

NOTE: THE CONTRACT IS BASED ON A MODIFIED VERSION OF THE DBIA #530 AND #535 DOCUMENTS. A TRACKED CHANGES VERSION OF THE DOCUMENTS WILL BE MADE AVAILABLE TO PROPOSERS UPON WRITTEN REQUEST.

Standard Form of
Agreement Between
Owner and Design-
Builder – Cost Plus
Fee with an Option
for a Guaranteed
Maximum Price

Document No. 530

Third Edition, 2022

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Washington, D.C.



TABLE OF CONTENTS

Article	Name	Page
Article 1	Scope of Work.....	2
Article 2	Contract Documents.....	2
Article 3	Interpretation and Intent	2
Article 4	Ownership of Work Product.....	3
Article 5	Contract Time.....	4
Article 6	Contract Price.....	<u>75</u>
Article 7	Procedure for Payment	<u>4419</u>
Article 8	Termination for Convenience	<u>4520</u>
Article 9	Representatives of the Parties	<u>4620</u>
Article 10	Bonds and Insurance	<u>4721</u>
Article 11	Other Provisions.....	<u>4721</u>



Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ 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, ~~amendments~~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~~ ~~The GMP Exhibit referenced in Section 6.6.1.1 herein or, if applicable, the GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein;~~

~~2.1.3~~—This Agreement, including all exhibits ~~(list, for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices or exhibit detailing offsite reimbursable personnel)~~ but excluding, if applicable, the GMP ~~Exhibit~~Amendment;

- | | | |
|--------------------|------------|--|
| 2.1.4 — | <u>.1</u> | <u>Exhibit A: Owner's Project Criteria</u> |
| | <u>.2</u> | <u>Exhibit B1: Insurance Exhibit – Design-Builder's Insurance Requirements</u> |
| | <u>.3</u> | <u>Exhibit B2: Payment Bond Form</u> |
| | <u>.4</u> | <u>Exhibit B3: Performance Bond Form</u> |
| | <u>.5</u> | <u>Exhibit C: Phase 1 and 2 Scope of Services</u> |
| | <u>.6</u> | <u>Exhibit D: Validation Period Level of Effort</u> |
| | <u>.7</u> | <u>Exhibit E: Hourly Rates, Unit Prices, and Allowance Items</u> |
| | <u>.8</u> | <u>Exhibit F: Contract Amendment Forms</u> |
| | <u>.9</u> | <u>Exhibit G: Change Order Forms</u> |
| | <u>.10</u> | <u>Exhibit H: Business Equity Enterprise Inclusion Form</u> |

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

~~2.1.5~~—~~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 ~~(and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof),~~ shall carefully review all the Contract Documents, including but not limited to the various documents comprising the Basis of Design Documents 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 ~~or, if applicable, prior to Owner's acceptance of the GMP Proposal.~~

3.2 ~~The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price.~~ **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 ~~if applicable, after Owner's acceptance~~ the parties' execution of the GMP Proposal 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. ~~(Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)~~

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: ~~(a) 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; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s), 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.

[At the parties’ option, the following may be used in lieu of Section 4.2.]

~~Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural, engineering and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on 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 furbish 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 ~~agrees~~shall not be required to pay Design-Builder ~~the additional sum of _____~~

Dollars (\$ _____) as 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 ~~five (5)~~ 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 shall be achieved no later than _____ (_____) calendar days after the Date of Commencement during Phase 1 and as part of the GMP Amendment ("Scheduled Substantial Completion Date").~~

~~*[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1 if the Project is subject to a Temporary Certificate of Occupancy.]*~~

~~_____ The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:~~

~~"Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."~~

5.2.2 ~~Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: (Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion.)~~ 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. 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 1.2.8 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. ~~Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner _____ Dollars (\$_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. (If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)~~ The parties have established liquidated damages for the failure to timely complete the Project as follows.

~~**[The parties may want to consider the following supplemental language within Section 5.4 if they want to assess liquidated damages. 1 Liquidated Damages for failing to meet Final Completion. In this case, the first sentence in Section 5.2.3 should be deleted and the language below should be checked and completed.]**~~

~~Delay. Design-Builder understands agrees that if Final Substantial Completion is not achieved within _____ days of the attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within _____ (_____) days of Substantial Completion, Design-Builder shall pay to Owner _____ Dollars (\$_____), _____ dollars (\$_____) per day as liquidated damages for each calendar day that Final Design-Builder fails to achieve Substantial Completion is delayed beyond the above-referenced number of days.~~

~~**[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following.]**~~

~~**5.4** Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Builder's liability for actual damages for delays exceed _____ Dollars (\$_____).~~

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.

~~**[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]**~~

~~_____ Owner and Design Builder agree that the maximum aggregate liability Design Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be _____ Dollars (\$_____).~~

5.6 Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (\$_____) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly.)*

[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]

_____ Owner and Design Builder agree that the maximum aggregate amount that Design Builder shall receive as the early Completion Bonus is _____ Dollars (\$_____).

5.7 *[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]*

_____ In addition to Design Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design Builder shall only be entitled to an increase in the Contract Price if said events exceed _____ (_____) cumulative days. Said additional compensation shall be limited to:

[Check one box only.]

_____ Dollars (\$_____) a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

_____ the direct costs and expenses Design Builder can demonstrate it has reasonably and actually incurred as a result of such event.

5.8 ~~Owner's Review Time.~~ 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.

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

5.86.2 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.

~~6.1.16.1.1~~ 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") ~~equal as set forth herein.~~

~~.1~~ Subject to ~~Design-Builder's Fee (as defined in the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), 6 of the Agreement. Design Builder's compensation shall be subject to any GMP established in Section 6.6 hereof~~ the Validation NTE, the Phase 1 NTE and any adjustments made in accordance with the General Conditions of Contract, 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.

~~6.1.2~~ For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited preliminary services, such as a lump sum or cost plus arrangement for preliminary design, programming or services necessary to enable Design-Builder to furnish Owner with a GMP before execution of this Agreement.)*

~~.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:

[Choose one of the following.]

_____ Dollars (\$ _____), as adjusted in accordance with Section 6.2.2 below.

or

_____ percent (_____ %) of the Cost of the Work, as adjusted in accordance with ~~Section 6.2.2 below~~ the Contract Documents.

~~6.2.2—1.1~~ The Design-Builder's Fee ~~will~~ Percentage shall include the following items, which shall not be ~~adjusted~~ charged as follows for any changes in a Cost of the Work:-

~~6.2.2.1~~ For ~~additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____%) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth in Exhibit _____ hereto.~~

~~6.2.2.2~~ For ~~deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:~~

~~**[Check one box only.]**~~

~~No additional reduction to account for~~

~~.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 ~~or any other markup.~~

~~or~~

~~An amount equal to the sum of: (a) _____ percent (_____%) Percentage shall not be applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth in Exhibit _____ hereto applied to the direct costs of the net reduction. 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 actually ~~necessarily~~ incurred by Design-Builder in the proper performance of the Work. ~~The~~ 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. ~~The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a _____~~

percent (_____ %) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.3.4 ~~Costs~~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.

[In lieu of the language in Section 6.3.4 above, Design-Builder and Owner may want to include the following language.]

A multiplier of _____ percent (_____ %) shall be applied to the wages and salaries of the 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 incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. 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.

~~6.3.8~~**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.

~~6.3.9~~**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.

~~6.3.10~~**9** Costs of removal of debris and waste from the Site.

~~6.3.11~~**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.

~~6.3.12~~ 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.

~~6.3.13~~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.

6.3.4413 All fuel and utility costs incurred in the performance of the Work.

6.3.4514 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.

~~6.3.16~~ 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.

~~6.3.17~~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.

6.3.4816 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.

~~6.3.1917~~ Deposits which are lost, except to the extent caused by Design-Builder's negligence.

~~6.3.2018~~ Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

~~6.3.2419~~ Accounting and data processing costs related to the Work.

~~6.3.2220~~ Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

~~f and not included in the Design-Builder and Owner 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 want agree to consider adding the following Section 6.3.23 to address the payment of warranty work.]~~

~~**6.3.23** Owner and methods of pricing Design-Builder agree that an escrow account in the amount of _____ Dollars (\$ _____) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP. Builder's compensation.~~

6.4.1 Allowance Items and Allowance Values.

~~6.4.1~~ Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the ~~GMP~~ Exhibit ~~E~~ or the ~~GMP Proposal~~ Amendment and are included within ~~any established NTE and the GMP, as applicable.~~

~~6.4.2~~ Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

~~6.4.3~~ No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

~~6.4.4~~ The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance ~~directly~~ associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and ~~general conditions costs, overhead and fee,~~ 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.

~~*[In the alternative, the parties may want to delete Section 6.4.4 and add the following provision.]*~~

~~In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is _____ percent (_____ %) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.2.~~

6.4.5 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 6.4.4.1.4; 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.

~~6.5 Non Reimbursable Costs.~~

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

~~6.5.1.1 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.~~

~~6.5.1.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.~~

6.5.2 Not To Exceed Amounts

~~1.3 The cost of Design-Builder's capital used in the performance~~ 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.

~~6.5.1.4 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.~~

~~*[The parties shall comply with the following Section 6.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 6.6 shall be deemed inapplicable and compensation to .2*~~ 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.

~~.3~~ Design-Builder shall ~~be based on~~ not request reimbursement for costs that are within the NTE Scope unless those ~~fees and~~ costs are identified in the ~~balance of this Article 6.]~~

~~6.6 The Guaranteed Maximum Price ("GMP").~~

~~6.6.1 GMP Established Upon Execution of this Agreement.~~

~~6.6.1.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$_____). Documents used~~ Payment Application as a basis for the GMP

shall be identified in an exhibit to this Agreement (“GMP Exhibit”). Design-Builder does not guarantee any specific line item provided subject to the NTE Amount. Except as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all allowed in Section 6.4.4.1.b, costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the GMP Exhibit will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 6.6.2.1 below, to ensure that the basis for the GMP is well-understood.)* that are within the NTE Scope that are in excess of the NTE Amount shall be the sole responsibility of the Design-Builder.

~~In lieu of 4~~ NTE Amounts and NTE Scopes may only be modified by Change Order pursuant to the General Conditions.

6.64.3 Lump Sums

~~1.1,~~ The Owner and Design-Builder may ~~want to~~ 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 ~~language,~~ information:

Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$ _____). Documents used as basis for the GMP shall be identified as an exhibit to this Agreement (“GMP Exhibit”). Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of _____ Dollars (\$ _____), and as set forth in the GMP Exhibit (“General Conditions Cap”). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said General Conditions Cap and the GMP may be adjusted in accordance with the Contract Documents.

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 with the Lump Sum Scope.
or

~~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

6.64.4 Contingencies

~~1.2~~ The GMP includes a Contingency in the amount of _____ Dollars (\$ _____) which is 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. By way of example, and not as a limitation, such (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 include: (be reimbursed under a) trade 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; ~~(b) overtime~~

(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; ~~(c) escalation of materials; (d) correction of~~

(ii) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work, design errors or omissions, ~~however (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused; ~~(e) 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; ~~or (f) those events under 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 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is 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 ~~the~~ an NTE or GMP under the Contract Documents.

.5 Design-Builder shall provide Owner notice of all anticipated charges against the ~~Contingency, Contingencies~~ and shall provide Owner as part of the monthly status report required by ~~Section 2.1.2 of~~ 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 ~~the~~ Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.6.2—4.5 Lump Sum General Conditions Costs

.1 If the Parties enter into the GMP ~~Established after Execution of~~ 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 Manger

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
- xix. 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.

2.1 GMP Proposal 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 _____ dollars (\$_____). 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.** ~~If requested by Owner, Design-Builder shall submit a~~ 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 following deliverables set forth in Exhibit C, unless the parties mutually agree otherwise. The GMP Proposal shall include all Work necessary to complete the Project.

~~6.6.2.1.1~~ A proposed GMP, which shall be the sum a. **Submission of:**

i. **the GMP Proposal.** Submission of the GMP Proposal constitutes Design-Builder's ~~Fee as~~ representation and agreement that it has adequately investigated the site and the project parameters, the Project is adequately defined in Section 6.2.1 hereof;

ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof; and

iii. If applicable, any prices established under Section 6.1.2 hereof.

~~6.6.2.1.2~~ — ~~The, the Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached are sufficiently defined to the GMP Proposal;~~

~~6.6.2.1.3~~ — ~~A list of provide an accurate GMP and Project Schedule for the Project, and subject to the assumptions and clarifications made by in the GMP Proposal, the Project is sufficiently clear and understandable for the Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design to perform the Work in accordance with the Contract Documents;~~

~~6.6.2.1.4~~ — ~~The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has for an amount that will not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;~~

~~6.6.2.1.5~~ — ~~If applicable, a list of Allowance Items, Allowance Values and a statement of their basis;~~

~~6.6.2.1.6~~ — ~~If applicable, a schedule of alternate prices;~~

~~6.6.2.1.7~~ — ~~If applicable, a schedule of unit prices;~~

~~6.6.2.1.8~~ — ~~If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be exceed the basis for an increase in Original GMP of the GMP and/or Contract Time(s); and~~

~~6.6.2.1.9~~ — ~~The time limit for acceptance of Project, except as amended pursuant to the GMP Proposal. Contract Documents.~~

6.6.2.2b. 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.

6.6.2.3c. Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP and its basis Proposal shall be set forth in an amendment to this Agreement. the GMP Amendment. At the Owner's option, the GMP for the Project may be converted into a Lump Sum.

6.6.2.4d. Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts 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:

~~6.6.2.4.1.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 6.6.2.31.4.c above;

~~6.6.2.4.2~~ — Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

~~6.6.2.4.3ii.~~ Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; ~~provided, however, in this event 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 not be entitled compensated pursuant to the payment provided 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 8.2 hereof. 6.3;~~

~~If Owner fails b. Design-Builder's Fee Percentage set forth in Section 6.2.1;~~

~~c. Any additional Lump Sum amounts established pursuant to exercise any of 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 above options, 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 have the right to (a) continue with the 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 as if Owner had elected to proceed which exceed the GMP for the Project, as adjusted in accordance with Item 6.6.2.4.2 above, the Contract Documents. Execution of a GMP Amendment constitutes Design Builder's representation and be paid by Owner accordingly, unless 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 until Owner notifies it in writing to stop understandable for the Design Builder to perform the Work, or (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions 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 Contract, provided, however, that in the Design Builder, and Design Builder hereby assumes liability for such event Design Builder shall not be entitled to the payment provided for in Section 8.2 hereof. 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.

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices 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 be shared as follows: go 100% to the Owner.

[Choose one of the following.]

_____ percent (_____%)² The Parties may establish Incentive payments to the Design-Builder and _____ percent (_____%) to Owner.

or

The first _____ Dollars (\$ _____) of Savings shall be provided to (choose either Design-Builder or Owner) _____, with the balance of Savings, if any, shared _____ percent (_____%) to Design-Builder and _____ percent (_____%) to Owner.

6.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the GMP Amendment. The Owner anticipates establishing an Incentive program to incorporate Deferred Scope into the understanding that to the extent Design-

~~Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly Project.~~

6.7 — Performance Incentives

~~6.7.1 — Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.~~

~~(The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.)~~

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 ten (10) thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.~~

~~7.1.3 — If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.~~

~~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 — Owner will retain _____ percent (_____%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.~~

~~***{Design-Builder and Owner may want to consider substituting the following retainage provision.}***~~

~~— Owner will retain _____ percent (_____%) of the cost of the Work, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.~~

~~**[For public projects, Design-Builder and Owner may want to consider substituting the following retainage provision.]**~~

Owner will retain _____ percent (_____ %) from Design-Builder's Applications for Payment pursuant to applicable state law.

~~**[Design-Builder and Owner may want to consider substituting the following retainage provision.]**~~

Because Owner has obtained a performance bond and payment bond pursuant to Article 10 below, Owner will not retain retainage from Design-Builder on this Project.

~~**7.2.2**~~ Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

~~**[If Owner and Design-Builder have established a warranty reserve pursuant to Section 6.3.23 above, the following provision should be included.]**~~

If a warranty reserve has been established pursuant to Section 6.3.23 above, Owner shall at the time of Substantial Completion retain the agreed upon amounts and establish an escrow account as contemplated by Section 6.3.23 above.

~~**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 6.78 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment ~~(less any amount the parties may have agreed to set aside for warranty work)~~ within ten (10) days after Owner's receipt of the 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 6.78.2 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 _____ percent (_____ %) per month until paid. ~~interest.~~

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement 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 ~~three (3)~~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 ~~three (3)~~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, ~~and the parties have agreed to a payment to Design-Builder in the case of such termination of convenience,~~ 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 ~~*[Choose one of the following.]*~~

~~The fair and reasonable sums for overhead and profit on the sum of items set forth in Section 11.6.1 of the General Conditions~~

or

~~Overhead and profit in the amount of _____ percent (____%)The Design-Builder's Fee Percentage on the sum of items set forth in Section 11.6.1 of the General Conditions~~

In addition to the amounts set forth in Section

~~1.2~~ ~~8.1~~ above and Section 11.6.1 of the General Conditions, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:

~~8.2.1~~ If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

~~8.2.2~~ If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

~~4.3~~ _____ 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.

~~*{The following Article 9 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.}*~~

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. ~~Design-Builder shall provide the following performance bond and labor and material payment bond or 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.~~

~~Performance Bond.~~

~~*[Check one box only. If no box is checked, then no bond is required.]*~~

~~Required Not Required~~

~~Payment Bond.~~

~~*[Check one box only. If no box is checked, then no bond is required.]*~~

~~Required Not Required~~

~~Other Performance Security.~~

~~*[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]*~~

~~Required Not Required~~

Article 11

Other Provisions

11.1 **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 prefiled 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 prefiled statement(s) of intent, as approved. Copied of the approved intent statements(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.7 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.

[Section 2.9.1 of the General Conditions contains an option for the parties to establish a limited time frame for Design-Builder's warranty. If the parties agree to such a limited time frame, the parties may insert it below.]

The parties have agreed to limit the time frame that Owner can make a claim pursuant to Section 2.9.1 of the General Conditions. Owner must make all claims pursuant to Section 2.9.1 of the General Conditions within _____ years of the date of Final Completion of the Project.

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:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

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Contact us



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

(202) 682-0110
dbia@dbia.org