



**FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER
COST PLUS FEE WITH AN OPTION
FOR A GUARANTEED MAXIMUM PRICE
MODIFIED DBIA 530**

TABLE OF CONTENTS

Article Name	Page
Article 1 Scope of Work	2
Article 2 Contract Documents	2
Article 3 Interpretation and Intent	2
Article 4 Ownership of Work Product.....	3
Article 5 Contract Time	4
Article 6 Contract Price	5
Article 7 Procedure for Payment	12
Article 8 Termination for Convenience.....	14
Article 9 Representatives of the Parties.....	15
Article 10 Bonds and Insurance.....	16
Article 11 Other Provisions	18



Issaquah School District

Design-Build Project for New High School and New Middle School

**Form of Agreement Between
Owner and Design-Builder – Cost Plus Fee
With an Option for a Guaranteed Maximum Price
Modified DBIA Form 530**

This **AGREEMENT** is made as of the ____ day of _____ in the year of 20__, by and between the following parties, for services in connection with the Project identified below.

OWNER:

(Name and address)

Issaquah School District
565 NW Holly Street
Issaquah, WA 98027

DESIGN-BUILDER:

(Name and address)

PROJECT:

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

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;

2.1.2 The GMP Exhibit referenced in Section 6.6.1.1 herein or, if applicable, the GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein;

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

2.1.4 The General Conditions; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal or any interim Contract Amendments by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner's acceptance of the GMP Proposal or any interim Contract Amendments.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction

and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner's acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

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

3.4 Not Used.

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 Instruments of Service. The Drawings (including original Construction Documents), Specifications, materials, models, sketches, renderings, surveys, reports, and other documents, including those prepared as 3D electronic models, using CAD, and existing in other electronic formats, prepared or provided by Design-Builder are instruments of service intended for use solely with respect to the Project. Owner shall be permitted to retain copies, including reproducible and originally stamped copies, of all instruments of service, and is granted an unlimited and royalty free license to utilize instruments of service to communicate about the Project, complete the Project, expand the Project, correct any deficiencies, make any renovations or repairs to the Project, or for future projects other than the construction of another building. Owner agrees to indemnify and hold Design-Builder harmless from any subsequent modification of the instruments of service by Owner and from Owner's use of the instruments of service on other projects.

4.2 Design-Builder to Convey Instruments of Service to Owner. Upon Owner's request if made during the Project or within five (5) years of Substantial Completion, Design-Builder shall be required to convey to Owner in whatever format Owner may designate instruments of service for the completion, use, updating, modernizing, and maintenance of the Project, conditioned upon Owner's agreement to indemnify and hold harmless the Design-Builder as set forth in paragraph 4.1 above.

4.3 Submission of Instruments of Service Does Not Waive Rights. Submission or distribution of Design-Builder's instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of any rights reserved in this Section.

4.4 Not Used.

4.5 Note Used.

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 Substantial Completion of the entire Work shall be achieved no later than (xx) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows:

To be determined

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 1.2.7 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.

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner (*amount to be filled in upon execution of this Contract*) (to be negotiated) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

5.5 Any liquidated damages assessed pursuant to this Contract shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are caused by any

delay in achieving the Contract Time(s), provided this limitation shall not apply to Design-Builder's duty to indemnify the Owner as provided in this Contract.

5.6 Not Used

5.7 Not Used

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

Owner and Design-Builder may agree to interim Contract Amendments prior to execution of agreement to GMP. Contract Amendments shall define the scope of work, deliverables, deadlines and other details. Compensation shall be in accordance with all terms of this Agreement and General Conditions. The contract sum shall be the sum of all current Contract Amendments.

6.2 Design-Builder's Fee.

6.2.1 Design-Builder's Fee shall be:

_____ percent (_____%), of reimbursable costs as adjusted in accordance with Section 6.2.2 below.

6.2.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.2.2.1 No additional reduction to account for Design-Builder's Fee or any other markup.

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

6.3.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the

basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Design-Builder shall be reimbursed the cost of supervisor and administrative personnel in accordance with rates proposed or subsequently negotiated. Weekly rates for such personnel shall include all costs associated with work on the project including, but not limited to wages, salaries, bonuses, vacation, holiday, sick leave, benefits, pensions, professional memberships, professional licenses and other similar costs. Personnel and billable rates are identified in Exhibit ____.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit ____ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices are identified in Exhibit _____

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

6.3.5 Reasonable travel and per diem expenses incurred per United States General Services Administration ("GSA") guidelines while traveling more than fifty (50) miles in connection with the Work with the Owner's prior written approval.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

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

6.3.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

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

6.3.10 Costs of removal and lawful disposal of debris and waste from the Site.

6.3.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.3.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

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

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

6.3.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.3.16 Not Used.

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

6.3.18 Not Used.

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

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

6.3.21 Accounting and data processing costs related to the Work.

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

6.4 Allowance Items and Allowance Values.

6.4.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

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

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

6.4.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.4.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.5 Non-Reimbursable Costs.

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

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

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

6.5.1.3 The cost of Design-Builder's capital used in the performance of the Work.

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

6.5.1.5 Parking and daily commuting to the job site.

6.6 The Guaranteed Maximum Price (“GMP”).

6.6.1 GMP Established Upon Execution of this Agreement.

6.6.1.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$ _____). Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement (“GMP Exhibit”). Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. (While the GMP Exhibit will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 6.6.2.1 below, to ensure that the basis for the GMP is well-understood).

6.6.1.2 The GMP includes a Contingency in the amount of _____ Dollars (\$ _____) which is available for Design-Builder’s exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency. Unused Contingency funds shall accrue to the Owner.

6.6.2 GMP Established after Execution of this Agreement.

6.6.2.1 GMP Proposal(s). If requested by Owner, Design-Builder shall submit a GMP Proposal(s) to Owner which shall include the following, unless the parties mutually agree otherwise:

6.6.2.1.1 A proposed GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 6.2.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof; and
- iii. If applicable, any prices established under Section 6.1.2 hereof.

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

6.6.2.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

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

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

6.6.2.1.6 If applicable, a schedule of alternate prices;

6.6.2.1.7 If applicable, a schedule of unit prices;

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

6.6.2.1.9 The time limit for acceptance of the GMP Proposal.

6.6.2.2 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

6.6.2.3 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

6.6.2.4 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

6.6.2.4.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 above;

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

6.6.2.4.3 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.2.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

6.6.3 Savings.

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the

GMP, as such GMP may have been adjusted over the course of the Project, the difference (“Savings”) shall be shared as follows: All savings shall accrue to the owner.

6.7 Not Used

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the Application.

7.1.1.1 Draft Application. On or about the 25th of each month, Design-Builder shall submit to Owner a report on the current progress of the Work as compared to Design-Builder’s Construction Schedule, and a draft, itemized application for payment for work performed during the current calendar month on a form supplied or approved by Owner. This shall not constitute a payment request. Design-Builder and Owner shall confer regarding the current progress of the Work and the amount of payment to which Design-Builder is entitled. Owner may on occasion request Design-Builder to provide data substantiating Design-Builder’s right to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents.

7.1.1.2 Payment Request. After Design-Builder and Owner have met and conferred regarding the updated draft application, and Design-Builder has furnished all progress information required and all data requested by Owner under 7.1.1.1 above, Design-Builder shall submit to Owner on or before the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment for Work completed during the previous month in accordance with Article 6 of the General Conditions of Contract on a form supplied or approved by Owner. Among other things, the Application shall state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with Owner and that all payments due Subcontractors of any tier from Owner’s payment the prior month have been made.

7.1.1.3 Disputed Amounts. If Design-Builder believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, Design-Builder may, also by the tenth (10th) day of the month, submit to Owner along with the approved payment request a separate written

payment request specifying the exact additional amount due, the category in the Schedule of Values (Attachment C hereto) in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, Design-Builder and all Subcontractors shall file with Owner by the tenth day of the month certified copies of all payroll records relating to the additional amount due.

7.1.1.4 Validity of Payment Requests. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

7.1.2 Owner shall make payment within twenty (20) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract. Subcontractor and supplier payments shall be made promptly following Owner payment to Design-Builder subject to subcontract terms.

7.1.3 Not Used.

7.2 Retainage on Progress Payments.

7.2.1 Pursuant to Chapter RCW 60.28, the Owner will retain five percent (5%) of each approved Application for Payment to be retained as a trust fund for the protection and payment of the claims of any person arising under the contract and the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due from Design-Builder. The moneys reserved may, at the option of Design-Builder, be retained in accordance with the provisions of Chapter 60.28 RCW.

7.2.2 Owner shall release to Design-Builder all retained amounts in accordance with Chapter 39.12 RCW and Chapter 60.28 RCW upon the later of (i) Sixty (60) days after Final Acceptance of the entire Work; (ii) Design-Builder has on file, pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from Design-Builder and from each Subcontractor of any tier, approved by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by Design-Builder or Subcontractor of any tier; and (iii) pursuant to RCW 60.28.021, the Owner has received certificates from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries authorizing release of retainage. If there are either unpaid taxes or unsatisfied claims of lien against the retained percentage, disbursement of retainage funds will be made in accordance with state law. If Design-Builder chooses to post a Retainage Bond on behalf of itself or any of its Subcontractors, such bond shall be on a form that is consistent with that published by the Office of the Superintendent of Public Instruction and issued by a surety licensed to do business in the State of Washington with an AM Best rating of no less than A-/IX on behalf of Design-Builder and no less than A-/V on behalf of any Subcontractor.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that:

(a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

(b) Owner shall have the right to withhold all amounts to which Owner is entitled to withhold pursuant to Section 6.3 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 as specified by RCW 39.76.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate 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

8.2 In addition to the amounts set forth in Section 8.1 above, if the Owner's termination for convenience under Paragraph 8.1 is not caused by a third-party challenge to the Project (such as, without limitation, an injunction, initiative or force majeure event), Design-Builder shall be entitled to receive one of the following as applicable:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid up to but no more than two and one-half percent (2.5%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid up to but no more than five percent (5%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

8.3 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 Sections 4.1 through 4.3 hereof.

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:

Steve Crawford _____
Issaquah School District
565 NW Holly Street
Issaquah, WA 98027
(425) 837-7002
[@issaquah.wednet.edu](mailto:Steve.Crawford@issaquah.wednet.edu)

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:

Royce Nourigat or
Tom Mullins _____

Issaquah School District
565 NW Holly Street
Issaquah, WA 98027
(425) 837-7002
@issaquah.wednet.edu

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 shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverages from insurance carriers acceptable to Owner. All policies will name the School Board of the Issaquah School District as an additional insured, with the exception of the Design-Builder's Professional Liability policy

10.1.1 Coverages and Limits. The insurance shall provide the minimum coverages and limits set forth below. Owner shall be provided forty-five (45) days written notice of cancellation. Owner does not warrant or represent that such coverages and limits are appropriate or adequate to protect Design-Builder. Neither Owner's specification or approval of the insurance in this Contract, nor of its amount, nor providing coverage in these stated minimum limits shall be construed to relieve Design-Builder from liability in excess of such limits. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. Design-Builder may, at its expense, purchase larger coverage amounts. The cost of any claim payments falling within the deductible shall be the sole responsibility of Design-Builder. Design-Builder shall submit upon execution of this Contract Certificates of Insurance as evidence of all insurance required herein:

10.1.1.1 CGL: A policy of Commercial General Liability Insurance which includes coverage for hazards of explosion, collapse and underground property damage, with the following minimum limits:

\$1,000,000 Per Occurrence (Limits to be amended)

10.1.1.2 Employers Liability:

(1)	\$1,000,000	Each Accident
(2)	\$1,000,000	Disease – Policy Limit
(3)	\$1,000,000	Disease – Each Employee

10.1.1.3 Automobile: Commercial Automobile Liability with a combined single limit of not less than \$1,000,000 for each accident and including coverage for transportation of pollutants. Coverage shall be for all owned, non-owned and hired automobiles.

10.1.1.4 Excess or Umbrella Liability: Includes coverage for hazards of explosion, collapse and underground property damage, with limits of at least \$10 million per occurrence and aggregate.

10.1.1.5 Contractors Pollution Liability: A policy providing coverage for claims involving remediation, disposal, or other handling of pollutants arising out of Design-Builder’s operations for others; from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos. Such Pollution Liability policy shall provide at least \$2,000,000 per claim coverage for Bodily Injury and Property Damage.

10.1.1.6 Design-Builder’s Professional Liability: Design-Builder shall maintain for three years after Substantial Completion subject to RCW 4.16.310 (or, if earlier, until demolition of the buildings) professional errors and omissions insurance in an amount no less than \$2 million. Design-Builder shall promptly notify Owner of any material changes to, interruption of, or termination of, this insurance. Design-Builder shall contractually require its Design Consultants of any tier to maintain professional errors and omissions insurance in an amount of at least \$1 million. If professional errors and omissions insurance is not reasonably available for or applicable to a class of consultants, Design-Builder must promptly notify Owner.

10.1.1.7 Worker’s Compensation: Worker’s Compensation coverage, as required by Title 51 RCW. If Design-Builder is qualified as a self-insurer in accordance with Chapter 51.14 RCW, Design-Builder shall so certify by letter signed by a corporate officer indicating that it is a qualified self insured, and setting forth the limits of any policy of excess insurance covering its employees.

10.1.1.8 Other Coverages. Other additional coverages that may be required will be listed in the General Conditions.

10.1.2

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

10.2.1 Performance and Payment Bonds. Design-Builder shall secure from a surety company acceptable to Owner, admitted and licensed in the State of Washington with an AM Best rating of A/VII or better, and shall pay for bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the Contract Price, including Washington State sales tax, pursuant to Chapter 39.08 RCW. The form of the Payment Bond and Performance Bond form shall be consistent with the form published by the Superintendent of Public Instruction. The bonds shall remain in force throughout the period required to complete the work, and thereafter for a period through final payment in these Contract Documents shall in no way affect or alter the liabilities of Design-Builder to Owner as set forth herein.

10.3 Owner's Insurance.

10.3.1 Builder's Risk.

10.3.1.1 Owner will purchase and maintain Builder's Risk property insurance in the amount of the Contract Price, plus Washington State Sales Tax, including all Change Orders for the Work on a replacement cost basis excluding earthquake and flood coverage until Substantial Completion. Design-Builder shall be responsible for all losses up to the policy deductible.

10.3.1.2

10.3.1.3 If Design-Builder believes it has a loss that is covered by Builder's Risk Insurance and it is likely to exceed the policy deductible, Design-Builder shall notify the Owner within 48 hours.

Article 11

Other Provisions

11.1 Other provisions are as follows:

11.1.1 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.

11.1.2 Business Equity. Owner is committed to providing the maximum practicable opportunity for participation in contracting by small business entities (sbe), disadvantaged business enterprises (dbe), as well as Minority Business Enterprises (MBE), Women Business Enterprises, (WBE), and Minority Women Business Enterprises (MWBE), state-certified and non state-certified, on public works projects. Owner and Design-Builder have agreed on an aspirational goal of 10% combined sbe/dbe/MBE/WBE/MWBE participation in the design and construction services set forth in this Contract. To achieve that goal, Design-Builder will implement an Outreach Plan, reviewed and approved by the Owner prior to the execution of this Contract, that outlines the proactive strategies, resource commitments, and specific steps Design-Builder will take to effectively reach out to consultants, subconsultants, and subcontractors for the performance of the design and construction services set forth in this Contract. Design-Builder shall also comply with the Business Equity requirements set forth in the General Conditions.

11.1.3 Electronic Data. In addition to the requirements set forth in the General Conditions for electronic data, Design-Builder shall comply with the requirements of Attachment A, Issaquah School District CAD and BIM Standards, in the performance of services under this Contract.

11.1.4 In performing the Work, the Design-Builder shall comply with all applicable federal, state and local laws and regulations including, but not limited to, the following:

- (1) Chap. 18.27 RCW relating to Contractor's registration;
- (2) Chap. 19.27 RCW relating to the State building code;
- (3) Chap. 27.44 RCW relating to Indian graves;
- (4) Chap. 27.53 RCW relating to archaeological sites;
- (5) RCW 28A.210.310 relating to use of tobacco products;
- (6) RCW 28A.400.330 prohibiting use of employees of contractor with crimes against children;
- (7) Chap. 39.06 RCW relating to Contractor's registration;
- (8) Chap. 39.08 RCW relating to Contractor's bonds;
- (9) Chap. 39.12 RCW relating to prevailing wages (**See Attachment B to this Agreement**);
- (10) RCW 39.30.060 relating to submittal of names of subcontractors;

- (11) Chap. 49.17 relating to industrial safety and health;
- (12) Chap. 49.26 RCW relating to asbestos;
- (13) Chap. 49.28 RCW relating to hours of labor;
- (14) RCW Chapters 28A.642 and 49.60 RCW prohibiting discrimination;
- (15) Chap. 49.70 RCW relating to hazardous materials;
- (16) Chap. 50.24 relating to unemployment compensation; and
- (17) Chap. 70.92 RCW relating to the provisions for the aged and physically disabled.

The foregoing list is provided only as a courtesy to the Design-Builder, and the Owner has not thereby undertaken any obligation to provide legal advice to the Contractor. The Owner makes no representation as to the currency, accuracy, or completeness of the list.

11.1.5 The Contractor and any of its Subcontractors of any tier shall not utilize any employee at the Owner's site in active school use or where there is a likelihood of contact with children or allow any contact between school children and any employee where an employee has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapters 9A.32 or 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the Contract Sum or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this paragraph. Failure to comply with these requirements is grounds for immediate termination of the Agreement.

.1 Any employees of Contractor and Subcontractors who will have regularly scheduled access to children shall be subject to a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 834, RCW 10.97.030 and RCW 10.97.050 and through the Federal Bureau of Investigation before the Contractor permits them to have such access to children. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous

two years, the Owner or the Contractor may waive the requirement. The Owner, pursuant to chapters 41.59 and 41.56 RCW, shall pay costs associated with the record check as part of the Contract Sum.

.2 The Contractor and subcontractors performing Work shall take reasonable steps to provide a drug and alcohol free site.

ATTACHMENTS: The following documents, whether attached hereto or not, are hereby incorporated by reference and made a part of this Agreement, as if set forth herein in full:

- Attachment A: Issaquah School District CAD and BIM Standards
- Attachment B: Prevailing Wage Rates Requirements and Information
- Attachment C: Schedule of Values
- Attachment D: Design-Builder's Proposal

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 FIRM NAME:

ISSAQUAH SCHOOL DISTRICT:

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)



**STANDARD FORM OF GENERAL
CONDITIONS BETWEEN OWNER AND
DESIGN-BUILDER
Modified DBIA Form 535**

TABLE OF CONTENTS

Article Name	Page
Article 1 General.....	1
Article 2 Design-Builder’s Services and Responsibilities.....	3
Article 3 Owner’s Services and Responsibilities.....	11
Article 4 Hazardous Conditions and Differing Site Conditions	13
Article 5 Insurance and Bonds.....	14
Article 6 Payment	15
Article 7 Indemnification.....	18
Article 8 Time.....	20
Article 9 Changes to the Contract Price and Time	20
Article 10 Contract Adjustments and Disputes	22
Article 11 Stop Work and Termination for Cause.....	24
Article 12 Electronic Data	27
Article 13 Miscellaneous	28

Article 1

General

1.1 Mutual Obligations

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

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price.

1.2.2 *Basis of Design Documents* are as follows: For purposes of the Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the “Basis of Design Documents.” For purposes of the Agreement Between Owner and Design-Builder – Lump Sum, the Basis of Design Documents is the Owner’s Project Criteria, Design-Builder’s Proposal and the Deviation List, if any.

1.2.3 *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 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.

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

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

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

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch

list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *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.

1.2.9 *General Conditions* refers to this document.

1.2.10 *GMP Exhibit* means that exhibit attached to the Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price.

1.2.12 *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.

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

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

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

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

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

1.2.18 *Substantial Completion or Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.19 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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 Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price; 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).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

2.2 Design Professional Services.

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.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 *Design-Builder and Owner* shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve or disapprove the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 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 in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve or disapprove 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 approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

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

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of approved 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. Some of the applicable legal requirements are highlighted in the Agreement.

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

2.6 Government Approvals and Permits.

2.6.1 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 Phase Services.

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

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 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.

2.7.5 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.

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

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 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.

2.8.2 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, so long as 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.

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

2.9 Design-Builder's Warranty.

2.9.1 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 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Final Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Final 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.

2.10.2 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 of advance notice identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 Apprentice Utilization Requirements

2.11.1 The Design-Builder shall ensure that at least 15% of the total construction labor hours utilized on the project are performed by apprentices registered with the Washington State Apprenticeship and Training Council.

2.11.1.1 Total labor hours include additional hours worked as a result of change orders.

2.11.1.2 Total labor hours exclude hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements. However, total labor hours shall include the hours worked by supervisors, foremen, and superintendents if it is determined they are subject to prevailing wage requirements pursuant to Washington Administrative Code (WAC) 296-127-015.

2.11.1.3 Total labor hours include all hours worked by the Design-Builder and all subcontractors on the Project.

2.11.2 The Design-Builder shall meet or exceed the apprentice utilization requirements of the Contract Documents on all labor hours on the Project.

2.11.3 The Design-Builder shall include the apprentice utilization requirements of this section in all subcontracts executed for the Project.

2.11.4 If, during the term of the Agreement, the Design-Builder determines that it will be unable to meet the percentage utilization requirement in Paragraph A, above, the Design-

Builder may make a written request to the Owner to reduce the required percentage. The request shall include documentation of:

2.11.4.1 The Design-Builder's good faith efforts to use registered apprentices; and/or

2.11.4.2 The lack of availability of registered apprentices; and/or

2.11.4.3 A disproportionately high ratio of material costs to labor hours, which makes infeasible the required minimum level of apprentice participation.

2.11.5 The Owner shall evaluate the request, and if appropriate, a change order shall be prepared by the Owner reducing the utilization requirement.

2.11.6 With its monthly Application for Payment, the Design-Builder shall submit the Apprentice and Journey Level Worker Utilization Report on the form provided by the Owner.

2.12 Business Equity Requirements

2.12.1 General Requirements

To achieve the aspirational goals set forth in the Preliminary Agreement and the Agreement, Design-Builder shall implement an Outreach Plan, reviewed and approved by Owner, outlining the proactive strategies, resource commitments, and specific steps the Design-Builder will take to effectively reach out to small business entities (sbe), disadvantaged business enterprises (dbe), as well as Minority Business Enterprises (MBE), Women Business Enterprises, (WBE), and Minority Women Business Enterprises (MWBE), state-certified and non state-certified, as subcontractors, subconsultants and suppliers for this project. In addition to addressing outreach to sbe/dbe/MBE/WBE/MWBE, the Outreach Plan shall describe the specific activities the Design-Builder will undertake in its efforts to achieve equitable utilization of these businesses.

Design-Builder shall comply with the following requirements: In accordance with Chapter 39.19 RCW

2.12.2 Affirmative Efforts

2.12.2.1 Design-Builder shall:

- (a) Advertise opportunities for subcontractors, subconsultants and suppliers in a manner reasonably designed to provide sbe/dbe/MBE/WBE/MWBE capable of performing the work with timely notice of such opportunities, and all advertisements shall include a provision encouraging participation by sbe/dbe/MBE/WBE/MWBE Advertising may be done through

general advertisements (e.g., newspapers, and journals) or by soliciting bids/proposals directly from sbe/dbe/MBE/WBE/MWBE.

- (b) Provide sbe/dbe/MBE/WBE/MWBE that express interest with adequate and timely information about plans, specifications, and requirements of the Agreement.

2.12.2.2 Design-Builder is further encouraged to:

- (a) Break down total requirements into smaller tasks or quantities, where economically feasible within the Project budget, in order to permit maximum participation by sbe/dbe/MBE/WBE/MWBE and other small businesses.
- (b) Establish delivery schedules, where the requirements of the Agreement permit, that encourage participation by sbe/dbe/MBE/WBE/MWBE and other small businesses.
- (c) Reduce bonding requirements where practicable.
- (d) Utilize the services of available women/minority community organizations, minority contractor groups, and other organizations that provide assistance in recruitment and placement of sbe/dbe/MBE/WBE/MWBE and other small business.

2.12.3 Reporting Requirements

2.12.3.1 Prior to Application of First Progress Payment and as needed during this project, Design-Builder shall submit a list of sbe/dbe/MBE/WBE/MWBE subcontractors, subconsultants and suppliers it intends to use.

2.12.3.2 Prior to Final Acceptance, Design-Builder shall submit a report of total dollar amounts paid to sbe/dbe/MBE/WBE/MWBE.

2.12.3.3 With the monthly Payment Application, Design-Builder shall submit a report in a format provided by the Owner showing the sbe/dbe/MBE/WBE/MWBE subcontractors, subconsultants and suppliers it has utilized during the preceding month and the dollar amounts paid to those firms.

2.12.4 Non-Discrimination

Design-Builder shall not create barriers to open and fair opportunities to all businesses, including sbe/dbe/MBE/WBE/MWBE, to participate in District contracts and to obtain or compete for contracts and subcontracts as sources of suppliers, equipment, construction and services. In considering offers from and doing business with subcontractors and

suppliers, the Design-Builder shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental or physical disability in an otherwise qualified disabled person.

2.12.5 Sanctions

Failure to comply with any of the mandatory requirements of this part of the Agreement may subject the Design-Builder to sanctions or damages as may be provided by applicable laws.

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 endeavor to provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.2 Furnishing of Services and Information.

3.2.1 To the extent they are available and already in existence, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 Record drawings of any existing structures at the Site; and

3.2.1.5 Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

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 Not Used.

3.4 Owner's Representative.

3.4.1 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 zoning, zoning variances, plan check fees, building permits, occupancy permit, as well as any renewals and penalties and land-use permits required for the design and construction of the Work, as may be required by regulatory agencies having jurisdictions over the Project. All other permits, government charges inspection fees, and licenses required to perform and complete the Work, shall be the sole responsibility of Design-Builder. Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner shall require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

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. 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, 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 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 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.

4.2 Differing Site Conditions.

4.2.1 If Design Builder encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Design Builder shall give written notice to Owner within seven calendar days, as described in Article 10. Conditions shall not be disturbed prior to such notice.

4.2.2 If such conditions differ materially and cause a change in Design Builder's cost of, or time required for, performance of any part of the Work, the Design Builder may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided a request for equitable adjustment is made in accordance with Article 10.

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.

5.1.2 Design-Builder's insurance policies shall not contain any language that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Other requirements are set forth in the Agreement.

5.2 Owner's Liability Insurance. Not Used.

5.3 Owner's Property Insurance. Requirements for Owner's Property Insurance are set forth in the Agreement.

5.4 Bonds and Other Performance Security. Requirements for Bonds and Security are set forth in the Agreement.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. 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.

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

6.2 Monthly Progress Payments.

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

Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Owner to the extent Design-Builder advances payment.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, that all subconsultants, subcontractors, and suppliers have been paid, less applicable earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding Application for Payment, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

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

6.3.2 Not Used.

6.4 Not Used.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar

requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, 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 Final Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Not Used.

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

6.7 Final Payment.

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

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

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Not Used.

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

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

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

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

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

7.2 Tax Claim Indemnification.

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 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. To the maximum extent permitted by law, Design-Builder shall defend, indemnify, and hold Owner harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

7.4.1 The sole negligence of Design-Builder or any of its Subcontractors;

7.4.2 The concurrent negligence of Design-Builder, or any Subcontractor, but only to the extent of the negligence of Design-Builder or such Subcontractor; and

7.4.3 The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.

7.4.4 In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Design-Builder, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Design-Builder specifically waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

7.5 Not Used.

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.

8.2 Delays to the Work.

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

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

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 Not Used.

9.1.4 A Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either recovered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.

9.2 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. If no agreement on pricing is reached, Owner shall compensate Design-Builder in accordance with paragraph 9.4.1.3 below.

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 obtains Owner's approval and records 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:

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

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

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 Not Used.

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

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

9.5 Emergencies.

9.5.1 In any emergency threatening the safety of persons and/or property, Design-Builder shall inform Owner of how Design-Builder intends to act to prevent immediate 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 or in accordance with provisions of the Agreement applicable to Force Majeure events.

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 notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The Design-Builder and the Owner are 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, the Design-Builder and the 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 The Design-Builder and the Owner will first attempt to resolve disputes or disagreements through the Project Management Team which will conclude within twenty-one (21) days of the written notice required under Section 10.2 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through the PMT, then a Claim will be submitted to the Senior Management Team. The SMT will meet as soon as conveniently possible, but in no case later than twenty-one (21) days after submission of the Claim. No fewer than five (5) days prior to the SMT meeting, the Owner and Design-Builder will exchange information relevant to the Claim.

10.3 Mediation.

10.3.1 Any Claim that has not been resolved in accordance with the procedures set forth in Section 10.2, will be subject to non-binding mediation following Substantial Completion. A request for mediation will be filed in writing with the other party to the Contract, and the parties will promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty (30) days of the request,

either party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the parties may agree, with a copy to the other party, and the mediation will be administered by the American Arbitration Association (or other agreed service) in accordance with its Construction Industry Mediation Procedures currently in effect as of the Effective Date. Mediation will proceed in advance of binding dispute resolution proceedings, which will be stayed pending the completion of mediation. The parties to the mediation will share the mediator's fee and any filing fees equally. The mediation will be held in Seattle, Washington, unless another location is mutually agreed upon. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof. Representatives of each party with decision-making authority must attend the mediation session with authority to settle any Claim.

10.4 Litigation.

10.4.1 Any Claim that has not been resolved in accordance with the procedures set forth in Sections 10.2 and 10.3, will be decided by litigation, unless mutually agreed in writing otherwise. All unresolved Claims of the Design-Builder will be waived and released unless the Design-Builder has complied with the notice and time limits of the Contract Documents, and litigation is served and filed no later than one hundred twenty (120) days after the Substantial Completion date of the entire Work. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Design-Builder. The pendency of mediation will toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the last mediation session ended with no further sessions scheduled by the mediator. Design-Builder is barred from offering in litigation any evidence of facts or legal theories that Design-Builder did not offer or assert in the written Claim provided prior to the mediation.

10.5 Duty to Continue Performance.

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

10.6 Consequential Damages.

10.6.1 Notwithstanding Anything Herein To The Contrary (Except As Set Forth In Section 10.6.2 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.

10.6.2 The consequential damages limitation set forth in Section 10.6.1 above is not intended to affect the payment of liquidated damages set forth in Article 5 of the

Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential. In addition, this limitation shall not affect either party's duty to indemnify the other as specified in the Contract Documents.

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 or stoppage of the Work by Owner which is not caused by the acts of the Design Builder or its agents, Consultants or Subcontractors.

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

11.2.1 If Design-Builder 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. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages 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 Not Used.

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

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 Design-Builder.

11.5.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Design-Builder's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

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

11.5.1.2 The Design-Builder 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 Design-Builder fails to comply with its foregoing obligations, the Owner shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the Owner 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 Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

Article 12

Electronic Data

12.1 Electronic Data.

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 Not Used.

13.2 **Assignment.**

13.2.1 Design-Builder shall not assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents without the written consent of the Owner.

13.3 **Successorship.**

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

13.4 **Governing Law.**

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the State of Washington. Venue shall be in the King County Superior Court.

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, or (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.

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.

End of General Conditions of the Contract