



Request for Qualifications House of Healing

This **REQUEST FOR QUALIFICATIONS** (“RFQ”) from the Owner named below invites the submittal of a Statement of Qualifications (“SOQ”) from firms interested in providing design-build services for the project described below. By submitting an SOQ, the Proposer represents that it has carefully read the terms and conditions of this RFQ and all attachments and addenda and agrees to be bound by them. This RFQ is not an offer to enter into a contract, but merely a solicitation of persons interested in submitting SOQ to the Owner for the Project.

OWNER:

Western Washington University
516 High Street, MS 9122
Bellingham, WA 98225-9122

PROJECT:

Coast Salish Longhouse, House of Healing
Western Washington University

OWNER CONTACT PERSON:

Sherrie A. Montgomery, AIA
Capital Planning & Development
516 High Street, MS 9122
Western Washington University
Bellingham, WA 98225-9122

SOQ DUE DATE AND TIME

Proposer’s SOQ shall be submitted no later than:

3:00 PM local time, February 10, 2022.

All SOQs must be submitted pursuant to the instructions below. It is the Proposer’s sole responsibility to ensure that the SOQ is delivered in the manner required by this RFQ by the Due Date and Time. Owner has the right to reject any SOQs not properly delivered.

Project Information Meeting is scheduled for January 25, 2022 at 2:00 PM. The meeting will be conducted remotely and the information will be on the website.

SECTION 1 OWNER DESCRIPTION

1.1. General

Western Washington University is one of six state-funded, four-year institutions of higher education. The University is located in Bellingham, a city of approximately 87,500, situated in the northwest corner of Washington State. The University is 90 miles north of Seattle, 55 miles south of Vancouver, B.C., and an hour's drive from the ski area on 10,778-foot Mount Baker. Western maintains over 60 permanent buildings on a 212-acre campus that sits along Sehome Hill overlooking Bellingham Bay and many of Puget Sound's San Juan Islands. Among other properties, Western Washington University includes an additional 88 acres of off-campus laboratory and classroom facilities at Shannon Point Marine Center in Anacortes, Washington, and a 9.8-acre student-owned facility at nearby Lake Whatcom.

Since its founding in 1893, Western has grown into a comprehensive university with nearly 16,000 full and part-time students, making it the third largest institution of higher education in the state. The University is large enough to offer a wide range of high quality programs and small enough to focus its resources on individual students. Faculty, students, and staff work closely together in a uniquely attractive setting to pursue a university education and build career skills on the sound foundation of the arts, humanities, sciences and professional studies.

Western Washington University – *Make Waves*. For further information about the campus in general, visit the Western Washington University website at: <http://www.wvu.edu/>.

In accordance with RCW 39.10.300, et seq., Western Washington University (WWU) will utilize a progressive design-build approach for the procurement and delivery of the project, meaning that the Design-Builder will be selected primarily on the basis of qualifications. This approach does not require design or a complete project price proposal during the selection process. The selected Design-Builder will work collaboratively with WWU in the complete development and delivery of the project.

WWU fully embraces the principle of collaboration and integrated project delivery that emphasize a cooperative approach to problem solving. Toward that end, WWU expects the design-build team, as part of the project team, to deliver this project by creating a culture of open and honest communication, utilizing Lean principles efficiently and effectively, and establishing a collaborative environment where the project team contributes its best efforts for the benefit of the project as a whole.

1.2. Funding/Authority

Western received \$4,500,000 in state capital appropriations in the 2021-2023 capital budget. Western is currently fund raising an additional \$450,000.

WWU obtained authority to use the design-build delivery method from the Washington State Capital Projects Advisory Review Board Project Review Committee on December 2, 2021.

1.3. Procurement Website

<https://cpd.wvu.edu/rfq>

SECTION 2 OVERVIEW OF PROJECT

2.1. General Description of the Project

The vision for a Coast Salish longhouse on Western's campus originated from the Native American Student Union and is the result of decades of dialogue among students, faculty, and campus administrators. To honor that commitment and ensure the vision is fully realized, the project has ambitious goals, including a design targeting

net zero carbon emissions, low impact development site design strategies, high native-owned and MWBE participation, use of locally sourced material and products in construction, and active participation by student groups, Tribes, and local community throughout design and construction.

The longhouse will include a gathering hall that will support educational, community, and cultural functions; a teaching/warming kitchen; student lounges; and other support services. The outdoor spaces will include gathering areas, cooking space, and educational gardens with native plantings that may be used in teaching indigenous science, art, and medicine. The Coast Salish longhouse will reflect traditional Coast Salish architecture and design and will serve as a gathering and ceremonial space for native students as well as Coast Salish tribal nations throughout the Salish Sea region. Western's House of Healing will stand as a landmark for Native people, validating WWU's commitment to addressing diversity, equity, and inclusion.

The project will be between approximately 5,500 and 7,000 GSF and will be located in an open meadow in Sehome Arboretum, adjacent to WWU's campus. This site was selected by WWU in collaboration with the City of Bellingham local Tribal elders and is jointly managed by WWU and the City of Bellingham.

The project will be led by a Steering Committee that includes representatives from the Project Planning Committee, which consists of Native students, faculty, and staff for consulting purposes.

The primary purpose of a longhouse on the Western campus is to increase representation of Native students and enhance their recruitment, retention, and graduation. The Coast Salish longhouse at Western will support American Indian/Alaska Native and First Nation students in academics by providing a dedicated space on the university campus for students to gather, build community and support each other. An identity-conscious facility will have a powerful impact on the recruitment and retention of Native students, but more importantly will promote cultural sovereignty and a sense of place for Native students, faculty, staff, and tribal communities. The longhouse will also enhance through action Western's land acknowledgement statement for the campus and tribal communities who serve Native students.

The proposed 4,500 to 7,000 square foot longhouse on Western's campus will also serve as a house of healing and educational center to promote cultural exchange and supportive understanding for the communities served by the university. The Coast Salish people have long understood the importance of collective healing in response to shared historical trauma, as well as holding the power of traditional and cultural practices in order to overcome hardship. By acknowledging the past trauma and suffering of Indigenous people and all ethnic groups, as well as the current grief and suffering caused by the global pandemic and ensuing economic crisis, the proposed Coast Salish Longhouse House of Healing will benefit the recovery process for all people who have suffered and continue on a road of recovery.

2.2. **Project Goals**

The Owner has established the following Project Goals:

- 2.2.1. **Incorporate Coast Salish Traditions.** This Project Goal will be achieved through a design that reflects the traditions and incorporates the input of the Coast Salish Community. The Design-Build team will actively engage with and encourage participation from student groups, Tribes, and the local community.
- 2.2.2. **Exceed Business Equity Goals:** This Project Goal will be achieved with the Design-Builder exceeding its aspirational goal for inclusion of native, local, small, women, and minority owned businesses and establishing and maintaining inclusive contracting and procurement practices that provide outreach to, enhancement of and support local, small, women and minority owned businesses. Particular emphasis will be given to inclusion of native owned businesses and the use of the Tribal Employment Rights Office (TERO) for outreach and support.
- 2.2.3. **Exceed Sustainability Goals.** This Project Goal will be achieved through attaining net zero carbon emissions, net zero energy use, incorporating low impact site development strategies, and the use of locally sourced materials and products in construction.
- 2.2.4. **Maximize Limited Budget.** This Project Goal will be achieved by leveraging the

efficiencies of the progressive design-build process through innovative and lean design and construction techniques that provides the most scope and programming within WWU's established budget.

2.2.5. **Execute a successful, collaborative Progressive Design-Build (PDB) Process to produce the envisioned project:** The Design-Build team will develop and utilize a collaborative relationship between the Owner, its stakeholders, and the Design-Build Team to exceed the Project Goals within the Owner's budget and schedule and demonstrating exemplary design and project management.

2.3. **Form of Agreement**

2.3.1. The Design-Build Team will work collaboratively with the Owner to establish a project scope, Basis of Design Documents, and Guaranteed Maximum Price. The Design-Build Agreement will be a modified version of the DBIA Form 530, Standard Form of Agreement Between Design-Builder and Owner with a modified version of the DBIA Form 535 General Conditions of Agreement. The Design-Build Agreement and General Conditions are attached as Exhibit D to this RFQ.

2.4. **Reasons for Using the Design-Build Procedure**

2.4.1. The Owner has received permission from the Capital Projects Advisory Review Board Project Review Committee to use the Design-Build Procedure set forth in RCW 39.10. This project will be delivered using progressive design-build. With progressive design-build, the entire Design-Build Team is integrated with the Owner at the earliest possible time, creating natural efficiencies with respect to the ability for the development of a design that maximizes the University's budget but also to more fully incorporate the University's and stakeholder's input into the design at the earliest possible stage. In addition, the interaction between the University and the Design-Build Team before substantial prescriptive specifications are identified allow for maximum innovation by the Design-Build Team to better achieve the University's Project Goals.

2.4.2. Studies have shown that design-build provides time savings, and progressive design-build maximizes on the savings in the delivery method. Progressive design-build is also the fastest delivery method. Progressive design-build allows the Owner and its stakeholders to collaborate with the design-builder at the outset to customize the space and programming to the Owner's needs and to maximize the Owner's limited budget.

2.5. **Guaranteed Maximum Price**

The Guaranteed Maximum Price for this Project will be Three Million, Six Hundred Fifty Thousand dollars (\$3,650,000), not including tax.

2.6. **Project Procurement Schedule**

The following is the Project Procurement Schedule. The Owner reserves the right to modify the Project Procurement Schedule via addenda issued prior to the date set forth below.

Date	Activity
January 11, 2022	Issue RFQ
January 25, 2022	Project Information Meeting
January 28, 2022	Last Date to Submit Questions Regarding the RFQ
February 2, 2022	Last Date to Issue Owner Addenda
February 10, 2022	SOQ Due Date
February 18, 2022	Notification of Finalists
February 21, 2018	Issue RFP
February 28, 2022	Mandatory Site Walk Through for Finalists
March 1 and 2, 2022	Confidential Individual Meetings
March 4, 2022	Last Date to Submit Proposed Changes to Contract

March 8, 2022	Last Date to Issue Owner Addenda
March 14, 2022	Proposal Due Date
March 17 and 18, 2022	Interviews with Finalists (optional)
March 25, 2022	Notification of Highest Scored Finalist

2.7. **Definitions**

- 2.7.1. **Business Day:** any day on which the Owner is open for regularly conducted business.
- 2.7.2. **Confidential Individual Meetings:** The confidential meeting(s) conducted individually between the Owner and each Finalist after the issuance of the RFP. All Confidential Individual Meetings will be conducted pursuant to the instructions in the Procurement Documents, and all participants will be required to enter into a confidentiality agreement before the meeting.
- 2.7.3. **Design-Builder:** The entity with the prime design-build contract with the Owner.
- 2.7.4. **Design-Build Team Member:** All entities listed by the Design-Builder as providing services or construction on the project. The Design-Builder is not required to list all members of the Design- Build Team in the SOQ. Members of the Design-Build Team may also be referred to as “Team Members”.
- 2.7.5. **Disadvantaged Business Enterprise:** Any business entity certified with the Washington State Office of Minority and Women’s Business Enterprises under chapter 39.19 RCW.
- 2.7.6. **Key Team Member:** Individuals who will be assigned to the Project who play an important role in the design, construction or management of the Project.
- 2.7.7. **Procurement:** The Owner’s process for selecting a Design-Build Team for this Project.
- 2.7.8. **Procurement Documents:** All documents issued by the Owner in connection with the Procurement or Project.
- 2.7.9. **Projects of Similar Scope and Complexity:** Projects that had completion dates within the last five (5) years and that have many or all of the following characteristics:
 - a. Projects of a similar size and budget that include design and construction of culturally significant buildings that incorporate meaningful input from the local community;
 - b. Projects that utilize an integrated delivery method that require strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design;
 - c. Projects where the Design-Builder achieved high participation from Business Equity Enterprises (as defined in Exhibit F), in particular Native owned businesses;
 - d. Projects that achieved high sustainability goals such as NetZero, LEED Gold or Platinum and that incorporate innovative sustainability materials and systems; and
 - e. Projects where the Design-Builder was selected prior to the establishment of the scope, schedule and GMP where the Design-Builder collaborated with the Owner to develop the final scope, schedule GMP.
- 2.7.10. **RFP:** The Owner’s Request for Proposals, which will be issued to those Finalists who are selected to proceed to the next phase of this Procurement.
- 2.7.11. **Small Business Entity:** A small business as defined in RCW 39.26.010 as a Washington state business, including a sole proprietorship, corporation, partnership, or other legal entity that:
 - a. Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either
 - i. Fifty or fewer employees; or
 - ii. A gross revenue of less than seven million dollars annually as reported on its feral income tax return or its return filed with the Washington State Department of Revenue over the previous three consecutive years; or

- b. Is certified with the Washington State Office of Minority and Women's Business Enterprises under Chapter 39.19 RCW.

SECTION 3 PROCUREMENT PROCESS

3.1. General Information

3.1.1. Compliance with Legal Requirements

This Procurement will be conducted in accordance with RCW 39.10.330 and all applicable federal, state, and local laws, and Owner policies and procedures.

3.1.2. Conflict of Interest and Communications with the Owner

The Owner may make a written determination to waive a potential conflict of interest if the following apply:

- a. The role of the Consultant was limited to provision of preliminary design, reports, or similar "low level" documents that will be incorporated into the Procurement and did not include assistance in development of instructions to Proposers or evaluation criteria, or
 - i. Where all documents and reports delivered to the Owner by the Consultant are made available to all Proposers.
 - ii. Proposers are required to conduct the preparation of their SOQs with professional integrity and free of lobbying activities. Communication with the Owner regarding this Project shall be via email or regular mail only and directed to the following Owner's Representative, Sherrie Montgomery.
- b. Do not communicate about the Project or the Procurement with any other Owner employees, representatives, or consultants. Communication with other Owner employees, representatives, or consultants regarding the Procurement may cause the firm involved to be disqualified from submitting under this Procurement. Any verified allegation that a responding Proposer or Team Member or an agent or consultant of the foregoing has made such contact or attempted to influence the evaluation, scoring, and/or selection of Finalists may be the cause for Owner to disqualify the Proposer team from submitting an SOQ or Proposal, to disqualify the Team Member from participating in the Procurement and/or to discontinue any further consideration of such Proposer or Team Member.
- c. Following the Owner's approval of the Finalists, the Owner anticipates that certain communications and contacts will be permitted. The RFQ, RFP and/or other written communications from Owner will set forth the rules and parameters of such permitted contacts and communications. To the extent any Proposer intends at any time to initiate contact with the general public regarding the Project, the nature of such intended contact and the substance thereof must be approved in writing by Owner prior to the commencement of such activities.

3.1.3. Expenses of Proposer and Payment of Honorarium

With the exception of the payment of the Honorarium as noted below, the Owner 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 the Proposer cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the process even in the event the Owner cancels this Project or rejects all Proposals. The Owner will pay an Honorarium in the amount of Five Thousand Dollars (\$5,000) to the responsible Finalists submitting responsive Proposals to the RFP that remain in competition until the point of Contract award but who are not awarded the Design-Build Contract.

3.1.4. Public Disclosure

All documentation and submittals provided to the Owner may be considered public

documents under applicable laws and may be subject to disclosure. Proposers recognize and agree that the Owner will not be responsible or liable in any way for any losses that the Proposer may suffer from the lawful disclosure of information or materials to third parties.

Any materials requested to be treated as confidential documents, proprietary information, or trade secrets must be clearly identified and readily separable from the balance of the SOQ or Proposal.

Such designations will not necessarily be conclusive, and Proposers may be required to legally justify why such material should not, upon written request, be disclosed by the Owner under the applicable public records act. The Owner will endeavor to provide at least two (2) Business Days' notice of a public records request for material submitted pursuant to this Procurement. Proposers must respond to the notice in writing with any objection to the production of the documents within two (2) Business Days of receipt of the notice. The Proposers may be required to ask a superior court of appropriate jurisdiction to prevent the inspection or release of records. All costs incurred by Proposers associated with any public records request are the responsibility of the Proposers.

3.1.5. **Protest Procedures**

The protest procedures applicable to the Procurement are set forth in Exhibit B to this RFQ.

3.2. **Owner Rights and Procurement Conditions**

3.2.1. The Owner 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 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;
- h. To take any action affecting the RFQ process, the RFP process, or the Project that is determined to be in the Owner's best interests;
- i. To utilize information from any source, including but not limited to references and individuals who are not identified by the Proposer and/or Finalist, to evaluate Proposers and Finalists; and
- j. Approve or disapprove of the use of particular Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Subconsultants, Subcontractors, or Key Team Members from those identified in the SOQ or Proposal, such approval or disapproval shall not be unreasonably exercised.

3.3. **Outline of the Procurement Process**

3.3.1. **Request for Qualifications (RFQ).**

- a. This RFQ invites firms to submit SOQs describing in detail their technical, management, and financial qualifications to design, permit, construct, commission, and closeout the Project. The issuance of this RFQ is the first phase of the Procurement process.

- b. Proposers will submit their SOQ, and other deliverables required pursuant to this Procurement at the time and in the manner set forth in this RFQ and any addenda. The Owner will not consider SOQ or other deliverables that are submitted after the time set forth in the RFQ. Proposers are solely responsible for making sure that the Owner receives the SOQ in a timely fashion.
- c. The Owner will evaluate the information submitted by each Proposer to 1) determine whether the Proposer meets the mandatory minimum requirements and 2) evaluate the SOQ provided by each Proposer pursuant to the evaluation system described below. Any Proposer who fails to meet the mandatory minimum requirements set forth in this SOQ will be deemed non-responsive and will not be considered further by the Owner in this Procurement.
- d. All SOQ will be evaluated in accordance solely with the criteria established in the RFQ and any addenda issued thereto. The evaluation criteria are listed below, including the relative weight or importance given to each criterion.
- e. Not more than three responsive and responsible firms will be selected as Finalists. Only those firms that have been short-listed will be invited to submit a Proposal in response to the RFP.
- f. The results of the SOQ evaluations will be carried forward and included in the final evaluation and selection.
- g. Design-Build Team Members and individual Key Team Members will be used as a basis for selection. Once shortlisted, neither the Proposer nor Team Members that are submitted to the Owner as part of the SOQ or Proposal may substitute a listed consultant, subconsultant or subcontractor, or any individual listed as a Key Team Member; however, a change to any submitted Team Member or Key Team Member will result in re-evaluation and may result in a change to the evaluation and scoring of the Proposer.

3.3.2. Request for Proposal (RFP), Confidential Individual Meetings & Selection Process

- a. The Owner will issue the RFP to the Finalists. The RFP will further explain the evaluation criteria, Proprietary Meetings, and other elements of the RFP process.
- b. Prior to the submission date for Proposals, written questions will be accepted as defined in the RFP.
- c. The Owner will conduct an optional site walk for the Finalists. The Owner will provide video and photographs of the site as well.
- d. The Owner will conduct Confidential Individual Meetings with each Finalist. The first Confidential Individual Meeting will be an Interactive Proprietary Meeting that will occur prior to the submission of the Proposals and will allow the Owner to evaluate the Finalists' ability to collaborate with the Owner's team and to allow the Finalists to ask the Owner questions regarding the Project and the Owner's goals and concerns. The second Confidential Individual Meeting is optional and, if WWU determines it is necessary, will be an Interview after the submission of the Proposals and will allow the Owner to ask questions regarding the Design-Build Team's Proposal. The Confidential Individual Meetings will be further described in the RFP. All information from the Design-Build Teams provided in the Confidential Individual Meetings will remain confidential during the procurement process; however, see Section 3.15 with respect to the potential public disclosure of information provided during the procurement pursuant to any applicable public records act. The Proprietary meetings will also provide an opportunity for direct interaction between the Finalist and the RFP Evaluation Committee.
- e. A Finalist may submit suggested proposed changes to the contract provisions no later than the date set forth in the Procurement Schedule. The Owner, at its sole discretion, may revise the RFP, the contract provisions and/or program documents and issue an addendum to all Finalists.
- f. Finalists will submit a Technical Proposal and Price Proposal in accordance

with the Procurement schedule.

- g. The Price Proposal will be submitted in a separate, distinctly marked and sealed envelope from the Technical Proposal.
- h. The Owner will establish an RFP Evaluation Committee to review and evaluate the Technical Proposal. The RFP Evaluation Committee may be the same as the RFQ Evaluation Committee. The RFP Evaluation Committee will evaluate the Proposals in accordance with the published evaluation criteria.
- i. At its sole discretion, the Owner may ask written questions of Proposers, seek written clarifications, and conduct discussions with Proposers on Proposals.
- j. The Owner will provide written notification to all Finalists of the selection decision and make a selection summary available to all Proposers at the conclusion of the Procurement.
- k. At the Owner's discretion, it will initiate negotiations with the Highest Scored Finalist. If the Owner is unable to execute a contract with the Highest Scored Finalist, negotiations with the Highest Scored Finalist may be suspended or terminated, and the Owner may proceed to negotiate with the next Highest Scored Finalist. The Owner will continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated. Negotiations are at the Owner's sole discretion. By submitting a Proposal pursuant to the RFP, the Proposer represents and warrants that it will enter into the contract provided by the Owner subject to the terms set forth in its Proposal.

3.3.3. Price Proposal

Finalists will submit a Price Proposal pursuant to the instructions set forth in the RFP. The Price Proposal for this Project is anticipated to include the Design-Builder's overhead and profit costs.

3.3.4. Evaluation and Scoring of Proposers and Finalists

In the evaluation and scoring of Proposers and Finalists, the Owner will consider the information submitted in the SOQ, the Technical and Price Proposal, Confidential Individual Meetings with respect to the evaluation criteria set forth in the RFQ and RFP, and information from references and other sources. The result of the evaluation will be a comparative scoring of Proposers.

In evaluating each of the criteria, the Evaluation Committees will identify significant and minor strengths and weaknesses from the submissions. The Evaluation Committees will then use the following metric to evaluate the submissions and determine the number of points for each Evaluative Criteria based on the percentages assigned in the RFQ, the RFP and any addenda. In the description below, the term "Proposer" includes both Proposers in the SOQ phase as well as Finalists in the RFP phase of the procurement.

- a. Definition of "**strength**" and "**weakness**":
 - i. The term "strength" ultimately represents a benefit to the Project and is expected to increase the Proposer's ability to meet or exceed the Project Goals. A minor strength has a slight positive influence and a significant strength has a considerable positive influence on the Proposer's ability to exceed the Project Goals.
 - ii. The term "weakness" detracts from the Proposer's ability to meet the Project Goals and may result in inefficient or ineffective performance. A minor weakness has a slight negative influence and a significant weakness has a considerable negative influence on the Proposer's ability to exceed the Project Goals.
- b. **Excellent** (80-100 percent): The Evaluative Criteria demonstrates an approach that is considered to exceed the Project Goals and the RFQ or RFP requirements and provide a consistently outstanding level of quality. For the Evaluative Criteria to be considered Excellent, it must be determined to have significant strengths and/or a

number of minor strengths and few, if any, appreciable weaknesses. The minimum allocation of points for Excellent is 80 percent of the maximum points available for a given evaluation criterion. The greater the significance of the strengths and/or the number of strengths will result in a higher percentage, up to a maximum of 100 percent. An Evaluative Criteria that is evaluated as Excellent is considered to present virtually no risk that the Proposer would be unsuccessful in delivering the Project to the Owner's satisfaction and would most likely exceed all Project Goals.

- c. **Good** (60-79 percent): The Evaluative Criteria demonstrates an approach that is considered to meet the RFQ or RFP requirements in a beneficial way (providing advantages, benefits, or added value to the Project) and offers quality. For the Evaluative Criteria to be considered Good, it must be determined to have strengths and no significant weaknesses. Minor weaknesses are offset by strengths. The minimum allocation of points for Good is 60 percent of the maximum points available for a given evaluation criterion. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor weaknesses will result in a higher percentage, up to a maximum of 79 percent. There is little risk that the Proposer would be unsuccessful in delivering the Project to the Owner's satisfaction and would most likely meet all Project Goals.
- d. **Fair** (40-59 percent): The Evaluative Criteria demonstrates an approach that contains minor and/or significant weaknesses and limited appreciable strengths. The minimum allocation of points for Fair is 40 percent of the maximum points available for a given evaluation criterion. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor or significant weaknesses will result in a higher percentage, up to a maximum of 59 percent. There is some risk that the Proposer would be unsuccessful in delivering the Project to the Owner's satisfaction and meeting the Project Goals.
- e. **Deficient** (0-39 percent): The Evaluative Criteria demonstrates an approach that contains significant weaknesses and few or no appreciable strengths. The minimum allocation of points for Deficient is 0 percent. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor or significant weaknesses will result in a higher percentage, up to a maximum of 39 percent of the maximum points available for a given evaluation criterion. It is expected that the Proposer would not be able to deliver the Project to the Owner's satisfaction and meet the Project Goals. The Owner, at its sole discretion, may reject any Proposal deemed *Deficient* in fulfilling the requirements of the RFQ or RFP requirements.
- f. **Non-Responsive**: Does not meet the Minimum Qualifications required for evaluation. In addition, the Owner, at its sole discretion, may reject any Evaluative Criteria deemed non-responsive to any of the requirements of the RFQ or RFP.

For the purpose of selecting and evaluating Proposers, the evaluation criteria will be given the following relative weights:

SOQ		Total SOQ Points: 60
	Team Organization	10 points
	Projects of Similar Scope and Complexity	10points
	Sustainable Design and NetZero Experience	10 points
	Project Controls	10 points
	Experience with Native Participation	10 points
	Successful Utilization of Certified Disadvantaged Businesses	10 points
Technical Proposal		Total Technical Proposal Points: 80

	Overall Management Approach	10 points
	GMP Development Plan	15 points
	Design Development and Management	15 points
	Sustainability Plan	10 points
	Inclusion Plans for Native Participation	20 points
	Inclusion Plans Small Business/MWBE	10 points
Price Proposal		Total Price Proposal Points: 10
TOTAL		GRAND TOTAL Points: 150

SECTION 4 SOQ DOCUMENTATION REQUIREMENTS

4.1. Submittal Process

The University is requiring electronic submittals of the items listed below for this solicitation. Hard copy submittals will not be accepted. Submissions must be delivered through the University's eBuilder bid portal no later than 3:00 pm on the date in the schedule set forth in section 2.6 of the RFQ.

<https://app.e-builder.net/public/publicLanding.aspx?QS=c562bc54773140b4ad8324ee12037d00>

- .1 The electronic submittal shall include the solicitation number (PW774), the title of the document, and due date and time in the subject line. The Proposal shall be titled, "WWU PW774 Coast Salish Longhouse Statement of Qualifications"
- .2 Limit file size to 80MB.
- .3 The University will use the time stamp on the submittal upload to determine timeliness.
- .4 Proposers are responsible for ensuring timely delivery of submittals.
- .5 The University is not responsible for Proposer's technical difficulties in submitting electronically.
- .6 The Owner reserves the right not to evaluate late submittals.

4.1.1. If issues arise in accessing the RFQ documents or the submittal portal, please contact:

Sherrie Montgomery, Project Manager
Capital Planning & Development
Montgos6@wwu.edu
(360) 650-6519

4.1.2. Any addenda issued for this RFP will be published at the following website address: <https://cpd.wwu.edu/rfq>. Proposers are responsible for checking the website prior to submission of Proposals for any addenda. If you are unable to download the addenda, you may contact the individual noted above.

4.2. **SOQ Format Requirements**

The SOQs shall comply with the following format requirements:

- 4.2.1. SOQs shall be formatted in searchable .pdf format and shall include a searchable bookmark for each subsection of the submittal.
- 4.2.2. The body of the SOQ shall be organized in accordance with the Evaluation Criteria.
- 4.2.3. The body of the SOQ, when printed, shall be limited to a maximum of Fifteen (15) pages.
 - a. The **only** documentation that is **not** included in the page count is the following:

- i. Letter of interest or cover letter.
 - ii. Statement of Proposer's Ability to Provide a Proposal Bond, or Performance and Payment Bond;
 - iii. Statement of Proposer's Ability to Meet the Owner's Insurance Requirements;
 - iv. Corporate Structure Questionnaires;
 - v. Identification of Projects Table;
 - vi. Resumes of Key Team Members;
 - vii. Divider tabs, provided that they contain no substantive content; and
 - viii. Cover pages, provided that they contain no substantive content.
- b. **SOQs that exceed the page limit may be rejected.** The Owner, at its sole discretion, reserves the right to reject SOQs that exceed the page limit or to remove pages from the sections of any non-conforming SOQ submittals to bring each non-conforming SOQ submittal within the page count requirement.
 - c. A "page" shall be defined as (when printed) one single-sided piece of paper that has words, charts, tables, pictures, or graphics. Pages shall be 8.5 x 11 inches, with the exception of the Identification of Projects Table, which may be presented in 8.5 x 14-inch format.
 - d. The font shall for any portion of the submittal, including graphics, be no smaller than 10 point.

4.3. **SOQ Organization**

SOQs shall consist of the following parts:

4.3.1. Letter of Interest

4.3.2. Minimum Qualifications

- a. Statement of Proposer's Ability to Provide Performance and Payment Bond. (See Section 5.2.1 and Exhibit C)
- b. Statement of Proposer's Ability to Meet the Owner's Insurance Requirements. (See Section 5.2.2 and Exhibit D)

4.3.3. Technical & Management Qualifications

- a. Team Organization
- b. Demonstrated History of Successful Projects Similar in Scope and Complexity
- c. Design Experience
- d. Project Controls
- e. Successful Utilization of Business Equity Enterprises, including Certified Disadvantaged Businesses

4.3.4. SOQ Attachments

- a. Resumes of Key Team Members
- b. Identification of Projects Table
- c. Corporate Structure Questionnaire(s)

SECTION 5 SOQ SUBMITTAL INFORMATION

5.1. **Letter of Interest (No points)**

The SOQ must include a cover letter containing the name, address, telephone number, fax number, and e-mail address of the Proposer and the principal contact person. The Letter of Interest shall also include the following: (1) name, address, telephone number, fax number, and e-mail address for all listed consultants for the Project (if any) and (2) the type of firm or organization (corporation, partnership, joint venture, etc.) that will serve as the prime contracting party. The

letter of interest may be a maximum of two (2) pages.

5.2. **Minimum Qualifications**

5.2.1. **Statement of Proposer's Ability to Provide Performance and Payment Bond (Pass/Fail)**

As a **mandatory minimum requirement**, the Proposer must have the ability to obtain a performance and payment bond in the amount equal to the value of the contract amount, subject to subsequent modifications to that amount, and sales tax. Proposer shall provide a letter signed by an authorized representative of Proposer's surety company (or agent) confirming that the Proposer can meet this minimum requirement. Any Proposer who fails to meet this mandatory minimum requirement will be considered non-responsive and will not be considered further by the Owner in this Procurement process. The surety shall be a company authorized to conduct business in the state where the Project is located with a current minimum A.M. Best rating of A-, Class VII or better. Letters indicating "unlimited" bonding capability are not acceptable.

5.2.2. **Statement of Proposer's Ability to Meet the Owner's Insurance Requirements. (Pass/Fail)**

As a **mandatory minimum requirement**, the Proposer must document that it has the ability to meet the minimum insurance requirements as set forth in the attached draft Agreement and General Conditions (Exhibit D). Proposer shall provide a letter from Proposer's insurance company or broker indicating that the Proposer is capable of complying with the insurance requirements specified in Exhibit D or an ACCORD Insurance Certificate that shows evidence of insurance that meets or exceeds the requirements set forth above. Any Proposer who fails to meet this mandatory minimum requirement will be considered to be non-responsive and will not be considered further by the Owner in this Procurement. The insurer shall be a company authorized to conduct business in the state where the Project is located with a current minimum A.M. Best rating of A-, Class VII or better.

5.3. **Technical and Management Qualifications**

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 set forth 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.

The SOQ will be evaluated on the following technical and management qualifications:

5.3.1. **Team Organization**

- a. The following Key Team Members shall be identified from the design-build team. Individuals identified may have multiple roles. Proposers should clearly identify the roles for the Key Team Members.
 - i. corporate executive dedicated to the project,
 - ii. project manager
 - iii. lead design architect,
 - iv. architectural project manager,
 - v. construction project manager,
 - vi. cultural liason,

- vii. superintendent,
- viii. cost estimator,
- ix. quality control manager,
- x. safety officer, and
- xi. equity manager.

No other consultants or trade contractors should be included in the proposal; these team members will be selected in consultation with WWU after the contract is awarded.

- b. Provide an organization chart for the Design-Build Team, including but not limited to the Key Team Members identified. Include in the organization chart the percentage of time that Key Team Members are estimated to be dedicated to the Project for each phase. Clearly identify the Key Team Member who will be responsible for leading the Design-Build Team and will be the prime contact with the Owner during each phase of the project.
- c. Provide a narrative describing the benefits of the team structure and the benefits that each Key Team Member provides to the Project. Explain how the Design-Build Team and Key Team Members will exceed the Project Goals. Describe the Team's past performance working together and/or describe the steps the Team has taken to promote integration and a collaborative working environment. The Owner reserves the right to award more points to those teams who have worked together in a collaborative delivery model. If the Team has not worked together, describe the efforts the Team has undertaken to create a collaborative teaming environment.
- d. For each Design-Build Team Member, identify all lawsuits or claims filed in any court or public administrative body in which the Design-Build Team Member, or any company owned or controlled by the Design-Build Team Member, is a party asserting a claim on a design or construction contract. For lawsuits and/or claims in Washington, identify those filed in the last ten years. For lawsuits and/or claims against the Owner, identify all claims and/or lawsuits filed at any time. With each lawsuit, identify the name of the parties, the court or administrative body, and the case number or identifying information for the case. Also identify the amount of the original claim as well as the amount ultimately recovered.

5.3.2. **Demonstrated Experience of Successful Projects of Similar Scope and Complexity**

- a. Describe the Team's past performance in successfully managing design-build (or a similar integrated delivery model) Projects of Similar Scope and Complexity that include management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Address the Design-Build Team's experience with each element of the definition of Projects of Similar Scope and Complexity. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.
- b. Describe how Team Members have utilized the progressive design-build process, innovative design and construction techniques, and/or state of the art technology and sustainability measures to achieve the owner's goals, increase safety, and/or enhance communication and collaboration.
- c. In the Identification of Projects Table, note each Key Team Member who had a material role in each Project of Similar Scope and Complexity described.

5.3.3. **Sustainable Design and Net Zero Experience**

- a. Describe the Design-Build Team's experience in working on projects seeking to maximize sustainable construction practices;
- b. Specifically address the Design-Build Team's experience in projects providing achievable solutions regarding Net Zero energy requirements, Living Building Challenge, and/or Leadership in Energy and Environmental Design (LEED) Certification. Indicate if the project achieved certification and the level of

certification. Discuss any initiatives the Design-Build Team employed to achieve sustainability;

- c. Describe instances where the Team has exceeded owner's project goals for previous owners on Projects of Similar Scope and Complexity.

5.3.4. **Project Controls**

- a. Describe the Team's past performance with Progressive Design-Build or similar integrated projects development and management of Project budgets, including collaboratively developing a GMP and/or flexible scope within a fixed GMP with an owner.
- b. Discuss how the estimating and cost monitoring reporting process provided substantive and meaningful information to the owner. Provide examples of deliverables to the owner that will assist in understanding the GMP development process.
- c. Describe any issues or problems that arose on the projects discussed in this section and how those issues or problems were resolved.

5.3.5. **Experience with Native Participation**

- a. Provide a summary of experience with tribal engagement, outreach and participation with native owned business, labor, craft and materials and how the team has utilized the work force of tribal members.

5.3.6. **Successful Utilization of Small and Certified Disadvantaged Businesses**

- a. Provide a summary of the Design-Build Team's performance in the state of Washington over the last five years in utilization of Small and Certified Disadvantaged Businesses. WWU reserves the right to award additional points to firms who have achieved substantial utilization of Small and Certified Disadvantaged Businesses that are Native owned or in geographic areas that tend to have lower numbers of Certified Businesses such as rural counties like Whatcom and Skagit.
- b. For each project discussed, include the following information:
 - i. Name of the project;
 - ii. Date of Substantial Completion;
 - iii. Name of the owner and a contact person with email and phone;
 - iv. Final contract value;
 - v. Owner's utilization goals for the project (if any);
 - vi. The overall percentage of the final contract value paid to each of the following categories. Do not list businesses in more than one category.
 - Disadvantaged Businesses
 - Small Businesses
 - Native Owned Businesses

5.4. **Resumes of Key Team Members**

5.4.1. Provide a resume for all Key Team Members. Resumes should be no longer than 1 page and should include the following information at a minimum. The resumes will not be evaluated separately. Rather, the resumes will be evaluated in the context of the criteria set forth in Section 5.3.

- a. Description of the individual's proposed Project role;
- b. Identification of employer and number of years employed by the firm;
- c. Educational background, professional licenses, and/or certifications; and

- d. Experience relevant to their proposed role on the Project and how their experience will benefit this Project.

5.5. Identification of Projects Table

5.5.1. The Proposer must submit an Identification of Projects Table with the required information set forth herein for each project cited or mentioned in the SOQ. The Identification of Projects Table may be submitted on 8.5" x 14" 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. The identification of projects will not be evaluated separately. Rather, the projects will be evaluated in the context of the criteria set forth in Section 5.3.

- a. Name of project;
- b. Owner;
- c. Location of project (include address);
- d. Delivery method;
- e. Name of each Design-Build Team Member and Key Team Member who is proposed for this Project who played a significant role on the listed project, including an identification of their project function;
- f. The initial contract price, the final contract price, and an explanation for any difference between the two amounts;
- g. The initial date scheduled for substantial completion, the actual date of substantial completion, and an explanation for any difference between the two dates;
- h. Project contact information of the Owner or customer and their role on the project (current address, e-mail, and phone number) who can verify the characteristics of the listed project.

5.6. Corporate Structure Questionnaire

5.6.1. Submit a completed Corporate Structure Questionnaire for Design-Builder (Exhibit E). If the prime Design-Builder is a Joint Venture, all Joint Venture partners must have functional responsibilities for the Project. Describe the duties of each Joint Venture partner and provide a copy of the Joint Venture Agreement.

SECTION 6 LIST OF EXHIBITS

- A. Scope of Work
- B. Protest Procedures
- C. Proposal, Performance, and Payment Bond Instructions
- D. Agreement and General Conditions
- E. Corporate Structure Questionnaire
- F. Business Equity and Apprenticeship Utilization Requirements

Exhibit A

Project Scope of Work

Western's proposed longhouse will stand as a landmark for Native people, validating Western's commitment to addressing diversity, equity and inclusion. This facility will also provide Western the opportunity to attract Alaska Native and First Nation students and engage with other Indigenous communities.

The project has ambitious goals, including a design targeting net zero carbon emissions, low impact development site design strategies, high native-owned and MWBE participation, use of locally sourced material and products in construction, and active participation by student groups, Tribes, and local community throughout design and construction.

The Coast Salish longhouse will reflect traditional Coast Salish architecture and design and will serve as a gathering and ceremonial space for native students as well as Coast Salish tribal nations throughout the Salish Sea region. The project is estimated to be between approximately 5,500 and 7,000 GSF and will be located in an existing open meadow in Sehome Arboretum, adjacent to WWU's campus, which is adjacent to the campus and jointly managed by the University and the City of Bellingham.

The primary use of the longhouse will be as collaborative space, where students and community members can gather, learn, and take part in ceremonial and other types of gatherings. The longhouse will allow the institution to begin to address the shortage of collaborative space on campus, resulting in enhanced and more effective learning experiences for students and the surrounding community.

The longhouse will be a teaching space in addition to providing space for cultural and community activities. The longhouse may be used as a classroom or a laboratory depending on the course objectives, and its cultural attributes will enhance the learning environment provided for Native students and others desiring to learn more about the Coastal Salish and other Native peoples.

The longhouse will include a gathering hall that will support educational, community, and cultural functions, a teaching/warming kitchen, student lounges and other support services. The outdoor spaces will include gathering areas, cooking space, and educational gardens with native plantings that may be used in teaching indigenous science, art, and medicine.

The Coast Salish longhouse will support distance learning by integrating technology into the learning spaces to allow classes and events taking place on Western's Bellingham campus to be available in real-time to off-site, including those place-bound students attending Western's university center locations in Everett, Poulsbo, Bremerton and Port Angeles. At least 50 percent of activities in the longhouse will be available to place-bound students attending Western's university center locations and a significant portion of events and activities in the longhouse will also be broadcast online.

The list of program space types may not be all-inclusive. Desired space types include:

Interior

- Gathering lobby/public lounge
- Gathering hall
- Kitchen
- Multi-purpose breakout rooms
- Locker/changing rooms
- Restrooms
- Storage for cultural items, furniture, equipment and AV

- Student lounge

- Student life lobby
- Reception desk
- Staff offices
- Office support

Exterior

- Large gathering area
- Cooking fire area
- Ceremonial fire area
- Native and healing plants garden areas

Site (Exterior) Spaces

Space type	Site program area	Area (sqft)	No. required/ no. of occupants	Notes
Community Gathering	Large Gathering Area	2,000	150	soft surface for dance; cardinal directions
	Cooking Fire - salmon - clam bake area	500		kitchen adjacency; wood storage/water
	Ceremonial Fire area	500		wood storage/water
	Passenger Drop-Off			1 bus or 2 cars
	Elder Parking			dedicated spaces?
	HC Parking Requirements			minimum grade at stall and level or ramp access to building
	Welcome/Approach access and plaza			pedestrian entry to site, interpretive sculpture/ element to welcome all students
	Cultural Art features?			elements around the site? Along path to campus? By students?
	Water Feature(s)?			pond? other?
Teaching & Learning	Access to Gathering Room/Meeting Room			
	Terraced Seating area (Outdoor Study "Room"?)		seating for 30	Outdoor story telling; quiet, secure
	Medicine Garden?			water/tool storage
	Traditional Use Plants Garden?			area for drying and processing; water/tool storage
	Basket Plants/Wetland/Bioswale			stormwater detention from hard surfaces and roof
Other	Load/Unload parking			(2) 30 min parking spaces; drop-off can be signed for 30 min spaces
	Bike Parking		8 to 10	
	Building Service Parking		2 spaces	
	Waste/Recycling			exterior screened service area; level area close to truck access
Utilities	Connection to Campus telecommunications, power			
	Transformer			
	Irrigation connection			
	Water Main			
	Sanitary Sewer			

Interior Spaces

Space type	Programming	SF	Occupants	Occupant Assumption	Notes
Community Gathering	Gathering Lobby/public lounge	320	13	20 sf per person	exhibition, visible cultural storage, public message board, comfortable seating
	Gathering Hall	2,000	200	10 sf per person	raised terrace seating at perim., mixed rect. table and stacking chair seating, direct connection to outdoor gathering, fireplace?
	Multipurpose/breakout room	200	13	15 sf per person	rect. table and stacking chair seating
	Locker/changing room (men)	80			sink with mirror
	Locker/changing room (women)	80			sink with mirror
	restroom (men)	180			approx. 4 stalls/3 sinks
	restroom (women)	260			approx. 5 stalls/5 sinks
	Table & Chair Storage	150			rect. table and stacking chair storage
	A/V Storage	80			
Kitchen	500			Commerical kitchen	

Net Assignable Subtotal for Gathering 3,850

Gross Square Footage Subtotal for Gathering 5,198

Space type	Programming	SF	Occupants	Occupant Assumption	Notes
Student Life	Student Lounge	640	32	20 sf per person	lounge seating, mailboxes, vending, family/children area, reading tables, small group work area(s)
	Student Life Lobby	80	5	15 sf per person	private message board, comfortable seating
	Reception Desk	80			
	Staff Office	120			
	Second Office	120			
	Copy Print Fax kitchenette	80			copy, print, fax, office supplies, refer, micro, sink, casework
	Cultural Storage	200			student group regalia, event materials, supplies, etc.

Net Assignable Subtotal for Student Life 1,320

Gross Square Footage Subtotal for Student Life 1,782

Total building area

Net Assignable Total 5,170

Gross Square Footage 6,980

Efficiency factor 1.35 Allows for Mechanical, Electrical, circulation, etc.

Exhibit B

Protest Procedures

1. PURPOSE

To provide a prompt, fair and equitable administrative remedy to all Proposers and Prospective Proposers regarding the solicitation or procurement of a project, including but not limited to alleged substantive errors or omissions in the procurement documents, a decision by the Owner to award the Contract and/or notice from the Owner that a Proposal is non-responsive or that a Proposer is not responsible.

2. TIMING

Any actual or prospective Proposer showing a material economic interest in this Contract or who is aggrieved by either the solicitation or award of this Contract, may protest to the Owner, only in accordance with the procedures set forth below.

- A. Protests Based on the Form or Content of the Solicitation Documents: Any Protest based on the form or content of the solicitation documents, which is or should have been apparent prior to the date established for submittal of Statements of Qualifications or Proposals, must be clearly labeled on the transmittal envelope as a "Protest" and filed as soon as practicable to:

Attention: Brian Ross, Assistant Director of Capital
Budget Office of Facilities Development and Capital
Budget Western Washington University
915 26th Street MS 9122
Bellingham, WA 98225-9122

No protest based on the form or content of the solicitation documents will be considered if received by the Owner later than five (5) calendar days prior to the specified submittal date. The "solicitation documents" includes all documents issued by the Owner in connection with the solicitation of the project.

- B. Other Protests: Protests based on any other circumstances must be received by the Owner at the address noted above in a transmittal envelope, clearly marked "Protest", within four (4) business days from the date the Proposer was notified of any selection decision; provided, however, that in no event shall a protest be considered if all Proposals are rejected or if the protest is received after award of the Contract.
- C. The Owner will not proceed from the Request for Qualifications phase to the Request for Proposals phase until two business days after all Proposers are notified of the selection decision for the short listed Finalists. At the request of a Proposer not selected as a Finalist, the Owner will provide the requesting Proposer a scoring summary of the evaluation factors for that Proposer's Statement of Qualifications.
- D. The Owner will notify all Finalists of the selection decision and make a selection summary available to all Finalists within two (2) business days of the notification. If the Owner receives a timely protest from a Finalist, the Owner will not execute a contract until two (2) business days after the final protest decisions is transmitted to the protestor.

3. CONTENTS OF PROTEST:

To be considered, a Protest shall be in writing and shall include: (1) the name, street address, fax number and email address of the aggrieved party; (2) the name of the project for which the Protest is submitted; (3) a detailed description of the specific grounds for the Protest and any supporting legal and/or factual documentation; and (4) the specific ruling or relief requested.

- A. Decision by the Owner: The Protest shall be promptly considered on the written submittal by the Assistant Director of Capital Budget. The Assistant Director will give notice of the Protest and provide a

copy to any others as required. In its sole discretion, the Assistant Director may give notice of the Protest to other interested parties, including other Proposers. The Owner reserves the right to resolve or to attempt to resolve any Protest that concerns the form or content of the solicitation and which Protest was received before the proposal evaluations through written addenda to the procurement documents. Any addenda will be provided to all parties who have obtained a copy of the solicitation from the Owner.

- B. The Assistant Director will issue a written decision on the Protest within two (2) business days following the receipt of the Protest, stating the reasons for the action taken. A copy of the decision shall be provided to the aggrieved party, and any other party as may be required, including but not limited to: (i) personal service, (ii) facsimile, or (iii) email, with telephonic confirmation.
- C. The aggrieved party may appeal the decision of the Assistant Director through the judicial process in the county having jurisdiction (Whatcom County). The Owner will stay award of the Contract for two (2) business days, following the issuance of its decision.

4. JUDICIAL PROCEEDINGS

All judicial proceedings must be filed within four (4) business days of the issuance of the Owner's decision.

5. STRICT COMPLIANCE

Strict compliance with these protest procedures is essential in furtherance of the public interest. Any aggrieved party that fails to comply strictly with these protest procedures is deemed, by such failure, to have waived and relinquished forever any right or claim with respect to alleged irregularities in connection with the solicitation or award of the Contract. No person or party may pursue any judicial or administrative proceedings challenging the solicitation or award of this Contract, without first exhausting the administrative procedures specified herein.

6. REPRESENTATION

An aggrieved party may participate personally or, if a corporation or other artificial person, by a duly authorized representative. Whether or not participating in person, an aggrieved party may be represented, at the party's own expense, by counsel.

7. COMPUTATION OF TIME

In computing any period of time prescribed by this procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included. The term "business day" shall mean any day on which the Owner is open for regularly conducted business. Any document received after the close of regular business hours (8:00 a.m. to 5:00 p.m.) shall be deemed received the following business day.

8. ACKNOWLEDGEMENT

By submitting a proposal in response to this solicitation, the Proposer acknowledges that it has reviewed and acquainted itself with the protest procedures herein and agrees to be bound by such procedures as a condition of submitting a proposal.

Exhibit C

Performance, and Payment Bond Instructions

1. The selected Design-Builder will be required to provide the following bonds for this Project:
 - a. Payment Bond in the amount equal to the value of the contract amount, subject to subsequent modifications to that amount, and sales tax.
 - b. Performance Bond in the amount equal to the value of the contract amount, subject to subsequent modifications to that amount, and sales tax.

2. The following shall apply:
 - a. Proposers must submit a statement from their bonding company that the Proposer can meet the bonding requirements set forth above.
 - b. The Payment and Performance Bond(s) shall be in the form attached hereto.

Exhibit D

Draft Agreement and General Conditions

1. Attached is the Draft Agreement and General Conditions for the Project.
2. Proposers must submit suggested changes to the Draft Agreement and General Conditions by the date set forth in the Procurement Schedule.

Exhibit E

Corporate Structure Questionnaire

1. Proposers shall complete the following information for the Proposed Design-Builder:

Legal Name	
Street Address	
Mailing Address	
Point of Contact	
Position	
Email	
Telephone Number	
Fax Number	
Type of Business	
D-U-N-S Number	
Federal Tax Identification Number	
State Contractor's Registration Number (if applicable)	
State Business License Number (if applicable)	

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.

Exhibit F

Business Equity and Apprenticeship Utilization Requirements

BUSINESS EQUITY

Western Washington University (WWU) is committed to providing maximum opportunity for participation in contracting by Business Equity Enterprises (BEE). Development of a comprehensive BEE Inclusion Plan by the design-builder that is accepted by WWU shall be required as a condition for receiving an Award.

Prior to the execution of the contract for this project, WWU and the selected firm shall agree on an Inclusion Plan that will include and aspirational goal of BEE participation afforded by the various scopes and services of the work, as well as the strategies the Design-Builder will use to achieve the maximum BEE utilization on the Project. Participation may be either as the design-builder, a sub-consultant, sub-contractor, or supplier.

The Business Equity Enterprise (BEE) definitions include all the following:

1. Native Owned Business Enterprise (NBE): A business licensed to do business in the State of Washington, including a sole proprietorship, corporation, or other legal entity that is more than 50% owned and controlled by at least one Native person.
2. Native or Tribal Participation: Native or Tribal Participation includes, but is not limited to, businesses with Native or Tribal ownership, employees, craft labor, subcontractors, subconsultants, and/or material suppliers. WWU reserves the right to determine the extent of the Native or Tribal Participation from each Proposer and/or Finalist.
3. Small Business Enterprise (SBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is owned and operated independently from all other businesses and either:
 - a. Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which the business entity is proposed to be engaged; or
 - b. Is certified with the Washington State Office of Minority and Women's Business Enterprises (OMWBE).
4. Disadvantaged Business Enterprise (DBE): Any business certified with the OMWBE.
5. Minority Business Enterprise (MBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority person.
6. Women's Business Enterprise (WBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one woman.
7. Minority Women's Business Enterprise (MWBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority woman.

The term “minority” means a person of Asian, African-American, Hispanic and/or Native American racial or ethnic heritage.

All BEE must perform a Commercially Useful Function on the Project. A Commercially Useful Function means a function performed by a BEE that is responsible for the execution of a distinct element of the work and carrying out its responsibilities by performing, managing, and supervising the work with its own resources and employees. Acting as a conduit to transfer funds to another business performing, managing or supervising the work does not typically constitute a Commercially Useful Function. Whether a business has performed a Commercially Useful Function is determined by many factors, including but not limited to the following:

1. The amount of work subcontracted to the BEE is consistent with normal industry practice;
2. The amount paid to the BEE is commensurate with the work it is actually performing;
3. Whether the BEE is merely a pass-through entity in order to obtain the appearance of participation;
4. Whether the BEE manages its own work, owns or leases its own equipment, manages its own work force for installation, is responsible for supplying its own materials and supplies, and maintains responsibility for the performance of the Work;
5. In the context of a BEE being a partner within a joint venture, that the BEE is providing resources and staff consistent with the stated percentage of the BEE’s interest in such joint venture; and
6. For materials and supplies, whether the BEE is responsible for negotiating the price, determining quality and quantity, ordering the materials, and paying for the material itself.

In the RFP stage, Finalists will be required to submit their proposed Inclusion Plan for the utilization of BEE. The criterial will be set forth in the RFP Evaluation Criteria. Currently, it is anticipated that each Finalist’s Inclusion Plan shall:

- State the overall BEE utilization goal the Finalist is proposing for this project.
- Outline the design and construction work scopes in which the Finalist anticipates the BEE will be utilized.
- Discuss specific strategies and/or relationships the Finalist intends to draw upon in pursuit of the University’s commitment to the equitable participation of the BEE on this project.
- Address the Finalist’s proposed actions to comply with the Business Equity requirements set forth in the contract.
- Discuss any identified challenges and opportunities, including how to mitigate those challenges and optimize the opportunities.

Prior to the execution of the contract, the Design-Builder will finalize the Inclusion Plan and submit it to the Owner for review and final approval.

APPRENTICESHIP UTILIZATION REQUIREMENTS:

Mandatory apprenticeship utilization of at least fifteen percent (15%) of the total labor hours worked on the Contract is required. Apprentices must be registered as apprentices with the State Apprenticeship and Training Council. Design-Builder shall comply with the requirements of the Contract Documents related to apprenticeship. Proposers may contact the Department of Labor and Industries, Apprenticeship Program, at (360) 902-5320 to obtain information on apprenticeship programs.



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

*Note: This document contains differences from the DBIA Agreement form 530.
Owner will provide a copy red-lined from the DBIA Agreement form upon written
request.*

Document No. 530

Second Edition 2010
© Design-Build Institute of America
Washington, DC

TABLE OF CONTENTS

Article	Name	Page
<u>Article 1</u>	Scope of Work	2
<u>Article 3</u>	Interpretation and Intent	2
<u>Article 4</u>	Ownership of Work Product	3
<u>Article 5</u>	Contract Time	4
<u>Article 6</u>	Contract Price	5
<u>Article 7</u>	Procedure for Payment	17
<u>Article 8</u>	Termination for Convenience	18
<u>Article 10</u>	Bonds and Insurance	19
<u>Article 11</u>	Other Provisions	19

DRAFT



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:

Western Washington University
516 High Street MS 9122
Bellingham, WA 98225-9122

DESIGN-BUILDER:

(Name and address)

PROJECT:

Coast Salish Longhouse, House of Healing
Western Washington University

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 the *General Conditions of Progressive Design Contract Between Owner and Design-Builder* ("General Conditions of Contract");

2.1.2 The Phase 2 Amendment in accordance with Section 6.6.2 herein, provided such Amendment is executed between the parties;

2.1.3 This Agreement, including all exhibits but excluding the Phase 2 Amendment:

- .1 Exhibit A: Insurance Requirements;
- .2 Exhibit B: Form of Performance and Payment Bond;
- .3 Exhibit C: Phase 1 and 2 Scope of Work;
- .4 Exhibit D: Owner's Program;
- .5 Exhibit E: Design-Builder's Phase 1 Scope of Services and Hourly Rates;
and
- .6 Exhibit F: Business Equity Enterprise Inclusion Plan.

2.1.4 The General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, provided the Phase 2 Amendment is executed between the parties.

2.1.6 Other documents as set forth in Exhibit C.

Article 3 **Interpretation and Intent**

3.1 Design-Builder, prior to execution of the Agreement, shall carefully review all the applicable Contract Documents, including the Owner's Program set forth in Exhibit D, 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 Phase 2 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 Phase 2 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 Owner's Program 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 Owner's Program, including any performance specifications for the purposes of developing the Design-Builder's Phase 1 Scope of Services (Exhibit E), 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 Basis of Design Documents as well as all applicable Legal 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: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on 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, to the extent permitted by law 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 Phase 2 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 1.2.14 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 the parties have either established or will establish amounts as liquidated damages for damages that are difficult to determine and accurately specify. Such damages are assessed as a reasonable measure of damages to the Owner and not as a penalty. Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages whether special or

consequential, of whatsoever nature, incurred by Owner which are occasioned by the specific event for which liquidated damages are assessed.

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

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

Article 6

Contract Price

6.1 Contract Price.

6.1.1 The Guaranteed Maximum Price (“GMP”) for this Project is \$Three million Six Hundred Fifty Thousand dollars (\$3,650,000.00), not including Washington State Sales Tax. The GMP is the maximum amount that the Design-Builder may be compensated pursuant to this Agreement.

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

6.2 Design Builder’s Fee Percentage.

6.2.1 Design Builder’s Fee Percentage shall be:

_____ percent (_____ %) of the Cost of the Work.

6.2.2 If the Owner exercises its option to go forward with Phase 2 and the Parties enter into the Phase 2 Amendment, Design Builder shall be paid a Lump Sum Fee which shall be determined by multiplying the Fee Percentage by the estimated Cost of the Work included in the GMP, less the amount already paid to the Design Builder 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.

6.2.3 The Lump Sum Fee will be earned and paid monthly on a percentage of completion basis and in accordance with the most recent Schedule of Values. If the Contract is terminated for any reason, the Design-Builder shall only be entitled to that portion of the Lump Sum Fee that represents the portion of Work completed in accordance with the Contract Documents.

6.2.4 The Fee Percentage and any Lump Sum Fee shall include the following items, which shall not be charged as either a Cost of the Work, or as part of the Lump Sum General Conditions Amount or any Allowance:

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

- .2 all regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project; and
 - .3 All other direct and indirect costs incurred by the Design Builder that are not otherwise specifically identified in the Cost of the Work, the Lump Sum General Conditions Amount, the Design Builder's Contingency and/or any Allowance established by the Parties.
- 6.2.5** Prior to the execution of the Phase 2 Amendment, Design Builder's Fee Percentage will only be adjusted pursuant to Section 3.2.1 of the General Conditions.
- 6.2.6** If the Owner exercises its option to enter into Phase 2 and the parties enter into the Phase 2 Amendment, the Fee Percentage shall not be subject to modification unless the GMP varies, either upward or downward, by more than five percent (5%) from the original GMP established in the Phase 2 Amendment ("Original GMP").
- .1 If the GMP increases by more than five percent (5%) 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 five percent (105%) of the Cost of the Work set forth in the Original GMP.
 - .2 If the GMP decreases by more than five percent (5%) 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 ninety-five percent (95%) 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.
- 6.3 Cost of the Work.** The term Cost of the Work shall mean costs set forth in this Section that are reasonably and actually incurred by Design Builder in the proper performance of the Work. However, if the Owner exercises its option to enter into Phase 2 and the Parties enter into the Phase 2 Amendment, then the costs listed in Section 6.3.15 below as General Conditions Costs and included the Lump Sum General Conditions Amount are excluded from the Cost of the Work. The term Cost of the Work shall include only the following:
- 6.3.1** Direct labor costs of employees of Design Builder performing construction or design Work at the Site or, with Owner's agreement, at locations off the Site.
- .1 The costs for those employees of Design Builder performing design or other services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, the Hourly Rates set forth Exhibit E.
 - .2 The costs for those employees of Design-Builder performing Work that is identified in Section 6.3.15 below shall, if applicable, be calculated on the basis of the Hourly Rates set forth in Exhibit E.
 - .3 Wages for any employees for whom there is not an established Hourly Rate shall be paid as follows: Basic wages and fringe benefits: 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 include all costs directly associated with the employment of labor and include, but are not limited to, 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 unemployment compensation.

- 6.3.2** 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 Section 6.3 hereof.
- 6.3.3** 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 either the Hourly Rates set forth in Exhibit E or the prevailing market rates for design professionals performing such service. 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.
- 6.3.4** 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.
- 6.3.5** 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.
- 6.3.6** Costs of removal of debris and waste from the Site.
- 6.3.7** 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 as established by the lower of the local prevailing rate published in the Rental Rates published by the Rental Rate Blue Book by Data Quest, 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 a 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.
- 6.3.8** All fuel and utility costs incurred in the performance of the Work.

- 6.3.9** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
- 6.3.10** Costs for permits, royalties, licenses, tests and inspections incurred by Design Builder as a requirement of the Contract Documents.
- 6.3.11** Deposits which are lost, except to the extent caused by Design Builder's negligence or other fault.
- 6.3.12** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 6.3.13** Unit Prices established by the Parties.
- 6.3.14** 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, the Fixed Fee, or the Lump Sum General Conditions Amount.
- 6.3.15 General Conditions Costs.** The following costs are reimbursable in Phase 1 as a Cost of the Work; however, if the Owner exercises its option to enter into Phase 2 and the parties enter into the Phase 2 Amendment, these costs shall be included in the Lump Sum General Conditions Amount set forth in Section 6.4.5 of the Agreement and shall not be included or reimbursable as part of the Cost of the Work in Phase 2.
- .1 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:
 - a. Project Executive
 - b. Project Manger
 - c. Superintendent
 - d. Quality Control Manager
 - e. Project Engineer
 - .2 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. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a ten percent (10%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.
 - .3 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. As set forth below:
 - a. 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.
 - b. Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed 200% of the Federal Per Diem maximum lodging rate for the location where the work is being performed. The Owner's Representative may increase this limit in writing when circumstances require.
 - c. 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.

- .4 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.
- .5 Premiums for insurance and bonds required specifically by this Agreement or the performance of the Work by the Design Builder.
- .6 Accounting and data processing costs related to the Work.
- .7 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.
- .8 General administrative costs not specifically listed in Sections 6.3.1 through 6.3.13 above, including but not limited to the following:
 - a. Shop Drawing Reproduction
 - b. Construction Schedule & Updates
 - c. Safety/Security
 - d. Field Office Set-up (mobilization/demobilization)
 - e. Office Supplies
 - f. Telephone System
 - g. Telephone Service Charge
 - h. Computer Network/System Set-up
 - i. Courier Service
 - j. Postage (Fed-X, USPS)
 - k. Furniture/Equipment
 - l. Office Cleaning
 - m. Project Superintendent Vehicle
 - n. Computers
 - o. Copy Machine
 - p. Temporary Electric Hook-up/Removal
 - q. Temporary Electric Material
 - r. Project Signage
 - s. Temporary Water Hook-up/Removal
 - t. Drinking Water & Supplies

- u. Chemical Toilets
- v. O&M Manuals
- w. Project Record Documents
- x. Field Engineering/Layout Survey

6.4 Other Methods of Pricing

Within Phase 1 NTE or the GMP, the Parties may agree to the following methods of pricing:

6.4.1 Allowance Items and Allowance Values.

- .1 Any and all Allowance Items will be included in either in Exhibit E or the Phase 2 Amendment and are included within any established NTE and the GMP, as applicable. The description of the Allowance Item shall include the scope of the Allowance Item as well the estimated cost of the Allowance Item, (the "Allowance Value") and any assumptions regarding the Allowance Item. Design-Builder shall obtain written approval from the Owner for any Allowance Items for subcontractors.
- .2 The establishment of Allowance Items and Allowance Values by the Design Builder and the Owner are a representation that the Design Builder and Owner have worked together to review the Allowance Items and Allowance Values based on 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 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 the applicable Contract Price.
- .4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance 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 general conditions costs, overhead and fee, are not included in the Allowance Value and are deemed to be included in the applicable 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 applicable Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.1 above; however, Design Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to Section 10.1 of 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. Design-Builder shall not be entitled to an adjustment in the Lump Sum Fee based on a Change Order pursuant to this Articles 9 and 10 of the General Conditions.
- .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 Agreement via 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 as set forth herein; however, Design Builder’s Compensation for the scope of work in the NTE shall not exceed the NTE Sum without a written Change Order.
- .3 Design Builder must identify all costs that are subject to any applicable NTE in the Payment Application, and Design Builder may not also submit such costs under any other line item in the Payment Application.
- .4 NTE Sums may only be modified by written Change Order or Contract Amendment 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. Lump Sums agreed upon by the Parties shall be incorporated into the Agreement via 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. All line items that are identified as a Cost of the Work in Section 6.3 of the Agreement that are included in the Lump Sum;
 - c. An updated Schedule of Values that incorporates the Lump Sum; and
 - d. 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 based on the percentage complete of the Scope of the Work subject to the Lump Sum.
- .3 If any line item that is identified as a Cost of the Work in Section 6.3 of the Agreement is subsequently included in any Lump Sum, Design Builder shall not thereafter request reimbursement for those line items as a Cost of the Work. Design-Builder may, however, request reimbursement through the Design-Builder’s Contingency set forth in Section 6.4.4.1.b of the Agreement.
- .4 Lump Sums may only be modified via written Change Order or Contract Amendment pursuant to the General Conditions

6.4.4 Design Builder’s Contingency

- .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 a Cost of the Work and

not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Contingency Items include the following costs, which are subject to written approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under the 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;
 - (iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or
 - (v) Costs that are in excess of an NTE Sum or Lump Sum.

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

.3 Design Builder shall not be entitled to any Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder's Contingency. Amounts included in the Design Builder's Contingency shall be excluded from the calculation to establish the Lump Sum Fee and from the calculation set forth in Section 6.2.6 of this Agreement to determine whether the GMP has changed.

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

- .5 Design Builder shall provide Owner notice of all anticipated charges against the Contingency 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 the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design Builder agrees that if Design Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.
- .6 At the conclusion of the Project, all savings from any Contingency shall go to the Owner.

6.4.5 Lump Sum General Conditions Amount

- .1 If the Owner exercises its option to enter into Phase 2, and Parties enter into the Phase 2 Amendment, the Parties shall establish a Lump Sum amount for the General Conditions Costs ("Lump Sum General Conditions Amount") that are set forth in Section 6.3.15 of the Agreement.
- .2 If the Owner exercises its option to enter into Phase 2 and Parties enter into the Phase 2 Amendment, the costs identified in Section 6.3.15 of the Agreement shall not be included in the Cost of the Work, and the Design Builder's sole compensation for the costs set forth in Section 6.3.15 shall be through the Lump Sum General Conditions Amount. Design Builder shall not be entitled to be compensated for the identified Lump Sum General Conditions Amount as part of the Cost of the Work.
- .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 Amount 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 Amount 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 Amount 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 Amount 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 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 herein.
- .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 GMP, 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 –Validation and GMP Development

- .1 **Scope of Work for Phase 1.** Phase 1 shall commence upon a written Notice to Proceed from the Owner and shall end on Phase 1 Completion Date as set forth below. The services to be provided by the Design Builder during Phase 1 are set forth in Exhibit C to the Agreement "Phases 1 and 2 Scope of Work" and Exhibit E to the Agreement "the Design-Builder's Phase 1 Scope of Services".
- .2 **Phase 1 Not to Exceed Amount.** Design Builder guarantees that during Phase 1, Design Builder's Compensation shall not exceed Phase 1 Not to Exceed Amount ("Phase 1 NTE") of _____ Dollars (\$_____). Design Builder agrees that it will be responsible for paying all costs of completing Phase 1 Work which exceed Phase 1 NTE and shall not seek reimbursement from the Owner for any costs that exceed Phase 1 NTE, as adjusted in accordance with the Contract Documents including by written Change Order. Phase 1 NTE includes the Design Builder's Phase 1 Contingency in the amount of _____ Dollars (\$_____).
- .3 **Phase 1 Completion Date.** Phase 1 Completion Date is _____.
- .4 **Design Builder's Phase 1 Compensation.** Design Builder's compensation for Work performed in Phase 1 shall consist of the following:
 - a. The Cost of the Work as set forth in Section 6.3 of the Agreement for Work performed in Phase 1. The Cost of the Work includes the following:
 - i. the Cost of the Work Contingency set forth in Section 6.4.4.1.a; and
 - ii. any Not to Exceed or Lump Sum Amount established as part of the Cost of the Work;
 - b. The Design-Builder's Fee Percentage, which shall be multiplied by the Cost of the Work for Phase 1, less the Design Builder's Contingency;
 - c. Any Allowances and Owner Directed Allowances established by the Parties; and
 - d. The Design-Builder's Contingency set forth in Section 6.4.4.1.b.

- 5 **Phase 2 Proposal.** At the conclusion of Phase 1, the Design Builder will submit a Phase 2 Proposal pursuant to the requirements set forth in Exhibit C. Unless the Parties agree otherwise, the Phase 2 Proposal shall include the deliverables set forth in Exhibit C.
- 6 **Owner's Option to Enter Into Phase 2**
- a. After submission of the Phase 2 Proposal, Design Builder and Owner shall meet to discuss and review the Phase 2 Proposal. The Owner shall make its best efforts to provide such comments within thirty (30) days of the Owner's receipt of the Phase 2 Proposal, unless the Owner provides notification that it requires additional time for review. If Owner has any comments regarding the Phase 2 Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice to Design Builder of such comments or findings in a reasonably prompt manner. If appropriate, Design Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Phase 2 Proposal. To assist in the Owner's review of the Phase 2 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 Phase 2 Proposal. The Owner shall make its best efforts to review any revised Phase 2 Proposal within thirty (30) days of receipt of the revised Phase 2 Proposal.
 - b. The Owner, at its sole discretion, may exercise its option to enter into Phase 2 of the Agreement.
 - i. If the Owner accepts the Phase 2 Proposal, the parties shall enter into the Phase 2 Amendment. The total compensation paid to Design Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract.
 - ii. The Owner may suggest modifications to the Phase 2 Proposal, whereupon, if such modifications are accepted in writing by Design Builder, the Phase 2 Proposal shall be deemed accepted and the Parties shall proceed in accordance with subsection i above.
 - c. If Owner decides not to exercise its option to enter into Phase 2 and/or rejects the Phase 2 Proposal or fails to notify Design Builder in writing on or before the date specified in the Phase 2 Proposal that it has exercised its option to enter into Phase 2, the Phase 2 Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:
 - i. Owner may authorize Design Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.6.1.4 hereof; however, Design Builder may not exceed any NTE or Lump Sum that may be established between the Parties; or
 - ii. Owner may elect not to exercise its option to enter into Phase 2. In such case, the Design-Build Agreement shall be terminated, and Design-Builder shall be compensated for the amount incurred pursuant to Section 6.6.1.4 above, as supported by Design-Builder's Payment Applications and subject to Phase 1 Not to Exceed Amount. The compensation set forth herein shall be the Design-Builder's sole compensation for the Project if the Owner elects not to exercise its option to enter into Phase 2, and the Design Builder hereby agrees that it will not seek any other compensation, remedy or damages of any kind whatsoever if the Owner elects not to exercise its option to enter into Phase 2.
 - d. The Design Builder shall not perform any Work after the submission of the Phase 2 Proposal unless the Owner exercises its option to enter into Phase 2 and has approved and signed the Phase 2 Proposal 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.
 - e. If the Design Builder performs Work after the submission of the Phase 2 Proposal but before the Parties enter into the Phase 2 Amendment, Design Builder shall be

compensated pursuant to Section 6.6.1.4 of the Agreement; however, in no case shall the Design Builder be entitled to be paid in excess of the Phase 2 NTE, as amended by the Parties.

6.6.2 Phase 2, Post GMP Period.

- .1 Commencement and Scope of Work.** Phase 2 shall commence when the Owner exercises its option to enter into Phase 2 and both Parties sign the Phase 2 Amendment. Phase 2 is the final phase of the Contract. The scope of Work for Phase 2 will be developed during Phase 2 and set forth in the Phase 2 Amendment, but it will, at a minimum, include the services set forth in Exhibit C, including but not limited to the following:
 - a. Completion of the design services and the development of Construction Documents for the Project,
 - b. Performance and completion of construction Work, start-up, testing and commissioning and closeout of the Project in accordance with the requirements of the Contract Documents; and
 - c. Any ongoing contractual obligations after Final Completion, such as guarantees, warranty services, and/or obligations to provide insurance and indemnity to the Owner.
- .2 Guaranteed Maximum Price.** The GMP has been established in this Agreement and shall not be changed except through the Phase 2 Amendment or a written Change Order. Design Builder agrees that it will be responsible for paying all costs of completing the Phase 2 Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Execution of the Phase 2 Amendment constitutes Design Builder's representation and agreement to the following:
 - a. The Project is adequately defined, that the Basis of Design Documents are sufficiently defined to provide an accurate GMP;
 - b. The Project is sufficiently clear and understandable for the Design Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP and within the Project Schedule; and
 - c. If the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design Builder, and Design Builder hereby assumes liability for such costs without reimbursement by the Owner.
- .3 Project Schedule.** The Substantial and Final Completion Dates will be set forth in the Phase 2 Amendment. By entering into the Phase 2 Amendment, the Design-Builder makes the following representations:
 - a. The Project Schedule is sufficient time to complete the Project in accordance with the Phase 2 Amendment and the Contract Documents.
 - b. If the Design-Builder fails to achieve Substantial Completion by the date set forth in the Phase 2 Amendment, the Design-Builder will pay liquidated damages in the amount set forth in Section 5.4 of the Agreement and the Phase 2 Amendment as agreed compensation to the Owner for the cost of delay and not as a penalty.
- .4 Design Builder's Compensation.** Design Builder shall be compensated for Phase 2 for the following costs up to the established GMP. Any costs incurred in excess of the GMP shall be the responsibility of the Design Builder.
 - a. The Cost of the Work as set forth in Section 6.3 of the Agreement for Phase 2 Work, excluding the costs identified in Section 6.3.15 of the Agreement as Design-Builder's through the Lump Sum General Conditions Amount. The Cost of the Work also includes the following:
 - i. the Cost of the Work Contingency pursuant to Section 6.4.4.1.a; and
 - ii. any Not to Exceed Amount established as part of the Cost of the Work;

- b. The Design-Builder's Lump Sum Fee allocated to Phase 2 Work, calculated pursuant to Section 6.2 of the Agreement;
- c. The Lump Sum General Conditions Amount allocated to Phase 2 Work, which shall be calculated pursuant to Section 6.4.5 of the Agreement;
- d. Any additional Lump Sum Amounts established by the Parties in the Phase 2 Amendment;
- e. Any Allowances and Owner Directed Allowances established by the Parties in the Phase 2 Amendment;
- f. The Design-Builder's Contingency pursuant to section 6.4.4.1.b of the Agreement; and
- f. Any Incentive Payments established by the Parties in the Phase 2 Amendment.

6.6.3 Savings and Incentives.

The parties may establish incentive payments to the Design-Builder during Phase 1. If the parties establish incentive payments during Phase 1, the Design-Builder shall provide the agreed upon incentive plan as part of the Phase 2 Proposal, and the incentive plan shall be incorporated into the Contract Documents in the Phase 2 Amendment.

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 Sections 6.3 and 6.4 of the General Conditions of Contract.

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

7.2 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 6.8 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-

Builder has satisfied the requirements for final payment set forth in Section 6.8.1 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 rate of twelve percent (12%) per year until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" and transparent arrangement relative to all costs on the Project. 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. Notwithstanding the foregoing, with the exception of the Fee Percentage, prior to agreeing to a multiplier or markup, the Owner shall have the right to review the underlying costs of any multiplier or markup. The audit may be performed by employees of Owner or a representative of Owner. Design-Builder, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Design-Builder, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors. All records shall be maintained for a period of six (6) years after final payment under this Contract.

Article 8 **Termination for Convenience**

8.1 Upon ten (10) days' written notice to Design-Builder or if the Owner decides to not exercise its option to enter into Phase 2, 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 the following:

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.

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 6.3 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 Phase 1 NTE in the form set forth as Exhibit B. Upon execution of the Agreement, 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 Phase 1 NTE in the form set forth as Exhibit B, Upon execution of the Phase 2 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 set forth in the Phase 2 Amendment in the form set forth as Exhibit B.

10.3 Options Pursuant to RCW 39.08.010(3) and (4).

10.3.1 Pursuant to RCW 39.08.010(3), at the option of the Design-Builder, the Owner may retain ten percent of the contract amount for a period of thirty days after the date the parties enter into the Phase 1 Amendment or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed during the Initial Phase under chapter 60.28 RCW, whichever is later.

10.3.2 Pursuant to RCW 39.08.010(4), the Owner may accept a full payment and performance bond from an individual surety or sureties.

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.

11.6 Business Registration Requirement.

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

11.7 Contractor's Registration Requirement.

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.

11.9 Business Equity Enterprise Inclusion Plan.

11.9.1 The Design-Builder shall follow the Business Equity Enterprise Inclusion Plan set forth in Exhibit F hereof and shall make its best efforts to meet the percentage requirements set forth therein.

11.9.2 The Business Equity Enterprise (BEE) definitions include all the following:

- a. Small Business Enterprise (SBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is owned and operated independently from all other businesses and either:
 - i. Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which the business entity is proposed to be engaged; or
 - ii. Is certified with the Washington State Office of Minority and Women's Business Enterprises (OMWBE).
- b. Disadvantaged Business Enterprise (DBE): Any business certified with the OMWBE.
- c. Minority Business Enterprise (MBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority person. The term "minority" means a person of Asian, African-American, Hispanic and/or Native American racial or ethnic heritage
- d. Women's Business Enterprise (WBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one woman.
- e. Minority Women's Business Enterprise (MWBE): A business entity licensed

to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority woman.

11.9.3 All BEE must perform a Commercially Useful Function on the Project. A Commercially Useful Function means a function performed by a BEE that is responsible for the execution of a distinct element of the work and carrying out its responsibilities by performing, managing, and supervising the work with its own resources and employees. Acting as a conduit to transfer funds to another business performing, managing or supervising the work does not typically constitute a Commercially Useful Function. Whether a business has performed a Commercially Useful Function is determined by many factors, including but not limited to the following:

- a. The amount of work subcontracted to the BEE is consistent with normal industry practice;
- b. The amount paid to the BEE is commensurate with the work it is actually performing;
- c. Whether the BEE is merely a pass-through entity in order to obtain the appearance of participation;
- d. Whether the BEE manages its own work, owns or leases its own equipment, manages its own work force for installation, is responsible for supplying its own materials and supplies, and maintains responsibility for the performance of the Work;
- e. In the context of a BEE being a partner within a joint venture, that the BEE is providing resources and staff consistent with the stated percentage of the BEE's interest in such joint venture; and
- f. For materials and supplies, whether the BEE is responsible for negotiating the price, determining quality and quantity, ordering the materials, and paying for the material itself.

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



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

*Note: This document contains differences from the DBIA Agreement form 530.
Owner will provide a copy red-lined from the DBIA Agreement form upon written
request.*

Document No. 535 (modified)

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 a modified DBIA Document No. 530, *Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition).

1.2.2. *Allowance Item* is a scope of work for a designated portion of the Project that the parties agree to manage pursuant to Section 6.4.1 of the Agreement.

1.2.3. *Basis of Design Documents* are those documents set forth in the Phase 2 Amendment that establish the Scope of Work for Phase 2 of the Project.

1.2.4. *Commercial Terms* are any terms that establish the Contract Price or Design-Builder's Compensation, including but not limited to the GMP, any Not to Exceed amount, any Lump Sum, any Allowance, or the Design-Builder's Contingency. The term "Commercial Terms" also includes any terms that establish the Contract Time, including but not limited to the Project Schedule, Substantial Completion, and Final Completion.

1.2.5. *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the 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.

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

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

1.2.8. *Design-Builder's Fee Percentage* is the amount set forth in Section 6.2.1 of the Agreement.

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

1.2.10. *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.

1.2.11. *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Owner's Program and the Basis of Design Documents, as applicable.

1.2.12. *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.

1.2.13. *Final Basis of Design Documents* are the documents agreed upon in the Phase 2 Amendment by the Owner and Design-Builder at the conclusion of the Phase 1 that comprise the performance and other requirements of the Project.

1.2.14. *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 6.7.1 and the submission of all documents set forth in Section 6.8.1.

1.2.15. *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.

1.2.16. *General Conditions Costs* are the costs set forth in Section 6.3.15 of the Agreement that are included in the Lump Sum General Conditions Amount pursuant to Section 6.4.5 of the General Conditions if the parties enter into Phase 2 of the Contract.

1.2.17. *General Conditions of Contract* refer to this *General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder*.

1.2.18. *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.

1.2.19. *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. Legal Requirements include, but are not limited to, Proclamation 21-14.1. A COVID-19 Declaration will be required for the General Contractor and all Sub-Contractors with employees working on-site. For more information, please see the following link: <https://cpd.wvu.edu/covid-19-vaccination-declaration>.

1.2.20. *Lump Sum Fee* is the lump sum amount established pursuant to Section 6.2 of the Agreement, provided the parties enter into the Phase 2 Amendment.

1.2.21. *Original GMP or Original Guaranteed Maximum Price* means the Guaranteed Maximum Price that is set forth in the original Phase 2 Amendment entered into by the parties.

1.2.22. *Phase 2 Amendment* is the amendment to the Agreement entered into by the parties at the conclusion of Phase 1 that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

1.2.23. *Phase 2 Proposal* means that proposal developed by Design-Builder in accordance with

Section 6.6 of the Agreement and Exhibit C.

1.2.24. *Project Schedule or Schedule* is the schedule provided by the Design-Builder pursuant to Section 2.1.3 of the General Conditions.

1.2.25. *Owner's Program* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Program may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.26. *Reliable Design Decision* is a decision, development, or election that refines the 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 Owner's Program or the Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent Design Submissions, design submissions 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 but not be limited to, design consultants, design sub-consultants, design-build subcontractors, 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 a change to the Owner's Program or the Basis of Design Documents, as applicable and/or any Commercial Term and is further described in Section 2.4.1.6 of the General Conditions.

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 with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Agreement; 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). 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, pursuant to Exhibit C, schedules for the execution of the Work for Owner's review and response. The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work and as set forth in Exhibit C, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

2.1.5 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 following information: any updates to the Project Schedule, status of any changes or potential changes to the Initial and/or Final Basis of Design Documents or the Project Schedule, progress of the design, 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.

2.2 Design Professional Services.

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

2.2.2 Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, 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 (including low voltage) and plumbing design. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decisions impacts Design-Builder's cost and/or time of performance. 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. Selection of Design Consultants and Design Sub-Consultants that have not been identified in the Design-Builder's Proposal shall be in accordance with Section 2.8 of the General Conditions.

2.3 Standard of Care.

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

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim and final Design Submissions that Owner may wish to review.

.1 Design Submissions shall be consistent with the Owner Project Requirements as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4, including but not limited to changes recorded in the Design Log and through Change Orders. By submitting Design Submissions, the Design Builder represents to the Owner that the Work depicted and otherwise shown, contained or reflected in Design Submissions can be constructed in compliance with the then current Commercial Terms. Notwithstanding the above, Design Builder may propose Design Submissions that may alter either the Basis of Design Documents, or the Commercial Terms; however, Design Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents. Alternatively, if the Owner agrees in writing, the proposed Design Submission may be included in the Trend Log pursuant to 2.4.1.7 of the General Conditions.

.2 Unless the parties agree in writing otherwise, the Design-Builder shall provide the Milestone Design Submissions set forth in Contract Documents. On or about the time of the scheduled submission of the Milestone Design Submissions set forth in the Contract Documents, Design Builder and Owner shall meet and confer about the Milestone Design Submissions, with Design Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Owner's Program, the Basis of Design Documents, or, if applicable, previously submitted Design Submissions.

.3 The Owner shall review and comment on Design Submissions, providing any comments and/or concerns about the Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. 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 submission of Design Submissions.

.4 If incorporation of the Owner's comments result in a design that is inconsistent with or otherwise give rise to a change in the Owner's Program, the Basis of Design Documents, or the applicable Commercial Terms, the Design Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents or the Commercial Terms, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions. Alternatively, if the Owner agrees in writing, the proposed Design Submission may be included in the Trend Log pursuant to Section 2.4.1.7 of the General Conditions.

.5 The Design Builder shall provide an updated cost model for the Project periodically as set forth Exhibit C. The cost model will be based on a detailed labor and material cost estimate for the GMP and the other Commercial Terms as required in Contract Documents. The cost model will be supplemented pursuant to Contract Documents.

.6 **Design Log.** A Design Log, including a full listing of Reliable Design Decisions and all changes to the Basis of Design Documents, will be maintained by the Design Builder and provided to the Owner for review.

- a. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.

- b. The purpose of the Design Log is to record design decisions that are consistent with the Owner's Program, the Commercial Terms, and the Basis of Design Documents, as applicable. Both parties must agree to include a Reliable Design Decision in the Design Log. If a Reliable Design Decision will cause a change in the Basis of Design Decisions, or any of the other Commercial Terms, such changes must be processed pursuant to Articles 9 and 10 of the General Conditions.
- c. Once a Reliable Design Decision is incorporated into the Design Log, it shall be binding on the Design Builder as if set forth in the Owner's Program and/or the Basis of Design Documents, as applicable.

.7 Trend Log. If the Design-Builder does not know the extent to which a Design Submissions or a Design Submission will alter a Commercial Term, the Design-Builder shall request in writing for the Owner to agree to identify the 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 Submissions or 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 Owner's Program or Basis of Design Documents as a result of the Trend.
- b. The Design-Builder must obtain the Owner's consent 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 Basis of Design Documents and/or any other Commercial Term, the resolution shall be memorialized in a Change Order.

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

.1 The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality, including its phasing and subcontracting mode. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. To the extent not prohibited by the Contract Documents or Applicable Code Requirements, and subject to written approval by the Owner, Design Builder may prepare Construction Documents for approved Construction Packages for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

.2 It is acknowledged by the parties hereto that inherent in a design build project, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Builder will limit the Construction Packages for Owner's review to a reasonable number, not more than that stipulated in the Supplementary Conditions, unless approved in writing by the Owner. Contract Schedule shall indicate the times for the Owner to review the completion of each such portion of the

Construction Documents and a reasonable time for review of same.

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

2.5 Legal Requirements.

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

2.5.2 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 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, 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 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.

2.8 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. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that the Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors identified in the Design-Builder's Proposal or previously approved by Owner 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. Unless otherwise agreed in writing by the Parties, the best value selection process shall contain mutually acceptable evaluation Requirements for the proposal and selection process that is clear and consistent and, when applicable, includes both qualifications and price. The Subcontractor Procurement Procedure shall comply with the following requirements:

.1 Design-Builder shall identify the scope of subcontracted Work ("Subcontract Package") and shall identify at least three pre-qualified Subcontractors for each Subcontract Package. The Owner may reject any pre-qualified Subcontractor for good cause.

.2 Design-Builder shall select from the pre-qualified Subcontractors for the Subcontract Package, unless Design-Builder obtains prior, written approval from the Owner.

.3 If Design-Builder cannot reasonably identify three pre-qualified Subcontractors, then it shall inform the Owner in writing as to the reason for the inability to identify the pre-qualified Subcontractors, and Design-Builder shall not proceed with the selection of a Subcontractor without obtaining prior, written approval from the Owner.

.4 Design-Builder shall select Subcontractors on the basis of the Best Value for the Project. If the Best Value is not the lowest price, Design-Builder shall obtain written approval of the Subcontractor selection from the Owner, such approval shall not be unreasonably withheld.

2.8.4 Design-Builder must obtain prior, written approval from the Owner for 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;
- 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; and
- c. An explanation of i) how the self-performed construction Work will be priced (i.e. Lump Sum, Not to Exceed, etc.), and ii) how the reasonableness of the costs for the self-performed construction Work will be verified.

.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, whether such costs are proposed on the basis of a Cost of the Work or a Lump Sum, 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 Amount.
- 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.

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

2.9 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 but not limited to 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.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in 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 Owner has provided information in the Owner's Program ("Owner Provided Information"). The Owner Provided Information contains design or prescriptive specifications, and 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 Owner Provided Information, including any performance specifications, but only for the purposes of developing the Design-Builder's Phase 1 Scope of Services (Exhibit E), the Phase 1 Not to Exceed Amount and the Design-Builder's Fee Percentage. Notwithstanding the above, Design-Builder is required to perform an independent evaluation of the Owner Provided Information during Phase 1 as set forth in Exhibit C to the Agreement and may not rely on the Owner Provided Information for the purposes of performing the Work. Provided Design-Builder complies with other requirements set forth in the Contract Documents regarding entitlement to adjustment of Commercial Terms, such as but not limited to those regarding notice of claims to the Owner and identification of differing site conditions, Design-Builder may be entitled to an adjustment in Phase 1 Scope of Services, 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 in the Owner Provided Information that is discovered in Phase 1.

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 a 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 the Phase 1. Unless working with such 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 the 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 Exhibit D 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.

4.2.2 Pursuant to Exhibit C, Design-Builder is required to submit a Differing Site Conditions Report at the conclusion of Phase 1 with the Phase 2 Proposal. Notwithstanding the above, provided the parties sign the Phase 2 Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1 above if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1 and was not included in the Phase 2 Proposal, including all information required in Exhibit C.

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.

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

5.3 Design-Builder's Property (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 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 builder's risk insurance obtained by Design-Builder shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal, testing and start-up of building systems, and reasonable compensation for architect's and contractor's services and expenses as a result of a loss, and other perils or causes of loss as called for in the Contract Documents. The builder's risk insurance shall include physical loss or damage to the Work, including 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.

5.3.2 Prior to Design-Builder commencing any Work, Design-Builder shall provide Owner with certificates evidencing that (i) all Design-Builder's property insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final acceptance from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days

prior written notice is given to Owner. Design-Builder shall notify Owner within ten (10) days of receipt of any notice of cancellation or non-renewal sent by insurance company. Design-Builder's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.7.2 hereof. Design-Builder shall provide Owner with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.3 Any loss covered under Design-Builder's property 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.

5.3.4 Owner and Design-Builder waive against each other and each of their Subcontractors, Design Consultants, Subcontractors, agents and employees of each 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.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work pursuant to 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.

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. When Design-Builder submits its monthly Application for Payment, it shall include, in addition to other requirements a waiver and release of claims and mechanic's liens. Payments will not be considered due and payable by Owner unless these forms are properly completed and timely received by Owner.

6.2.2 Reconciliation. At the time it submits an Application for Payment, Design-Builder shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Project Schedule.

6.2.4 Stored Materials. If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-

Builder complies with or furnishes satisfactory evidence of the following:

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

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 By submitting the Application for Payment Design-Builder (a) represents that the Work described herein has been performed consistent with the Contract Documents and has progressed to the point indicated in the Application for Payment; (b) certifies that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.010, as their interests appeared in the last preceding Application for Payment, if payment for the application has been paid to the Design-Builder more than 10-days prior to the current application; and (c) recertifies that Design-Builder's prior certifications are true and correct, to the best of Design-Builder's knowledge, as of the date of the Application for Payment., 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 Payments.

6.3.1 Payment. Owner shall make progress payments, in such amounts as Owner determines are properly due, within thirty (30) days after receipt of the Initial invoice or a properly executed Application for Payment. Owner shall notify Design-Builder in accordance with Chapter 39.76 RCW if an Application for Payment does not comply with the requirements of the Contract Documents or if payment will be withheld.

6.3.2 Retainage. Owner shall retain five percent (5%) of the amount of each progress payment due under an Application for Payment until at least forty-five (45) days after Final Acceptance and receipt of all documents required by Governmental Rule or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage.

6.3.3 Title to Work Covered by Progress Payments. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Design-Builder from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Design-Builder with the Contract Documents.

6.4 Owner's Right to Withhold Payment and Offset

6.4.1 Withholding of Payment. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect

Owner from loss or damage for reasons including:

- .1 Work not in accordance with the Contract Documents;
- .2 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- .3 Work by Owner to correct defective Work or to complete the Work;
- .4 Design-Builder's failure to perform in accordance with the Contract Documents; and
- .5 Costs, claims, or liability that are the result of Design-Builder's failure to perform in accordance with the Contract Documents, including Liquidated Damages.

6.4.2 Owner's Offset Rights. If, at the time any payment by Owner is due under this Article 6, Design-Builder is liable to Owner for any amounts in accordance with the provisions of the Contract Documents (including Liquidated Damages), Owner may deduct the outstanding amount of such claims against Design-Builder from the amount payable to Design-Builder.

6.4.3 Payment Disputes. If Design-Builder disputes Owner's determination of payments due hereunder, or disputes any offsets or withholding by Owner, Design-Builder shall have the right to submit the dispute for resolution in accordance with Article 10. Pending resolution of any such dispute, Design-Builder shall continue its performance of the Work in accordance with the Contract Documents. Amounts determined by such resolution process to have been properly due shall be payable by Owner within thirty (30) days after (a) the effective date of the Parties' negotiated settlement or (b) absent such settlement, the arbitration award issued pursuant to Section 10.3.2.

6.5 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.

6.6 Design-Builder's Payment Obligations.

6.6.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties and Washington state law, 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.

6.7 Substantial Completion.

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

6.7.2 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.7.1 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.

6.8 Final Payment.

6.8.1 Application for Final Payment. Once Owner has issued a Certificate of Final Acceptance, Design-Builder shall be entitled to submit an Application for Final Payment, which application will include the following information:

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

6.8.2 Payment. Within thirty (30) days after receipt of an acceptable Application for Final Payment, Owner shall pay to Design-Builder the unpaid balance of the Contract Price (less any Retainage per Article 6), reduced by any amounts owed by Design-Builder to Owner pursuant to this Contract which have not been paid by Design-Builder. Retainage funds shall be released pursuant to Chapter 60.28 RCW.

6.8.3 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.

6.8.4 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 2.10 and 2.11 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend 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 Tax Claim Indemnification.

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

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against non-party claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) 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. 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 non-party bodily injury, sickness, or death and non-party 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 obligation 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.

7.4.3 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: (____)

7.4.4 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 be 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 the Design-Builder's Delay Rate set forth in Section 6.4.5.4 of the Agreement, 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.

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 adjust the remaining Work to meet 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 or increased costs on the Project.

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; or
- .3 As set forth in Section 9.4.3 below.

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

9.4.3 Pricing Components for Changed Work. The value of any Changed Work that is compensable, of any disputed Work Change Directive and of any other increase or decrease in the Contract Price, including a Claim, shall be limited to the following costs to the extent that the Design-Builder demonstrates that the costs are both reasonable, actually incurred, not otherwise disallowed (collectively "Changed Work"), Changed Work shall be subject to any Not to Exceed Amount agreed upon by the Parties.

- .1 For Changed Work that is priced on the basis of the Cost of the Work, Design Builder shall be compensated up to a Not to Exceed Sum for the following:
 - a. The Cost of Changed Work, which shall be determined in the same way as the Cost of the Work set forth in Section 6.3 of the Agreement;
 - b. Any Allowance pursuant to Section 6.4.1 of the Agreement; and
 - c. Design Builder's Contingency pursuant to Section 6.4.4 of the Agreement.
- .2 For Extra Work that is priced on a Lump Sum basis, Design Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.
- .3 If the parties have entered into the Phase 2 Amendment, the Cost of Extra Work shall not include any items included in the Lump Sum General Conditions Amount pursuant to Section 6.4.5 of the Agreement or the General Conditions Costs set forth in Section 6.3.15 of the Agreement.
- .4 During Phase 1, Design-Builder shall be entitled to include the Fee Percentage in the compensation for Changed Work. If the parties have entered into the Phase 2 Amendment, the Design-Builder shall not be entitled to include the Fee Percentage in the compensation for Changed Work. The Lump Sum Fee may only be modified pursuant to Section 6.2 of the Agreement. The fee for Subcontractor's Changed Work shall be computed as follows:
 - a. Design-Builder shall receive eight percent (8%) of fixed-price costs or six percent (6%) of the time-and-material costs owed directly to a Subcontractor for materials

supplied and/or Work properly performed by that Subcontractor or owed directly to a Design Consultant for services it properly performs.

- b. Each "lump-sum" Subcontractor of any tier shall receive eight percent (8%) of fixed-price costs or six percent (6%) of the time-and-material costs owed directly to a lower-tier "lump-sum" Subcontractor for materials supplied and/or Work properly performed by that Subcontractor.
- c. Each "lump-sum" Subcontractor of any tier shall receive eight percent (8%) of fixed-price costs or six percent (6%) of the time-and-material costs owed directly to a lower-tier "lump-sum" Subcontractor for materials supplied and/or Work properly performed by that Subcontractor.

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

9.5 Emergencies.

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

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 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 for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.4, 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 SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

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 its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

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

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

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the 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:

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

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

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

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

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

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

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

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

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

11.5 Bankruptcy of Owner or Design-Builder.

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

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

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

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

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

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.

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.

DRAFT

Exhibit A
Insurance Requirement
Table of Contents

Page

Design-Builder’s Insurance Requirements	2
Owner’s Insurance Requirements	7
Design Consultant’s Insurance Requirements	8
Design-Build Subcontractor’s Insurance Requirements	11
General Contractor’s and Subcontractor’s Insurance Requirements	15

Design-Builder's Insurance Requirements

1.1 Insurance Types and Limits.

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

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	Commercially reasonable deductibles (maximum of \$50,000). All deductibles will be paid by the design-builder.
2. Employer's Liability (Bodily Injury by Accident)			
a. By Disease	\$ 1,000,000	n/a	
b. Each Accident	\$ 1,000,000	n/a	
c. Each Employee	\$ 1,000,000	n/a	
3. Commercial General Liability			
a. Bodily Injury/Property Damage per occurrence limit	\$ 1,000,000	n/a	
b. Bodily Injury/Property Damage aggregate limit	n/a	\$ 2,000,000	
c. Products/Completed Operation aggregate limit	n/a	\$ 2,000,000	
d. Personal and Advertising Injury aggregate limit	n/a	\$ 2,000,000	
e. Medical Expense limit (any one person)	\$ 5,000	n/a	
4. Contractor's Protective Liability (if applicable)	Separate coverage or included in item #6		
5. Commercial Automobile Liability	\$ 1,000,000 CSL	n/a	
6. Professional Errors and Omissions pursuant to Section 1.1.3 (A) and 1.1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	\$ 1,000,000	\$ 2,000,000	
7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)	\$n/a	n/a	
8. Umbrella Excess Liability Insurance	As necessary		
9. Builder's risk and boiler & machinery insurance provided pursuant to Article 5 of the General Conditions	\$ An amount equal to the full insurable value of the completed project on a replacement cost basis		

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

1.1.3 PROFESSIONAL LIABILITY INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

1.1.3(B).1 The Design-Builder's policy cannot contain any restriction, limitation or exclusion

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

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

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

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

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

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

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

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

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

2.1 Coverage Parameters and Endorsements.

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

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

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

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

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

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability

and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

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

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

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

3.1 Additional Insureds

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

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

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

4.1 Terms and Effective Dates.

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

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

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

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

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

General Liability, including completed operations coverage
Worker's Compensation

Professional Liability, including Contractor's Protective Liability, if applicable.
Umbrella Coverage

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

Owner's Insurance Requirements

1.1 Insurance Types and Limits.

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

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

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

2.1 Additional Insureds.

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

Design Consultant's Insurance Requirements

1.1 Insurance Types and Limits.

1.1.1 The Design-Consultant shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 9 of DBIA Document No. 540, *Standard Form of Agreement Between Design-Builder and Design Consultant* (2010 Edition):

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	Commercially reasonable deductibles (maximum of \$50,000). All deductibles will be paid by the design-consultant.
2. Employer's Liability (Bodily Injury by Accident)			
a. By Disease	\$ 1,000,000	n/a	
b. Each Accident	\$ 1,000,000	n/a	
c. Each Employee	\$ 1,000,000	n/a	
3. Commercial General Liability			
a. Bodily Injury/Property Damage per occurrence limit	\$ 1,000,000	n/a	
b. Bodily Injury/Property Damage aggregate limit	n/a	\$ 2,000,000	
c. Products/Completed Operation aggregate limit	n/a	\$ 2,000,000	
d. Personal and Advertising Injury aggregate limit.	n/a	\$ 2,000,000	
e. Medical Expense limit (any one person)	\$ 5,000	n/a	
4. Commercial Automobile Liability	\$ 2,000,000 CSL	n/a	
5. Professional Errors and Omissions	\$ 1,000,000	\$ 2,000,000	
6. Umbrella Excess Liability Insurance	As necessary		
7. Other Coverages as Required on a case by case basis	n/a	n/a	

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

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

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

email.

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

1.1.6 Professional Liability.

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

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

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

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

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

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

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

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

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

2.1 Coverage Parameters and Endorsements.

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

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

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

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

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

3.1 Additional Insureds.

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

4.1 Terms and Effective Dates.

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

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

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

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

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

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

Design-Build Subcontractor's Insurance Requirements

1.1 Insurance Types and Limits.

1.1.1 Design-Build Subcontractor shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 10 of DBIA Document No. 560, *Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition) or DBIA Document No. 565, *Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor - Lump Sum* (2010 Edition):

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	Commercially reasonable deductibles (maximum of \$50,000). All deductibles will be paid by the design-build subcontractor or its design consultant, as applicable
2. Employer's Liability (Bodily Injury by Accident)	\$	\$	
a. By Disease	\$ 1,000,000	n/a	
b. Each Accident	\$ 1,000,000	n/a	
c. Each Employee	\$ 1,000,000	n/a	
3. Commercial General Liability			
a. Bodily Injury/Property Damage per occurrence limit	\$ 1,000,000	n/a	
b. Bodily Injury/Property Damage aggregate limit	n/a	\$ 2,000,000	
c. Products/Completed Operation aggregate limit	n/a	\$ 2,000,000	
d. Personal and Advertising Injury aggregate Limit.	n/a	\$ 2,000,000	
e. Medical Expense limit (any one person)	\$ 5,000	n/a	
4. Commercial Automobile Liability	\$ 1,000,000 CSL	n/a	
5. Professional Errors and Omissions pursuant to Sections 1.1.5 (A) and 1.1.5 (B) below providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	\$ 1,000,000	\$ 2,000,000	
6. Umbrella Excess Liability Insurance	As necessary		
7. Contractor's Pollution Liability, including coverage for microbial matter (if applicable)	n/a	n/a	
8. Other Coverages as Required on a case by case basis	n/a	n/a	

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

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

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

1.1.5 PROFESSIONAL LIABILITY INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1 Coverage Parameters and Endorsements.

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

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

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

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

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

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

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

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

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

3.1 Additional Insureds

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

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

4.1 Terms and Effective Dates.

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

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

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

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

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

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

General Contractor's and Subcontractor's Insurance Requirements

1.1 Insurance Types and Limits.

1.1.1 General Contractor and Subcontractor shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as set forth in DBIA Document No. 550, *Standard Form of Agreement Between Design-Builder and General Contractor – Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), DBIA Document No. 555, *Standard Form of Agreement Between Design-Builder and General Contractor – Lump Sum* (2010 Edition), and DBIA Document No. 570, *Standard Form of Agreement Between Design-Builder and Subcontractor (Where Subcontractor Does Not Provide Design Services)* (2010 Edition):

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	Commercially reasonable deductibles (maximum of \$50,000). All deductibles will be paid by the general contractor or subcontractor, as applicable.
2. Employer's Liability (Bodily Injury by Accident)			
a. By Disease	\$ 1,000,000	n/a	
b. Each Accident	\$ 1,000,000	n/a	
c. Each Employee	\$ 1,000,000	n/a	
3. Commercial General Liability			
a. Bodily Injury/Property Damage per occurrence limit	\$ 1,000,000	n/a	
b. Bodily Injury/Property Damage aggregate limit	n/a	\$ 2,000,000	
c. Products/Completed Operation aggregate limit	n/a	\$ 2,000,000	
d. Personal and Advertising Injury aggregate limit.	n/a	\$ 2,000,000	
e. Medical Expense limit (any one person)	\$ 5,000	n/a	
4. Commercial Automobile Liability	\$ 1,000,000 CSL	n/a	
5. Professional Errors and Omissions (if applicable)	\$ 1,000,000	\$ 2,000,000	
6. Contractor's Pollution Liability, including coverage for microbial matter (if applicable)	n/a	n/a	
7. Umbrella Excess Liability Insurance	As necessary		
8. Other Coverages as Required on a case by case basis	n/a	n/a	

1.1.2 The insurance required by this Section 1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written

on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

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

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

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

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

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

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

1.1.5.2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

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

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

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

2.1 Coverage Parameters and Endorsements.

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

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

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

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

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

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

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

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

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

3.1 Additional Insureds.

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

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

4.1 Terms and Effective Dates.

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

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

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

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

General Liability, including completed operations coverage

Worker's Compensation

Professional Liability, including Contractor's Protective Liability, if applicable.

Umbrella Coverage

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

Exhibit F

Business Equity and Apprenticeship Utilization Requirements

BUSINESS EQUITY

Western Washington University (WWU) is committed to providing maximum opportunity for participation in contracting by Business Equity Enterprises (BEE). Development of a comprehensive BEE Inclusion Plan by the design-builder, that is accepted by WWU, shall be required as a condition for receiving an Award.

Prior to the execution of the contract for this project, WWU and the selected firm shall agree on an Inclusion Plan that will include and aspirational goal of BEE participation afforded by the various scopes and services of the work, as well as the strategies the Design-Builder will use to achieve the maximum BEE utilization on the Project. Participation may be either as the design-builder, a sub-consultant, sub-contractor, or supplier.

The Business Equity Enterprise (BEE) definitions include all the following:

1. Native Owned Business Enterprise (NBE): A business licensed to do business in the State of Washington, including a sole proprietorship, corporation, or other legal entity that is more than 50% owned and controlled by at least one Native person.
2. Native or Tribal Participation: Native or Tribal Participation includes, but is not limited to, businesses with Native or Tribal ownership, employees, craft labor, subcontractors, subconsultants, and/or material suppliers. WWU reserves the right to determine the extent of the Native or Tribal Participation from each Proposer and/or Finalist.
3. Small Business Enterprise (SBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is owned and operated independently from all other businesses and either:
 - a. Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which the business entity is proposed to be engaged; or
 - b. Is certified with the Washington State Office of Minority and Women's Business Enterprises (OMWBE).
4. Disadvantaged Business Enterprise (DBE): Any business certified with the OMWBE.
5. Minority Business Enterprise (MBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority person.
6. Women's Business Enterprise (WBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one woman.
7. Minority Women's Business Enterprise (MWBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50%

owned and controlled by at least one minority woman.

The term “minority” means a person of Asian, African-American, Hispanic and/or Native American racial or ethnic heritage.

All BEE must perform a Commercially Useful Function on the Project. A Commercially Useful Function means a function performed by a BEE that is responsible for the execution of a distinct element of the work and carrying out its responsibilities by performing, managing, and supervising the work with its own resources and employees. Acting as a conduit to transfer funds to another business performing, managing or supervising the work does not typically constitute a Commercially Useful Function. Whether a business has performed a Commercially Useful Function is determined by many factors, including but not limited to the following:

1. The amount of work subcontracted to the BEE is consistent with normal industry practice;
2. The amount paid to the BEE is commensurate with the work it is actually performing;
3. Whether the BEE is merely a pass-through entity in order to obtain the appearance of participation;
4. Whether the BEE manages its own work, owns or leases its own equipment, manages its own work force for installation, is responsible for supplying its own materials and supplies, and maintains responsibility for the performance of the Work;
5. In the context of a BEE being a partner within a joint venture, that the BEE is providing resources and staff consistent with the stated percentage of the BEE’s interest in such joint venture; and
6. For materials and supplies, whether the BEE is responsible for negotiating the price, determining quality and quantity, ordering the materials, and paying for the material itself.

In the RFP stage, Finalists will be required to submit their proposed Inclusion Plan for the utilization of BEE. The criteria will be set forth in the RFP Evaluation Criteria. Currently, it is anticipated that each Finalist’s Inclusion Plan shall:

- State the overall BEE utilization goal the Finalist is proposing for this project.
- Outline the design and construction work scopes in which the Finalist anticipates the BEE will be utilized.
- Discuss specific strategies and/or relationships the Finalist intends to draw upon in pursuit of the University’s commitment to the equitable participation of the BEE on this project.
- Address the Finalist’s proposed actions to comply with the Business Equity requirements set forth in the contract.
- Discuss any identified challenges and opportunities, including how to mitigate those challenges and optimize the opportunities.

Prior to the execution of the contract, the Design-Builder will finalize the Inclusion Plan and submit it to the Owner for review and final approval.

APPRENTICESHIP UTILIZATION REQUIREMENTS:

Mandatory apprenticeship utilization of at least fifteen percent (15%) of the total labor hours worked on the Contract is required. Apprentices must be registered as apprentices with the State Apprenticeship and Training Council. Design-Builder shall comply with the requirements of the Contract Documents related to apprenticeship. Proposers may contact the Department of Labor and Industries, Apprenticeship Program, at (360) 902-5320 to obtain information on apprenticeship programs.