

**NORTH MASON REGIONAL FIRE AUTHORITY
REQUEST FOR QUALIFICATIONS – HEADQUARTERS FIRE STATION
SUBMITTALS DUE: Wednesday, April 29, 2020 @3:00 p.m. EXACTLY, Pacific Local
Time**

Public notice is hereby given the North Mason Regional Fire Authority has issued the above request for qualifications (RFQ) for Design-Build Project Teams interested in providing Progressive Design-Build services for the North Mason Regional Fire Authority's HQ Fire Station under the design-build delivery method. Full notice and complete details of the RFQ are available to download at www.northmasonrfa.com or by contracting Charles Westover, Hill International, at (425)214-0311 or by email at charleswestover@hillintl.com. In the event it becomes necessary to revise any part of this RFQ, addenda will be posted on the Authority's website no later than 04/24/20.

The North Mason Regional Fire Authority will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.

Date of Publication: **Apr 02, 2020**

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1. INTRODUCTION

1.1. BACKGROUND AND PURPOSE

- 1.1.1. The North Mason Regional Fire Authority (hereinafter “Authority”) spans 132 square miles, encompassing the majority of the northeast portion of Mason County and serves approximately 22,000 residents in the communities of Belfair, Dewatto, Collins Lake, Trails End Lake, Tahuya, Maggie Lake and both the north and south shores of Hood Canal. The Authority currently provides around the clock firefighter staffing at Collins Lake Fire Station 27 and Belfair Fire Station 21, as well as daytime weekday staffing at Tahuya Station 81. There are an additional six volunteer fire stations located throughout the remainder of the Authority.
- 1.1.2. The Authority is initiating this Request for Qualifications (RFQ) to solicit Statements of Qualifications (SOQs) from Design-Build Project Teams interested in providing Progressive Design-Build services pursuant to (RCW 39.10.300-.320) (“DB Delivery Method or DB”) for the proposed HQ Fire Station project.
- 1.1.3. The Headquarters Fire Station Construction Project will take place on two parcels of land that total 3.5 acres, adjacent to the current headquarters fire station located at 460 Old Belfair Highway. The proposed project will include site improvements, utilities, storm water, building construction, landscape and parking. The facility itself is anticipated to be 20,212 square feet in size and accommodate both daytime and overnight staff, requiring adequate office space and living space including kitchen/dining area, fitness room, day room and sleeping quarters. An area will also be designated for indoor classes and training. An attached apparatus bay will house a variety of vehicles including fire engines, command vehicles and ambulances.
- 1.1.4. The existing headquarters fire station, originally built in 1971, served an area of 36 square miles, with the all-volunteer staff responding to 200 emergency calls each year. The 49 year old station no longer meets community needs, with the service area having grown to cover 132 square miles and 2,600 emergency calls answered annually. The new station project is a critical component of meeting the needs of North Mason citizens by providing a larger, upgraded and more efficient facility for emergency operations, training and community resources. The proposed project will support the Authority’s operations for the next 50 years and beyond.
- 1.1.5. The project has been approved by the North Mason Fire Authority Board of Commissioners and is fully funded.
- 1.1.6. The project Design-Build Budget. The established Guaranteed Maximum Price (GMP) for this Project is \$8,800,000.
- 1.1.7. Schedule. Anticipated Notice to Proceed: July 2020, Owner Occupancy: January 2022, Closeout Phase: January 2022 – March 2022.

- 1.1.8. Procurement Approach. The Authority recently received approval from the Capital Project Advisory Review Board Project Committee to use the progressive design-build (DB) delivery method for this project.
- 1.1.9. The Authority will select up to three firms to enter the Request for Proposals (“RFP”) phase. The Authority’s intent is to limit the Design-Build Team’s efforts required during the RFP phase (including submittal requirements) and select the most qualified team based on criteria described in detail in this RFQ and the subsequently issued RFP.
- 1.1.10. Existing Information. The Authority engaged TCA Architects to perform a basic programming study for the HQ Fire Station to verify basic space and budgetary needs for use in securing project funds. The resulting documents were created solely for the purposes of budgeting and do not reflect the Authority’s intent for the project approach. The Authority fully expects the DB team to engage with the Authority and key stakeholders to validate program needs and to develop the project design. These documents will be provided to finalists selected to enter the RFP phase. The Authority has made a determination that the work performed by TCA is preliminary in nature and will not give them an advantage over other teams. Therefore, the Authority will allow TCA to compete on this project.
- 1.1.11. The Project Goals will be used to evaluate the proposers and finalists, and proposers and finalists should focus their submittals on the Project Goals identified below. Evaluators will score based on their assessment as to the proposer’s and finalists’ strengths and weaknesses regarding whether proposers and finalists are more or less likely to exceed the Project Goals.
 - A. **The Efficient and Effective Design.** The Design-Build Team will provide designs that maximize the square footage available to meet the needs of the North Mason Regional Fire Authority, so the station can effectively serve the community, including:
 - a. Include the functions and amenities in an efficient workspace including administration spaces within the limited footprint of the building and incorporate as many additional amenities as the budget allows;
 - b. Provide comfortable spaces for staff that are both livable, provide health benefits such as exercise facilities, and incorporate best practices from the “Healthy In/Healthy Out” guide produced by the Washington State Council of Fire Fighters <https://www.wscff.org/health-wellness/healthy-in-healthy-out/>;
 - c. Create functional and comfortable public spaces and buildings that fit into and enhance the adjacent public safety building as well as the successful future development of the surrounding community;
 - d. Design for easy long and short term maintenance and upkeep, taking into account the life cycle of the building;
 - e. Siting the building in an optimal location while minimizing the need for extensive permitting; and
 - f. Creating a design that takes into account the anticipated future use of the building.

- B. **Exceed Schedule Expectations.** The Design-Builder will develop a design and construction phasing plan and schedule that will achieve completion as soon as practicable within the budget.
- C. **Efficient Pricing.** The Design-Build Team will provide transparent pricing that takes advantage of the efficiency of progressive design-build, including the following:
 - a. Fast track design and construction to maximize the Owner's budget and minimize the schedule; and
 - b. Utilize materials and equipment that are easily maintained from reliable suppliers with excellent warranty service.
- D. **High Functioning Team.** The Design-Build Team will develop and promote a high functioning, collaborative relationship between itself, the Owner, and the Stakeholders to exceed the Project Goals within the Owner's budget and schedule and demonstrate exemplary project management.
- E. **Design for Safety.** The Design-Build Team will create designs that enhance the safety of the project(s) in both construction and in the operation of the facility. The design and construction process will reduce re-work and interference with operations with a goal of no recordable incidents.

1.2. MINIMUM QUALIFICATIONS

The Design Builder must be licensed to do business in the State of Washington.

1.3. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFQ and RFP process is tentatively scheduled to begin on or about July 1, 2020 and end in approximately late March, 2022.

1.4. DEFINITIONS

- 1.4.1. Definitions for the purposes of this RFQ include:
- 1.4.2. Authority – The Authority is the North Mason Regional Fire Authority, a Washington State entity that is issuing this RFQ.
- 1.4.3. Design-Build Team – Individual/s or company/team whose Proposal has been accepted by the Authority and is awarded a fully executed, written contract.
- 1.4.4. Design-Build Team Member – A company who is part of the Design-Build Team.
- 1.4.5. Key Team Member – An individual who works for a Design-Build Team Member.

- 1.4.6. Projects of Similar Scope and Complexity - The definition of “Projects of Similar Scope and Complexity” are projects that had completion dates within the past 6 years and that have many or all of the following characteristics:
- A. Projects of a similar size that include design and construction of fire stations;
 - B. Projects where the design and construction were fast tracked and achieved schedule efficiencies;
 - C. Projects that utilize an integrated delivery method (GC/CM, DB, private Integrated Project Delivery, etc.) that require strong coordination and integration of the design and construction team and early involvement of the contractor during design;
 - D. Projects where the Design-Builder was selected prior to the establishment of the final scope, price, and schedule and where the Design-Builder collaborated with the Owner to develop the final scope, price, and schedule; and
 - E. Projects where the design-builder evaluated the site and assisted the owner in site selection;
 - F. Projects requiring excellent communications skills and where Design-Build Team Members assisted the Owner with community outreach;
 - G. Projects where the design maximized function within a limited space.
 - H. Projects that achieved the owner’s sustainability goals.
- 1.4.7. Proposal – A formal offer submitted in response to a solicitation.
- 1.4.8. Proposer -- Individual or company submitting a Proposal in order to attain a contract with the Authority.
- 1.4.9. Finalist – Proposer selected to proceed to the RFP phase.
- 1.4.10. Request for Qualifications (RFQ) – Formal procurement document in which a service or need is identified. The purpose of an RFQ is to solicit the Design Build community to submit their qualifications and, experience for evaluation and short list Design Builders to proceed to the RFP phase.
- 1.4.11. Request for Proposals (RFP) – Formal procurement document in which a service or need is identified. The purpose of an RFP is to solicit the shortlisted Design Builders to submit their management approach, and pricing component for evaluation and selection of the highest scored proposer.

2. PROJECT DELIVERY AND SELECTION PROCESS

2.1. PROJECT DELIVERY

2.1.1. This Project has been approved by the Washington State Project Review Committee for use of the "Progressive Design-Build" delivery system pursuant to RCW 39.10.280. Use of the DB delivery method provides an economic benefit by providing cost-effective design and construction. The Authority is also using the DB delivery method in order to contract with a single entity for both design and construction. The design and construction services shall be set forth in a Design-Build Agreement, the proposed form of which is provided with this RFQ.

2.2. SELECTION PROCESS

2.2.1. RFQ Phase. Proposers shall submit a Statement of Qualifications "SOQ" pursuant to this RFQ and any addenda. The Authority shall initially determine whether DB Teams are "Responsive and Responsible" with respect to the submission of the SOQ.

2.2.2. Short List. The Authority will establish a selection committee and evaluate each Project Team responding to this RFQ solely upon the factors, weighting and process identified in this RFQ and any addenda thereto. Based on the selection committee's findings, the Authority intends to short list no more than three responsive and responsible finalists to submit proposals.

2.2.3. The Authority will notify all proposers of the Finalists selected to move to the next phase of the selection process. The procurement process will not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the written request of a Proposer not selected as a Finalist, the Authority will provide the requesting Proposer with a scoring summary of the evaluation factors for its SOQ.

2.2.4. RFP Phase. The Authority will provide the short-listed firms a Request for Proposal ("RFP"), including addenda, that will contain a description of the Project generally as described in this RFQ and any addenda, including the Authority's criteria requirements with a detailed description of the project including programmatic, performance, and technical requirements; functional and operational elements; and the established GMP for the design-build portion of the project and matters listed in RCW 39.10.330(3).

2.2.5. Proposal. The short-listed Project Teams will submit a proposal responsive to the RFP and any addenda, which is anticipated to require, at a minimum, a brief narrative of the technical approach, a description of the DB Team's management approach to meet the time and budget requirements and other factors including, but not limited to GMP Development and Construction Management, Proposed Project Team members. Finalists will also be required to submit a Price Proposal for general conditions and fees.

- 2.2.6. Proprietary Interactive Meetings ("Interactive Meetings"). Prior to submitting a response to the RFP, the short-listed Project Teams will be invited to meet individually with the Authority. The Authority is anticipating holding one Interactive Meeting with each finalist. The purpose of the Interactive Meeting is to permit the Finalists to ask the Authority questions to help prepare responses to the RFP and for the Selection Committee to meet and become familiar with key members of the proposed Project Team and their design ideas. The Selection Committee will also ask the Finalists questions. The Finalists should treat the Interactive Meeting as the first project meeting and should come prepared to address challenges specific to the Project and how the Project Team will address those challenges. Only Key Team Members who are expected to perform substantial work on the Project should attend the Interactive Meeting, and the number of Key Team Members in attendance is limited to seven. The Authority will notify each short-listed Project Team of the specific time for the Interactive Meeting. In the event the Washington Stay Home/Stay Healthy directive remains in effect at the time of the Interactive Meetings, they will be conducted via teleconference.
- 2.2.7. Interview. After submitting their Proposals, the Finalists will participate in an interview with the Authority. The purpose of the interview will be for the Project Teams to communicate their understanding of the Project approach and their Project Team's ability to meet the Authority's stated objectives for the Project. The Project Team should be prepared to discuss with specificity the Project Team's capacity to conduct this work in compliance with the Authority's timetable, budget, and expectations. In addition, Project Teams will be provided an opportunity to present previous projects and explain how the Key Team Members achieved project excellence in budget, management and design. Only Key Team Members who are expected to perform substantial work on the Project should attend the Interview, and the number of Key Team Members in attendance is limited to seven. The Authority will notify each short-listed Project Team of the specific time for the interviews. In the event the Washington Stay Home/Stay Healthy directive remains in effect at the time of the interviews, they will be conducted via teleconference.
- 2.2.8. Selection. The selection committee will evaluate the Proposals based solely on the factors, weighting, and process identified in the RFQ, the RFP and in any addenda. The Authority will then initiate negotiations with the firm submitting the highest scored proposal. If the Authority is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated, and the Authority may proceed to negotiate with the next highest scored firm. The Authority shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated. The Authority shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification.
- 2.2.9. Honorarium. Responsible Finalists who submit responsive Proposals and who are not selected will each receive a \$5,000 stipend 60 days after the later of 1) highest-ranking Project Team is selected and confirmed at a meeting of the North Mason

Regional Fire Authority Board of Commissioners and 2) successful negotiation of the design-build contract.

2.2.10. Expenses. The Authority accepts no liability for the costs and expenses incurred by firms in responding to this Procurement. Each Proposer that enters into the Procurement process shall prepare the required materials, the SOQ and the Proposal at its own expense and with the express understanding that it cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the process even in the event the Authority cancels this Project or rejects all Proposals. Proposers and Finalists will pay their own expenses for travel and participation in the Interviews.

3. GENERAL INFORMATION

3.1. RFQ COORDINATOR

3.1.1. The RFQ Coordinator is the sole point of contact for the Authority for this procurement. All communication between the Proposer and the Authority upon receipt of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Charles Westover
Phone Number	(425) 785-6246
E-Mail Address	charleswestover@hillintl.com

3.1.2. Any other communication will be considered unofficial and non-binding on the Authority. Proposers are to rely on written statements issued by the RFQ Coordinator on behalf of the North Mason Regional Fire Authority. Communication directed to parties other than the RFQ Coordinator may result in disqualification of the Proposer.

3.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

ITEM	DATE	TIME	LOCATION
DB RFQ Advertisement	04/02/2020		
Last Date to Submit RFQ Questions	04/20/2020		
RFQ Last Addendum Issued	04/24/2020		
Statement of Qualifications Due	04/29/2020	3:00 PM	
Short-List Announced	05/06/2020		
RFP Issued	05/12/2020		
Site Walk	05/15/2020	TBD	*Belfair, WA
Proprietary Interactive Meetings	05/18/2020	TBD	**460 NE Old Belfair Hwy Belfair, WA
Last Day for Questions	05/20/2020		
RFP Last Addendum Issued	05/22/2020		
Proposals Due	05/26/2020	3:00 PM	
Interviews	Week of 06/08/2020	TBD	**460 NE Old Belfair Hwy Belfair, WA
Selection of Design-Build Project Team	06/22/2020		
Anticipate NTP	07/01/2020		
***Substantial Completion	Jan. 2022		
***Final Completion	Mar. 2022		

* Site walk location will be provided in the RFP. Standard approach may be modified dependent upon COVID-19 status.

** Proprietary Interactive Meetings and Interviews may be held via teleconference, dependent upon status of WA State Stay Home/Stay Healthy directive.

The Authority reserves the right to revise the above schedule.

3.3. SUBMISSION OF STATEMENTS OF QUALIFICATIONS (SOQ)

3.3.1. Preparation of Submission

- A. Submittals shall be submitted electronically by email to the RFQ Coordinator in a searchable PDF format. Submittals delivered by hand, fax, telephone or any postal carrier will not be accepted. Submittals shall be submitted no later than Wednesday, April 29, 2020 at 3:00 pm to charleswestover@hillintl.com.
- B. Electronic submittals shall be limited to the documents specified in the RFQ document and shall not include additional brochures, booklets or other sales material that are not specifically requested in the RFQ. Electronic submittals shall

clearly indicate in the title of the email the title of the Project, the name of the Proposer, and the date of the Proposal.

- C. It is the Responder's responsibility to make sure that submissions are received in a timely fashion and to ensure attached files are not corrupt or damaged. If the RFQ Coordinator is unable to open an attachment because it is damaged, corrupt, infected, etc., the Authority may disqualify the Responder's submission.

3.4. PROPRIETARY INFORMATION / PUBLIC DISCLOSURE

- 3.4.1. Materials submitted in response to this competitive procurement shall become the property of the Authority and will not be returned.
- 3.4.2. All received submittals, including but not limited to SOQs, Proposals, and the required attachments shall remain confidential until the award of contract recommendation has been approved by the North Mason Regional Fire Authority Board of Commissioners. Thereafter, the SOQs/Proposals shall be deemed public records as defined in RCW 42.56, "Public Records."
- 3.4.3. Any information in the SOQ that the Proposer desires to claim as proprietary and exempt from disclosure under the provisions of state law shall be clearly designated. Each page claimed to be exempt from disclosure must be clearly identified with the word "Confidential" printed on it. Marking the entire SOQ exempt from disclosure will not be honored.
- 3.4.4. The Authority will consider a Proposer's request for exemption from disclosure; however, the Authority will make a decision predicated upon state law and regulations. If any information is marked as proprietary in the SOQ, it will not be made available until the affected Proposer has been given an opportunity to seek a court injunction against the requested disclosure.
- 3.4.5. All requests for information should be directed to the RFQ Coordinator.

3.5. REVISIONS TO THE RFQ

- 3.5.1. In the event it becomes necessary to revise any part of this RFQ, addenda will be posted on the North Mason Regional Fire Authority website at www.northmasonrfa.com no later than 04/24/20.
- 3.5.2. The Authority also reserves the right to cancel or to reissue the RFQ in whole or in part, prior to final award of a contract.

3.6. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

- 3.6.1. The Authority encourages participation in all of its contracts by entities certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). Proposers may contact OMWBE at www.OMWBE.wa.gov to obtain information on certified entities.

3.7. ACCEPTANCE PERIOD

3.7.1. Statement of Qualifications shall remain in effect for ninety (90) days for acceptance by the Authority from the due date for receipt of SOQs.

3.8. RESPONSIVENESS

3.8.1. The Proposer is specifically notified that failure to comply with any part of the RFQ may result in rejection of the SOQ as non-responsive. The Authority also reserves the right, however, at its sole discretion to waive minor administrative irregularities. The Authority reserves the right to contact a Proposer for clarification of its SOQ.

3.9. REJECTION OF STATEMENT OF QUALIFICATIONS

3.9.1. The Authority reserves the right to cancel at any time for any reason this solicitation and to reject all SOQs. The Authority shall have no liability to any respondent arising out of such cancellation or rejection. The Authority reserves the right to waive minor variations in the selection process.

3.10. SUBSTITUTION OF DESIGN-BUILDER AND KEY TEAM MEMBERS

3.10.1. Design-Build Team Members and Key Team Members included by the Design-Builder in the SOQ (collectively "Team Members"), will be used as a basis for selection. Substitution of Team Members at any time during the solicitation process and in the performance of the work will not be allowed without written authorization from the Owner, which shall not be unreasonably withheld. Proposers and Finalists must submit the qualifications information of all proposed substituted Team Members to the Owner. Even with written authorization from the Owner, a change to any submitted Team Member will result in re-evaluation and may result in a change to the evaluation and ranking of the Proposer, which may result in the removal of a Finalist from the short list.

4. STATEMENT OF QUALIFICATION CONTENTS

4.1. SOQ ORGANIZATION AND REQUIREMENTS

4.1.1. Each firm's SOQ must include a Table of Contents and be organized by discrete sections corresponding to the scoring criteria and in the same order as below. SOQs not following the prescribed format will lose points. There is a 25 page - single sided - limit requirement. The following are excluded from the 25 page limit:

- A. Covers, tabs and dividers, provided that they do not contain substantive content;
- B. Resumes;
- C. Required attachments, including but not limited to the Corporate Structure Questionnaire and Proposer Responsibility Statement and the insurance and bond submittals;
- D. The Identification of Projects Table; and

E. The Cover Letter.

4.1.2. The font shall not be smaller than 10 point.

4.1.3. SOQs should be easy to read, concise and not contain repetitive language.

4.1.4. With the exception of the Identification of Projects Table. A “page” is defined as (when printed) a single sided 8.5 x 11 inch piece of paper. For the Identification of Projects Table, Proposers may use 11 x 17 inch paper.

4.2. LETTER OF SUBMITTAL

4.2.1. The Letter of Submittal shall be signed and dated by a person authorized to legally bind the Design Builder to a contractual relationship, e.g., the president or executive director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include the following information about the Design Builder and any proposed subcontractors:

- A. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
- B. Legal status of the Design Builder (sole proprietorship, partnership, corporation, etc.).
- C. Location of the facility from which the Design Builder would operate.
- D. Identify any current or former Authority employees employed by or on the Design Builder’s governing board as of the date of the Proposal or during the previous twelve (12) months.
- E. Statement of Acknowledgement that the Design Builder will comply with all terms and conditions set forth in the Request for Qualifications, unless otherwise agreed by the Authority.

4.3. STATEMENT OF QUALIFICATIONS

4.3.1 The SOQ shall demonstrate the Design-Build Team’s ability to undertake the Project by providing the following technical and management qualifications of the Proposer, Team Members, and individual Key Team Members. The Proposer is responsible for ensuring that contact information contained in their referenced project profiles is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications.

Emphasis will be placed on experience and expertise in performing substantive work on projects that are of Similar Scope and Complexity, as described in the definitions above. The Owner reserves the right to award more points to projects that have more of the characteristics in the definition of Projects of Similar Scope and Complexity. The Owner also reserves the right to award more points to successful projects in which Proposer, Team Members, and/or individual Key Team Members had substantial responsibility for their respective scopes of work.

4.3.2. Design-Build Team Organization and Responsibilities

- A. Provide an organization chart (showing proposed Design-Build Team Members, Key Team Members and their firm affiliation) for all phases of the Project from programming through final acceptance and warranty and maintenance period. Key Team Members include the following individuals:
- a. Corporate executive(s) dedicated to the project,
 - b. DB Project Manager,
 - c. Constructor Project Manager (if not the DB project manager),
 - d. Lead Estimator,
 - e. Construction Superintendent,
 - f. Design Manager
 - g. Lead Designer
 - h. Designer Project Manager

Clearly indicate whether any individuals are proposed to fill multiple roles. The Authority reserves the right to reject the inclusion of any individual or consultant firm from the winning Design Build team.

- B. Provide a resume for all Key Team Members. Resumes should be no longer than 1 page and should include the following information:
- 1) Description of the Key Team Member's proposed Project role and the percentage of time that the Key Team Member will be assigned to the Project for both Phase 1 and Phase 2;
 - 2) Identification of Key Team Member's specialized experience and competence on at least three (3) Projects of Similar Scope and Complexity.
 - 3) DBIA designation, if applicable.
- C. Provide a narrative describing the qualifications of Design-Build Team Members and Key Team Members and why the Design-Build Team proposed in this SOQ will exceed the Authority's Project Goals.
- D. Provide litigation/dispute history for the lead contractor and the designer-of-record for the last 5 years.

4.3.3. Demonstrated History of Successful Projects of Similar Scope and Complexity

- A. Describe the proposed Design-Build Team's experience in successfully managing Projects of Similar Scope and Complexity that include management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.
- B. Describe the Design-Build Team's experience in developing and/or managing costs within a Guaranteed Maximum Price. If costs exceeded the budget estimates, what was done to bring the costs back within project requirements?

4.3.4. Budget Adherence

- A. What processes will the proposed Design-Build Team implement to ensure that the project is designed and constructed to a fixed fee and a set GMP? Include in your description projects where the Design-Build Team creatively managed issues regarding sequencing, scheduling, and site access.
- B. Describe the proposed Design-Build Team's approach to the following:
 - Quality assurance/quality management: and
 - Changes in scope
- C. What formal and informal protocols and processes will the proposed Design-Build Team implement to ensure a project that is "designed to the budget" the first time. Include the proposed Design-Build Team's experience in commissioning and testing Projects of Similar Scope and Complexity.
- D. Describe your project buyout process and how you progress from the preliminary budget to final construction budget.

4.3.5. Safety, Financial, Legal: Pass/Fail.

- A. Provide evidence of capacity of the Design-Builder to provide bonding in the amount of the estimated GMP. (An actual bond does not need to be submitted with the SOQ, but inability to provide the required bonding capacity will result in disqualification).
- B. Provide a copy of certificate(s) of insurance showing the current limits of liability for commercial general liability, employer's liability, business automobile liability, and professional liability for the lead contractor and the designer-of-record.
- C. Provide a signed Corporate Structure Questionnaire and Proposer Responsibility Statement set forth in Attachment 1 demonstrating that the Design-Builder meets the responsibility criteria set forth in RCW 39.04.350:
 - a. Have a certificate of registration in compliance with chapter 18.27 RCW

- b. Have a current state unified business identifier number;
 - c. If applicable, have industrial insurance coverage for the Design-Builder's employees working in Washington as required in Title 51 RCW;
 - d. If applicable, have an employment security department number as required in Title 50 RCW;
 - e. If applicable, have a state excise registration number as required in Title 82 RCW;
 - f. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065;
 - g. Not have been found out of compliance by the Washington State apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one year period immediately preceding the date of the bid solicitation;
 - h. Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The proposer must designate a person or persons to be trained under these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. Proposers that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection.
 - i. Within a three year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW
- D. Provide the Table of Contents of the constructor's accident prevention program and a brief overview of its implementation.
- E. Provide the safety and accident prevention record of the construction members of the Design-Build team. Include other relevant information that documents their safety record, including Total Recordable Incidence Rate (TRIR).
- F. Provide a list of all OSHA, WISHA, or other state safety agency citations and their dispositions for the past five (5) years against the Design-Builder.
- G. Disclose past or current bankruptcies, convictions, debarments, or suspensions involving the lead contractor and the designer-of-record.

4.3.6. Past Utilization of OMWBE Certified Businesses

- A. Describe the Proposer's successful past utilization of businesses certified by the Washington State Office of Minority and Women Business Enterprises. The information provided in response to this section will be evaluated on a pass/fail basis.

4.3.7. Identification of Projects Table (not scored)

- A. The Proposer must submit an Identification of Projects Table with the required information set forth herein. The Identification of Projects Table may be submitted on 11" x 17" paper and may be no more than two pages in length. The Proposer is responsible for ensuring that contact information contained in their Identification of Projects is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications. The Owner reserves the right to contact any person listed in the Identification of Projects or any other person with knowledge regarding any Project in which any Design-Build Team Member or Key Team Member participated.
 - a. Name of project;
 - b. Owner/Customer;
 - c. Location of project (include address);
 - d. Description of the delivery method and integration of design and construction and identify the firm(s) role as a prime consultant, subconsultant, contractor, subcontractor or other;
 - e. Project description and applicability and relevance of the referenced project to the evaluation criteria Project.
 - f. Name of each Key Team Member who is proposed for this contract who played a significant role on the project example, including a description of their project responsibilities and functions;
 - g. The initial contract price, the final contract price, and an explanation for any difference between the two amounts;
 - h. The initial date scheduled for substantial completion, the actual date of completion, and an explanation for any difference between the two dates; and
 - i. Project contact of the owner or customer (current address, e-mail, and phone number) who can verify the characteristics of the submitted project example.
- B. The information provided in this section will not be scored separately. Rather, the information will be used to obtain basic information regarding the projects and determine whether projects identified in the SOQ are within the definition of Projects of Similar Scope and Complexity.

5. EVALUATION

5.3. PRELIMINARY EVALUATION WEIGHTING AND SCORING

5.3.2. In the evaluation and ranking of Proposers, the Authority will consider the information submitted pursuant to the RFQ and the RFP with respect to the evaluation criteria set forth below. The result of the evaluation will be a comparative ranking of Proposers.

5.3.3. For the purpose of selecting and evaluating Proposers, the evaluation criteria will be given the following relative weights. Note, this information is subject to change.

SCORING CRITERIA FOR RFQ PHASE ONLY		
SOQ		Total Points:
	Design-Build Team Organization and Responsibilities	30 points
	Demonstrated History of Successful Projects of Similar Scope and Complexity	30 points
	Budget Adherence	20 points
	Safety, Financial and Legal	Pass/Fail
	Past Performance in Utilizing Certified OMWBE Businesses	Pass/Fail
	Total RFQ Points:	80

<i>SCORING CRITERIA FOR RFP PHASE (NOT INCLUDED IN THIS RFQ) THIS IS FOR INFORMATIONAL PURPOSES ONLY</i>		
<i>RFP Management Proposal, Proprietary Meeting, and Interview</i>		
	<i>Overall Management Approach</i>	<i>40 points</i>
	<i>Design Development & Management</i>	<i>15 points</i>
	<i>Project Controls, Cost Tracking and GMP Development</i>	<i>30 points</i>
	<i>Scheduling, Sequencing & Construction Management</i>	<i>10 points</i>
<i>Price Proposal</i>		<i>25 points</i>
		<i>Total RFP Points: 120</i>

<i>FINAL SCORING – SUMMARY OF RFQ AND RFP PHASES</i>	
<i>Total Points of All Elements</i>	<i>200</i>

5.4. AWARD OF CONTRACT

5.4.2. This RFQ does not obligate the Authority to award a contract. The Authority reserves the right to cancel at any time for any reason this solicitation and to reject all SOQs and/or Proposals. The Authority shall have no liability to any respondent arising out of such cancellation or rejection. The Authority reserves the right to waive minor variations in the selection process.

5.4.3. The North Mason Regional Fire Authority reserves the option of awarding this contract in any manner most advantageous for the Authority.

5.4.4. Award of contract, when made, will be to the proposer whose Proposal is the most favorable to the Authority, taking into consideration the evaluation factors. The North Mason Regional Fire Authority shall make the award of contract.

5.4.5. Reservation of Rights

The Authority reserves without limitation and may exercise at its sole discretion, the following rights and conditions with regard to this Procurement process:

- A. To cancel the Procurement process and reject any and all SOQs and/or Proposals;
- B. To waive any informality or irregularity;
- C. To revise the Procurement Documents and schedule via an addendum;
- D. To reject any Proposer that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
- E. To require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its SOQ or Proposal and require additional evidence of qualifications to perform the work described in this RFQ or a subsequent RFP;
- F. To provide clarifications or conduct discussions, at any time, with one or more Proposers;
- G. To conduct reference checks for all DB Teams. The Authority may, at its sole discretion, consider the information obtained through this process and adjust the team's scores with respect to the factors identified above.
- H. To contact references that are not listed in the Proposer's SOQs and investigate statements on the SOQs and/or qualification of the Proposer and any firms or individuals identified in the SOQ;
- I. To consider alternative technical concepts and/or approaches identified by Proposers;
- J. To take any action affecting the RFQ process, the RFP process, or the Project that is determined to be in the Authority's best interests.

- K. Approve or disapprove of the use of particular Design Consultants, Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Design Consultants, Subconsultants, Subcontractors, or Key Team Members from those identified in the SOQ or Proposal.

5.5. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

- 5.5.2. Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. Discussion will be limited to a critique of the requesting Design Builder's Proposal. Comparisons between Proposals or evaluations of the other Proposals will not be allowed. Debriefing conferences may be conducted in person (dependent upon WA State Stay Home/Stay Healthy directive) or on the telephone.

5.6. PROTEST PROCEDURE

- 5.6.2. The following protest procedures shall apply to any protest by any DB Team filing a protest with respect to any decision by the Authority regarding this procurement.
- 5.6.3. All protests regarding the form of the RFQ, the form of the RFP, or any actions or activities of the Authority in conducting the RFQ and/or RFP must be submitted by the date for submittal of the Statement of Qualifications for the RFQ and the Proposal for the RFP, as applicable. For example, any protest based on the RFQ or any action taken by the Authority in the RFQ process must be submitted by the date set forth in the RFQ for submittal of the Statement of Qualifications.
- 5.6.4. Per RCW 39.10.330, the Authority shall notify all proposers in writing upon selection of the short listed finalists and shall notify all finalists upon selection of the winning DB Team. The proposers not selected for either the short list or as the selected Design-BUILDER shall have 4 calendar days from notification to submit a protest. If there is a protest, the Authority will not advance to the next phase of the procurement (in the case of a Protest at the RFQ phase) or execute the contract with the winning team (in the case of a Protest at the RFP phase) until 2 calendar days after the final Protest decision is transmitted to the protestor.
- 5.6.5. Form of Protest: Form of Protest: In order to be considered, a protest shall be in writing, addressed to the RFQ Coordinator. The protest shall include the following:
 - A. The name, address, and phone number of the proposer protesting, or the authorized representative of the proposer submitting an RFQ or RFP;
 - B. The Solicitation Number and Title under which the Protest is submitted;
 - C. A detailed description of the specific grounds for Protest and any supporting documentation. It is the responsibility of the protesting proposer to supplement its Protest with any subsequently discovered documents prior to the Manager's decision: and
 - D. The specific ruling or relief requested.

- 5.6.6. Timeliness of Protest. Failure to submit a timely protest shall constitute a waiver of the right to submit a Protest.
- 5.6.7. Determination of Protest. Upon receipt of a timely written Protest, the Authority shall investigate the Protest and shall respond in writing to the Protest prior to execution of the contract per the RCW's. The decision of the Authority shall be final.

6. MISCELLANEOUS

6.3. ANTI-KICKBACK

- 6.3.2. No officer or employee of the North Mason Regional Fire Authority, having the power or duty to perform an official act or action related to this procurement shall have or acquire any interest in the contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the contract.

7. ATTACHMENTS

Attached to this RFQ and incorporated herein by reference are the following background documents:

- 7.3.2. ATTACHMENT 1 – Corporate Structure Questionnaire and Proposer Responsibility Statement
- 7.3.3. ATTACHMENT 2 – Statement of Acknowledgement
- 7.3.4. ATTACHMENT 3 – Combined Agreement, Insurance, Payment and Performance Bond (DBIA 530, Proposed Progressive Design-Build Agreement Between Owner and Design-Builder – Cost Plus Fee with a Guaranteed Maximum Price, Insurance Requirements, Payment and Performance Bonds; Proposed General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder)

**ATTACHMENT 1
NORTH MASON REGIONAL FIRE AUTHORITY
HEADQUARTERS FIRE STATION
CORPORATE STRUCTURE QUESTIONNAIRE
AND PROPOSER RESPONSIBILITY STATEMENT**

1. Proposers shall complete the following information for the Proposed Design-Builder and all proposed Design-Build Team Members:

Legal Name	
Street Address	
Mailing Address	
Point of Contact	
Position	
Email	
Telephone Number	
Fax Number	
Type of Business	
Federal Tax Identification Number	

2. If the Proposed Design-Builder is a Joint Venture, Proposers must:
- a. Submit the above information the Joint Venture as well as for each member of the Joint Venture; and
 - b. Attach a copy of the Joint Venture Agreement to this form.

3. Proposer Responsibility: The Proposer must complete the following information for the Design-Builder to be determined to be responsible and eligible to submit a Statement of Qualifications. Failure to sign the certification at the end of this document may result in a Proposer's disqualification.

1	Washington State Contractor's Registration Number	
2	Washington State Unified Business Identifier Number	
3	Does the Design-Builder have employees?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4	If the Design-Builder has employees, then does the Design-Builder have industrial insurance as required under Title 51 RCW?	
5	If the Design-Builder has employees, provide the Design-Builder's employment security department number	
6	Design-Builder's state excise registration number as required in Title 82 RCW	
7	Has the Design-Builder been disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8	Has the Design-Builder been found out of compliance by the	<input type="checkbox"/> Yes

	Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one year period immediately preceding the date of the bid solicitation	<input type="checkbox"/> No
9	Has the Design-Builder completed three or more public works projects and had a valid business license in Washington for three or more years are exempt from this subsection? If the answer is no, complete questions 10 and 11. If the answer is yes, skip questions 10 and 11.	<input type="checkbox"/> Yes <input type="checkbox"/> No
10	Has the Design-Builder received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department.	<input type="checkbox"/> Yes <input type="checkbox"/> No
11	Provide the name of the person or persons designated by the Design-Builder that were trained under these requirements.	
12	Within a three year period immediately preceding the date of the bid solicitation, has the Design-Builder been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW?	<input type="checkbox"/> Yes <input type="checkbox"/> No

I am authorized to make the representations in this document on behalf of the Design-Builder. I declare under the penalty of perjury under the laws of the State of Washington that the information provided in this Corporate Structure Questionnaire and Proposer Responsibility Statement to be true and correct.

Signed this ___ day of [month] _____, [year] _____

at [insert location]_____

Signature

Printed Name

Title

ATTACHMENT 2

RFQ STATEMENT OF ACKNOWLEDGEMENT

NMRFA Headquarters Fire Station

ALL RESPONDERS COMPLETE THIS PAGE AND INCLUDE WITH SUBMITTAL:

1. By submitting a response, the Responder certifies that the Responder has fully read and understands this RFQ document and has full knowledge of the scope, nature, quantity, and quality of work to be performed; the detailed requirements of the services to be provided; and the conditions under which the services are to be performed.
2. The Responder certifies that he or she has read and understands all terms and conditions of this solicitation.
3. By signing this document, the Responder certifies that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding. If the Authority determines that collusion has occurred among the Responders, none of the submittals from the participants of such collusion will be considered. The Authority's determination will be final.
4. The Responder acknowledges that the person who signs below is fully authorized to sign on behalf of the firm listed and to fully bind the firm to all conditions and provisions thereof.
5. The Responder acknowledges receipt of the following addenda: _____ through _____.

Respectfully submitted this _____ day of _____, 20_____.

Name _____ of _____ Firm: _____

Address: _____

Signature: _____

Name _____ (Print): _____

Title: _____

Email: _____ Phone: _____



**PROGRESSIVE DESIGN-BUILD
AGREEMENT BETWEEN OWNER
AND DESIGN-BUILDER - COST
PLUS FEE WITH A GUARANTEED
MAXIMUM PRICE**

Note: This document has been modified from the DBIA Form. A redlined copy will be provided upon request.

Document No. 530

Second Edition 2010
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Washington, DC

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REVISED Form of Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and 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)

**North Mason Regional Fire Authority
PO Box 277
Belfair WA 98528-0277**

DESIGN-BUILDER:

(Name and address)

PROJECT:

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

Headquarters/Fire Station

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, 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* (2010 Edition, as amended) (“General Conditions of Contract”), including but not limited to The GMP Amendment in accordance with Section 6.6 herein, provided such Amendment is executed between the parties.

2.1.2 This Agreement, including all exhibits but excluding the GMP Amendment:

- | | | |
|----|-------------|--|
| .1 | Exhibit A: | Initial Basis of Design Documents |
| .2 | Exhibit B1: | Insurance Exhibit – Design-Builder’s Insurance Requirements |
| .3 | Exhibit B2: | Form of Payment Bond |
| .3 | Exhibit B3: | Form of Performance Bond |
| .4 | Exhibit C: | Phase 1 and 2 Scope of Services |
| .5 | Exhibit D: | Phase 1 Level of Effort and Hourly Rates and Allowance Items |
| .6 | Exhibit E: | Form Phase 2 Amendment |
| .7 | Exhibit F: | Form Change Orders |

2.1.3 The General Conditions of Contract; and

2.1.4 Interim Design Submissions, the Design Log, and the Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, the most recent approved documents governing over previously approved documents.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including but not limited to the various documents in the Initial Basis of Design Documents set forth in Exhibit A, and the Phase 1 and 2 Scope of Services set forth in Exhibit C, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement or after the parties’ execution of the GMP

Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. *(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 the Initial Basis of Design Documents contain design or prescriptive specifications the 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 Initial Basis of Design Documents, including any performance specifications for the purposes of developing the Scope of Services for Phase 1, the Phase 1 Not to Exceed Amount and the Design-Builder's Fee Percentage. However, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner during Phase 1. 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 Initial and Final 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 Phase 1, the Phase 1 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 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.

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 the 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 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 the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

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

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

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

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) 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 Phase 1 shall be completed no later than _____ ("Phase 1 Completion Date"). The parties will establish a date for Substantial Completion of the entire Work ("Scheduled Substantial Completion Date") in the GMP Amendment.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be determined during Phase 1: *(Insert any interim milestones for portions of the Work with different scheduled dates for 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 1.2.13 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 associated with any Interim Milestone Date is not attained by the Scheduled Interim Milestone Date or Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Therefore, provided the parties enter into the GMP Amendment, Design-Builder and Owner will establish a liquidated damage rate for delay in the GMP Amendment for each day that Substantial Completion extends beyond any Scheduled Interim Milestone Date and/or the Substantial Completion Date.

5.5 Any liquidated damages assessed pursuant to this Agreement for delay damages 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).

5.6 In addition, the parties may establish liquidated damages as a remedy for other breaches of contract or failure to achieve performance standards. Such liquidated damages provisions may be added in the GMP Amendment or by written Change Order.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") as set forth herein.

.1 The total Compensation to Design-Builder shall not exceed the Guaranteed Maximum Price ("GMP") of _____ dollars (\$ _____), as adjusted pursuant to the Contract Documents.

.2 The parties acknowledge that the scope of work for this Project is not fully developed. The Design-Builder shall develop the Initial and Final Basis of Design Documents such that the total Compensation to the Design-Builder shall not exceed the GMP set forth herein, 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 and Lump Sum Fee.

6.2.1 Design-Builder's Fee Percentage shall be:

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

The Fee Percentage and any Lump Sum Fee shall include the following items, which shall not be charged as a Cost of the Work:

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

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

6.2.2 Prior to the execution of the GMP Amendment, Design-Builder's Fee Percentage will only be adjusted pursuant to Section 3.4 of this Agreement.

6.2.3 If the Parties enter into the GMP Amendment, Design-Builder shall be paid a fixed fee (the "Lump Sum Fee") determined by multiplying the Fee Percentage by the estimated Cost of the Work included in the GMP Amendment. The estimated Cost of the Work shall include the Lump Sum General Conditions Amount. The Lump Sum Fee will be earned and paid on a monthly basis following execution of the GMP Amendment on a percentage of completion basis, specifically taking into account payments previously made, including during Phase 1. The following costs shall be excluded from the Cost of the Work when calculating the Lump Sum Fee:

- .1 Owner Directed Allowances, as defined in Section 6.4.1.6; and
- .2 The Design-Builder's Contingency as defined in Section 6.4.4.1.b.

6.2.4 The Lump Sum Fee established in the GMP Amendment shall not be modified unless the GMP varies, either upward or downward, by more than ten percent (10%) from the GMP set forth in this Agreement ("Original GMP").

- .1 If the GMP increases by more than ten percent (10%) above the Original GMP, the Lump Sum Fee shall be increased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is in excess of one hundred ten percent (110%) of the Cost of the Work set forth in the Original GMP.
- .2 If the GMP decreases by more than ten percent (10%) below the Original GMP, the Lump Sum Fee shall be decreased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is less than eighty-five percent (90%) of the Cost of the Work set forth in the Original GMP.
- .3 The following costs shall be excluded from the Cost of the Work when calculating adjustments to the Lump Sum Fee:
 - a. Owner Directed Allowances, as defined in Section 6.4.1.6; and
 - b. The Design Builder's Contingency as defined in Section 6.4.4.1.b.

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

6.3.1 Unless included in Lump Sum General Conditions, direct labor costs of 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. Wages for those employees performing construction services shall be paid as follows: Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits. Whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. The Design-Builder shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier for the period upon the Owner's request. Direct labor costs

also include direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries and contributions required by the Federal Insurance Compensation Act (FICA), the Federal Unemployment Tax Act (FUTA) and the State Unemployment Compensation Act (SUCA).

6.3.2 Unless included in Lump Sum General Conditions, 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 Unless included in Lump Sum General Conditions, 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 in writing by the Owner.

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

6.3.5 Unless included in Lump Sum General Conditions, 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. The costs for those employees performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those Hourly Rates set forth in Exhibit E. Contracts to 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.

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

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

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

6.3.10 Unless included in Lump Sum General Conditions, the reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.3.11 Unless included in Lump Sum General Conditions, 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 the applicable rental cost as established by the lower of the local prevailing rate published in the Rental Rate Blue Book by Data Quest. San Jose, California, as modified by the AGC/WSDOT agreement 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 in the Blue Book, 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 by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

6.3.12 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

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

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work, with the exception of Washington State Sales Tax, which shall be paid outside the Phase 1 NTE or GMP.

6.3.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

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

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

6.3.19 Accounting and data processing costs related to the Work.

6.3.20 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. 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.

6.3.21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder's Contingency, Design Builder's Fee Percentage, the Lump Sum Fee, or the Lump Sum General Conditions.

6.4 Other Methods of Compensation

Within the Phase 1 NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder's Compensation

6.4.1 Allowance Items and Allowance Values.

- .1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Exhibit D or the GMP Amendment and are included within any established NTE and the GMP, as applicable.
- .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.
- .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.
- .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. With the exception of Owner Directed Allowances, all other costs, including design fees, Design-Builder's overall project management and fixed general conditions costs, overhead and fee, 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.
- .5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.1.4; however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.
- .6 The Owner and the Design Builder may designate certain Allowances as "Owner Directed Allowances." Design Builder shall be compensated for Owner Directed Allowances for the Cost of the Work associated with such allowances plus the Fee Percentage. Items designated as "Owner Directed Allowances" shall not be included in the calculation to determine the Lump Sum Fee.

6.4.2 Not To Exceed Sums

- .1 The Owner and Design Builder may establish Not to Exceed ("NTE") Sums for specific scopes of the Work. Any such NTE Sum will be negotiated between the Owner and Design-Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

- a. A specific description of the Scope of the Work that is subject to the NTE Sum;
 - b. An updated Schedule of Values that incorporates the NTE Sum; and
 - c. Any milestone dates associated with the scope of the Work associated with the NTE Sum.
- .2 For each scope of work for which a NTE Sum has been established, the Design-Builder shall be reimbursed for the scope of the Work as a Cost of the Work; however, Design-Builder's compensation shall not exceed the NTE Sum without a written Change Order.
 - .3 Design-Builder shall not request reimbursement for costs subject to the NTE Sum, unless those costs are identified in the Payment Application as subject to the NTE Sum.
 - .4 NTE Sums may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

- .1 The Owner and Design-Builder may establish Lump Sums for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
 - a. A specific description of the Scope of the Work that is subject to the Lump Sum;
 - b. An updated Schedule of Values that incorporates the Lump Sum; and
 - c. Any milestone dates associated with the scope of the Work associated with the Lump Sum.
- .2 For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.
- .3 Design-Builder shall not request reimbursement for costs subject to the Lump Sum, unless those costs are identified in the Payment Application as subject to the Lump Sum.
- .4 Lump Sums may only be modified via Change Order pursuant to the General Conditions

6.4.4 Contingencies

- .1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for Design-Builder's exclusive use for the below described unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Contingency Items include the costs described below, which are subject to written

approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.

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

(i) Trade buy-out differentials;

(ii) Escalation of materials; and

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

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

(i) Overtime or acceleration;

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

(iii) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder; or

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

.2 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. Design-Builder shall not be entitled to any Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder's Contingency. Further, the amounts included in the Design-Builder's Contingency set forth in Section 6.4.4.1.b shall be excluded from the calculation set forth in Section 6.2.3 to establish the Lump Sum Fee and the calculation set forth in Section 6.2.4 to determine whether the GMP has changed.

.3 Prior to the final accounting, the Contingencies are not available to Owner for any reason, including, but not limited to changes in scope or any other item which

would enable Design-Builder to increase an NTE or GMP under the Contract Documents.

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

6.4.5 Lump Sum General Conditions Costs

- .1 If the Parties enter into the GMP Amendment, the Parties shall establish an amount for the Lump Sum General Conditions Costs. The parties shall determine the portions of the Cost of the Work set forth in Section 6.3 that are included in the Lump Sum General Conditions Costs, and the parties shall include a description of 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 Management
 - 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 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 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 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 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 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.

6.5 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 expressly provided for in Section 6.3 hereof.
- .2 Overhead and general expenses, except as provided for in Section 6.3 hereof.
- .3 The cost of Design-Builder's capital used in the performance of the Work.
- .4 Costs that would cause the Phase 1 NTE, the GMP, the Cost of the Work Contingency, the Design Builder's Contingency, or any other NTE or Lump Sum Amount, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Project Phases.

6.6.1 Phase 1

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

- a. The Cost of the Work set forth in Section 6.3;
- b. Design-Builder's Fee Percentage set forth in Section 6.2.1 multiplied by the Cost of the Work;
- c. Any Lump Sums established pursuant to Section 6.4.3; and
- d. Contingency Items charged under Section 6.4.4.

.2 **Phase 1 Not to Exceed Amount.** Design-Builder guarantees that its Compensation during Phase 1 shall not exceed the Phase 1 Not to Exceed Amount ("Phase 1 NTE") of _____ Dollars (\$_____). Documents used as a basis for the Phase 1 NTE shall be identified in Exhibit D to this Agreement. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the Phase 1 NTE, as adjusted in accordance with the Contract Documents.

.3 The Phase 1 NTE includes the Cost of the Work Contingency in the amount of _____ Dollars (\$_____) and the Design-Builder's Contingency in the amount of _____ Dollars (\$_____).

.4 The Phase 1 Completion Date is _____.

.5 GMP Proposal. At the conclusion of Phase 1, Design-Builder shall submit a GMP Proposal to Owner which shall include the deliverables set forth in Exhibit C, unless the parties mutually agree otherwise.

.6 Submission of the GMP Proposal. Submission of the GMP Proposal constitutes Design-Builder's representation and agreement that it has adequately investigated the site and the project parameters, the Project is adequately defined, the Final Basis of Design Documents are sufficiently defined to provide an accurate GMP and Project Schedule, and subject to the assumptions and clarifications in the GMP Proposal, the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the Original GMP.

.7 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.

.8 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP Proposal shall be set forth in the GMP Amendment. The Design-Builder understands that the Guaranteed Maximum Price is established in the Agreement.

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

- a. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.5 above;
- b. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

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

6.6.2 Phase 2 Post GMP Period.

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

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

- b. Design-Builder's Lump Sum Fee established pursuant to Section 6.2.3;
- c. Any Lump Sums established pursuant to Section 6.4.3;
- d. Contingency Items charged under Section 6.4.4; and
- e. Design-Builder's Lump Sum General Conditions Costs established pursuant to Section 6.4.5.

.2 **GMP** The total compensation paid to Design-Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract. By agreeing to the GMP Amendment, the Design-Builder understands that if the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design-Builder, and Design-Builder hereby assumes liability for such costs without reimbursement by the Owner.

6.6.3 Savings.

.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall go to 100% to the Owner.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

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

7.1.3 If Design-Builder's Fee under Section 6.2 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.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage pursuant to RCW Chapter 60.28, and Owner shall release such retainage pursuant to state law. Pursuant to RCW Chapter 60.28, the Design-Builder may submit a bond in lieu of the retainage that the Owner would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form approved by the Owner. 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.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the statutory rate of interest per month until paid.

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

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for allowable costs and subject to any established Not to Exceed Amount or GMP:

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

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

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above based on Design-Builder's Fee Percentage, provided, however, if a Lump Sum Fee has been established, then the Lump Sum Fee shall only be modified pursuant to Section 6.2.4 above.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product

shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

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

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

9.2 Design-Builder's Representatives.

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

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

Article 10

Bonds and Insurance

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

10.2 Bonds and Other Performance Security. Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the Phase 1 NTE in the form set forth as Exhibit B. Upon execution of the GMP Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the GMP in the form set forth as Exhibit B.

10.3 All bonds furnished by Design-Builder shall be from a surety that is qualified and registered to conduct business in the state of Washington.

Article 11

Other Provisions

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

11.2 Wages.

11.2.1 The Design-Builder and its Subcontractors, Consultants and Sub-Consultants shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the applicable state prevailing wage rate required by (RCW Chapter 39.12). 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 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 and each Subcontractor 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.

11.5.1 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. The Design-Builder agrees to comply with and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable.

11.6 Business Registration Requirement.

11.6.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers of every tier 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.

11.7.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 39.06.010.

11.8 Apprenticeship Program

11.8.1 Design-Builder shall comply with the apprenticeship program set forth in RCW 39.04.320, as applicable.

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: _____

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

DRAFT

**EXHIBIT B1
INSURANCE REQUIREMENTS
NORTH MASON REGIONAL FIRE AUTHORITY
HEADQUARTERS/FIRE STATION**

Insurance Exhibit

1.1 Insurance Types and Limits.

1.1.1 Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition):

(Specify each type of insurance as applicable, minimum ratings of the carriers, applicable limits and deductible amounts, required endorsements, and other terms and conditions, as applicable.)

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required <i>Per Claim/Occurrence</i>	Minimum Limits Required <i>Aggregate Policy Limits</i>	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	All deductibles shall be commercially reasonable and acceptable to the Owner
2. Employer's Liability (Bodily Injury by Accident)	\$1,000,000	\$1,000,000	See above
3. Commercial General Liability	\$2,000,000	\$2,000,000	See above
4. Contractor's Protective Liability (if applicable)	\$1,000,000	\$1,000,000	See above
5. Commercial Automobile Liability	\$1,000,000	\$1,000,000	See above
6. Professional Errors and Omissions pursuant to Section 1.3 (A) and 1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	\$2,000,000	\$2,000,000	See above
7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)	\$1,000,000	\$1,000,000	See above
8. Umbrella Excess Liability Insurance	\$3,000,000	\$3,000,000	See above
9. Builder's Risk	Full amount of contract		\$50,000

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

1.1.3 PROFESSIONAL LIABILITY INSURANCE.

1.1.3(A) Professional Liability Insurance To Be Provided By Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant. *[Note: Even if this coverage part is selected, the Design-Builder should consider obtaining its own professional liability coverage.]*

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

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

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

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

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

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

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

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

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

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

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-Builder's practice policy.

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

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

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

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

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

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

1.1.4 Any coverage required to be maintained after Final Payment shall be identified below. *(List here any coverages required to be maintained after Final Payment is made)*

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

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

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form (December 2004 Edition) or equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon by Owner and Design-Builder.

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

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

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

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

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

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

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

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

3.1 Additional Insureds

3.1.1 Owner and Owner's officers, directors and employees shall be included as an additional insured on general liability, umbrella and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder's Contractor's Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates, and upon request of the same will furnish them to the Owner. Owner shall not be an additional insured on any other of Design-Builder's policies except for those which are specifically listed below: *(List here any other policies for which the Owner will be an additional insured, as well as other entities who are to be named an additional insured.)*

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

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

4.1 Terms and Effective Dates.

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

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

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

4.1.4 RESERVED

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

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

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

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

**EXHIBIT B2
PAYMENT BOND FORM
NORTH MASON REGIONAL FIRE AUTHORITY
HEADQUARTERS/FIRE STATION**



PAYMENT BOND FOR DESIGN-BUILD PROJECTS

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

DESIGN-BUILDER/PRINCIPAL: <i>(Name and address)</i>	SURETY: <i>(Name and address)</i>
OWNER/OBLIGEE: <i>(Name and address)</i> North Mason Regional Fire Authority PO Box 277 Belfair WA 98528-0277	PROJECT: <i>(Name and location)</i> NMRFA Headquarters/Fire Station Project
DESIGN-BUILD AGREEMENT: Dated: Amount:	BOND DATE: <i>(Not earlier than date of Design-Build Agreement)</i> BOND AMOUNT:

MODIFICATIONS TO THIS BOND:
(List modifications to this Bond below. If none, write "None")

BOND TERMS AND CONDITIONS

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

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

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

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

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

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

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

4.2 Pay or arrange for payment of any undisputed amounts.

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

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

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

7 Dispute Resolution. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the State in which the Project is located. Such suit or action must be filed within one (1) year from the date: a) on which the Claimant sent a claim to the Surety pursuant to Section 3.1; or, b) on which the Claimant last performed labor or services or furnished materials or equipment on the Project, whichever occurs first. If the provisions of this Section 7 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

7.1 In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-

Builder is not a necessary or indispensable party to any legal action by any party against the Surety to enforce the Surety's obligations under this Bond.

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

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

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

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

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

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

For Claims on this Bond:

(check appropriate box)

Use the contact information shown on page 1; or

Use the following alternate contact information:

(fill in Surety claims administrator contact information below)

12 Subcontractor Bonds. If this Bond is issued for an agreement between the Design-Builder and a subcontractor, the term Design-Builder in this Bond shall be deemed to be the bonded subcontractor and the term Owner shall be deemed to be Design-Builder.

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

DESIGN-BUILDER (AS PRINCIPAL) Company:	SURETY Company:
Signature:	Signature:
Name and Title:	Name and Title:
	Corporate Seal

	(Attach Power of Attorney)

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

Attest:

Signature and Title

EXHIBIT B3
PERFORMANCE BOND FORM
NORTH MASON REGIONAL FIRE AUTHORITY
HEADQUARTERS/FIRE STATION



PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

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

DESIGN-BUILDER/PRINCIPAL: <i>(Name and address)</i>	SURETY: <i>(Name and contact information)</i>
OWNER/OBLIGEE: <i>(Name and address)</i> North Mason Regional Fire Authority PO Box 277 Belfair WA 98528-0277	PROJECT: <i>(Name and location)</i> NMRFA Headquarters/Fire Station Project
DESIGN-BUILD AGREEMENT: Dated: Amount:	BOND DATE: <i>(Not earlier than date of Design-Build Agreement)</i> BOND AMOUNT:

MODIFICATIONS TO THIS BOND:
(List modifications to this Bond below. If none, write "None")

BOND TERMS AND CONDITIONS

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

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

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

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

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

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

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

.1 The Surety, in accordance with the terms of the Design-Build Agreement; or

.2 Another design-builder selected pursuant to Section 5.3 to perform the remaining obligations under the Design-Build Agreement.

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

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

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

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

5.4 Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Owner the amount of its reasonable costs to complete the Work; or

5.5 Deny liability, in whole or in part, and notify the Owner in writing, citing reasons therefor.

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

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

7.1 The responsibilities of Design-Builder for correction of defective Work and completion of the Project;

7.2 Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Paragraph 5; and

7.3 Liquidated damages, or if no liquidated damages are specified in the Design-Build Agreement, actual damages caused by delayed performance or non-performance of Design-Builder.

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

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

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

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

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

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

For Claims on this Bond:

(check appropriate box)

Use the contact information shown on page 1; or

Use the following alternate contact information:

(fill in Surety claims administrator contact information below)

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

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

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

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

DESIGN-BUILDER (AS PRINCIPAL) Company:	SURETY Company:
Signature:	Signature:
Name and Title:	Name and Title:
	Corporate Seal
	(Attach Power of Attorney)

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

Attest:

Signature and Title



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

Note: This document has been modified from the DBIA Form. A redlined version will be provided upon request.

Document No. 535

Second Edition, 2010

© Design-Build Institute of America
Washington, DC

Article 1

General

1.1 Mutual Obligations

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

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

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

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition, as revised).

1.2.2 *Initial Basis of Design Documents* are those documents developed as a Phase 1 deliverable that outline the scope of the Project and include the DBIA 530 Revised Form of Progressive Design-Build Agreement Between Owner and Design-Builder Cost plus Fee with a Guaranteed Maximum Price (as revised); the DBIA 535 Form of General Conditions of Progressive Design-Build Contract (as revised), and the other documents required as a Phase 1 deliverable.

1.2.3 *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, Hourly Rate or Contract Time.

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

1.2.5 *Contingencies* are the amounts available for Design-Builder's use and are defined in Section 6.4.4 of the Agreement. The Cost of the Work Contingency is defined in Section 6.4.4.1.a. The Design-Builder's Contingency is defined in Section 6.4.4.1.b.

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

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

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

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

1.2.10 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Initial and Final Basis of Design Documents, as applicable.

1.2.11 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder: (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.12 *Final Basis of Design Documents* are the documents agreed upon in the GMP Amendment by the Owner and Design-Builder at the conclusion of Phase 1 that comprise the performance and other requirements of the Project.

1.2.13 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission and receipt of all documents set forth in Section 6.7.2.

1.2.14 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.15 *General Conditions of Contract* refer to this DBIA Document No. 535, *General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as revised).

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

1.2.17 *Phase 1* is the first phase of the Contract when the Design-Builder engages in consultation with the Owner and other stakeholders to develop the design, budget and schedule to a sufficient extent to allow the Design-Builder to submit a GMP Proposal. At the conclusion of Phase 1, the Design-Builder shall submit the deliverables set forth in the Contract Documents.

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

1.2.19 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.20 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances,

rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.21 *Original GMP* is the GMP set forth in the Agreement.

1.2.22 *Owner Directed Allowances* are the amounts defined in Section 6.4.1.6 of the Agreement.

1.2.23 *Owner Provided Information* is all information provided by the Owner to the Design-Builder during the course of the Project.

1.2.24 *Phase 2* is the second phase of the Project that commences after the parties enter into the GMP Amendment. The scope of Phase 2 shall be set forth in the GMP Amendment.

1.2.25 *Project Schedule* is the schedule provided by the Design-Builder and approved by the Owner pursuant to Section 2.1.3 of the General Conditions and Exhibit C.

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

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

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

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

1.2.30 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an Interim Milestone Date, 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 without compromising the building operation (including materially increasing operating expenses) or the user's ability to reasonably use all parts of the Project.

1.2.31 *Trend* is an issue identified in the Trend Log.

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

1.2.33 *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

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

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

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

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

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

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through

qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant. Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. "Material portions of the Work" shall, at a minimum, include the civil, landscape, architectural, structural, mechanical, electrical, and plumbing design. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.3 Standard of Performance for Professional Services.

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

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

2.4 Design Development Services.

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

- .1** Interim and final Design Submissions shall be consistent with the Initial and Final Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1, as well as the Commercial Terms. By submitting a Design Submission, the Design-Builder represents to the Owner that the Design Submission may be constructed for the then current Initial or Final Basis of Design Documents (as applicable) and the Commercial Terms. Notwithstanding the above, Design-Builder may propose designs that may alter the Initial or Final Basis of Design Documents, the Commercial Terms; however, Design-Builder must provide notice thereof in accordance with Article 10 and obtain a Change Order before such proposed designs are incorporated into an approved Design Submission or Construction Documents.
- .2** Design-Builder shall provide the Design Submissions set forth in Exhibit C. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Initial or Final Basis of Design Documents, or, if applicable, previously submitted Design Submissions.
- .3** The Owner shall review and comment on such Design Submissions, providing any comments and/or concerns about such Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Schedule. The Design-Builder shall revise the Design Submissions (and any other deliverables) in

response to the Owner's comments and incorporate said responses into the next Design Submission.

- .4 If incorporation of the Owner's comments result in a design that is inconsistent with the Initial or Final Basis of Design Documents or otherwise give rise to a change in the Initial or Final Basis of Design Documents or the Commercial Terms, the Design-Builder shall provide notice thereof in accordance with Article 10. Changes to the Initial or Final Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9.
- .5 The Design-Builder shall provide an updated cost model for the Project periodically as required in Exhibit C. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.
- .6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Initial and Final Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.
 - a. Both parties must agree to include a Reliable Design Decision in the Design Log.
 - b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
 - c. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Interim or Final Basis of Design Documents.
 - d. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Interim or Final Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Articles 9 and 10.
- .7 Trend Log. If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.
 - a. The request to include a Trend in the Trend Log must include the following information:
 - i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
 - ii. The estimated change in the applicable Commercial Term; and
 - iii. Potential impacts or changes to the Initial or Final Basis of Design Documents as a result of the Trend.
 - b. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.
 - c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial or Final Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order. If the resolution does not change the Initial or Final Basis of Design Documents and/or any Commercial Term, it shall be removed from the Trend Log.

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

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

2.4.3 Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any Design Submissions, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions, such time period shall not be less than ten business days.

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

2.5 Legal Requirements.

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

2.5.2 The Commercial Terms shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Commercial Term. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services.

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

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

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

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

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

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

2.8 Subcontracts

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

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

2.8.3 All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with a Subcontractor Procurement Procedure established during Phase 1. Design-Builder shall identify the scope of subcontracted Work ("Subcontract Package") and shall identify qualified Subcontractors for each Subcontract Package. Unless approved in writing by the Owner, the Subcontractor Procurement Procedure shall comply with the following:

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

2.8.4 Design-Builder must obtain prior, written approval from the Owner for the Design-Builder or the lead Constructor (if the lead Constructor is not also the Design-Builder) to self-perform construction Work.

1. For each scope of Work for which Design-Builder proposes self-performance, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:
 - a. A detailed description of the scope of Work; and
 - b. A detailed explanation of the effect of the self-performed construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project;
2. Design-Builder will provide the Owner with an estimate of the costs for all self-performed construction Work on an open book basis. In calculating the costs for self-performed construction Work, the following shall apply:
 - a. The costs for self-performed construction Work shall not include costs that are also included in the Lump Sum General Conditions Costs.
 - b. Notwithstanding the above, Design-Builder may include in the costs for self-performed construction Work additional general conditions costs that are directly associated with the self-performed construction Work that Design-Builder would not have incurred but for the self-performed construction Work.

2.8.5 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the

Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

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

2.9 Design-Builder's Responsibility for Project Safety.

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

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

2.9.3 Design-Builder's responsibility for safety under this Section 2.9 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

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

Documents.

2.11.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.11.3 The one-year period referenced in Section 2.11.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.12 Contract Phases

2.12.1 Phase 1. Phase 1 shall commence upon Notice to Proceed from the Owner and shall end on the Phase 1 Completion Date as set forth in DBIA Document 530, Section 5.2. The services provided by the Design-Builder during Phase 1 shall be established in Exhibit C.

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

.2 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during Phase 1 as set forth in Exhibit C. Notwithstanding the above, the parties recognize that the Design-Builder relied on the information set forth in the Request for Proposals to establish the Phase 1 NTE, and if the actual conditions differ materially from the information set forth in the RFP, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Phase 1 NTE, provided that the Design-Builder meets the requirements in Section 4.2.1 of the General Conditions.

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

.4 Design-Builder must verify the information set forth in Exhibit C by the conclusion of Phase 1. The extent to which such verification will occur in Phase 1 shall be set forth in Exhibit C. If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the information provided in Exhibit C, Design-Builder shall, at the conclusion of Phase 1, provide Owner with written notice of any such material differences in the GMP Proposal. A "Material Difference" is defined as one that would either a) impact the Initial Basis of Design Documents or Design-

Builder's Fee Percentage or b) be considered a Differing Site Condition pursuant to Section 4.2.1 of the General Conditions. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1.

.5 At the conclusion of Phase 1, the Design-Builder will submit a GMP Proposal pursuant to Exhibit C and Section 6.6.2 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

.6 If the Design-Builder performs Work after the submission of the GMP Proposal but before the parties enter into the GMP Amendment pursuant to Section 6.6.2 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during Phase 1; however, in no case shall the Design-Builder be entitled to be paid in excess of the GMP Development NTE.

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

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

3.1.2 Owner shall provide timely reviews and approvals of Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

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

3.2 Furnishing of Services and Information.

3.2.1 The Initial Basis of Design Documents sets forth the information provided by the Owner.

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

3.3 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to

complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

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

3.4 Owner's Representative.

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

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1.

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

3.6 Owner's Separate Contractors.

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during Phase 1. Unless working with Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during Phase 1, Owner

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

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

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

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

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

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

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the applicable Commercial Term to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. Notwithstanding the above, provided the parties sign the Validation Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action regarding any Differing Site Condition.

4.3 Archaeological Resources

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

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

4.3.3 The disturbance of any cairn or Native Indian grave is prohibited by the Indian Graves and Records Act (RCW 27.44).

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

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

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

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

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance on an "all risk" or equivalent policy form upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall be on a special perils form and shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. A copy of the builder's risk policy shall be made available to the Owner for its approval at Owner's written request, such approval shall not be unreasonably withheld. The builder's risk insurance shall include physical loss or damage to the Work, including temporary buildings, debris removal, and damage to materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1 to the extent that the Design-Builder, or any subcontractor or subconsultant of any tier is responsible for the claim against the builder's risk insurance.

5.3.2 Not Used.

5.3.3 Not Used.

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

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement. Such waiver shall be effective whether the person or entity would otherwise have a duty of indemnification, do not pay the insurance premiums, and whether or not the person or entity had an insurable interest in the property damaged.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a preliminary schedule of values for all of the Work as set forth in Exhibit C. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any

updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

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

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 If authorized by Owner, the Application for Payment may include request for payment for equipment and/or material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
- .2 The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
- .4 Design-Builder furnishes Owner a certificate of insurance extending Design-Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
- .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;
- .6 Owner shall at all times have the right of access in company of Design-Builder;
- .7 Design-Builder and its surety assume total responsibility for the stored materials;
- .8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and
- .9 Upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

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

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

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

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

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

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

6.6 Substantial Completion.

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

6.6.2 Not Used

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

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

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

- .1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3** Consent of Design-Builder's surety, if any, to final payment;
- .4** All operating manuals, warranties, record drawings, and other deliverables required by the Contract Documents;
- .5** "As Built" drawings, with any and all implemented changes that constitute a final record set of the Project; and
- .6** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

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

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

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but

not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

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

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

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

7.2 Not Used.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, its agents or employees.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and

employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the worker's compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

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

OWNER'S INITIALS: (____)
DESIGN-BUILDER'S INITIALS: (____)

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

7.5 Lower Tier Contractors Indemnification Obligations

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

7.6 Limited Recourse.

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

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

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

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

- .1** The scope of the change in the Work;
- .2** The amount of the adjustment to the Contract Price or any Commercial Term; and
- .3** The extent of the adjustment to the Contract Time(s) or any Commercial Term.

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

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

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

9.2 Work Change Directives.

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

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

9.3 Minor Changes in the Work.

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

9.4 Contract Price Adjustments.

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

- .1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3** The Cost of the Work as set forth in the Agreement; or
- .4** If an increase or decrease cannot be agreed to as set forth in items.1 through.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including the Fee Percentage (if applicable), as set forth in the Agreement.

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

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the

services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder, unless the parties specifically agree to allow the Design Log or Trend Log to operate as such written notice of claims. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

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

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

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

10.3 Arbitration.

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

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

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

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

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTIONS 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT

LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

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

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

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

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

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

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance

with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of any Commercial Term, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

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

- .1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

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

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

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

- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.
- .3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure,

such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

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

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

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

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

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

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

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

12.3 Electronic Data Protocol.

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

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

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

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

Article 13

Miscellaneous

13.1 Confidential Information.

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

13.2 Assignment.

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

13.3 Successorship.

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

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

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

13.6 No Waiver.

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

13.7 Headings.

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

13.8 Notice.

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

13.9 Amendments, Work Directives and Change Orders.

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