progressed CPM resource loaded Primavera project schedule.
d. Subcontractor invoices.

6.2.4 Cash Flow

.1 Along with the baseline CPM resource loaded schedule the Design-Builder will provide an overall anticipated monthly cash flow for the project. The format for this cash flow will follow the example set forth in Exhibit C.

.2 Every month the Design-Builder will update this cash flow with the following information
   a. Baseline planned monthly costs
   b. Actual monthly costs
   c. Earned (Budgeted Work Completed) Monthly Costs
   d. Forecast monthly costs to complete the project

6.2.5 The Application for Payment may request payment for equipment and/or materials 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 the company of Design-Builder;
   .7 Design-Builder and its surety assume total responsibility for the stored materials;
   .8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and
   .9 Upon payment, Owner will receive the equipment and materials free and clear of all Liens and encumbrances.

6.2.6 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.7 The Application for Payment shall constitute Design-Builder’s representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free
and clear of all claims, Liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder’s receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. 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. When Design-Builder removes the grounds for withholding payment, Design-Builder shall provide written evidence thereof. If such evidence is satisfactory to Owner, Owner will include the amount so withheld in the next scheduled progress payment.

6.3.2 Specifically and without limitation, Owner may deduct from each payment the following:

.1 Claims against Design-Builder;
.2 Defective Work not remedied or Work not performed in accordance with the Contract Documents;
.3 Failure of Design-Builder to make proper payments to any of its Subcontractors;
.4 Failure to perform the Work in accordance with the Current Schedule;
.5 Damage to other work or property caused by Design-Builder or any entity for which Design-Builder is responsible;
.6 Damages owing to Owner under the terms of the Contract;
.7 Any and all other circumstances in which Owner determines that it is necessary to protect its interests.

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

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days’ written notice of its intent to stop work and an opportunity to cure the late payment.

6.5 Design-Builder’s Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors within seven days of receipt of payment from the Owner, unless its contractual obligations to such parties provide for a shorter time period., all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic’s Liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work representing an Interim Milestone, has achieved Substantial Completion. Within five (5) days of Owner’s receipt of Design-Builder’s notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Substantial Completion in accordance with the requirements of the Contract Documents. Owner will conduct reasonable inspections, surveys and/or testing as Owner deems necessary. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, Owner will promptly advise Design-Builder as to any errors, omissions,
deviations, defects, or deficiencies in the Work necessary to be corrected as a condition to Substantial Completion and as to any errors, omissions, deviations, defects or deficiencies which may be corrected as Punch List items. Upon correction of the errors, omissions, deviations, defects, or deficiencies identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to Owner and Owner will conduct another round of inspections, surveys and/or tests. This procedure shall be repeated until Owner finds that all prerequisites to Substantial Completion have been met. 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.

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

6.7 Final Completion

6.7.1 Design-Builder shall notify Owner when it believes the entire Work, or to the extent permitted in the Contract Documents a portion of the Work, has achieved Final Completion. Within five (5) days of Owner’s receipt of Design-Builder’s notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Final Completion in accordance with the requirements of the Contract Documents. Owner will conduct reasonable inspections, surveys and/or testing as Owner deems necessary. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, Owner will promptly advise Design-Builder as to any errors, omissions, deviations, defects or deficiencies in the Work necessary to be corrected as a condition to Final Completion and as to any errors, omissions, deviations, defects or deficiencies which may be corrected as Punch List items. Upon correction of the errors, omissions, deviations, defects, or deficiencies identified as a prerequisite to Final Completion, Design-Builder shall provide written notification to Owner and Owner will conduct another round of inspections, surveys and/or tests. This procedure shall be repeated until Owner finds that all prerequisites to Final Completion have been met. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Final Completion that will set forth the date of Final Completion of the Work or portion thereof.

6.8 Final Payment.

6.8.1 When the Design-Builder has completed all work in accordance with the terms of the Contract Documents and received a Certificate of Final Completion, the Design-Builder shall properly execute and submit a Final Application for Payment final invoice to Accounts Payable. Once the Final Application for Payment has been processed, the Owner’s Procurement Department will issue the Certificate of Completion and Release to be executed by the Design-Builder and returned to the Procurement Officer. The Certificate of Completion and Release shall constitute a waiver of all claims by the Design-Builder except for unsettled claims specifically stated, if any.

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

- The Certificate of Completion and Release which shall warrant that the Design-Builder has fully completed its work included in the Contract and has fully paid for labor,
materials, equipment, services, taxes and all other costs and expenses of every nature and kind whatsoever resulting from this Contract. If any dispute exists between the Design-Builder and any person, firm or corporation to which Design-Builder might be obligated in connection with this Contract, the Design-Builder shall state the name of claimant and amount and general nature of claim against the Contractor. The Certificate of Completion and Release shall state the amount and nature of all present and future claims that the Design-Builder may have against the Owner relative to this Contract. The Contract work shall not be complete until after the Design-Builder has returned to the Procurement Officer a properly completed Certificate of Completion and Release.

6.8.3 Sixty days after Final Acceptance, retainage may be released to the Design-Builder; provided, however, that there are no claims filed of materialmen or laborers and that the Owner has received the certificate of the Washington State Department of Revenue of payment in full of all taxes, Employment Security Department release, the approved Washington State Department of Labor and Industries Certificate of Release of the State’s Lien on Public Works Contracts form and the approved affidavit showing payment of prevailing wages for the Design-Builder and any Subcontractors. If any liens remain unsatisfied from the retainage, the Design-Builder shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and reasonable legal fees.

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

6.8.6 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

6.8.7 Owner shall release the Contract Retainage pursuant to RCW 60.28.011.

**Article 7**

**Indemnification**

7.1 Patent and Copyright Infringement.

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

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

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

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

7.2 Tax Claim Indemnification. Not Used

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder’s General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively “Indemnitees”) from and against non party claims, losses, damages, liabilities, including attorneys’ fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys’ fees and expenses, for bodily injury, sickness or death and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-
Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then Design-Builder’s duty to indemnify shall not apply to liability for damages arising out of Design-Builder’s services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, its agents or employees.

7.4.4 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder’s indemnity obligations set forth above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers’ compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the worker’s compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Design-Builder’s indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

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

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

7.4.6 The Owner shall not be responsible or be held liable for any damage to person or property consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or other equipment used by the Design-Builder or any of its Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or other equipment be furnished or loaned to the Design-Builder by the Owner. The acceptance and/or use of any such crane, hoist, rigging, blocking, scaffolding or other equipment by the Design-Builder or its Subcontractors shall be construed to mean that the Design-Builder accepts all responsibility for any claims for damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages by its own employees or property or to the employees or property of other contractors, the Owner, or otherwise.

7.4.7 No Effect on Other Rights. The obligations described in this Section 7.4 shall not be construed to limit rights and obligations provided by law or equity which would otherwise exist in favor of a Person indemnified hereunder.

7.4.8 Notification of Third Party Claim. Owner and Design-Builder shall each provide timely notification to the other party of the receipt of any third party claim relating to the Contract.

7.5 Lower Tier Contractors Indemnification Obligations

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

7.6 Survival
7.6.1 The Indemnification obligations in this Article shall survive the expiration or termination of this Agreement.

7.7 Limited Recourse.

7.7.1 None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

**Article 8**

**Time**

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

8.2.1 Except as set forth in Section 9.6 below, if Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order, but only to the extent that the critical path of the Contract Time has been impacted. 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 Materials, and Force Majeure Events. Design-Builder shall provide notice and documentation of any delay pursuant to Article 10.

8.2.2 In addition to Design-Builder’s right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement. The adjustment to the Contract Price shall be limited to the Design-Builder’s Delay Rate as set forth in Section 6.4.5.4 of the Agreement.

**Article 9**

**Changes to the Contract Price and Time**

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price or any Commercial Term; and
9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs and time extensions associated with the Change. Changes Orders will not be allowed unless there is an actual change to the Work.

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

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall work with the Owner to adjust the remaining Work to meet as many of Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

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

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

9.3 Minor Changes in the Work.

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

9.4 Contract Price Adjustments.

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

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

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

.3 The Cost of the Work as well as fees and any other markups set forth in the Agreement;

.4 The increase in the Lump Sum General Conditions as set forth in Section 6.4.5.4 of the Agreement; or
.5 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.4 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including the Design-Builder's Fee Percentage (if applicable), as may be set forth in the Agreement.

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

9.4.3 Pricing Components for Changed Work. 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 limited to the following costs to the extent that the Design-Builder demonstrates that the costs are both reasonable, actually incurred, not otherwise disallowed (collectively "Changed Work"), Changed Work shall be subject to any Not to Exceed Amount agreed upon by the Parties.

.1 For Changed Work that is priced on the basis of the Cost of the Work, Design Builder shall be compensated up to a Not to Exceed Sum for the following:
   a. The Cost of Changed Work, which shall be determined in the same way as the Cost of the Work set forth in Section 6.3 of the Agreement;
   b. Any Allowance pursuant to Section 6.4.1 of the Agreement; and
   c. Design Builder’s Contingency pursuant to Section 6.4.4 of the Agreement.

.2 For Changed Work that is priced on a Lump Sum basis, Design Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.

.3 If the parties have entered into the Phase 2 Amendment, the Cost of Changed Work shall not include any items included in the Lump Sum General Conditions Amount pursuant to Section 6.4.5 of the Agreement or the General Conditions Costs set forth in Section 6.3.15 of the Agreement.

.4 During Phase 1, Design-Builder shall be entitled to include the Fee Percentage in the compensation for Changed Work. The fee for Subcontractor’s Changed Work shall be computed as follows:
   a. 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.
   b. 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.
   c. 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.

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

9.5 Emergencies.

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

9.6 Limitations on Changes to the Contract Time and Contract Price

Notwithstanding anything in Article 9, the risks arising from the following events or circumstances shall be borne exclusively by Design-Builder, shall not be the basis for any relief, changes in the Contract Price, changes in the Contract Time, or otherwise, to Design-Builder:

.1 delays in obtaining or delivery of goods or services from any Subcontractor, unless Subcontractor’s reason for delay arises from an event that would otherwise be excusable to Design-Builder under this Contract;

.2 delays of common carriers unless the common carrier’s reason for the delay arises from an event that would otherwise be excusable to Design-Builder under this Contract;

.3 general market and economic conditions affecting the availability, supply or cost of labor, equipment and materials, construction equipment and supplies, or commodities;

.4 weather conditions, except conditions that are within the definition of a Force Majeure;

.5 strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions that are the result of Design-Builder’s actions;

.6 the suspension, termination, interruption, denial or failure to obtain or nonrenewal of any permit, license, consent, authorization or approval which is necessary for the performance of the Work or the operation or maintenance of the Work, except for any such matter involving an Owner-Provided Approval;

.7 Material Differences as defined in Section 2.12.1.4 that could have been discovered during Phase 1 and were not disclosed by Design-Builder during Phase 1; and

.8 bankruptcy or insolvency of a Subcontractor or inability of a Subcontractor to perform, unless the underlying cause of such inability would otherwise be considered grounds for an Excusable Delay hereunder.
Article 10
Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide an initial written notice to the other party of the basis for its claim for relief. The initial written 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, the initial written notice shall be given within a reasonable time, in any case not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder, unless the parties specifically agree to allow the Design Log or Trend Log to operate as such written notice of claims. The initial written notice shall include a description of the claim for relief requested, a description of the occurrence giving rise to the claim for relief, and a preliminary analysis of the cost and schedule impact of the claim for relief.

10.1.2 The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the following:

1. The circumstances giving rise to the claim for relief,
2. The specific contractual adjustment or relief requested;
3. The basis of the entitlement to the claim for relief;
4. The cost of the claim for relief, including an itemized description of the Cost of the Work associated with the claim for relief;
5. The impact of the claim for relief on the Project Schedule, including a proposed revised Project Schedule;
6. Proposed efforts to mitigate the impacts on the cost and schedule.

10.1.3 The failure to provide timely written notice of any claim for relief shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.
10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder’s Representative and Owner’s Representative, Design-Builder’s Senior Representative and Owner’s Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

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

10.3 Arbitration.

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

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

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

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

10.4 Duty to Continue Performance.

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

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTIONS 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER
10.5.2 The limitations of liability for consequential damages under Section 10.5.1 shall not apply to or limit any right of recovery a party may have respecting the following:

.1 Losses (including defense costs) to the extent (i) the loss is covered by the proceeds of insurance required to be carried hereunder or for which Design-Builder was required to provide insurance coverage, or (ii) Design-Builder is deemed to have self-insured the loss pursuant to the Contracts;

.2 Losses in connection with any illegal activities, fraud, recklessness, criminal conduct, intentional misconduct, bad faith, or gross negligence;

.3 Design-Builder’s indemnities under Article 7 or elsewhere in this Contract;

.4 Design-Builder obligation to pay liquidated damages under this Contract; and


Article 11

Stop Work and Termination

11.1 Owner’s Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

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

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

11.2.1 If any one of the following events occur, the Owner, in addition to any other rights or remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below:

.1 Design-Builder (i) fails promptly to begin the Work under the Contract Documents, (ii) fails to perform the Work with sufficient resources (supervision, workers, equipment, and material) to assure timely completion of said Work, or (iii) fails to complete any Work by the relevant Scheduled Interim Milestone Dates or Substantial or Final Completion Dates;

.2 Design-Builder fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work;
.3 Design-Builder discontinues the prosecution of the Work (exclusive of work stoppage (i) due to termination of its performance by Owner, or (ii) due to and during the continuance of a Force Majeure event or suspension by Owner);

.4 Design-Builder fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from Owner to do so or (if applicable) after cessation of the event preventing performance;

.5 Design-Builder shall have become insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors;

.6 Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against Design-Builder;

.7 Any material representation or warranty made by Design-Builder in the Contract Documents or any certificate, schedule, instrument or other document delivered by Design-Builder pursuant to the Contract Documents shall have been false or materially misleading when made;

.8 Design-Builder materially breaches any agreement, representation or warranty contained in the Contract Documents;

.9 Design-Builder assigned or transferred the Contract Documents or any right or interest herein, except as expressly permitted under Section 13.2.1; or

.10 Design-Builder fails to discharge or obtain a stay of any final judgment(s) or order for the payment of money against it in excess of $100,000 in the aggregate arising out of the prosecution of the Work (provided that for purposes hereof posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay);  

.11 Design-Builder failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or failed reasonably to comply with the instructions of Owner consistent with the Contract Documents;

.12 Design-Builder violates any Legal Requirements in performance of the Work; or

.13 Design-Builder fails to provide and maintain the Performance and Payment Bonds and insurance as required hereunder.

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

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. 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 and the Surety shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys’ fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder’s default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.
11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

11.3 Design-Builder’s Right to Stop Work.

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

11.3.1.1 Owner’s failure to provide financial assurances as required under Section 3.3 hereof; or

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

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

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

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

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

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

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

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner’s receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

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

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

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

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

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

11.6 Termination for Convenience.

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

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

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

.3 The amount set forth in Article 8 of the Agreement.

11.6.2 Notwithstanding anything to the contrary contained herein, if a termination occurs prior to execution of the applicable GMP Amendment, the amount payable to Design-Builder, inclusive of all payments previously made to Design-Builder and costs of demobilization, shall in no event exceed the applicable Not To Exceed Amount.

11.6.3 Under no circumstances is Design-Builder entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 11.6 or Agreement Section 8. The payment to Design-Builder determined in accordance with this Section 11.6 and Agreement Section 8 constitutes Design-Builder’s sole and exclusive remedy for a termination under this Section 11.6 and Agreement Section 8.

11.6.4 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner’s rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder’s express written consent and such third parties’ agreement to the terms of Article 4 of the Agreement.
11.6.5 After receipt of a Notice of Termination for Convenience, and except as directed by Owner, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 11.6.:

.1 Stop Work as specified in the notice;

.2 Place no further Subcontracts or orders for materials, services or facilities relating to the Work terminated, except as necessary for mitigation of damages;

.3 Unless instructed otherwise by Owner, terminate all Subcontracts to the extent they relate to the Work terminated;

.4 Assign to Owner in the manner, at the times, and to the extent directed by Owner, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case Owner will have the right, in its sole discretion, to accept performance, settle or pay any or all claims arising out of the termination of each such Subcontract;

.5 Settle outstanding liabilities and claims arising out of such termination of Subcontracts, with, to the extent required by Owner, the approval or ratification of Owner, which approval or ratification shall be final;

.6 Transfer title to and deliver to Owner, as directed by Owner, (i) the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated, and (ii) the Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property which would have been required to be furnished to Owner if the Work had been completed, and (iii) all intellectual property (including documentation, disclosures and drafts), licenses and Data;

.7 Complete performance in accordance with the Contract Documents of all Work not terminated;

.8 Take all action which may be necessary, or Owner may direct, for the protection and preservation of the property related to the Contract Documents which is in the possession of Design-Builder and in which Owner has or may acquire an interest;

.9 As authorized by Owner, use its best efforts to sell at reasonable prices any property of the types referred to in Section 11.6.5.6; provided, however, Design-Builder (i) is not required to extend credit to any purchaser, and (ii) may acquire such property under the conditions prescribed and at prices approved by Owner. Design-Builder shall apply the proceeds of any such sale or disposition to reduce any amounts owed by Owner under the Contract Documents, or if no amount is owing, Design-Builder shall apply such proceeds as directed by Owner; and

.10 Upon receipt of request from Owner, submit to Owner a list of termination inventory not previously disposed of and excluding items authorized for disposition by Owner. Within 45 days of Owner’s receipt of the list, Design-Builder shall deliver such inventory to Owner and Owner will accept title to such inventory as appropriate.
Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

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

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

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

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed.
Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain.

13.1.2 A party receiving Confidential Information agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

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

13.3 Successorship.

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

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the State of Washington, without giving effect to its conflict of law principles. The venue of any proceeding for the litigation and/or resolution of any dispute under the Contract Documents shall be Franklin County, Washington.

13.5 Severability.

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

13.6 No Waiver.

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

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

13.8 Notice.

13.8.1 Any notice, demand, consent or other communication made pursuant to this Contract shall be in writing and shall be (a) delivered personally to the party to whom the same is directed, or (b) sent by facsimile, recognized courier service (e.g. Federal Express) or registered or certified mail, return receipt requested, postage prepaid; or (c) sent by electronic mail and in each case, addressed as follows:

If to Owner:


With copy to:


If to Design-Builder:


With copy to:


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

13.9 Amendments.

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

13.10 Survival.

13.10.1 The dispute resolution provisions contained in Section 10, and all other provisions which by their inherent character should survive termination of the Contract and/or Final Acceptance, shall survive the termination of the Contract and the date on which Final Acceptance occurs.
13.11 **No Estoppel.**

13.11.1 Owner shall not, nor shall any officer thereof, be precluded or estopped by any return or certificate made or given by any Owner representative or other officer, agent, or employee of Owner under any provisions of the Contract from at any time (either before or after the final completion and acceptance of the Work and payment therefor) pursuant to any such return or certificate showing the true and correct amount and character of the work done, and materials furnished by Design-Builder or any Person under the Contract or from showing at any time that any such return or certificate is untrue and incorrect, or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the Contract Documents; and Owner shall not be precluded or estopped, notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from Design-Builder such damages as it may sustain by reason of Design-Builder's failure to comply with the Contract Documents.

13.12 **Further Assurances.**

Design-Builder shall promptly execute and deliver to Owner all such instruments and other documents and assurances as are reasonably requested by Owner to further evidence the obligations of Design-Builder hereunder, including assurances regarding assignments of Subcontracts contained herein.

13.13 **Turn Over of Designs and Drawings**

13.13.1 Upon final acceptance or termination of this Contract, the Owner shall be entitled to, and the Design-Builder shall turn over to the Owner, all such designs, drawings, tracings and the like prepared pursuant to this Contract, except for record copies, which the Design-Builder may use for its internal reference purposes subject to the nondisclosure provisions of this Contract, which shall survive the completion or termination hereof.

13.14 **Limitation on Third Party Beneficiaries.**

13.14.1 Except as expressly provided in this Contract (such as warranty and indemnity provisions), it is not intended by any of the provisions of this Contract to create any other third party beneficiary under this Contract or to authorize anyone not a Party to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Except as otherwise provided in this Section 13.13, the duties, obligations and responsibilities of the Parties pursuant to this Contract with respect to third parties shall remain as imposed by law.

13.15 **Independent Contractor**

13.15.1 Design-Builder is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with Owner other than that of project owner and independent contractor. In no event shall the relationship between Owner and Design-Builder be construed as creating any relationship whatsoever between Owner and Design-Builder's employees. Neither Design-Builder nor any of its employees is or shall be deemed to be an employee of Owner. Except as otherwise specified in the Contract Documents, Design-Builder has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractor and for all other Persons that Design-Builder or any Subcontractor hires to perform or assist in performing the Work.

13.16 **Entire Agreement.**

13.16.1 The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.
Questions? We’re here to help.

Contact us

Design-Build Institute of America
1001 Pennsylvania Ave. NW, Suite 410
Washington, DC 20004

(202) 682-0110
dbia@dbia.org
The Owner’s Project Criteria will be provided with the Request for Proposals
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<td>11</td>
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<td>16</td>
</tr>
</tbody>
</table>
## Design-Builder’s Insurance Requirements

### 1.1 Insurance Types and Limits.

**1.1.1** Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition):

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Minimum Limits Required Per Claim/Occurrence</th>
<th>Minimum Limits Required Aggregate Policy Limits</th>
<th>Maximum Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Worker’s Compensation</td>
<td>Statutory Limits</td>
<td>Statutory Limits</td>
<td></td>
</tr>
<tr>
<td>2. Employer’s Liability (Bodily Injury by Accident)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. By Disease</td>
<td>$1,000,000</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>b. Each Accident</td>
<td>$1,000,000</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>c. Each Employee</td>
<td>$1,000,000</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>3. Commercial General Liability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Bodily Injury/Property Damage per occurrence limit</td>
<td>$5,000,000</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>b. Bodily Injury/Property Damage aggregate limit</td>
<td>n/a</td>
<td>$10,000,000</td>
<td></td>
</tr>
<tr>
<td>c. Products/Completed Operation aggregate limit</td>
<td>n/a</td>
<td>$10,000,000</td>
<td></td>
</tr>
<tr>
<td>d. Personal and Advertising Injury aggregate limit</td>
<td>n/a</td>
<td>$102,000,000</td>
<td></td>
</tr>
<tr>
<td>e. Medical Expense limit (any one person)</td>
<td>$105,000</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>4. Contractor’s Protective Liability (if applicable)</td>
<td>Separate coverage or included in item #6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Commercial Automobile Liability</td>
<td>$5,000,000 CSL</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>6. Professional Errors and Omissions pursuant to Section 1.1.3 (A) and 1.1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible</td>
<td>$5,000,000</td>
<td>$5,000,000</td>
<td></td>
</tr>
<tr>
<td>7. Contractor’s Pollution Liability including coverage for microbial matter (if applicable)</td>
<td>$n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>8. Umbrella Excess Liability Insurance</td>
<td>As necessary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Builder’s risk and boiler &amp; machinery insurance provided pursuant to Article 5 of DBIA Document No. 535, <em>Standard Form of General Conditions of Contract Between Owner and Design-Builder</em> (2022 Edition)</td>
<td>$ An amount equal to the full insurable value of the completed project on a replacement cost basis</td>
<td>n/a</td>
<td></td>
</tr>
</tbody>
</table>
1.1.2 The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

1.1.3 PROFESSIONAL LIABILITY INSURANCE.

1.1.3(A) Professional Liability Insurance To Be Provided By Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design Consultant’s practice policy and shall include in the Design Consultant Agreement a provision requiring the Design Consultant to give the Design-Builder 30 Days written notice of any cancellation or non-renewal.

1.1.3(A).1 The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant’s professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

1.1.3(A).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(A).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.

1.1.3(A).4 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.3(A).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of Design Consultant to ensure that such person or entity provide Design-Builder and Design Consultant with evidence of insurance to comport with this Exhibit.

1.1.3(A).6 Waiver of subrogation is to be provided in favor of Design-Builder and its officers, directors and employees, and (if commercially available) Owner and its officers, directors and employees.

1.1.3(B) Professional Liability Insurance To Be Provided By Design-Builder. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-Builder.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Builder.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-Builder’s practice policy.
1.1.3(B).1 The Design-Builder’s policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder’s valid and collectible commercial general liability and umbrella/excess liability policies. Notwithstanding the above, a Design-Builder’s professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.

1.1.3(B).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(B).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Builder.

1.1.3(B).4 The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

1.1.3(B).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design-Builder then it is the responsibility of Design-Builder to ensure that person or entity provide Design-Builder with evidence of insurance to comport with this Exhibit.

1.1.3(B).6 Waiver of subrogation is to be provided in favor of Design-Builder and Owner (if commercially available) and their respective officers, directors and employees.

1.1.4 Any coverage required to be maintained after Final Payment shall be identified below:

   General Liability, including completed operations coverage
   Worker’s Compensation
   Professional Liability, including Contractor’s Protective Liability, if applicable.
   Umbrella Coverage

   Such coverage shall remain in place for six (6) years after Substantial Completion.

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form CG 00 01 or its equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon by Owner and Design-Builder.

2.1.1.1 Acceptable professional liability exclusions to the Design-Builder’s commercial general liability insurance are limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.

2.1.2 General Liability, Automobile Liability, Worker’s Compensation/Employers Liability and Umbrella/Excess Liability policies shall each include the following endorsements:

   2.1.2.1 Unintentional Errors and Omissions Endorsement
   2.1.2.2 Notice of Occurrence Endorsement
   2.1.2.3 Knowledge of Occurrence Endorsement

2.1.3 Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.
2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

2.1.5 Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

2.1.5.1 The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

2.1.5.2 Any restriction, limitation, or exclusion related to Naturally Occurring Substances must be modified so as not to apply to microbial matter and the release of such Naturally Occurring Substances as a result of the performance of Operations.

3.1 Additional Insureds

3.1.1 Owner and Owner’s officers, directors and employees shall be included as an additional insured on general liability, umbrella/excess and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder’s Contractor’s Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy or worker’s compensation. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates, and upon request of the same will furnish them to the Owner.

3.1.2 Each of the policies designated in section 3.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such entities under Worker’s Compensation/Employer’s Liability policies.

3.1.3 Additional Insured coverage provided under the Commercial General Liability/Umbrella/Excess and, if applicable, Design-Builder’s Contractor’s Pollution Liability policies, shall cover both the premises/operations and completed operations hazards.

4.1 Terms and Effective Dates.

4.1.1 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.2 If the Contractor’s Pollution Policy is made on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.3 Professional Liability coverage shall be retroactive to the date that professional services first commenced.

4.1.4 All Claims-Made Policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

4.1.5 Any coverage required to be maintained after Final Payment shall be identified below:
General Liability, including completed operations coverage
Worker’s Compensation
Professional Liability, including Contractor’s Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.
Owner’s Insurance Requirements

1.1 Insurance Types and Limits.

1.1.1 Owner participates in the State of Washington Self-Insurance Liability Program which administers a Liability Account to finance the payment of general liability (including professional liability) and vehicle liability tort claims and lawsuits arising from the negligent actions of state agencies, its officers, employees and volunteers. The program operates under the authority of Chapter 4.92 RCW – Action and claims against state.

General liability (including professional liability) and vehicle liability tort claims and lawsuits against Western for the actions of its’ officers, employees and volunteers, while acting within the scope of their employment during university-sponsored programs and/or activities, would be subject to defense by the State of Washington with funding by the Liability Account.

Owner shall comply with all State of Washington workers compensation statutes and regulations.

2.1 Additional Insureds.

2.1.1 Design-Builder and Design-Builder’s officers, directors and employees shall be included as an additional insured on the State of Washington Self-Insurance Liability Program maintained by the Owner. Owner shall furnish to Design-Builder a copy of a Certificate of Insurance showing the parties named as an additional insured as set forth above. Design-Builder shall not be an additional insured on any other of Owner’s policies.
### Design Consultant’s Insurance Requirements

#### 1.1 Insurance Types and Limits.

1.1.1 The Design-Consultant shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 9 of DBIA Document No. 540, *Standard Form of Agreement Between Design-Builder and Design Consultant (2022 Edition)*:

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Minimum Limits Required Per Claim/Occurrence</th>
<th>Minimum Limits Required Aggregate Policy Limits</th>
<th>Maximum Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Worker’s Compensation</td>
<td>Statutory Limits</td>
<td>Statutory Limits</td>
<td></td>
</tr>
<tr>
<td>2. Employer’s Liability (Bodily Injury by Accident)</td>
<td>Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. By Disease</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>b. Each Accident</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>c. Each Employee</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>3. Commercial General Liability</td>
<td>Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Bodily Injury/Property Damage per occurrence limit</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>b. Bodily Injury/Property Damage aggregate limit</td>
<td>n/a</td>
<td>$ See above</td>
<td></td>
</tr>
<tr>
<td>c. Products/Completed Operation aggregate limit</td>
<td>n/a</td>
<td>$ See above</td>
<td></td>
</tr>
<tr>
<td>d. Personal and Advertising Injury aggregate limit</td>
<td>n/a</td>
<td>$ See above</td>
<td></td>
</tr>
<tr>
<td>e. Medical Expense limit (any one person)</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>4. Commercial Automobile Liability</td>
<td>$ Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>5. Professional Errors and Omissions</td>
<td>$ Required. Design-Builder shall have sole responsibility for determining the limits of</td>
<td>$ See left</td>
<td></td>
</tr>
</tbody>
</table>
6. Umbrella Excess Liability Insurance

- As necessary

7. Other Coverages as Required on a case by case basis

- n/a

---

1.1.2 The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

1.1.3 Unless otherwise specified, all insurance provided by Design Consultant shall be primary, and insurance independently carried by Design-Builder and Owner shall not contribute with such insurance.

1.1.4 For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be sent to the Design-Builder via fax and email.

1.1.5 **Waiver of Subrogation.** All Insurance policies shall provide for a waiver of subrogation in favor of those persons and entities designated in 3.1.1 below.

1.1.6 **Professional Liability.**

   The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant and Design Sub-Consultant.

   Such policies must provide coverage for the scope of professional services to be provided by or on behalf of Design Consultant under their Agreements and any subsequent addenda thereto. Design Consultant shall provide Design-Builder with a minimum of 30 days prior written notice of any cancellation or non-renewal.

1.1.6.1 The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as their Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant’s professional liability also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

1.1.6.2 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.6.3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.

1.1.6.4 If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of the Design Consultant to ensure that such person or entity provide Design-Builder and Owner with evidence of insurance to comport with this Exhibit.

1.1.7 Any coverage required to be maintained after Final Payment shall be identified below:

   - General Liability, including completed operations coverage
   -  

---
Worker’s Compensation
Professional Liability, including Contractor’s Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form CG 00 01 or its equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided that it is agreed to by Design-Builder.

2.1.2 General Liability, Automobile Liability, Worker’s Compensation/Employers Liability and Umbrella Excess Liability policies shall each include the following endorsements:

  2.1.2.1 Unintentional Errors and Omissions Endorsement
  2.1.2.2 Notice of Occurrence Endorsement
  2.1.2.3 Knowledge of Occurrence Endorsement

2.1.3 Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

3.1 Additional Insureds.

3.1.1 Design-Builder, Owner, and their respective parent entities, and officers, directors, members, and employees shall be included as an additional insured on general liability, umbrella/excess and automobile liability policies of insurance of the Design Consultant and its Design Sub-Consultants at any tier. Design-Builder is not an additional insured under any professional liability or worker’s compensation policies. Any coverage granted to an Additional Insured shall be primary and that coverage independently carried by an Additional Insured shall not contribute.

4.1 Terms and Effective Dates.

4.1.1 Professional Liability coverage shall be retroactive to the date that professional services first commenced.

4.1.2 If the Professional Liability coverage is provided on a project specific basis it shall include an extended reporting period of six (6) years beyond the date for Substantial Completion of the Project unless otherwise specified.

4.1.3 All claims-made policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

4.1.4 Any coverage required to be maintained after Final Payment shall be identified below:

  General Liability, including completed operations coverage
  Worker’s Compensation
  Professional Liability, including Contractor’s Protective Liability, if applicable.
  Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.
# Design-Build Subcontractor’s Insurance Requirements

## 1.1 Insurance Types and Limits.

1.1.1 Design-Build Subcontractor shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 10 of DBIA Document No. 560, *Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2022 Edition) or DBIA Document No. 565, *Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor - Lump Sum* (2022 Edition):

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Minimum Limits Required Per Claim/Occurrence</th>
<th>Minimum Limits Required Aggregate Policy Limits</th>
<th>Maximum Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Worker’s Compensation</td>
<td>Statutory Limits</td>
<td>Statutory Limits</td>
<td></td>
</tr>
<tr>
<td>2. Employer’s Liability (Bodily Injury by Accident)</td>
<td>Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>a. By Disease</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>b. Each Accident</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>c. Each Employee</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>3. Commercial General Liability</td>
<td>Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td>n/a</td>
<td>Commercially reasonable deductibles. All deductibles will be paid by the design-build subcontractor or its design consultant, as applicable</td>
</tr>
<tr>
<td>a. Bodily Injury/Property Damage per occurrence limit</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>b. Bodily Injury/Property Damage aggregate limit</td>
<td>n/a</td>
<td>$ See above</td>
<td></td>
</tr>
<tr>
<td>c. Products/Completed Operation aggregate limit</td>
<td>n/a</td>
<td>$ See above</td>
<td></td>
</tr>
<tr>
<td>d. Personal and Advertising Injury aggregate Limit</td>
<td>n/a</td>
<td>$ See above</td>
<td></td>
</tr>
<tr>
<td>e. Medical Expense limit (any one person)</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>4. Commercial Automobile Liability</td>
<td>$ Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td>n/a</td>
<td></td>
</tr>
</tbody>
</table>
5. Professional Errors and Omissions pursuant to Sections 1.1.5 (A) and 1.1.5 (B) below providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible  
   $ Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained  
   $ See left

6. Umbrella Excess Liability Insurance  
   As necessary

7. Contractor's Pollution Liability, including coverage for microbial matter (if applicable)  
   n/a  
   n/a

8. Other Coverages as Required on a case by case basis  
   n/a  
   n/a
1.1.2 The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

1.1.3 Unless otherwise specified, all insurance provided by Design-Build Subcontractor, its Sub-Subcontractors and its Design Consultants shall be primary, and insurance independently carried by Design-Builder and Owner shall not contribute with such insurance.

1.1.4 For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be sent to the Design-Builder via fax and email.

1.1.5 PROFESSIONAL LIABILITY INSURANCE.

1.1.5(A) Professional Liability Insurance To Be Provided By Design-Build Subcontractor’s Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of Design-Build Subcontractor’s Design Consultant.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Build Subcontractor’s Design Consultant.

Design-Consultant must provide Design-Builder and Design-Build Subcontractor with a minimum of 30 days prior written notice of any cancellation or non-renewal.

1.1.5(A).1 The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences or procedures by the Design Consultant or any person or entity providing design or other professional services as their Sub-Consultant. This exclusion is permissible only if the Design Consultant and any other persons or entities providing design or other professional services on their behalf are not performing construction activities. Notwithstanding the above, a Design Consultant’s professional liability policy also cannot contain any restriction, limitation of exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

1.1.5(A).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.5(A).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.

1.1.5(A).4 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.5(A).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design-Build Subcontractor’s Design Consultant then it is the responsibility of such Design-Consultant to ensure that such person or entity provide Design-Builder and Design-Build Subcontractor with evidence of insurance to comport with this Exhibit.

1.1.5(A).6 Waiver of subrogation is to be provided in favor of Design-Build Subcontractor and its officers, directors and employees, and (if commercially available) Design-Builder, and Owner and its officers, directors and employees.

1.1.5(B) Professional Liability Insurance To Be Provided By Design-Build Subcontractor.
Such policies must provide coverage for the scope of professional services to be provided by or on behalf of Design-Build Subcontractor.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Build Subcontractor.

Design-Build Subcontractor shall provide Design-Builder with 30 Days prior written notice of any cancellation or non-renewal of the Design-Build Subcontractor’s practice policy.

1.1.5(B).1 The Design-Build Subcontractor’s policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims but only to the same extent that such coverage is provided by the Design-Build Subcontractor’s valid and collectible commercial general liability and umbrella/excess liability policies. Notwithstanding the above, a Design-Build Subcontractor’s professional liability policy also cannot contain any restriction, limitation, or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

1.1.5(B).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.5(B).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Build Subcontractor.

1.1.5(B).4 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.5(B).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design-Build Subcontractor then it is the responsibility of Design-Build Subcontractor to ensure that such person or entity provide Design-Build Subcontractor and Design-Builder with evidence of insurance to comport with this Exhibit.

1.1.5(B).6 Waiver of subrogation is to be provided in favor of Design-Builder and Owner (if commercially available) and their respective officers, directors and employees.

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form CG 00 01 or its equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided that it is agreed to by Design-Builder.

2.1.1.1 Acceptable professional liability exclusions to the Design-Build Subcontractor’s commercial general liability insurance are limited to ISO endorsements CG 2280 and CG 2279 or their equivalents.

2.1.2 General Liability, Automobile Liability, Worker’s Compensation/Employers Liability and Umbrella Excess Liability policies shall each include the following endorsements:

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

2.1.3 Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.
2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

2.1.5 If Contractors pollution liability shall be required it can be written on an occurrence or claims-made basis. If written as a claims-made basis, the policy must comport to Section 4.1.3 below.

2.1.5.1 The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

2.1.5.2 Any restriction, limitation, or exclusion related to naturally occurring substances must be modified so as not to apply to microbial matter and to the release of such naturally occurring substances as a result of the performance of operations.

3.1 Additional Insureds

3.1.1 Design-Builder, Owner, and their respective parent entities, and officers, directors, members, and employees shall be included as an additional insured on general liability, contractor’s pollution liability, umbrella/excess and automobile liability policies of insurance of the Design-Build Subcontractor and its Design Consultants, and Sub-Subcontractors at any tier. No person shall be named as an additional insured on any professional liability policy or worker’s compensation. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute.

3.1.2 Each of the policies designated in section 3.1.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such entities under worker’s compensation/employer’s liability policies.

4.1 Terms and Effective Dates.

4.1.1 Professional Liability coverage shall be retroactive to the date that professional services first commenced.

4.1.2 If the Professional Liability coverage is provided on a project specific basis it shall include an extended reporting period of six (6) years beyond the date for Substantial Completion of the Project unless otherwise specified.

4.1.3 All claims-made policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) price coverage for post expiration claims resulting from such circumstances.

4.1.4 List here any coverage required to be maintained after Final Payment:

General Liability, including completed operations coverage
Worker's Compensation
Professional Liability, including Contractor’s Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.
General Contractor’s and Subcontractor’s Insurance Requirements

1.1 Insurance Types and Limits.

1.1.1 General Contractor and Subcontractor shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as set forth in DBIA Document No. 550, Standard Form of Agreement Between Design-Builder and General Contractor – Cost Plus Fee with an Option for a Guaranteed Maximum Price (2022 Edition), DBIA Document No. 555, Standard Form of Agreement Between Design-Builder and General Contractor – Lump Sum (2022 Edition), and DBIA Document No. 570, Standard Form of Agreement Between Design-Builder and Subcontractor (Where Subcontractor Does Not Provide Design Services) (2022 Edition):

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Minimum Limits Required Per Claim/Occurrence</th>
<th>Minimum Limits Required Aggregate Policy Limits</th>
<th>Maximum Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Worker’s Compensation</td>
<td>Statutory Limits</td>
<td>Statutory Limits</td>
<td></td>
</tr>
<tr>
<td>2. Employer’s Liability (Bodily Injury by Accident)</td>
<td>Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td></td>
<td></td>
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<tr>
<td>a. By Disease</td>
<td>$ See above</td>
<td>n/a</td>
<td></td>
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<tr>
<td>b. Each Accident</td>
<td>$ See above</td>
<td>n/a</td>
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<tr>
<td>c. Each Employee</td>
<td>$ See above</td>
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<td>3. Commercial General Liability</td>
<td>Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
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<tr>
<td>a. Bodily Injury/Property Damage per occurrence limit</td>
<td>$ See above</td>
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<tr>
<td>b. Bodily Injury/Property Damage aggregate limit</td>
<td>n/a</td>
<td>$ See above</td>
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<td>c. Products/Completed Operation aggregate limit</td>
<td>n/a</td>
<td>$ See above</td>
<td></td>
</tr>
<tr>
<td>d. Personal and Advertising Injury aggregate limit</td>
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<td>$ See above</td>
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</tr>
<tr>
<td>e. Medical Expense limit (any one person)</td>
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<td>n/a</td>
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<tr>
<td>4. Commercial Automobile Liability</td>
<td>$ Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained</td>
<td>n/a</td>
<td></td>
</tr>
</tbody>
</table>
5. Professional Errors and Omissions (if applicable) | $ Required. Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained | $ See left

6. Contractor’s Pollution Liability, including coverage for microbial matter (if applicable) | n/a | n/a

7. Umbrella Excess Liability Insurance | As necessary |

8. Other Coverages as Required on a case by case basis | n/a | n/a

1.1.2 The insurance required by this Section 1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

1.1.3 Unless otherwise specified, all insurance provided by General Contractor, Subcontractor and its Sub-Subcontractors shall be primary, and insurance independently carried by Design-Builder and Owner shall not contribute with such insurance.

1.1.4 For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be sent to the Design-Builder via fax and email.

1.1.5 Professional Liability. Such policy must provide coverage for construction management services and other professional services provided by or on behalf of General Contractor and Subcontractor.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by General Contractor and Subcontractor. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of General Contractor and Subcontractor under their Agreements and any subsequent addenda thereto.

General Contractor and Subcontractor shall provide Design-Builder with a minimum of 30 days prior written notice of any cancellation or non-renewal.

1.1.5.1 The General Contractor’s and Subcontractor’s policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the General Contractor’s and Subcontractor’s valid and collectible commercial general liability and umbrella/excess liability policies. Notwithstanding the above, a General Contractor’s and Subcontractor’s professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.
1.1.5.2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.5.3 Faulty Work Exclusion, limitation or restriction can only be applicable to the work self-performed by General Contractor/Subcontractor.

1.1.5.4 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.5.5 Waiver of subrogation is to be provided in favor of Design-Build and its officers, directors and employees and (if commercially available) Owner and its officers, directors and employees.

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form (December 2004 Edition) or equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided that it is agreed to by Design-Build.

2.1.1.1 Acceptable professional liability exclusions to the Contractors or Subcontractors commercial general liability insurance are limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.

2.1.2 General Liability, Automobile Liability, Worker’s Compensation/Employers Liability and Umbrella/Excess Liability policies shall each include the following endorsements:

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

2.1.3 Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

2.1.5 If General Contractor’s and Subcontractor’s Pollution Liability shall be required, it can be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.3.

2.1.5.1 The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

2.1.5.2 Any restriction, limitation, or exclusion related to naturally occurring substances must be modified so as not to apply to microbial matter and to the release of such naturally occurring substances.
3.1 Additional Insureds.

3.1.1 Design-Builder, Owner, and their respective parent entities, and officers, directors, members, and employees shall be included as an additional insured on general liability, umbrella/excess, contractors’ pollution liability and automobile liability policies of insurance of the General Contractor and Subcontractor and its Sub-Subcontractors at any tier. No person shall be named as an additional insured on any professional liability policy or worker’s compensation. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute.

3.1.2 Each of the Policies designated in Section 3.1.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such persons or entities under Worker’s Compensation and Employer’s Liability policies.

4.1 Terms and Effective Dates.

4.1.1 If required, Professional Liability coverage shall be retroactive to the date that professional services first commenced.

4.1.2 If required, and if the Professional Liability coverage is provided on a project specific basis it shall include an extended reporting period of six (6) years beyond the date for Substantial Completion of the Project unless otherwise specified.

4.1.3 All claims-made policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

4.1.4 List here any coverage required to be maintained after Final Payment:

- General Liability, including completed operations coverage
- Worker’s Compensation
- Professional Liability, including Contractor’s Protective Liability, if applicable.
- Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.
**PAYMENT BOND FOR DESIGN-BUILD PROJECTS**

This bond form has been endorsed by The National Association of Surety Bond Producers and The Surety & Fidelity Association of America

<table>
<thead>
<tr>
<th>DESIGN-BUILDER/PRINCIPAL:</th>
<th>SURETY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name and address)</td>
<td>(Name and address)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>OWNER/OBLIGEE:</th>
<th>PROJECT:</th>
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<tbody>
<tr>
<td>(Name and address)</td>
<td>(Name and location)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>DESIGN-BUILD AGREEMENT:</th>
<th>BOND DATE:</th>
<th>BOND AMOUNT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dated:</td>
<td>(Not earlier than date of Design-Build Agreement)</td>
<td></td>
</tr>
<tr>
<td>Amount:</td>
<td></td>
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</tr>
</tbody>
</table>

**MODIFICATIONS TO THIS BOND:**

(List modifications to this Bond below. If none, write “None”)
BOND TERMS AND CONDITIONS

1 Binding Effect. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay for labor, services, materials and equipment furnished by Claimants for use in the performance of the Design-Build Agreement, which is incorporated herein by reference.

2 Intent of Bond. If the Design-Builder promptly makes payment of all sums for all labor, services, materials, and equipment furnished for use in the performance of the Design-Build Agreement, then the Surety’s obligations under this Bond are null and void. Otherwise the Surety’s obligations shall remain in full force and effect.

3 Notice of Claim. Every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after such Claimant provided or performed the last of the work, services or labor, or furnished the last of the materials or equipment for which said claim is made, may have a right of action on this Bond.

3.1 Claimants shall provide written notice to the Surety and send a copy, or notice thereof, to Owner and Design-Builder, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim, and the last date such work, services or labor were performed, or the last materials or equipment were furnished in furtherance of the Design-Build Agreement.

3.2 If Claimant does not have a direct contract with Design-Builder, the notice shall identify the person or entity with whom Claimant contracted and who has not made payment to Claimant.

4 Surety’s Obligations. When a Claimant has satisfied the conditions of Section 3, the Surety shall promptly take the following actions at the Surety's expense:

4.1 Send an answer to that Claimant, with a copy to the Owner and Design-Builder, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any disputed portions or amounts.

4.2 Pay or arrange for payment of any undisputed amounts.

5 Bond Liability. If the Surety fails to discharge its obligations under Sections 4.1 or 4.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to successfully recover any sums found to be due and owing to the Claimant. If Claimant does not recover the entire amount claimed in its notice under Section 3, then such attorney’s fees shall be reduced in proportion to the amount actually recovered.

5.1 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

6 Waiver of Notice. The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

7 Dispute Resolution. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the State in which the Project is located. Such suit or action must be filed within one (1) year from the date: a) on which the Claimant sent a claim to the Surety pursuant to Section 3.1; or, b) on which the Claimant last performed labor or services or furnished materials or equipment on the Project, whichever occurs first. If the provisions of this Section 7 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.
7.1 In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by any party against the Surety to enforce the Surety’s obligations under this Bond.

8 Statutory Compliance. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

9 Copy To Be Furnished. Upon written request of any person or entity appearing to be a potential Claimant on this Bond, Design-Builder shall promptly furnish a copy of this Bond or shall permit a copy to be made.

10 Claimant Defined. A Claimant is any individual or entity having a direct contract with the Design-Builder or having a contract with a subcontractor that has a direct contract with the Design-Builder to furnish services, labor, materials or equipment for use in the performance of the Design-Build Agreement.

10.1 A Claimant may include amounts owed by the Design-Builder for design and other professional services furnished or performed by Claimant regardless of whether such services might form the basis for a mechanic’s lien under applicable State law.

11 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)

For Claims on this Bond:
(check appropriate box)
☐ Use the contact information shown on page 1; or
☐ Use the following alternate contact information:
(fill in Surety claims administrator contact information below)

12 Subcontractor Bonds. If this Bond is issued for an agreement between the Design-Builder and a subcontractor, the term Design-Builder in this Bond shall be deemed to be the bonded subcontractor and the term Owner shall be deemed to be Design-Builder.
13 **Authorization.** The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

<table>
<thead>
<tr>
<th>DESIGN-BUILDER (AS PRINCIPAL)</th>
<th>SURETY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company:</td>
<td>Company:</td>
</tr>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Name and Title:</td>
<td>Name and Title:</td>
</tr>
<tr>
<td></td>
<td>Corporate Seal</td>
</tr>
</tbody>
</table>

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title
PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

This bond form has been endorsed by The National Association of Surety Bond Producers and The Surety & Fidelity Association of America

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<tbody>
<tr>
<td>Dated:</td>
<td>(Not earlier than date of Design-Build Agreement)</td>
</tr>
<tr>
<td>Amount:</td>
<td></td>
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<tr>
<th>BOND AMOUNT:</th>
</tr>
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</table>

MODIFICATIONS TO THIS BOND:
(List modifications to this Bond below. If none, write “None”)
BOND TERMS AND CONDITIONS

1 Binding Effect. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Design-Build Agreement, which is incorporated herein by reference.

2 Intent of Bond. If the Design-Builder performs its obligations under the Design-Build Agreement, then the Surety's obligations under this Bond are null and void, except to participate in meetings as provided in Section 5.

3 Waiver of Notice. The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

4 Owner's Obligations. If there is no default in Owner's obligations under the Design-Build Agreement, then the Surety's obligation under this Bond shall arise after the following steps have been taken by Owner, as a condition precedent to a Bond claim:

4.1 The Owner has first provided written notice to the Design-Builder and Surety at the addresses listed on page 1 of this Bond, that Owner is considering declaring the Design-Builder in default and has requested and attempted to arrange a meeting with the Design-Builder and Surety, to be held not later than fourteen (14) days after receipt of Owner's notice, to discuss methods of performing the Design-Builder's obligations under the Design-Build Agreement. If the Owner, Design-Builder and Surety agree, the Design-Builder shall be allowed a reasonable time to perform its obligations under the Design-Build Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare the Design-Builder in default;

4.2 The Owner declares the Design-Builder to be in default, terminates the Design-Build Agreement and notifies the Surety in writing; and

4.3 The Owner has agreed to pay the balance remaining under the Design-Build Agreement (i.e., the total amount payable by the Owner to the Design-Builder thereunder less amounts properly paid by the Owner to the Design-Builder, the “Contract Balance”) to:

.1 The Surety, in accordance with the terms of the Design-Build Agreement; or
.2 Another design-builder selected pursuant to Section 5.3 to perform the remaining obligations under the Design-Build Agreement.

5 Surety's Obligations. When Owner has satisfied the conditions of Section 4, the Surety shall promptly take one of the following actions, at the Surety's expense:

5.1 Arrange for the Design-Builder to perform and complete the remaining obligations under the Design-Build Agreement, with consent of Owner;

5.2 Undertake to perform and complete the remaining obligations under the Design-Build Agreement itself, through its agents or through independent contractors;

5.3 Obtain bids or negotiated proposals from qualified design-builders acceptable to Owner for a contract for performance and completion of the Design-Build Agreement, arrange for a contract to be prepared for execution by Owner and a design-builder selected with Owner's concurrence, to be secured by performance and payment bonds equivalent to those for the Design-Build Agreement, issued by a qualified surety. The Surety shall: a. make available as Work progresses sufficient funds to pay the cost of completion of the Design-Build Agreement; and, b. pay to Owner the amount of damages as described in Section 7;

5.4 Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Owner the amount of its reasonable costs to complete the Work; or
5.5 Deny liability, in whole or in part, and notify the Owner in writing, citing reasons therefor.

6 Owner’s Rights. If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, under Section 5.5, the Owner shall be entitled without further notice to enforce any remedy available to it.

7 Damages Covered. In any event, the Surety’s obligations to the Owner, and the Owner’s obligations to the Surety, shall not be greater than those of the Owner and Design-Builder to each other, respectively, under the Design-Build Agreement. Subject to commitment by Owner to payment of the Contract Balance, the Surety is obligated without duplication for:

7.1 The responsibilities of Design-Builder for correction of defective Work and completion of the Project;
7.2 Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Paragraph 5; and
7.3 Liquidated damages, or if no liquidated damages are specified in the Design-Build Agreement, actual damages caused by delayed performance or non-performance of Design-Builder.

8 Bond Liability. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

9 Beneficiaries. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.

10 Dispute Resolution. All disputes related to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two (2) years after: a. the Owner declares the Design-Builder in default under Section 4.2; or, b. Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 10 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

10.1 In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by Owner against Surety to enforce the Surety’s obligations under this Bond.

11 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)

For Claims on this Bond:
(check appropriate box)
□ Use the contact information shown on page 1; or
□ Use the following alternate contact information:
(fill in Surety claims administrator contact information below)

12 Statutory Compliance. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory
requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

13 **Warranty Obligation.** The Surety’s obligations to the Owner for warranties of the Design-Builder shall be the same as those required of the Design-Builder under the Design-Build Agreement, subject to the time limitation in Section 10. Unless otherwise stated below, the Surety’s obligation for such warranties excludes: a) products, materials or equipment covered by a manufacturer’s separate warranty; and b) claims by the Owner first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Design-Build Agreement.

(List below any exceptions to the above limitations on Surety’s warranty obligation, if any)

14 **Authorization.** The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

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<tr>
<th>DESIGN-BUILDER (AS PRINCIPAL)</th>
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(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title
NOTE TO PROPOSERS: This Exhibit C will be negotiated with the successful Design-Builder to reflect the Design-Builder’s plan for the Project.

PART 1  APPLICABLE TO ALL PHASES

1.01 INTEGRATED DELIVERY

A. 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.

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

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

1.02 PROJECT GOALS

The Owner has established the following Project Goals.

A. Provide a Welcoming Gateway to the University. The SCSC will be physically, culturally, and accessible to all students and provide a space to highlight Western’s culture while promoting diversity and inclusivity, particularly for marginalized or disenfranchised populations. The design will incorporate unique vistas that are clearly identifiable as the Western Washington University campus.

B. Visible, Integrated Spectrum of Student Services: The building will provide access to multiple student services that are critical to retention and success of the students while providing vibrant student collaboration spaces and imbedded health and wellness promoting features.

C. Holistically Sustainable Design and Construction. The project will promote Western’s adoption of the Okanagan Charter and further Western’s sustainability objectives by achieving net-zero energy certified and net-zero carbon certified (including embodied carbon).

D. Efficient, Flexible Space. The Design-Build Team will outreach to Stakeholders to obtain their input and create a design such that the SDSC results in an effective and efficient use of capital resources that leverage hybrid work patterns and collaboration technologies to efficiently allocate and use space and meet the needs of the Stakeholder, including hoteling space that will support student services with offices located elsewhere on campus.
E. **Execute a Successful, Collaborative Progressive Design-Build (PDB) Process to Produce the Envisioned Project within a Firm Budget:** The Design-Build team will develop and promote a collaborative relationship with the Owner and its stakeholders to exceed the Project Goals, provide full transparency to the development of the project costs and schedule, and leverage the efficiencies of the PDB process to maximize scope and programming within the established budget. The University expects the design and construction members of the Design-Build team to integrate early in the project and for the Design-Builder to maintain consistent Key Team Members throughout the project.

**PART 2 PHASE 1 SCOPE OF SERVICES**

2.01 **SUMMARY OF WORK**

A. This Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 1.

B. Design Builder shall review, analyze, and validate the Owner Provided Information, the Owner's Project Criteria, the Owner's Budget, and the Schedule.

C. Design Builder shall conduct such site investigations, environmental assessments, geotechnical studies, surveys, review of regulatory and legal authority and restrictions, and all other actions and review and assess other information as reasonably necessary to verify and validate the Owner Provided Information and to perform the Work.

D. Design Builder shall review, analyze and validate the concepts for the scope as shown in the Owner’s Project Criteria. In addition, Design Builder shall work collaboratively with the Owner and the Stakeholders to examine whether new concepts will better maximize the Owner’s Project Goals, and if approved by the Owner, further develop such new concepts and incorporate them into the Project.

E. The Design-Builder will work with the Stakeholder groups who will be occupying the facility and will design a facility that provides the necessary space for the Stakeholder group to provide the services the University determines will be housed in the facility.

F. Design-Builder will study the suitability of sustainability objectives for the Project and provide Owner with options to incorporate sustainability measures into the Project. The goal for the Project is to comply with the Owner’s adoption of the Okanagan Charter and further the Owner’s sustainability objectives by achieving net-zero energy and net-zero carbon (including embodied carbon) performance as well as Living Building Challenge v4.0 Petal (Energy) Certification.

G. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to obtain input regarding the Project design and functionality, as well as other major elements of the Project Scope and to develop the Basis of Design Documents and incorporate sufficient space for each Stakeholder group so that the Stakeholder can provide the services that are necessary to allow the facility to function as intended.

H. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to progress the design to a sufficient state to develop the Basis of Design Documents, the Guaranteed Maximum Price, and the Schedule. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner and the Design-Builder.

I. Design Builder shall provide the Submittals as set forth in the Contract.
Documents. All Submittals shall be provided in a format acceptable to the Owner.

J. With the Validation Period Report for the Project, Design-Builder shall provide the Submittals as set forth in Section 3.01.C herein and the parties shall negotiate and collaboratively establish a Target Price, Target Budget and Initial Project Scope.

K. At the time set forth in the Validation Period Report, Design Builder shall prepare a GMP Proposal, including Phase 2 Submittals as set forth in Section 3.01.E herein.

2.02 VALIDATION PERIOD.

A. Owner Provided Information. Within the time period set forth in the schedule, Design Builder shall perform such assessments, reviews and investigations of the Owner Provided Information, as determined by Design Builder to be reasonably necessary to validate the Owner Provided Information, the Commercial Terms, and the Owner’s Project Criteria. Additional reviews, assessments and investigations of Owner Provided Information shall include, if reasonably necessary, the following:

1. Verification that any drawings or specifications provided by Owner, including but not limited to the As-Built drawings and other architectural and engineering drawings, plans and specifications are correct,
2. Constructability, including but not limited to proposed methods of construction, of the proposed structures in the Owner’s Project Criteria,
3. Verification of the architectural, engineering, and other assumptions and calculations in any Owner Provided Information,
4. Examination and verification of actual site conditions as set forth below,
5. Verification of any surveys,
6. Review and assessment of all applicable Legal Requirements on the Project,
7. Verification and validation of assumptions regarding the establishment of the Commercial Terms, including but not limited to the Owner’s Budget, the Schedule, and the Owner’s Project Criteria.

B. Site and Other Investigations. Design Builder shall perform site investigations as necessary for Design Builder to verify the Owner Provided Information and to validate the Commercial Terms and the Owner Project Criteria. Design Builder shall visit the Site and examine thoroughly and understand the nature and extent of the Work, site, locality, actual conditions, underground facilities, all physical conditions at or contiguous to the Site, and all local conditions and federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design Builder and safety precautions and programs incident thereto. Such additional investigations shall be conducted to sufficiently identify or characterize utility locations, site conditions, contaminated materials, and observable or concealed conditions in the existing facilities, including but not limited to the following:

1. If applicable, develop requirements for survey by the Owner and submit them to the Owner at least two (2) weeks prior to the need for the survey results.
2. Undertake surveys, investigations and analysis to provide necessary data and information for project design including sufficient information to evaluate design alternatives.
3. Perform soils sampling, testing, and analysis to provide necessary data, analysis, and information for Project design and provide a final Geotechnical Report. Test for contamination during this process.

4. Complete a comprehensive archaeological site survey and conduct a literature and data search to determine potentially archaeologically significant sites and conditions.

C. All reports or analyses generated by Design Builder’s testing, inspections, and investigations, including but not limited to geotechnical evaluations and hazardous materials studies, shall be provided to the Owner promptly, within seven (7) business days, after such reports are analyzed and generated.

D. Design Builder shall be responsible for ensuring that its design documents and construction work accurately conforms to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the contract.

E. At the time set forth in the Validation Period Schedule, the Design-Builder will provide to Owner a Validation Period Report with the deliverables set forth in Section 3.01.C.

F. With the Validation Period Report, Design-Builder will be deemed to have reviewed and verified all Owner Provided Information and Commercial Terms for the Project; therefore, Design-Builder cannot rely on any Owner Provided Information or the Owner’s Project Criteria for the purposes of performing the Work, unless specifically noted in writing by the Owner.

2.03 DEVELOPMENT OF BASIS OF DESIGN DOCUMENTS

A. Design Builder shall manage the design and estimating process in a transparent collaborative, efficient, and coordinated manner and conduct design workshops as required by the Contract Documents. The Basis of Design Documents will establish the scope of the Work and provide the basis for the GMP. The Basis of Design Documents must be consistent with the Owner’s Project Criteria as modified by the Initial Project Scope, unless the Owner has consented to modify its requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.

B. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.

C. The Owner will review and comment on the Design Submissions in a timely fashion.

D. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.

E. By submitting Design Submissions, Design Builder represents to the Owner that the Design Submissions may be designed and constructed for the then current Commercial Terms. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term; however, with any such Design Submissions, Design Builder must provide notice pursuant to Section 10 of the General Conditions.

2.04 DEVELOPMENT OF PROJECT COST AND GMP

A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner’s financial management strategy.
The Owner relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.

B. Throughout the Project, Design Builder will update estimates and forecasts and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis. The project controls system used by the Design Builder shall be acceptable to the Owner and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.

C. The Design Builder will coordinate the development of the project cost and GMP with the development of the Basis of Design Documents as well as the Schedule so that the Owner may obtain an accurate GMP within the Target Budget and Schedule.

2.05 DEVELOPMENT OF PROJECT SCHEDULE

A. The forecasting and development of the Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder’s ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder’s scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.

B. Design Builder shall provide the Owner with frequent updates to the Schedule in a format acceptable to the Owner.

PART 3 PHASE 1 SUBMITTALS

3.01 SUBMITTALS

A. Submittals After issuance of the Notice to Proceed:
   1. Design Builder shall provide the following Submittals within ___ days after issuance of the Notice to Proceed, unless otherwise noted in the Notice to Proceed or applicable schedule.
      a. Schedule Development Plan pursuant to Section 3.02.A
      b. Phase 1 Schedule pursuant to Section 3.02.B.
      c. BIM Protocol pursuant to 3.03.A.
      d. Proposed Work Groups pursuant to Section 3.04.D.
      e. Design Management Plan pursuant to Section 3.04.A
      f. GMP Development Plan pursuant to Section 3.05.A
      g. Proposed Cost Model Structure pursuant to Section 3.05.C.
      h. Proposed Work Breakdown Structure pursuant to Section 3.05.D.
   2. Owner will review the Submittals. Upon the Owner’s written approval, the Submittals will be finalized and incorporated into the Contract Documents by Contract Amendment.

B. Periodic submittals During Phase 1: Design Builder shall provide the following submittals throughout Phase 1.
   1. On a monthly basis and with each Application for Payment:
      a. Updates to the Phase 1 Schedule, and Project Schedule pursuant to Section 3.02.
      b. Updated Schedule of Values pursuant to Section 3.05.
   2. Pursuant to the Design Submission Schedule established by the parties:
      a. Updated Design Submissions pursuant to Section 3.02.
      b. Updated project budget information pursuant to Section 3.05.
   3. Milestone Design Deliverables pursuant to Section 3.04.G.

C. Submittals in the Validation Period Report:
1. Design-Builder shall provide the following Submittals in the Validation Period Report, unless otherwise noted in the approved Phase 1 Schedule.
   a. Phase 1 Not to Exceed Amount with Phase 1 Schedule of Values pursuant to Section 3.05.B
   b. Phase 1 Schedule pursuant to Section 3.02.B
   c. Phase 1 Scope of Work pursuant to Section 3.04.C
   d. Target Schedule pursuant to Section 3.02.C
   e. Target Budget for Phase 2 and updated Cost Model pursuant to Section 3.05.E
   f. Preliminary Schedule of Values for Phase 2 pursuant to Section 3.05.B.
   g. Initial Project Scope pursuant to Section 3.04.B.
   h. Design Submission Packages and Design Submission Schedule pursuant to Section 3.04.E.
   i. BIM Model and Execution Plan pursuant to 3.03.B.
   j. Project Safety and Job Hazard Analysis for Phase 1 pursuant to Section 3.07.A.
   k. Subcontract Plan pursuant to Section 3.06.A
   l. Project Phasing/Staging Analysis pursuant to 3.08.B.
   m. Early GMP Plan pursuant to 3.08.A
   n. Underutilized Business Participation and Inclusion Plan pursuant to 3.10.
   o. Quality Management Plan pursuant to Section 3.11.A and Design Quality Management Plan pursuant to Section 3.11.C.
   p. List of additional submittals (if any) required for the GMP Proposal

2. Owner will review the Validation Report. Upon the Owner’s written approval, the Submittals in the Validation Report will be finalized and incorporated into the Contract Documents by Contract Amendment pursuant to Section 6.6.1.2.c of the Agreement.

D. Early GMP Proposals: If the parties agree to the submission of Early GMPs, Early GMP Proposals shall be submitted based on the Phase 1 Schedule agreed by the Parties. The content of Early GMP Proposals will be determined pursuant to Section 6.6.1.4 of the Agreement.

E. GMP Proposal: With the GMP Proposal, Design Builder shall provide a GMP Proposal that includes the following Submittals.

1. Schedule of Values depicting the Proposed GMP pursuant to Section 3.05.F.
2. Basis of Design Documents pursuant to Section 3.04.F.
3. Project Schedule pursuant to Section 3.02.D.
4. Project Safety and Job Site Hazard Analysis pursuant to Section 3.07.B.
5. Permitting Strategy Plan pursuant to Section 3.09.A
6. Construction Quality Management Plan pursuant to 3.11.D.
8. Differing Site Conditions Report pursuant to Section 3.13.
3.02 SCHEDULES

A. Schedule Development Plan. By the date set forth in Section 3.01.A herein, Design-Builder shall provide a Schedule Development Plan for review and approval by Owner.

1. The Schedule Development Plan will show the following:
   a. The Key Team Member and other personnel responsible for developing and updating the Project Schedule;
   b. The process for collaboratively developing the Project Schedule, including all phases of the Schedule;
   c. The process for developing and communicating updates to the Project Schedule;
   d. The Design-Builder’s plan for mitigating schedule delays and impacts;
   e. The tools and systems that the Design-Builder will use to develop and update the Project Schedule;

2. Upon approval by the Owner, the Schedule Development Plan will be incorporated into the Contract Documents via Contract Amendment.

B. Phase 1 Schedule. As set forth in Section 3.01.C herein, Design Builder shall provide a Phase 1 Schedule.

1. Phase 1 Schedule shall show the activities of the Owner and Design Builder necessary to meet Phase 1 requirements.

2. Phase 1 Schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. During Phase 1, Design Builder will establish the timing for schedule Updates with acceptance from the Owner.

3. If an update to Phase 1 Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner within five (5) business days.

C. Target Schedule. Pursuant to Section 3.01.C, Design Builder shall submit a Proposed Target Schedule that reflects Design Builder’s sequence of design, procurement and construction activities including the interrelationships of the Demolition and Construction Packages.

1. The Proposed Target Schedule shall show the activities of the Owner and Design Builder necessary to meet the Project completion requirements.

2. The Proposed Target Schedule shall be updated periodically monthly with the level of detail for each schedule update reflecting the information then available.

   a. During Phase 1, Design Builder will establish the timing for schedule Updates with acceptance from the Owner.
   b. Design Builder shall also provide updates during the development of the Basis of Design Documents.

3. Design Builder shall meet with the Owner to review the Proposed Target Schedule and the parties shall collaboratively develop a final Target Schedule. In the event that the Owner has any comments relative to the Proposed Target Schedule or Target Schedule Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the Preliminary Schedule, its basis, or both. The parties will work collaboratively to make adjustments in the Basis of Design Document, the Project Schedule, or Target Budget to fit within the Owner’s objectives.
4. The Target Schedule will be used as a basis for scheduling the Project throughout Phase 1.

5. If an update to the Target Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.

D. With the GMP Proposal, Design Builder shall provide a Schedule that will incorporate the Target Schedule developed collaboratively during Phase 1 along with any updates to the schedule.

E. All schedules will be developed using pull planning. After the schedules are developed, Design-Build will deliver the schedule in the format of a Critical Path Method (CPM) Resource loaded schedule as set forth below.

F. Critical Path Method (CPM) Resource loaded schedule

1. The CPM Schedule will contain the following
   a. All tasks required to complete the scope of work for the project.
   b. Durations for all tasks in the project schedule.
   c. Logical ties and sequence of work for every task in the schedule.

2. Project Schedule shall be detailed and organized according to the approved WBS. The project schedule will include all activities and relationships identified in the Design-Build’s Scope of Work Narrative. Each major area of work within Design-Build’s scope shall be represented by activities in the schedule.

3. The detailed schedule shall reflect, at a minimum, design, engineering, procurement, construction, fabrication, and delivery activities for each design package and each piece of procured equipment, key drawing release dates by discipline, and logic and interrelationships between activities so that a logical progression of the work is depicted. Project Milestones shall also be included in schedule.

4. Design-Build and subcontractors shall meet with the Owner to review and approve the detailed CPM baseline Project Schedule.

5. Once the detailed project schedule has been approved by the Owner, Design-Build will establish a baseline schedule. Thereafter Design-Build shall advise the Owner of any proposed Critical Path Schedule changes and promptly provide the Owner with any revisions thereto and recovery plans as required to meet the contractual dates.

6. Schedule Validity and Content
   a. Prepare schedules in Primavera P6 Version 8.0 or greater format.
   b. Contain Work Breakdown Structure coding matching deliverables and work packages.
   c. Schedule will reflect all deliverables and tasks mention in the Scope of Work narrative.
   d. Schedules shall be coded for grouping by engineering, procurement, construction, and commissioning.
   e. Design, engineering, procurement and construction activities shall be included, such that Project staffing requirements can be determined or verified with schedule. The original resource-loaded construction schedule shall form basis for progress reporting, and payment.
   f. Schedules shall be provided in (XER) electronic Primavera format on a monthly basis unless otherwise agreed by the parties.
g. Complete sequence of design, engineering, procurement and construction by activity.

h. Schedules will be reported and calculated using retained logic. No progress override.

i. An unlocked and searchable PDF of monthly schedule with the following
   (1) Columns showing (Activity ID, Activity Description, Original Duration, Remaining Duration, Activity Percent Complete, Start, Finish, Total Float, Baseline Start, Baseline Finish, and Baseline Finish Variance)
   (2) Gantt chart illustrating schedule activities start and finish dates, baseline planned progress, actual earned progress, and critical tasks.

j. No open ends with the exception of one predecessor open end for starting the project and one successor open end for completing the project.

k. No out-of-sequence logic.

l. Critical path for Design-Builder’s schedule activities.

3.03 BIM MODEL AND EXECUTION PLAN

The parties will negotiate the full extent of the use of BIM Model and Execution Plan after award. This Section is intended only to provide an example. If the parties agree to utilize Building Information Modeling, Design-Builder will provide the following:

A. BIM Protocol

1. Design Builder shall develop and submit an appropriate technology protocol for BIM and digital information modeling. The protocol shall define the ownership, access and responsibility with respect to project information, in particular with respect to shared BIM. On a more detailed level the protocol shall develop standards for data interfaces, layering and other criteria to be developed during the validation Phase.

2. Design Builder shall provide the BIM Protocol by the date set forth in Section 3.01.A.

B. With the Validation Period Report, Design Builder shall submit for the Owner’s review and approval a BIM Model plus a BIM Execution Plan which shall meet the objectives and requirements set forth in the Owner’s Project Criteria and is anticipated to include the following elements:

1. BIM System Requirements
2. If requested by the Owner, a description of the following capabilities, including the implementation thereof:
   a. Design Modeling
      (1) Existing Conditions Modeling
      (2) Design Authoring
      (3) Asset Management
      (4) Design Model Reviews
      (5) Analysis
      (6) Reconciled Record Design Models
   b. Construction Modeling
      (1) 3D Coordination
      (2) 4D Modeling/Phase Planning
      (3) 5D Modeling/Cost Estimating
   c. Commissioning and Closeout
      (1) QA/QC
(2) Commissioning
(3) Punch List
(4) Record Model/As Built

d. Facilities Operations and Maintenance
   (1) As Built Management
   (2) Data Integration Capability
   (3) Existing System Integration

C. The BIM Execution Plan will provide for BIM Reviews where Design Builder will present the BIM model for review. BIM Reviews will occur at the frequency agreed by the parties during the design period and as necessary during Construction. The BIM review will generally consist of a walkthrough of the 3D model showing all systems both individually and integrated, and an identification of any clashes among disciplines. Design Builder will be responsible for administering this process and resolving any clashes in a timely fashion.

D. Design Builder shall meet with the Owner to review the proposed BIM Model and BIM Execution Plan.
   1. Design Builder shall highlight any material differences between the proposed BIM Model and BIM Execution Plan and the Owner’s Project Criteria.
   2. In the event that the Owner has any comments relative to the proposed BIM Model and BIM Execution Plan or finds any inconsistencies from the Owner’s Project Criteria or inaccuracies in the proposed BIM Model and BIM Execution Plan, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed BIM Model and BIM Execution Plan.
   3. The parties will work collaboratively to make adjustments in the proposed BIM Model and BIM Execution Plan, or any Commercial Term to fit within the Owner’s objectives.

E. The intended use of BIM for the Project shall accomplish the following objectives:
   1. For illustrations and presentation to the Owner and Stakeholders of the intended design
   2. For coordination between disciplines and trades (clash detection) during design and construction
   3. For verification of progress payments
   4. Monitor work-in-place including updating of 3-D Model for portraying key progress elements to the Commission.
   5. Construction Phasing and Sequencing
   6. As a data reach legacy document for Facility Management and Maintenance.

F. Use of BIM for Design and Construction:
   1. BIM shall be an integral part of project delivery and shall enable all stakeholders to see the project clearly as it develops. BIM shall support the use of SD models to iron out sequencing and cost issues where appropriate during construction and allow pull-driven fabrication and just-in-time delivery of information, materials, parts, assemblies and required equipment and resources. Design Builder shall appoint a Modeling Coordinator who will coordinate the use and protocol of BIM with the Owner’s BIM Consultant.

G. Use of BIM for Facility Management and Maintenance:
   1. If requested by the Owner, Design Builder and Owner shall establish
the initial requirements for the use of the model for Facility Management Monitoring and Maintenance, and additionally, Design Builder shall investigate and perform assessment of software programs to meet these requirements. During the preparation of Construction Documents, Design Builder shall meet with the Owner's operations and maintenance staff and discuss specific requirements that shall be built into the BIM model. It is the intent that any implementation of additions to the BIM design model for Building Monitoring Management and Maintenance will be included as part of future task authorizations.

3.04 DESIGN SUBMISSIONS AND SPECIFICATIONS

A. Design Management Plan. By the date set forth in Section 3.01.A herein, Design-Builder shall provide a Design Management Plan for review and approval by Owner.

1. The Design Management Plan will show the following:
   a. Organizational structure of the Design Team, including identification of Key Team Members and how the Design Team will integrate with Owner;
   b. A comprehensive description of the process by which the Design-Builder will develop a design collaboratively with the Owner and the Owner's Advisor. In addition to an explanation of the process, include the following information:
      (1) Describe the process of conducting a robust validation process that will significantly reduce the risks on the Project and incorporate relevant information as soon as practicable into the completion of the design;
      (2) Describe the process of identifying and evaluating design alternatives and selecting the preferred alternative that considers stakeholder input, budget, early work packages, material procurement, etc. and provides balanced design solutions to meet the Project needs within the Owner’s budget;
      (3) Describe the process of designing to take advantage of efficient techniques, including but not limited to prefabrication, modularization, and other efficient construction means and method;
      (4) Describe the process to incorporate constructability into the design;
      (5) Describe the process for scheduling Submittals so that the Owner can review them in a logical and efficient manner;
      (6) Describe the process for managing comments from Owner, stakeholders, and permitting authorities;

2. Upon approval by the Owner, the Design Management Plan will be incorporated into the Contract Documents via Contract Amendment

B. Initial Project Scope. During the Validation Period, the Design-Builder shall review the Project Scope and evaluate the feasibility of including the Owner’s Project Criteria within the Owner’s Budget and Schedule.

1. Design-Builder shall develop a Proposed Initial Project Scope that represents the Design-Builder’s best estimate of a reasonably feasible scope of work that can be accomplished for the Proposed Target Budget and Proposed Target Schedule.
2. The Design-Builder shall submit its Proposed Initial Project Scope to Owner with the Validation Period Report, and the parties shall collaboratively develop the final Initial Project Scope that will be used as a basis for designing the Project throughout Phase 1.

3. Should the Design Builder believe the Owner’s Project Criteria is not feasible within the Owner’s Budget and schedule, the Design Builder will provide options, recommendations and/or alternative technical concepts for the Owner to consider. The parties may decide to determine whether to designate certain parts of the Work as Deferred Scope. Deferred Scope is work that the parties determine is not in the Initial Project Scope; however, the parties will continue to develop the work with the goal of adding the Deferred Scope back into the Project at a later time within the Target Budget or GMP.

C. Phase 1 Scope of Work. With the Validation Period Report, Design-Builder shall submit a Phase 1 Scope of Work for Owner’s review and approval. The Phase 1 Scope of Work will provide detail on the Work Design-Builder will perform during the remainder of Phase 1, including but not limited to the following:
   1. Design hours by Design Submission Package
   2. General Conditions Costs
   3. Other Costs of the Work, described in detail.

D. Work Groups. The parties will establish Work Groups that correspond with the Cost Model and the Design Submission Packages. The purpose of the Work Group is to develop Design Submissions within the applicable Design Submission Package that are consistent with the Target Budget, Target Schedule, and Initial Project Scope. Not every scope may benefit from a Work Group. The Design-Builder is anticipated to propose the most efficient approach to developing design and cost within the Target Budget.
   1. By the date set forth in Section 3.01.A. of this Exhibit, the Design-Builder will provide the Owner with a list of proposed Work Groups. The parties will then collaboratively establish the final Work Groups.
   2. Each Work Group will contain representatives from both the Owner and the Design-Builder.
   3. The Work Groups will provide updated reports pursuant to this Exhibit C to the Owner’s and the Design-Builder’s Representatives.
   4. Work Groups will make decisions consistent with the Project Goals and the Commercial Terms. If a Work Group cannot make a decision by consensus, then the Work Group shall refer the decision to the Owner’s Representative and the Design-Builder’s Representative.
   5. Work Groups will collaboratively develop the Work Group Estimate using Target Value Design and a continuous estimating process that provides real time estimates of the costs of the Design Submission to the Owner. The Design-Builder will use the Work Group Estimates to develop the GMP.
   6. Additionally, the Work Groups will be expected to look for opportunities for removed scope, additional scope, higher quality of materials or equipment, alternates, or similar to create additional value to the Project. If applicable, reviewing scope that may have been removed when establishing the Project Program and Scope is expected to be given first consideration.

E. Design Submissions. As Design Builder develops the Basis of Design Documents, Design Builder shall collaborate with the Owner to submit and review the Design Submissions and specifications that will be incorporated into the Basis of Design Documents. The Design Submissions will be submitted pursuant to the Design Submission Schedule.
1. Design Builder shall segregate the Project into separate Design Submission Packages that represent a scope of work that should be logically assigned to a Work Group for development (“Design Submission Packages”) for review and approval by the Owner pursuant to Section 3.01.C. of this Exhibit. The parties will then collaboratively develop the final Design Submission Packages for the Project. The Design Submission Packages will correspond with Work Groups established by the Design-Build and the Owner to develop the Basis of Design Documents.

2. Each Work Group will submit a schedule of Design Submissions pursuant to Section 3.01.C. of this Exhibit for the applicable Design Submission Packages (“Design Submission Schedule”) for review and approval by the Owner. The Design Submission Schedule will be developed such that the review of each Design Submission is of reasonable scope for prompt, efficient, and thorough review by the Owner.

3. Design Builder shall highlight any material differences between the Design Submissions as they are being developed and the Owner’s Project Criteria and Initial Project Scope, as applicable.

4. In the event that the Owner has any comments relative to the Design Submissions or finds any inconsistencies from the Owner’s Project Criteria and Initial Project Scope, as applicable, or inaccuracies in the Design Submissions, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Basis of Design Documents.

5. The parties will work collaboratively to make adjustments in the Design Submissions and in the proposed Basis of Design Documents to fit within the Owner’s Project Goals.

F. Basis of Design Documents. The Owner and Design Builder shall work collaboratively to develop the Basis of Design Documents provided as part of the GMP Proposal. The Basis of Design Documents submitted with the GMP Proposal shall include at a minimum the following documents.

1. Project Manual, which shall set forth both the general objectives for the Owner, as well as specific uses for each element of the Project set forth in the Owner’s Project Criteria.

2. The Specifications.

3. Performance Requirements, which shall set forth the specific requirements for the project and identification of each major system, including but not limited to the following:
   a. Mechanical, electrical (Power, Emergency Power, Lighting, Low Voltage, Communications, Fire Alarm, Security, etc.) and plumbing systems
   b. Structural capacities and requirements
   c. Warranty obligations
   d. Operations and maintenance requirements

4. Designs developed during Phase 1.

5. Legal Requirements on which the GMP Proposal is based.

6. If applicable, Sustainability Requirements and Plan which shall document the Project sustainability goals and include the following:
   a. Outline Subcontractor requirements for Sustainability in the subcontract bid documents;
   b. Include a process to
      (1) monitor the submittal process to ensure compliance with Sustainability goals;
(2) train Subcontractors in Sustainability requirements;
(3) review design changes during construction for Sustainability impacts and informs Owner of impacts;
(4) ensure installed products are compliant with the Sustainability requirements; and
(5) assemble and maintain records to document Sustainability goals compliance.

7. A list of the assumptions and clarifications on which the GMP and Project Schedule are based.

G. Milestone Deliverables

1. Unless the parties agree in writing otherwise, Design Builder will, in addition to period design submissions, provide the following Milestone Design Deliverables to the Owner:
   a. 30% Design Complete
   b. 60% Design Complete
   c. 90% Design Complete
   d. IFC (Issued For Construction)

2. The Milestone Deliverables shall include major building elements and components, such as curtain walls, and finishes and shall include, but not be limited to the following.
   a. Concept, Character, and Principals
   b. Landscape Plan
   c. Existing Site Photos
   d. Site Plan and Access;
   e. Massing Plan
   f. Exterior Elevations
   g. Floor Plate Stacking
   h. Building Sections
   i. Build Entries and Circulation
   j. Solar Orientation
   k. Floor Plans
   l. Proposed Materials and Color Palette
   m. Parking Concept
   n. Narrative

3. Design-Builder must have written approval from the Owner to proceed with the project after submission of each of the Milestone Design Deliverables set forth above.

H. Design Considerations. In addition to the Owner’s Project Requirements, the Design-Builder will be responsible for the following:

1. The Design-Builder will provide all geotechnical, survey, and engineering services; and
2. The Design-Builder will design the furniture, fixtures, and equipment (“FFE”) and provide procurement support for the Project

3.05 COST AND GMP

A. GMP Development Plan. By the date set forth in Section 3.01.A herein, Design-Builder shall provide a final GMP Development Plan for review and approval by Owner.

1. The GMP Development Plan will include the following:
   a. Describe the Design-Builder’s strategies for exceeding the Project Goals.
b. Describe the process by which the Design-Builder will collaborate with Owner to establish the final GMP, including communication strategies and tools.

c. Describe the Design-Builder’s processes and tools for monitoring, reporting and managing cost, including but not limited to:

(1) Design to budget control and reporting processes, including the project controls software that the Design-Builder will use to provide transparency and to monitor and communicate the project costs to the Owner, including self-performed and subcontracted work;

(2) Scope, cost, and schedule baseline development and management/change control processes and the participation and interaction among the scheduling and estimating, project, design, construction and operations management teams to execute these processes;

(3) Incorporating input from design-build or other sub-contractors;

(4) How the Design-Builder will quantify the cost of risk and how risk is factored into the cost and schedule baseline, the project costs, and schedule performance;

(5) Describe the Design-Builder’s processes to avoiding surprises in unexpected costs and increases in project estimates. Specifically address the Design-Builder’s approach to escalation, supply chain management, and resource scarcity;

(6) Describe the specific tools that will be used for the financial management of the Project including a description of the tool and how the tool will provide value to the Project.

2. Upon approval by the Owner, the GMP Development Plan will be incorporated into the Contract Documents via Contract Amendment.

B. Schedule of Values

1. Schedule of Values. At the times set forth herein, Design-Builder will submit Schedules of Values for the Project in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.

2. With the submission of Design Submission Packages, Design Builder shall provide updated estimates of costs associated with the Design Submission in a format acceptable to the Owner that will be incorporated into the development of the GMP.

3. The updated estimates shall be provided on a monthly basis and shall be updated with new information as Design Builder develops and finalizes the GMP.

4. Schedule of Values.

a. With the Validation Period Report, Design-Builder shall provide a proposed Schedule of Values for Phases 1 and 2 for Owner’s review and acceptance.

b. With the GMP Proposal, Design-Builder will provide a Schedule of Values for Phase 2.
5. On a monthly basis, Design Builder shall provide an updated Schedule of Values for the Work with actual start and/or finish dates and percentages complete. Updates shall compare the planned progress from baseline schedule with actual progress from the current schedule. The Schedule of Values shall be in conformance with the requirements below and in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may reasonably require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.

6. Schedule of Values Requirements
   a. Submit to Owner schedule of values allocated to various portions of Work.
   b. Submit to Owner an updated progressed CPM Schedule will substantiate the % complete of each task.
   c. Schedule of values shall be used as basis for Design-Builder’s Applications for Payment, as well as a basis for identifying savings and overruns at the end of the project.

7. Sum of all values listed in schedule shall equal total GMP Contract Price.

8. Each item shall include directly proportional amount of Design-Builder’s fee, as applicable.

9. Schedule of Values Form and Content
   a. Schedule of Values will match a format acceptable to Owner.
   b. Title of Project and location.
   c. Project number.
   d. Name and Address of Design-Builder.
   e. Date of submission.
   f. Schedule of Values columns will contain at a minimum the following information
      (1) Line Item # - Corresponding back to the WBS and CPM Schedule
      (2) Line Item Description
      (3) Budgetary Cost
      (4) Current Period % Complete
      (5) Current Period Cost
      (6) Job To Date (“JTD”) % Complete
      (7) JTD Cost
      (8) Variance Column Representing Budgetary Cost Minus JTD Cost

C. Cost Model. Within the time frame set forth in Section 3.01.A, Design Builder shall provide a Proposed Cost Model Structure, for the Owner’s review and acceptance.

1. The Cost Model shall, at a minimum, provide the following information:
   a. List for all Design and Construction Packages, organized by CSI;
   b. Estimated base bid amounts for all Construction Packages;
   c. Construction Package Allowances.
2. Design Builder shall utilize a project controls management system (PCMS) that will be reviewed for acceptance to the Owner.
3. Estimates and forecasts within the Cost Model will need to have the capability to be broken down and reported on in many different formats. These formats may include organizing the estimate by different projects, project funding types, Owner cost element codes, contracts,
vendors, Construction Package Sets, Construction Packages, etc. Design-Builder shall collaborate with the Owner to determine the appropriate Work Breakdown Structure that will be used for the development of the Cost Model and all Project cost estimates.

4. In developing its Construction Packages, Design-Builder shall coordinate with the Owner to determine a packaging strategy deemed advantageous to all parties. The agreed-upon packaging strategy will be incorporated into the Cost Model and Project schedule.

5. On a monthly basis, Design-Builder shall update estimates and forecasts as data becomes available to reflect real time information. The Owner will rely on this real-time information for accuracy of overall Owner cost forecasts across all Owner projects.

D. Work Breakdown Structure (WBS)

1. The Work Breakdown Structure (WBS) is a task-oriented division of work necessary to engineer, procure, and construct the Project. It categorizes successively smaller tasks, in order to achieve scope, schedule, and budget control at the most practical level. The WBS should correspond with the Cost Model.

2. Within the time frame set forth in Section 3.01.A, Design-Builder will propose a WBS structure. Design-Builder will work with the Owner to develop a mutual compatible WBS system to satisfy the intent of the project. The WBS structure will represent the Design-Builder’s entire scope for the project, broken down into manageable Submittals or work packages. This Hierarchy will be used to organize the project’s scope narrative, the project’s schedule, and the project’s budgeted Schedule of Values (SOV). This will not be presented as a list of Submittals but as breakdown of work packages and their Submittals. The parties will agree on a form of WBS for use in the Project.

E. Target Budget. Pursuant to Section 3.01.C, Design Builder shall submit a Proposed Target Budget that reflects Design Builder’s best estimate of an achievable GMP for the Initial Project Scope.

1. The Proposed Target Budget shall include a Schedule of Values and Cost Model.

2. The Proposed Target Budget shall be updated periodically monthly with the level of detail for each update reflecting the information then available.
   
   a. During Phase 1, Design Builder will establish the timing for Target Budget Updates with acceptance from the Owner.
   
   b. Design Builder shall also provide updates during the development of the Basis of Design Documents.

3. Design Builder shall meet with the Owner to review the Proposed Target Budget and the parties shall collaboratively develop a final Target Budget. In the event that the Owner has any comments relative to the Proposed Target Budget or Target Budget Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the Target Budget. The parties will work collaboratively to make adjustments in the Basis of Design Document, the Project Schedule, or GMP to fit within the Owner’s objectives.

4. The Target Budget will be used as a basis for estimating and developing the GMP throughout Phase 1.
5. If an update to the Target Budget indicates that the Target Budget will be exceeded, Design Builder shall submit a corrective action plan to the Owner.

6. The Target Budget will be segregated into separate budgets for each Work Group (the “Work Group Budget”). Each Work Group Budget will form the basis of the Target Value Design process for the applicable Work Group to develop the estimated costs for the Work Group (the “Work Group Estimate”).

7. Work Groups will collaboratively develop the Work Group Estimate using Target Value Design and a continuous estimating process that provides real time estimates of the costs of the Design Submissions to the Owner. The Design-Builder will use the Work Group Estimates to develop the GMP.

F. Establishment of the GMP.

1. With the GMP Proposal, Design Builder shall prepare and submit a Schedule of Values that depicts the proposed GMP to the Owner, in a format acceptable to the Owner, reflecting Design Builder’s total cost for the Project on an open book basis. The Schedule of Values shall include:
   a. The Design-Builder’s Fee Percentage pursuant to Section 6.2 of the Agreement;
   b. The Cost of the Work pursuant to Section 6.3 of the Agreement;
   c. If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis pursuant to Section 6.4.1 of the Agreement;
   d. If applicable, a list of all Not to Exceed Amounts and the information required pursuant to Section 6.4.2 of the Agreement;
   e. If applicable, a list of Lump Sums and the information required pursuant to 6.4.3 of the Agreement;
   f. The Cost of the Work Contingency pursuant to Section 6.4.4.1.a of the Agreement;
   g. The Design-Builder’s Contingency pursuant to Section 6.4.4.1.b of the Agreement;
   h. The Lump Sum General Conditions Cost pursuant to Section 6.4.5 of the Agreement;
   i. If applicable, a schedule of Unit Prices and Hourly Rates pursuant to Section 6.4.6 of the Agreement

2. In support of the proposed GMP, Design Builder shall provide:
   a. A list of the assumptions and clarifications made by Design Builder in the preparation of the GMP to supplement the information contained in the Basis of Design Documents.
   b. All material changes from the Owner’s Project Criteria and Design Builder’s Proposal and the costs associated with such changes.

G. Design Builder shall meet with the Owner to review the proposed GMP. In the event that the Owner has any comments relative to the proposed GMP or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed GMP, its basis, or both. The parties will work collaboratively to make adjustments in the Basis of Design Documents, Project Schedule, or GMP to meet the Owner’s objectives.
3.06 SUBCONTRACT PLAN
A. By the date set forth in Section 3.01.C herein, Design Builder shall submit for approval the Subcontract Plan that will comply with Section 2.8.2 of the General Conditions and include the following:
   1. Identification of the Work anticipated to be subcontracted, including the scope of the subcontracted Work (“Subcontract Package”);
   2. A comprehensive explanation regarding the process for identifying, prequalifying, and negotiating with qualified Subcontractors;
   3. The form Subcontracts that Design-Builder anticipates using, all of which must be in compliance with Section 2.8 of the General Conditions;
   4. A Subcontractor Procurement Process that either follows the process set forth in Section 2.8.2 of the General Conditions or provides an explanation as to the suggested deviation from that process;
   5. The anticipated Self-Performed Construction Work, including the information set forth in Section 2.8.2 of the General Conditions; and
   6. An explanation regarding how Design-Builder will incorporate Subcontractor input into the design.

3.07 PROJECT SAFETY AND JOB SITE HAZARD ANALYSIS
A. By the date set forth in Section 3.01.C herein, Design Builder shall submit a Project Safety and Job Site Hazard Analysis for the activities associated with Phase 1.
B. With GMP Proposal, Design Builder shall submit a Project Safety Plan with Job Site Hazard Analyses addressing all phases of the project after Phase 1.
C. No field investigation or construction activities will be authorized without acceptance of safety plans as required for the Work.

3.08 PROJECT PHASING/STAGING
A. Early GMP Plan. With the Validation Period Report, Design-Builder will provide its Early GMP Plan that will include the Design-Builder’s proposed plan to complete portions of the Work prior to completion of the entire Project that would be subject to a Early GMP pursuant to Section 6.6.1.6 of the Agreement.
   1. The Early GMP Plan will include the following elements for each Early GMP Scope:
      a. A detailed description of the Early GMP Scope, including but not limited to the portion of the WBS and/or Basis of Design Documents that are applicable to the Early GMP Scope;
      b. The Early GMP Schedule; and
      c. The deliverables required for the Early GMP Proposal.
   2. If approved after negotiation with the Owner, the Early GMP Plan will be incorporated into the Contract Documents via Contract Amendment.
B. With the Validation Period Report, Design Builder shall provide a Project Phasing/Staging Analysis for all Demolition and Construction Packages that includes detailed plans for the phasing of the elements, including but not limited to all modifications and all other construction activities including the staging of construction materials and facilities.

3.09 PERMITTING STRATEGY PLAN:
A. With the GMP Proposal, Design Builder shall provide a Permitting Strategy Plan detailing the process for obtaining the building and site development permits for various phases of the project. During Phase 1, Design Builder must meet with the applicable building officials and develop processes and
time lines for plan check approvals. The Design-Build will be responsible for obtaining or, if the Owner is the only party able to obtain the permit, assisting the Owner with obtaining the following permits:

1. All permits necessary to design, construct, occupy and use the facility.
2. **The parties will list other permits required as part of the negotiation of the scope of the Work.**

B. The Permitting Strategy Plan must include the following:

1. A plan for conducting an efficient permitting process that minimizes re-design and obtains the required permits within the Project Schedule;
2. A list of permits required for the Project;
3. For each permit, the process and plan for obtaining the permit, including coordination of communications with permitting agency staff;
4. For each permit, a check list for each task required to obtain the permit; and
5. For each permit, a schedule for obtaining the Permit.

### 3.10 UNDERUTILIZED BUSINESS PARTICIPATION AND INCLUSION PLAN

A. With the Validation Period Report, Design Builder shall analyze the capabilities of underutilized businesses as subcontractors, including but not limited to businesses certified by OMWBE, Veteran Owned Businesses, as well as small, regional, and local businesses and the projected manpower availability to determine and report on the percentage of the Work that such firms could reasonably be expected to perform during the Design, Preconstruction and Construction Phases of the Project.

B. Based on this analysis, Design Builder shall prepare an outreach, inclusion and participation plan for underutilized businesses as subcontractors, including but not limited to businesses certified by OMWBE, Veteran Owned Businesses, as well as small, regional, and local businesses, subject to the review and approval of the Owner (“Underutilized Business Participation and Inclusion Plan”). The Underutilized Business Participation and Inclusion Plan will be a thoughtful commitment to underutilized businesses as subcontractors, including but not limited to businesses certified by OMWBE, Veteran Owned Businesses, as well as small, regional, and local businesses in the design and construction for the Project. Work performed by Underutilized Businesses must have a Commercially Useful Function.

C. As a minimum, the Underutilized Business Participation and Inclusion Plan shall include:

1. Outreach strategies to identify Underutilized Businesses capable of performing the work in the geographic region of the Project;
2. A complete description of the efforts to be taken on the part of Design Builder to tailor design, preconstruction services and Construction Packages so as to be capable of being performed by Underutilized consultants, designers, and/or subcontractors.
3. The approach to procure consultants and subcontractors (e.g., open bid, prequalification, best-value, etc.) to maximize participation by Underutilized Businesses.
4. Contracting strategies to remove barriers that allow Underutilized Businesses to be able to subcontract for the Project, such as the use of joint ventures in partnering with non-Underutilized Businesses;
5. Business strategies to support Underutilized Businesses in being successful on the project such as introductions to banks and/or bonding companies, progressive design-build training, and retainage;

6. Training opportunities in supporting the successful performance of the work by Underutilized Businesses.

3.11 QA/QC PLANS

A. Quality Manual

1. The Design-Builder shall provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Work. The Quality Manual shall establish the Quality Policy and Quality Objectives for all aspects of the Work conforming to the requirements of the ISO 9001:2015 Standard, and shall describe the processes that shall be established, implemented, controlled, and continually improved to achieve the Quality Objectives established for the Project.

2. The Quality Objectives shall be measurable and linked to meeting the needs and performance expectations of the Owner in respect of the Project. The Quality Management System described in the Quality Manual shall include all the activities required to achieve these Quality Objectives, including the Design-Builder’s controls such as scope, cost, schedule and general document control management activities. All these activities shall be subject to Internal Quality Audits and External Quality Audits.

3. The Quality Manual shall describe the members of the Design-Build Team, including Subcontractors and Key Team Members involved in performing the Work and how key management activities (such as the Design-Builder’s controls, design management and construction activities) shall interface with each other. The Quality Manual shall also provide the organization chart identifying the authority and responsibilities of all Key Team Members and other key personnel involved with the aforementioned aspects of the Project. The Quality Manual shall also show how the various levels of Quality Management System documentation are linked together.

4. The Quality Manual shall clearly define the reporting function and authority of the Design-Builder’s Quality Manager who shall liaise with the Owner and act as the single point representative of the Design-Builder for all matters relating to quality management for design and construction.

B. Quality Manager

1. At all times during the Project, the Design-Builder shall employ a Quality Manager who shall

   a. have experience in a similar quality management representative role for a project have a minimum 10 years of experience overseeing the design and construction of projects of similar scope and complexity to this Project;

   b. have sufficient organizational authority to implement required actions to ensure compliance with all quality requirements of this Agreement;

   c. have full access to all Quality Documentation described in the Quality Management System, including documentation maintained by all Design-Build Team Members;

   d. be responsible for developing, implementing, maintaining, and ensuring the effective operation of, the Quality Management System.
System including auditing, reporting and implementing corrective actions for Nonconforming Work;

e. ensure that reviews, checking, and verification are undertaken for all designs;

f. be responsible for the supervision of any personnel supporting the Quality Manager in the execution of the Quality Plan; and

g. be independent of the Design-Build Team and shall have the authority to immediately stop any work activity not being performed in accordance with the Agreement and not in accordance with the Quality Management Plans.

2. The Quality Manager will be responsible, at a minimum, for the following items

   a. developing, implementing and maintaining the Quality Plans;
   b. initiating periodic management reviews, annually at a minimum;
   c. preparing Quality Audit Plans, both internally and externally;
   d. approving and signing off on the action taken in close out of Non-Conformance Reports; and
   e. developing and implementing a program for corrective actions and preventive action for Non-Conforming Work.

C. Design Quality Management Plan.

1. The Design-Builder shall implement and conform to a comprehensive Design Quality Management Plan that describes how it intends to manage the design processes for the Project in conformance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The DQMP is to apply throughout the Work.

2. The DQMP shall contain an organizational chart identifying Key Team Members and other key personnel responsible for design management and their relationship with the Quality Manager for the Design-Builder’s overall Quality Management System as documented in the Design-Builder’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for design management and other engineering and construction management disciplines. The DQMP shall address all phases and aspects of the Work including design and construction.

3. The DQMP shall, at a minimum, include or reference detailed Quality Management System procedures and process flow charts for the following processes:

   a. design and development planning;
   b. determination of design inputs and outputs;
   c. design development reviews;
   d. design verification to ensure that design input requirements have been met;
   e. design validation to ensure that the completed project is capable of meeting its intended use;
   f. design changes;
   g. quality control of design deliverables;
   h. handling of Owner review comments on submittals;
   i. quality assessment and procurement of the Design-Build Team members responsible for design;
   j. if approved by Owner, External Quality Audits of the Design-Build Team members responsible for design;
k. Internal Quality Audits;

l. Corrective Actions, Preventive Actions and opportunities for improvement;

m. Document control management;

n. Submittal scheduling and the Project Schedule audits;

o. Control of revisions construction documentation during construction; and

p. Control of records relating to Quality Management.

4. The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

D. Construction Quality Management Plan.

1. The Design-Builder shall provide a comprehensive Construction Quality Management Plan that describes how it intends to manage the construction activities in conformance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Agreement. The CQMP is to apply throughout the Project.

2. The CQMP shall contain an organizational chart identifying Key Team Members and other key personnel responsible for construction management and their relationship with the Quality Manager for the Design-Builder’s overall Quality Management System as documented in the Design-Builder’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for construction management and other disciplines such as design management and environmental management. The CQMP shall address all phases and aspects of the Works, including design and construction.

3. The CQMP shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:

   a. Project Schedule management and audits;
   b. Inspection, testing and monitoring;
   c. Materials identification and traceability;
   d. Quality assessment and procurement of the Design-Build Team Members responsible for construction;
   e. If approved by Owner, External Quality Audits of the Design-Build Team Members responsible for construction;
   f. Internal Quality Audits;
   g. Control of nonconforming product;
   h. Corrective Actions, Preventive Actions and opportunities for improvement;
   i. Document control management;
   j. Control of Construction Documents drawing mark ups to reflect the as-built condition including capture of the reasons for any changes from the issued for construction documents and any necessary authorizations; and
   k. Control of Quality Records.

4. The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
3.12 CONTRACT CLOSEOUT PLAN
A. With the GMP Proposal, Design Builder shall provide a Contract Closeout Plan that integrates all aspects of project closeout proactively over the life of the project. The Contract Closeout Plan will be a comprehensive outline of the process to verify that the requirements of the Work are satisfactorily completed and to manage the commissioning and closeout of the Project. The Contract Closeout Plan is a living document that will grow and expand as the design and construction progress. The Contract Closeout Plan should include, but not be limited to mechanisms and procedures for:
1. A list of all closeout provisions included in subcontract procurement documents;
2. A list of specific requirements for achieving Substantial and Final Completion;
3. An outline of proposed phased completions and early subcontract closeouts;
4. The system by which Design-Builder will determine and achieve commissioning and testing requirements;
5. A list of all Warranties and Warranty requirements;
6. A list of all requirements by any Utilities for acceptance and completion;
7. A check list of all training required at the conclusion of the Project;
8. A check list of all O&M Documentation that will be provided at the conclusion of the Project;
9. A process for developing and transferring Record Documents;
10. A process for managing audits and cost reconciliations of the Cost of the Work and all other costs submitted by Design-Builder;
11. Coordination with the Permitting Strategy Plan;
12. A plan for finalizing all requirements and documentation required for completion of the Project.

3.13 DIFFERING SITE CONDITIONS REPORT
A. With the GMP Proposal, Design Builder shall provide a report of all Differing Site Conditions as defined in Section 4.2 of the General Conditions of the Contract that are discovered during Phase 1.
B. The Differing Site Conditions Report shall include the following information for each of the identified Differing Site Conditions identified in the Report.
1. The location of the Differing Site Condition;
2. A description of the Differing Site Condition that explains why it qualifies as a Differing Site Condition pursuant to Section 4.2 of the General Conditions;
3. The date the Differing Site Condition was discovered;
4. The impact of the Differing Site Condition on the Owner’s Project Criteria, the Basis of Design Documents, and/or any Commercial Term, as applicable.

PART 4 PHASE 2 SCOPE OF SERVICES
4.01 Unless the parties agree otherwise in writing, this Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 2.
4.02 PHASE 2 SCOPE
A. Design Builder shall complete the design and construction services as set forth in the GMP Amendment and any Early GMP Amendments.
B. Design Builder shall provide the Submittals set forth in this Attachment during the course of Phase 2. Submittals shall be provided in a format acceptable to the
Owner.

4.03 COMPLETION OF DESIGN
A. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.
B. The Owner will review and comment on the Construction Documents and other Design Submissions in a timely fashion.
C. Design Builder shall submit a written response to the Owner’s design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.

4.04 SCHEDULE OF VALUES AND COST MODEL
A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner’s financial management strategy. The Owner relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.
B. On a monthly basis, Design Builder will continue to update estimates and forecasts in the format required above and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis.
C. The Schedule of Values and Cost Model must be consistent with the GMP Amendment and any Early GMP Amendment and the format required above, unless the parties have agreed on a Change pursuant to Article 10 of the General Conditions.

4.05 SCHEDULE
A. The forecasting and development of the Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder’s ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder’s scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its property.
B. Design Builder shall provide the Owner with frequent updates to the Project Schedule on a monthly basis in the format required above for a scheduled completion within the GMP established in the GMP Amendment and any Early GMP Amendment.

4.06 CONSTRUCTION SERVICES
A. Design-Builder shall provide Construction Services and complete the construction of the Project pursuant to the Contract Documents.

4.07 COMMISSIONING, TESTING AND CLOSEOUT
A. Design Builder shall provide commissioning, testing, and closeout of the Project pursuant to the Contract Documents and the Closeout Plan.
B. The Commissioning, Testing and Closeout scope will include the following:
   1. Full commissioning for the Project, including but not limited to all testing and reports required to achieve the sustainability goals and certifications established in the GMP Proposal;
   2. HVAC testing and balancing;
3. Testing and verification that all Performance Requirements and other requirements in the Contract Documents that are set forth in the Basis of Design Documents and GMP Proposal are achieved.

4. Any special inspections required in the GMP Proposal are successfully conducted.

4.08 PHASE 2 SUBMITTALS

A. PERIODIC SUBMITTALS

1. On a monthly basis and with each Application for Payment:
   a. Updates to the Schedule pursuant to Section 3.02.
   b. Updated Schedule of Values pursuant to Section 3.05.

2. Pursuant to the Design Submission Schedule established by the parties:
   a. Updated Design Submissions pursuant to Section 3.04.
   b. Updated project budget information pursuant to Section 3.05.

B. MILESTONE SUBMITTALS. Design Builder shall provide the following Milestone Design Submissions pursuant to the Project Schedule:

1. 100% Construction Documents for review and approval by the Owner.

2. Design Builder shall not proceed with the project after submission of the 100% Construction Documents until it receives the Owner’s written approval.

C. Design Builder shall provide such other Submittals as set forth in the Contract Documents to successfully complete the Project.
EXHIBIT D
VALIDATION PERIOD LEVEL OF EFFORT
WESTERN WASHINGTON UNIVERSITY
PROGRESSIVE DESIGN-BUILD AGREEMENT
STUDENT DEVELOPMENT AND SUCCESS CENTER

TO BE PROVIDED BY THE DESIGN-BUILDER
EXHIBIT E
HOURLY RATES, UNIT PRICES AND ALLOWANCE ITEMS
WESTERN WASHINGTON UNIVERSITY
PROGRESSIVE DESIGN-BUILD AGREEMENT
STUDENT DEVELOPMENT AND SUCCESS CENTER

TO BE PROVIDED BY DESIGN-BUILDER
Unless the parties agree in writing otherwise, the Validation Amendment shall be in a substantially similar form as follow:

1. Pursuant to Section 6.6.1 of the Agreement, this Validation Amendment incorporates the following terms into the Agreement. To the extent any terms set forth in this Validation Amendment conflict with the Agreement, the terms in this Validation Amendment shall govern.

2. The Design-Builder has submitted to Owner the Validation Period Report pursuant to Section 2.02.E of Exhibit C.

3. The parties have collaboratively developed the terms of this Amendment pursuant to Section 6.6.1 of the Agreement.

4. The Parties agree to enter into this Validation Amendment to continue Phase 1 of the Project pursuant to Section 6.6.1 of the Agreement.

5. The parties hereby establish the following Commercial Terms:

<table>
<thead>
<tr>
<th>Phase 1 Not to Exceed Amount</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1 Completion Date</td>
<td></td>
</tr>
<tr>
<td>Target Budget</td>
<td>$</td>
</tr>
</tbody>
</table>

6. Other Commercial Terms are set forth in the following Exhibits to this Amendment, which are incorporated as if fully set forth herein:

   Exhibit A: Phase 1 Schedule of Values
   Exhibit B: Updated Phase 1 Schedule
   Exhibit C: Phase 1 Scope of Work
   Exhibit D: Target Schedule
   Exhibit E: Target Budget and Updated Cost Model
   Exhibit F: Preliminary Schedule of Values for Phase 2
   Exhibit G: Initial Project Scope
   Exhibit H: Design Submittal Packages and Design Submittal Schedule
   Exhibit I: BIM Model and Execution Plan
   Exhibit J: Project Safety and Job Hazard Analysis for Phase 1
   Exhibit K: Subcontract Plan
   Exhibit L: Project Phasing/Staging Analysis
   Exhibit M: Early GMP Plan
   Exhibit N: Underutilized Business Participation and Inclusion Plan
   Exhibit O: Quality Management Plan
EXHIBIT F
FORM OF VALIDATION AMENDMENT
WESTERN WASHINGTON UNIVERSITY
PROGRESSIVE DESIGN-BUILD AGREEMENT
STUDENT DEVELOPMENT AND SUCCESS CENTER

[List other agreed submittals here]

7. Pursuant to Section 10.2 of the Agreement, Design-Builder shall provide a Payment and Performance Bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the amount of the Phase 1 Not to Exceed Amount set forth above.

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

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date set forth below.

WESTERN WASHINGTON UNIVERSITY

By ________________________________

______________________________
Name of Design-Builder

Its ________________________________

By ________________________________

Its ________________________________

Date: ________________________________

Date: ________________________________

DESIGN-BUILDER'S ADDRESS AND PHONE:

__________________________________

__________________________________
Unless the parties agree in writing otherwise, the GMP Amendment shall be in a substantially similar form as follows:

1. Pursuant to Section 6.6.1 of the Agreement, this GMP Amendment incorporates the following terms into the Agreement. To the extent any terms set forth in this GMP Amendment conflict with the Agreement, the terms in this GMP Amendment shall govern.

2. The Design-Builder has submitted to Owner the GMP Proposal pursuant to Section 6.6.1.5 of the Agreement.

3. The Owner has reviewed the GMP Proposal, the parties have reconciled the Owner’s Comments pursuant to Section 6.6.1.6 of the Agreement, and the Owner has accepted the GMP Proposal as reconciled. The conformed, reconciled GMP Proposal is attached to this GMP Amendment at Exhibit A and is incorporated as if fully set forth herein.

4. The Owner has decided to exercise its option to enter into Phase 2 of the Agreement pursuant to Section 6.6.1.7 of the Agreement.

5. Consistent with the GMP Proposal, the parties hereby establish the following Commercial Terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guaranteed Maximum Price</td>
<td>$</td>
</tr>
<tr>
<td>Cost of the Work</td>
<td>$</td>
</tr>
<tr>
<td>Design-Builder’s Fee Percentage</td>
<td>$</td>
</tr>
<tr>
<td>Lump Sum General Conditions Costs</td>
<td>$</td>
</tr>
<tr>
<td>Cost of the Work Contingency (Section 6.4.4.1.a)</td>
<td>$</td>
</tr>
<tr>
<td>Design-Builder’s Contingency (Section 6.4.4.1.b)</td>
<td>$</td>
</tr>
<tr>
<td>Substantial Completion Date</td>
<td></td>
</tr>
<tr>
<td>Final Completion Date</td>
<td></td>
</tr>
</tbody>
</table>

6. Other Commercial Terms are set forth pursuant to the following Exhibits:

   a. Allowances as set forth in Section 6.4.1 of the Agreement are set forth and described in Exhibit B to the GMP Amendment.

   b. Not to Exceed Sums as set forth in Section 6.4.2 of the Agreement are set forth and described in Exhibit C to the GMP Amendment.

   c. Lump Sums as set forth in Section 6.4.3 of the Agreement (with the exception of the Design-Builder’s Lump Sum Fee set forth above) are set forth and described in Exhibit D to the GMP Amendment.

   d. Contingencies as set forth in Section 6.4.4 of the Agreement are set forth above and described in Exhibit E to the GMP Amendment.

   e. Design-Builder’s Lump Sum General Conditions Costs as set forth in Section 6.4.5 of the Agreement are set forth above and described in Exhibit F to the GMP Amendment.

   f. Unit Prices and Hourly Rates as set forth in Section 6.5.6 of the Agreement are described in Exhibit G to the GMP Amendment.
g. Liquidated Damages as provided in Section 5.4 – 5.6 of the Agreement are $_________________ per calendar day.

7. The GMP Proposal is supported by the following documents as required by Exhibit C to the Agreement and as set forth below. All Section numbers are in reference to Exhibit C.

   a. Schedule of Values depicting the Proposed GMP pursuant to Section 3.05.F.
   b. Basis of Design Documents pursuant to Section 3.04.F.
   c. Project Schedule pursuant to Section 3.02.D.
   d. Project Safety and Job Site Hazard Analysis pursuant to Section 3.07.B.
   e. Permitting Strategy Plan pursuant to Section 3.09.A
   f. Construction Quality Management Plan pursuant to 3.11.D.
   g. Contract Close-Out Plan pursuant to Section 3.12.
   h. Differing Site Conditions Report pursuant to Section 3.13.
   i. Any other Submittals determined by the Parties in the Validation Period Report.

Pursuant to Section 10.2 of the Agreement, Design-Builder shall provide a Payment and Performance Bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the amount of the Guaranteed Maximum Price set forth above.

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

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date set forth below.

WESTERN WASHINGTON UNIVERSITY

By ________________________________                             
Name of Design-Builder

Its ________________________________                             

Date: ________________________________

DESIGN-BUILDER

By ________________________________                             

Its ________________________________                             

Date: ________________________________

DESIGN-BUILDER’S ADDRESS AND PHONE:

_____________________________________________________________________

_____________________________________________________________________