



University of Washington

Project Name

Project No.

**Integrated Design-Build Contract
Between Owner and Design-Builder
Cost Plus Fee with a Final Target Cost**

00 52 53

This **Agreement** is made and entered into by and between the following parties, for services in connection with the Project identified above. This Agreement shall be effective on the date last set forth on the signature page.

Owner: **University of Washington**
University Facilities Building
Box 352205
Seattle, WA 98195-2205

Design-Builder: **Name**
Address
Address

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

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Article 1

GENERAL PROVISIONS AND DEFINITIONS

1.1 Integrated Design Build.

1.1.1 The Design-Builder and the Owner wish to fully embrace principles of collaboration and integrated delivery in the performance of the Work. Integrated delivery emphasizes a cooperative approach to problem-solving that involves all key parties: Owner, Design-Builder, and Design-Build Team Members. To this end, the Design-Builder and the Owner agree to employ the following techniques to maximize efficiency and minimize waste on the Project:

- 1.1.1.1 Create a culture of open and honest communication;
- 1.1.1.2 Integrate the Design-Build Team Members, including all Risk/Reward Team Members, as early as possible into the design process;
- 1.1.1.3 Utilize Building Information Modeling (BIM) efficiently and effectively;
- 1.1.1.4 Utilize Target Value Design efficiently and effectively;
- 1.1.1.5 Utilize Lean Principles efficiently and effectively;
- 1.1.1.6 Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and
- 1.1.1.7 Establish business terms that allow for equitable shared risk and reward for the Risk/Reward Team Members.
- 1.1.1.8 Create an environment that engages Business Equity Enterprises (BEE) to the fullest extent practicable.

1.1.2 The Design-Builder accepts the relationship of trust and good faith established by the Contract and covenants to work collaboratively and proactively with the Owner to perform and complete the Work for a cost within the Maximum Contract Amount and, once established, the Final Target Cost, and to support the Owner's overall objectives for the Project.

1.1.3 The Design-Builder will execute, perform, coordinate and manage the Work in an expeditious, collaborative, and professional manner and otherwise ensure that the Work meets or exceeds the requirements set forth in the Contract Documents. The Design-Builder will comply with the Project schedule and achieve all Milestones and deadlines established in the Contract Documents.

1.2 Contract Documents. The Contract Documents consist of this Agreement between Owner and Design-Builder and the attached Exhibits; other documents listed in this Agreement; and Modifications issued after execution of this Agreement.

1.2.1 Exhibits attached to this Agreement:

- 1.2.1.1 Exhibit A-1 – Business Terms Sheet
- 1.2.1.2 Attachment No. 1 to Exhibit A-1 – Project Definition Phase (Planning Work) Scope/Compensation
- 1.2.1.3 Attachment No. 2 to Exhibit A-1 – Project Definition Phase (Remainder of the Design-Builder and Architect Work) Task Deliverables/Compensation
- 1.2.1.4 Attachment No. 3 to Exhibit A-1 – Project Definition Phase (Specialty Consultants and Trade Contractors' Work) Task Deliverables/Compensation
- 1.2.1.5 Attachment No. 4 to Exhibit A-1 – Design/Preconstruction
- 1.2.1.6 Exhibit A-2 – Insurance and Bond Requirements
- 1.2.1.7 Exhibit A-3 – Prevailing Wage Rates

- 1.2.1.8 Exhibit A-4 – Chargeable Costs
- 1.2.1.9 Exhibit A-5 – Accepted Inclusion Plan

1.2.2 Exhibits to be added through a Design/Preconstruction Amendment:

- 1.2.2.1 Exhibit B-1 – Target Program
- 1.2.2.2 Exhibit B-2 – Base Target Cost Breakdown
- 1.2.2.3 Exhibit B-3 – Milestones
- 1.2.2.4 Exhibit B-4 – Incentive Distribution Spreadsheet
- 1.2.2.5 Exhibit B-5 – Procurement and Equity Plan
- 1.2.2.6 Exhibit B-6 – Approved Insurance Policy Matrix

1.2.3 Exhibits to be added through a Final Target Cost Amendment:

- 1.2.3.1 Exhibit C-1 – Implementation Documents
- 1.2.3.2 Exhibit C-2 – Final Target Cost Breakdown
- 1.2.3.3 Exhibit C-3 – Updated Milestones
- 1.2.3.4 Exhibit C-5 – Updated Incentive Distribution Spreadsheet, if applicable
- 1.2.3.5 Exhibit C-6 – List of Added Value Incentive Items
- 1.2.3.6 Exhibit C-7 – Updated Procurement and Equity Plan

1.2.4 Order of Precedence. In the event of a conflict or discrepancy among or in the Contract Documents, interpretation will be governed by the following priority, with an addendum or Modification to a Contract Document having precedence over the original document and a later addendum or Modification having precedence over an earlier addendum or Modification:

- 1.2.4.1 Any Owner's Directive
- 1.2.4.2 Change Orders
- 1.2.4.3 This Agreement
- 1.2.4.4 Exhibit A-2 – Insurance and Bond Requirements
- 1.2.4.5 Exhibit A-3 – Prevailing Wage Rates
- 1.2.4.6 Exhibit A-4 – Chargeable Costs
- 1.2.4.7 Exhibit A-1 – Business Terms Sheet
- 1.2.4.8 Exhibit C – Final Target Cost Amendment (and its Exhibits)
- 1.2.4.9 Exhibit B – Design/Preconstruction Amendment (and its Exhibits)
- 1.2.4.10 Division 01 - General Requirements

1.3 The Contract. Together, the Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes and subsumes prior negotiations, representations, or agreements either written or oral. The Contract may be amended or modified only by a Modification. The Contract will not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

1.4 The Project Team.

1.4.1 Owner. The Owner is the entity identified as such in this Agreement and is referred to throughout the Contract Documents as if singular in number.

- 1.4.1.1 The Owner's authorized representative is set forth in the Business Terms

Sheet.

1.4.2 Design-Builder. The Design-Builder is the entity identified as such in this Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Design-Builder” means the Design-Builder and the Design-Builder’s authorized representative acting on the Design-Builder’s behalf.

1.4.2.1 The Design-Builder’s authorized representative is set forth in the Business Terms Sheet.

1.4.3 Architect. The Architect is the entity identified as such in the Business Terms Sheet and is responsible for designing the Project on behalf of the Design-Builder. Portions of the Work may be designed by Trade Contractors and Specialty Consultants. The Architect must be licensed to practice architecture in the State of Washington and will comply with all Legal Requirements. All Work performed by the Architect must be consistent with the Project Charter and meet the Standard of Care.

1.4.4 Specialty Consultants. A Specialty Consultant is a person or entity of any tier (including the Architect, if different than the Design-Builder) providing professional services for the Design-Builder for all or a portion of the Work. A Specialty Consultant must be licensed to provide the professional services for which it is retained and comply with all Legal Requirements. Specialty Consultants will be identified in the Business Terms Sheet or by Modification.

1.4.5 Trade Contractors. A Trade Contractor is a person or entity of any tier performing Work and/or providing materials or equipment for the Design-Builder for a portion of the Work. A Trade Contractor must be licensed to perform the Work for which it is retained and comply with all Legal Requirements. Trade Contractors will be identified in the Business Terms Sheet or by Modification.

1.4.6 Design-Build Team Member(s). A Design-Build Team Member refers to any person or entity performing any portion of the Work (including the Design-Builder, the Architect, any Specialty Consultant, and any Trade Contractor), whether directly on behalf of the Design-Builder or indirectly through the Architect or a Specialty Consultant or a Trade Contractor. A Design-Build Team member must be licensed to perform the Work for which it is retained and comply with all Legal Requirements.

1.5 Project Governance.

1.5.1 Project Management Team (PMT). The PMT (which includes representatives from the Owner, the Design-Builder, and the Architect) will work together in a collaborative manner to provide management-level leadership throughout the Project. Each member of the PMT is set forth in the Business Terms Sheet. A replacement PMT member may be appointed by providing written notice to the other parties. The PMT works under the guidance and oversight of the Senior Management Team. The PMT reports progress and seeks approval of design, cost, and schedule changes from the Project Executive Committee.

1.5.1.1 **PMT Bulletin.** A PMT Bulletin is a written directive from the PMT, to the Design-Builder and Owner that may affect design, cost, schedule, or allocation of the Work.

1.5.2 Project Working Teams (PWTs). The Project Working Teams are interdisciplinary groups of Design-Build Team Members and representatives of the Owner organized by the PMT. PWTs are part of the collaborative process to develop the Target Program, the Implementation Documents, and other deliverables, and may be formed temporarily or for the duration of the Project.

1.5.3 Senior Management Team (SMT). The SMT (which includes senior executives from the Owner, the Design-Builder, and the Architect) will work together in a collaborative manner to provide supervision, coaching, and management of the PMT. The SMT will make human resource management decisions in the interest of the Project and will provide oversight

of the decisions of the PMT. In the event the PMT cannot reach agreement on an issue, the SMT will collaborate with the PMT to resolve the issue. The resolution will be documented by the PMT. A replacement SMT member may be appointed by providing written notice to the other parties.

1.5.4 Project Executive Committee (PEC). All major Project decisions, recommendations, and trade-offs within the established parameters of the Project (site, budget, schedule, financing) will be made by the PEC, a small, high-level committee representing broad University perspectives as well as Project-specific views. The PEC may also engage in collaborative design sessions with the PMT and the PWTs. The PEC includes: **PROVIDE TITLES OF EVERYONE ON THE PEC**. The PEC's decisions will be informed by input from the **Project Name** Executive Council, on which the **Name of Individual** will serve as liaison to the Project. The PEC will meet on a monthly basis. The PMT will participate in these monthly meetings by identifying recommendations and issues for discussion, and will report on PMT level decisions to the PEC.

1.5.5 Owner's Directive. An Owner's Directive is a written directive from the Owner, which may be used to override any decision by the PMT or SMT or may be issued in the absence of agreement of the PMT or SMT. An Owner's Directive may constitute a change in the Work if it affects the Base Target Cost, the Final Target Cost, and/or the Contract Time, as provided for in Article 8. However, issuance of an Owner's Directive does not necessarily indicate that a change in the Work has occurred.

1.6 The Project, the Work, and the Project Charter.

1.6.1 Project. The Project is described in the Business Terms Sheet.

1.6.2 Project Phases. The Project has three (3) phases of Work: (i) the Project Definition Phase as described in Article 5; (ii) the Design/Preconstruction Phase as described in Article 6; and (iii) the Construction Phase as described in Article 7, all as further described in the Contract Documents.

1.6.3 Work. The Work means the design, construction, and related services needed to fulfill the requirements of the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Design-Builder. The Design-Builder shall adhere to the UW Facilities Design Standard and will coordinate with the Owner throughout the Project to incorporate the Facilities Design Standard into the design and construction of the Project. The Owner must approve any deviations from the Facilities Design Standard.

1.6.4 Target Program. The Target Program will be jointly developed by the Owner and Design-Builder during the Project Definition Phase. It is intended to define the final quality, quantity, functionality, aesthetics, sustainability, and other requirements of the Project.

1.6.5 Project Charter. The Project Charter will be jointly developed by the Owner and Design-Builder during the Project Definition Phase to identify the Project goals and describe how the Owner and Design-Builder will define success on the Project. The Project Charter will be provided to all Design-Build Team Members.

1.6.6 Contract Task Matrix. The Contract Task Matrix, as part of the Procurement and Equity Plan, will set forth performance obligations of the Owner and each Design-Build Team Member as described therein, and will be incorporated into the Contract through the Design/Preconstruction Amendment and may be updated by the Final Target Cost Amendment.

1.6.7 Implementation Documents. The Implementation Documents consist of the Model; plans, sections, and elevations extracted from the Model; and any ancillary drawings, specifications and construction details, together with dimensions and layouts for civil, architectural, structural, mechanical, electrical, plumbing, and landscape design, as set forth in

Exhibit C-1. The Implementation Documents must address the requirements of the Target Program, adhere to the UW Facilities Design Standard except as approved otherwise, and will describe in detail the requirements for the Work and provide information necessary and appropriate to obtain all necessary permits for construction of the Project.

1.7 Project Completion.

1.7.1 Contract Time. The Contract Time is the period of time within which Substantial Completion must be achieved as set forth in the Business Terms Sheet or a subsequent Modification.

1.7.2 Day. The term “day” as used in the Contract Documents means calendar day unless otherwise specifically defined.

1.8 Project Finances.

1.8.1 Open Book. All financial records of the Risk/Reward Team Members will be maintained and available to the Owner on an “open book” basis to promote efficient and transparent use and expenditure of Project funds consistent with the Project Charter and requirements of the Contract.

1.8.2 Base Target Cost. The Base Target Cost will be established during the Project Definition Phase and will include all Chargeable Costs to design and perform the Work described in the Target Program. The Design-Builder will require that all Risk/Reward Team Members exclude any contingency (other than the Project Contingency) and any Fee from the Base Target Cost. The Base Target Cost will be used as the threshold against which Added Value Incentive Items are evaluated in order to determine whether Incentive Compensation is provisionally earned during the Design/Preconstruction Phase.

1.8.3 Final Target Cost. The Final Target Cost will be established during the Design/Preconstruction Phase and will include all Chargeable Costs to design and perform the Work described in the Implementation Documents. The Design-Builder will require that all Risk/Reward Team Members exclude any contingency (other than the Project Contingency) and any Fee from the Final Target Cost. The Final Target Cost cannot, unless otherwise approved in writing by the Owner, exceed the Base Target Cost; it must also include all Chargeable Costs for accepted Added Value Incentive Items. The Final Target Cost measures whether the Project meets the Owner’s financial expectations and will be the threshold against which the Final Actual Cost is compared upon Final Completion to determine the final Incentive Compensation amount earned, if any.

1.8.4 Chargeable Costs. Chargeable Costs include the actual costs reasonably and necessarily incurred by the Risk/Reward Team Members in the performance of the Work as more specifically defined in Exhibit A-4. The Chargeable Costs of a Risk/Reward Team Member include the payments made to any lower-tier Trade Contractors and Specialty Consultants in accordance with the requirements of their respective contracts.

1.8.4.1 Items that do not constitute Chargeable Costs are more specifically defined in Exhibit A-4; and to the extent such cost are incurred related to the Project, they are reimbursed, if at all, through the respective Fee.

1.8.5 Fee. A Fee is the individual percentage for the Project proposed by each Risk/Reward Team Member for its markup (inclusive of profit) on its Chargeable Costs (up to the Final Target Cost) and agreed to by the Owner as set forth in the Business Terms Sheet or established by Modification. For the Design-Builder, the Design-Builder’s Fee is the markup percentage proposed to the Owner in response to the Owner’s Request for Proposal. For the Architect, the Architect’s Fee is the markup percentage (to capture the Architect’s profit) proposed to the Owner in response to the Owner’s Request for Proposal. The Design-Builder’s Fee is added to all Chargeable Costs. For other Risk/Reward Team Members, including the Architect, the applicable Risk/Reward Team Member’s Fee is applied to the Chargeable Costs

incurred by that Risk/Reward Team Member. Each Fee is subject to audit by the Owner. No Fee will be applied to the Fee of another Risk/Reward Team Member, and no Fee will be applied to Chargeable Costs that exceed the Final Target Cost.

1.8.6 Project Contingency. The Project Contingency is a fund established by the PMT for use by the Design-Builder to cover costs for construction and design items that are properly reimbursable as Chargeable Costs but not the basis for a Change Order, such as, without limitation, minor design revisions due to errors or omissions that a reasonable design-builder should have anticipated, buy-out errors, scope gaps, interdisciplinary design coordination, expediting costs for critical materials, re-sequencing of the Work and/or acceleration of the Project schedule for improvement in the Project outcome, unanticipated field conditions that do not constitute a concealed or unknown condition (see Section 7.6), and abnormal inclement weather (see Section 10.2.4). The Project Contingency will be maintained as a separate fund, and will be tracked as a separate line item in the schedule of values and used by the PMT as a Project management tool. The PMT will determine when and how the Project Contingency will be used and allocated. Unused Project Contingency will be used to help determine Savings upon Final Completion.

1.8.7 Final Actual Cost. The Final Actual Cost is the sum of all Chargeable Costs upon Final Completion.

1.8.8 Total Contract Cost. The Total Contract Cost is the sum of the Final Actual Cost and Fee paid by the Owner to the Design-Builder through Final Completion, subject to Section 2.4.1.1, and subject to audit as set forth in Article 17.

1.8.9 Maximum Contract Amount. The Maximum Contract Amount is the maximum amount available for completion of the Project and is composed solely of (a) the Final Target Cost, (b) the maximum Incentive Compensation equal to **two percent (2%)** of the Final Target Cost upon Final Completion, (c) the estimated Fee payable to all Risk/Reward Team Members, and (d) Washington State Sales Tax (WSST). The Maximum Contract Amount is to be paid by the Owner to the Design-Builder based on approved progress payments. The Maximum Contract Amount is set forth in the Business Terms Sheet or established by Modification.

1.9 Project Incentives.

1.9.1 Risk/Reward Team Members. Risk/Reward Team Members are the Design-Build Team Members identified as such in the Business Terms Sheet and Modifications, each of whom is performing the Work with its Fee “at risk” and each of whom is eligible to share in the Incentive Compensation set forth in the Contract Documents.

1.9.2 Incentive Compensation. Incentive Compensation is an amount that is increased or decreased based on Project outcome and is distributed to the Risk/Reward Team Members in accordance with the Incentive Distribution Spreadsheet. Although Incentive Compensation may be provisionally earned as set forth in the Contract Documents, Incentive Compensation is not matured, due, or distributed until Final Completion and all adjustments to Incentive Compensation have been made. Incentive Compensation is not retainage; it is an amount potentially earned as excess compensation based on the outcome of the Project. The final Incentive Compensation, if any, will be calculated after the Final Actual Cost is determined. Incentive Compensation is comprised of the following items:

1.9.2.1 Added Value Incentive Items. Added Value Incentive Items are items identified as such in (a) a Modification after execution of the Design/Preconstruction Amendment; (b) the Final Target Cost Amendment (and designated as Exhibit C-6); or (c) a Modification after execution of the Final Target Cost Amendment. Any agreed Added Value Incentive Items will include disbursement conditions to define how such Added Value Incentive Items can be earned. Potential Added Value Incentive Items will be tracked during all phases of the Project by the PMT using a design options log.

1.9.2.2 Milestones. A Milestone is an event identified in a Milestone exhibit

(Exhibits B-3 and C-3) when the Project is evaluated and, if pre-conditions are met, the portion of Incentive Compensation designated for the Milestone is provisionally earned.

1.9.2.3 Savings. Upon Final Completion, if the Final Actual Cost is less than the Final Target Cost, the difference is Savings.

1.9.3 Incentive Compensation Percentages. Incentive Compensation Percentages are the percentage shares of the Incentive Compensation of the individual Risk/Reward Team Members to be used for distribution of any Incentive Compensation. The Incentive Compensation Percentages are established in the Incentive Distribution Spreadsheet.

1.9.4 Incentive Distribution Spreadsheet. The Incentive Distribution Spreadsheet will identify any Incentive Compensation that may be provisionally earned during the Project. The Incentive Distribution Spreadsheet, if agreed, will be an exhibit to the Design/Preconstruction Amendment (designated as Exhibit B-5) and potentially modified by the Final Target Cost Amendment (designated as Exhibit C-5).

1.10 Collaboration.

1.10.1 Building Information Modeling (BIM). BIM, or the Model, is a parametric, computable representation of the Project design developed by the Design-Builder, and will include construction details developed by the Design-Build Team Members. As used in this Agreement, references to BIM, or the Model, include the primary design model or models and all linked, related, affiliated, or subsidiary models developed for design, estimating, detailing, fabrication, or construction of the Project, or any portion or element of the Project. The Model is an Implementation Document.

1.10.2 Model Administrator. During the Project Definition Phase, the Design-Builder will select a Model Administrator who is responsible for receiving modeling information from the Design-Build Team Members and incorporating the information into the Model. Unless otherwise agreed, the Model Administrator will host and manage the modeling information.

1.10.3 Record Model. The Record Model is the version of the Model that will be updated throughout construction to reflect the as-built condition of the Project. The Record Model will be turned over to the Owner upon Final Completion.

1.10.4 Target Value Design. Target Value Design is a design discipline that requires project values, cost, schedule, and constructability to be basic components of the design criteria, and that uses cost targets to drive innovation in designing a project to provide optimum value to the Owner. Target Value Design uses constructability, value engineering, and cost information from the Risk/Reward Team Members before design decisions are made to allow the design to progress within the Base Target Cost, Final Target Cost, and Contract Time.

1.10.5 Co-Location Plan. The Co-Location Plan is a plan developed by the PMT or by a PWT, under PMT direction, that organizes the logistics, information systems, physical layout, scheduling, and workflows for Design-Build Team Members to effectively work in the same physical location. The Co-Location Plan, where appropriate, may include strategies for combining virtual Co-Location through use of communication technologies.

1.10.6 Lean Principles. The Design-Builder will utilize Lean™ principles and techniques (the “Lean Principles”) as developed or defined by the Lean Construction Institute™ and as generally identified below.

1.10.6.1 Open Communication. Communication is open, clear, and direct. It is important that the Owner and all Design-Build Team Members be apprised of information that affects their performance or which they can impact. Communication will be directly between the immediate participants through the most expeditious manner, with information or decisions documented, and made available to the Owner and Design-Build Team Members. The goal of communication in Lean™ is to ensure that the Owner and all Design-Build Team Members have a high level of common understanding.

1.10.6.2 **Collaboration.** The Design-Build Team Members will freely share concepts and ideas with each other to improve the overall Project outcome. Within the limits of licensing or professional registration, the Design-Build Team Members will review each other's portions of the Work and recommend improvements and will openly consider suggestions from the Owner and all Design-Build Team Members. Nothing in this Section changes a Design-Build Team Member's responsibility for its portion of the Work or requires another Design-Build Team Member to assume responsibility for, or to engage in portions of the Work that require licensure beyond that necessary to perform its respective Work.

1.10.6.3 **Reliable Promising.** Effective Project planning requires that each Design-Build Team Member clearly communicate its needs and provide reliable promises to other Design-Build Team Members with regard to its own performance. If a Design-Build Team Member discovers that it will not achieve a promise, it must immediately inform the PMT identifying when it can perform, and any impediments to its performance.

1.10.6.4 **Commitment-Based (Pull) Scheduling.** The Milestones will be collaboratively developed by the Owner and Design-Build Team Members based on the Owner's schedule requirements and realistic durations agreed by those who are primarily responsible for delivering the information, services, or materials for various components of the Project. In making detailed work plans for accomplishing the various Milestones, Design-Build Team Members will use a planning system based on requests and commitments by Design-Build Team Members to each other for information, materials, or resources that the requester needs to accomplish its task by a certain time in order to optimize the flow of Work through the Project by increasing schedule reliability and reducing bottlenecks and activities that do not facilitate achievement of the Milestones.

1.10.6.5 **Elimination of Waste.** Design or construction effort that does not add value is waste and will be reduced or eliminated. Design effort that is not necessary for construction or for regulatory purposes will be avoided. Similarly, construction resources and materials that are not incorporated into the completed Project will be reduced or eliminated. The Design-Build Team Members will maximize the use of just-in-time delivery of materials and information to reduce waste associated with maintaining inventories.

1.10.6.6 **Quality and Reduction in Rework.** Quality is created through careful execution of Work, not by inspection and rejection. The Design-Builder will develop a Quality Assurance/Quality Control work plan (QA/QC Work Plan) for the Project, which will be submitted to the Owner for approval. The Design-Build Team Members will consider innovative ways to design Work that reduces the risk of installation errors. Each Design-Build Team Member must strive to accurately complete its Work and identify any Work that does not meet the Project requirements so that necessary corrections can be identified and executed before, or at the time, the Work is being performed. The Design-Build Team Members will strive to eliminate rework. The Design-Builder will collaborate with the Design-Build Team Members to develop clear and effective procedures for a Design-Build Team Member to handoff its Work to a follow-on Design-Build Team Member so that any quality deviations are caught early.

1.10.6.7 **Best Performer.** Work is performed, to the greatest extent possible, by the organization or individual best capable of performing that Work.

1.10.6.8 **Value of Ideas, Not Status of Author.** Open communication and collaboration leads to the development of new ideas and concepts. Good ideas can come from any Design-Build Team Member, and it is the value of the ideas, not the role or status of the author, that determines whether an idea or concept will be used.

1.10.6.9 **Optimize the Whole Project, Not Its Components.** Under the leadership of the PMT, each Design-Build Team Member will focus efforts on creating value for the Project as a whole within the Project Charter. Efforts to optimize any individual Design-Build Team Member's portion of the Work must benefit the entire Project to be justifiable.

1.10.6.10 **Continuous Improvement.** Lessons learned are generated continuously and

used to guide and improve processes while the Project is underway rather than only at its conclusion.

1.11 Other Definitions.

1.11.1 Business Equity Enterprise(s). Business Equity Enterprise (BEE) includes all of the following

1.11.1.1 Small Business Enterprise (SBE) - A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is owned and operated independently from all other businesses and either: a) Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which the business entity is proposed to be engaged; or b) Is certified with the Washington State Office of Minority and Women's Business Enterprises (OMWBE).

1.11.1.2 Disadvantaged Business Enterprise (DBE): Any business certified with the OMWBE.

1.11.1.3 Minority Business Enterprise (MBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority person.

1.11.1.4 Women's Business Enterprise (WBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one woman.

1.11.1.5 Minority Women's Business Enterprise (MWBE): A business entity licensed to do business in the State of Washington, including a sole proprietorship, corporation or other legal entity, that is more than 50% owned and controlled by at least one minority woman.

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

1.11.2 Governmental Authorities. The Governmental Authorities (or a Governmental Authority) are governmental or any quasi-governmental authorities (including but not limited to planning, zoning, utility, construction, or safety authorities) having jurisdiction over the Project, in whole or in part.

1.11.3 Legal Requirements. The Legal Requirements are the applicable federal, state, county, and local laws, statutes, ordinances, codes, rules, regulations, or any requirements or lawful orders of Governmental Authorities.

1.11.4 UW Facilities Design Standard. The Facilities Design Standard is intended for use by design and construction professionals to facilitate the design and construction of University facilities. These standards represent proven systems that satisfy the University's best practice requirements for efficient operation and maintenance. Any deviations to these standards shall be vetted through a documented resolution process.

1.11.5 Standard of Care. Any professional services will be performed consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances, and as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.11.6 Hazardous Conditions. Hazardous Conditions are any materials, wastes, substances, biological agents, 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.

1.11.7 Change Order. A Change Order is a mutually agreed written order between Owner and Design-Builder and approved by the PMT that adjusts the Base Target Cost, Final Target Cost, Incentive Compensation, Fee applicable to Chargeable Costs, and/or Contract

Time due to changes to the Target Program or Implementation Documents.

1.11.8 Change Order Proposal. A Change Order Proposal is the Design-Builder's proposed amount of change in the Base Target Cost, Final Target Cost, and/or Contract Time, if any, arising from a described, proposed change in the Work.

1.11.9 Claims. A Claim is a demand or assertion by the Owner or Design-Builder seeking, as a matter of right, payment of money or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract.

1.11.10 Instruments of Service. The Instruments of Service are representations, in any medium of expression, now known or later developed, of the tangible and intangible creative work performed by any Design-Build Team Member under its respective agreement related to the Project. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

1.11.11 Modification. A Modification is (a) a written amendment to the Contract signed by both parties; (b) any executed Design/Preconstruction Amendment; (c) any executed Final Target Cost Amendment; (d) a Change Order; or (e) an Owner's Directive. The Design/Preconstruction Amendment(s) and Final Target Cost Amendment(s) are specific Modifications that mark the transition of the Work, or a portion thereof, from one Phase to the next Phase.

1.11.12 Submittal. A Submittal is any submission to the Owner for review and approval that demonstrates how the Design-Builder proposes to conform to the Contract Documents to those portions of the Work for which the Contract Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Contract Documents unless incorporated into a Modification.

1.11.13 Substantial Completion. Substantial Completion is the stage in the progress of the Work, or portion or phase thereof designated and approved in writing by the Owner, when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so that the Owner can fully occupy or utilize the Work, or the designated portion thereof, for its intended use, including furniture, fixtures, and equipment and staff occupancy.

1.11.14 Final Completion. Final Completion is the stage in the progress of the Work when all Work is complete in accordance with the Contract Documents, including but not limited to any punch list items.

1.11.15 Final Acceptance. Final Acceptance means the written acceptance issued to Design-Builder by the Owner after Design-Builder has completed the requirements of the Contract Documents.

Article 2 **COMPENSATION**

2.1 Generally. For the Design-Builder's performance of the Work in accordance with the Contract Documents, the Owner will pay to the Design-Builder the amounts earned as set forth in Sections 2.2, 2.3, and 2.4 (the "Compensation") in current funds, as set forth in the Contract Documents.

2.2 Project Definition Phase Compensation.

2.2.1 For the Design-Builder's performance of Work in accordance with the Contract Documents prior to execution of a Design/Preconstruction Amendment (for the entire Project or a portion thereof), the Owner will compensate the Design-Builder up to the fixed stipulated sum set forth in the Business Terms Sheet (subject to Modification) at the rates attached to the Business Terms Sheet (or subsequent Modification) as Chargeable Costs, plus applicable Fee.

The Chargeable Costs from the Project Definition Phase will be included within the Base Target Cost and the Final Target Cost when established, but the Fee on such Chargeable Costs will be accounted for separately.

2.3 Compensation after Execution of a Design/Preconstruction Amendment.

2.3.1 For the Design-Builder's performance of Work in accordance with the Contract Documents after execution of a Design/Preconstruction Amendment (for the entire Project or a portion thereof), the Owner will compensate the Design-Builder for the Chargeable Costs incurred up to the not-to-exceed amount set forth in the applicable Design/Preconstruction Amendment (subject to Modification), plus applicable Fee.

2.3.1.1 The Design-Builder will compensate all Risk/Reward Team Members on a similar structure as set forth in this Section 2.3.1.

2.4 Compensation After Execution of a Final Target Cost Amendment.

2.4.1 For the Design-Builder's performance of Work in accordance with the Contract Documents after execution of a Final Target Cost Amendment (for the entire Project or a portion thereof), the Owner will compensate the Design-Builder for the Chargeable Costs incurred plus, subject to the success of the Project, any Incentive Compensation earned as set forth in Section 2.5, and Fee.

2.4.1.1 In the event that the Final Actual Cost exceeds the Final Target Cost (subject to Modification) upon Final Completion, then any earned Incentive Compensation will first be reduced, dollar for dollar, by the amount of the difference until the Incentive Compensation is eliminated. Next, all Fee will be reduced, dollar-for-dollar, by the amount of the difference until all Fee is eliminated. Any remaining excess Chargeable Costs will be split evenly (50-50) between the Owner and the Design-Builder until the Owner has expended the Maximum Contract Amount. If the Maximum Contract Amount is exceeded, the Design-Builder is responsible for 80% and the Owner is responsible for 20% of all other Chargeable Costs.

2.4.1.2 The Design-Builder will distribute paid Incentive Compensation to the Risk/Reward Team Members based on the Incentive Distribution Spreadsheet.

2.4.1.3 The Design-Builder will compensate all Risk/Reward Team Members on a similar structure as set forth in this Section 2.4.1.

2.5 Incentive Compensation. The Incentive Compensation and the Incentive Compensation Percentages of the Risk/Reward Team Members will be set forth in the Incentive Distribution Spreadsheet. The Incentive Compensation can be adjusted by Modification. Incentive Compensation may be provisionally earned during the Project but will not be earned or paid before Final Completion.

2.5.1 Scope Swaps. The PMT may choose to reduce the scope of work of a Design-Build Team Member and correspondingly increase the scope of work of another Design-Build Team Member to capture the benefits of innovative designs, processes, or technologies. If the PMT determines that the increased scope for a Risk/Reward Team Member creates a significant financial inequity, it may use a portion of any savings from the innovative design, process, or technology to equitably increase the Fee of that Risk/Reward Team Member. All changes under this Section will be documented in a Change Order.

2.5.2 Milestone Notice. When a Milestone is achieved, the Design-Builder in conjunction with the interested Risk/Reward Team Members will prepare a Milestone notice and submit it to the Owner within 7 days of achieving the Milestone. Within 7 days after receipt of a Milestone notice, the Owner will either confirm that the Milestone was achieved or request additional information from the Design-Builder, or dispute achievement of the Milestone. If the Owner disputes achievement of a Milestone, or fails to respond within the 7 day period, the PMT will notify the SMT and schedule a meeting to discuss and resolve the dispute.

2.5.3 Design/Preconstruction Phase Incentive Compensation Adjustments.

2.5.3.1 **Generally.** The Owner and Design-Build Team Members intend to use Target Value Design processes to improve Project design, eliminate waste, and optimize Project value. Any Design/Preconstruction Phase Incentive Compensation adjustments are intended to promote innovation at the time when change is least disruptive to the Project and when savings can be most efficiently used by the Owner.

2.5.3.2 **Added Value Incentive Items.** The Owner has developed or will develop a list of Added Value Incentive Items that it would like to include in the Project without increasing the Base Target Cost.

2.5.3.3 **Incentive Compensation Increase by Adding Value.** If, through Target Value Design, the Design-Builder determines during Design/Preconstruction Phase that the Base Target Cost is sufficient to cover 100% of the estimated Chargeable Costs of an Added Value Incentive Item, and if the Owner chooses to add the Added Value Incentive Item, then the Incentive Compensation will be increased by 25% of the estimated Chargeable Costs of the Added Value Incentive Item accepted by the Owner and the Added Value Incentive Item will be added to the Target Program and will be reflected in the Implementation Documents. The Design-Builder will use its best efforts to allow the Owner to capture all residual savings through the addition of Added Value Incentive Items. The Design-Builder will keep a log of Added Value Incentive Items and include the last responsible date a decision is needed to include the item without resulting in extensive rework.

2.5.3.4 **Limit on Final Target Cost.** The Final Target Cost will not exceed the Base Target Cost unless the Final Target Cost is adjusted by Change Order after it is established.

2.5.4 Construction Phase Incentive Compensation Adjustments.

2.5.4.1 **Generally.** The Owner and Design-Build Team Members seek to reduce rework, improve productivity, and generally execute the Work as efficiently as possible. During the Construction Phase, the Incentive Compensation percentage will be reduced from twenty-five percent (25%) to fifteen percent (15%). The Owner's election of any Added Value Incentive Items will be documented by the Owner in writing. The Design-Builder will use its best efforts to allow the Owner to capture all residual savings through the addition of Added Value Incentive Items. The Design Builder will keep a log of Added Value Incentive Items and include the last responsible date a decision is needed to include the item without resulting in extensive rework.

2.5.4.2 **Final Completion of the Project.** If, upon Final Completion, the Final Actual Cost (after reconciliation of Allowances) is less than the Final Target Cost, this amount constitutes Savings; the Incentive Compensation is increased by 10% of the Savings. Unused Project Contingency will be considered in calculating the Savings, because the Final Actual Cost (which does not include Project Contingency) will be compared with the Final Target Cost (which does).

2.5.4.3 **Distribution of Incentive Compensation.** If Incentive Compensation remains after the reduction in Section 2.4.1.1, then the remaining Incentive Compensation will be distributed to the Design-Builder with the Final Payment as set forth in Section 11.6.

2.5.4.4 Under no circumstances will the Incentive Compensation collectively earned by all Risk/Reward Team Members through Added Value Incentive Items, Milestones, and Savings exceed % of the Final Target Cost upon Final Completion. (If the Incentive Compensation exceeds % of the Final Target Cost, it will be reduced as necessary.) This limitation does not include or apply to the Fee. The Owner's calculation and distribution of the Incentive Compensation depends on the successful completion of the Project by the Design-Builder, and will not in any event be subject to Claims.

2.6 Affiliates. An Affiliate is any organization that is owned directly or indirectly, in whole or in part, by the parent of the Design-Builder or Architect, or which is owned in whole or in part by the Design-

Builder or Architect or any of their owners. If an Affiliate is employed as a Trade Contractor or Specialty Consultant it will be compensated on the same basis as the parent company (including the same Fee), unless otherwise approved in writing by the PMT. A company with 5% or less common ownership with a parent of the Design-Builder or Architect or their owners, is not considered an Affiliate.

Article 3

CONTRACT TIME

- 3.1 Commencement.** The date of commencement of the Work will be the Effective Date unless a different date is stated elsewhere in the Contract Documents or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
- 3.2 Contract Time.** The Contract Time is the period of time, including authorized adjustments, for Substantial Completion of the entire Work measured from the date of commencement.
- 3.3 Completion of Phases.**
- 3.3.1 Project Definition Phase.** The time for completion of the Project Definition Phase will be established in the Business Terms Sheet and is subject to Modification.
- 3.3.2 Design/Preconstruction Phase.** The time for completion of the Design/Preconstruction Phase (for the entire Project or a portion thereof) will be established in a Design/Preconstruction Amendment and is subject to further Modification.
- 3.3.3 Construction Phase.** The time for completion of the Construction Phase (for the entire Project or a portion thereof), which will ensure Substantial Completion of the Work (or a portion thereof) within the Contract Time, will be established in a Final Target Cost Amendment, and is subject to further Modification.
- 3.4** The Contract Time is subject to adjustments as provided in the Contract Documents.

Article 4

GENERAL REQUIREMENTS FOR THE WORK

- 4.1 General.**
- 4.1.1** The Design-Builder will comply with, and will perform the Work in accordance with, all Legal Requirements applicable to the Project.
- 4.1.2** The Design-Builder will designate in writing in the Business Terms Sheet a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.
- 4.1.3** The Design-Builder will perform the entire Work in strict accordance with the Contract Documents. The Design-Builder will not be relieved of the obligation to perform the Work in accordance with the Contract Documents by the activities, tests, inspections, or approvals of the Owner.
- 4.1.3.1** The Design-Builder will address and comply with the Legal Requirements in the design of the Project. The Design-Builder will contractually require that the services of the Design-Build Team Members comply with the Legal Requirements. If any Design-Build Team Member performs Work contrary to any of the Legal Requirements, the Design-Builder will assume responsibility for such Work.
- 4.1.3.2** Neither the Design-Builder nor any Design-Build Team Member will be obligated to perform any act that it believes will violate any of the Legal Requirements. If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any of the Legal Requirements, the Design-Builder will notify the

Owner in writing.

4.1.3.3 The Design-Builder will be and operate as an independent contractor in the performance of the Work and will have complete control over and responsibility for all personnel performing the Work. In no event will the Design-Builder be authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner.

4.1.4 The Design-Builder will be responsible to the Owner for acts and omissions of the Design-Builder's employees, any of the Design-Build Team Members and their agents and employees, and any other persons or entities performing portions of the Work.

4.1.5 General Consultation. The Design-Builder will schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

4.1.6 When Legal Requirements or the Contract Documents require that services be performed by licensed professionals, the Design-Builder will provide those services through qualified, licensed professionals.

4.1.7 The Design-Builder, with the assistance of the Owner, will prepare and file documents required to obtain necessary approvals of Governmental Authorities.

4.1.8 Progress Reports.

4.1.8.1 The Design-Builder will keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder will submit an updated Project schedule in electronic format, as well as written progress reports to the Owner that contain the following information:

- (a) The estimated percentages of completion;
- (b) Work completed for the period;
- (c) Project schedule status;
- (d) Submittal schedule and status report, including a summary of outstanding Submittals;
- (e) Responses to requests for information to be provided by the Owner;
- (f) Approved Change Orders and Owner's Directives;
- (g) Pending Change Order Proposals and Owner's Directive status reports;
- (h) Tests and inspection reports;
- (i) Status report of Work rejected by the Owner;
- (j) Status of Claims submitted in accordance with Article 16;
- (k) Current Project cash flow and forecast reports;
- (l) Design-Builder's Apprentice Utilization Reports;
- (m) Cost summary, comparing actual costs to updated cost estimates;
- (n) Procurement and Equity Portfolio; and
- (o) Additional information as agreed to by the Owner and Design-Builder.

4.1.9 Project schedules.

4.1.9.1 The Design-Builder will prepare and submit for the Owner's information a Project schedule for the Work consistent with the requirements of the Owner's schedule, the Target Program, and the Milestones. The schedule, including the time required for design and construction, will not exceed any time limits identified in the Contract

Documents, will be related to the entire Project, and will include time contingency for risks identified by the PMT (including normal inclement weather) and allowances for periods of time required for Owner review and for approval of submissions by authorities having jurisdiction over the Project. The Project schedule will be revised at least monthly, and at appropriate intervals as required by the conditions of the Work, and will be reviewed with the PMT to review progress and any schedule issues. The Design-Builder will also maintain a look-ahead schedule, which will be submitted to the Owner and discussed with the PMT on a weekly basis.

4.1.9.2 All scheduling performed on the Project will use “pull scheduling” techniques pursuant to the Last Planner System™, or an equivalent system approved in writing by the Owner. In order to be pull-based, the planning system must be based upon requests from a Design-Build Team Member to others upon whom the requester’s portion of the Work is dependent, and receipt of reliable promises made by the upstream performer about when it will finish the portion of the Work agreed upon per the handoff criteria, in order to enable the downstream performers to begin their respective portions. At a minimum, the system must include the Milestones, collaboratively created Lean™ phase plans per Section 4.1.10, work plans per Section 4.1.11, and a method for measuring, recording, and improving planning reliability.

4.1.9.3 The Design-Builder will perform the Work in general accordance with the most recent Project schedule submitted to the Owner and will promptly notify the Owner of any material deviations from that schedule.

4.1.9.4 The Project schedule will show the sequence in which the Design-Builder proposes to perform the Work, including all design and construction activities, and the dates on which the Design-Builder plans to start and finish major portions of the design and construction, including dates for shop drawings and other Submittals, and for acquiring major materials and equipment.

4.1.9.5 The Design-Builder will notify the Owner in writing of any actual or anticipated event that is delaying or is likely to delay achievement of any Milestone or performance of any critical-path activity of the design or construction. This notice will be promptly issued to the Owner (and in no event later than 10 days after the event causing the delay) and will be reviewed by the PMT to evaluate potential impacts and remedies. In the notice, the Design-Builder, after utilizing contemporaneous period analysis, will indicate the expected duration of the delay, the anticipated effect of the delay on the Project schedule, and the action being or to be taken to correct such delay. Provision of this notice does not relieve the Design-Builder of its obligation to complete the Work within the Contract Time. If the Design-Builder believes that a delay entitles it to an increase in the Final Target Cost, then the Design-Builder will submit a Claim as provided in the Contract Documents.

4.1.10 Lean™ Phase Planning. Lean™ phase plans must be based on collaborative planning through direct communications by all Design-Build Team Members performing portions of the Work in a particular phase, who, working backward from the most recently approved Milestones, create collaborative Lean™ phase schedules indicating when their portion of the Work will be completed. Direct communications among Design-Build Team Members allow the various parties to make reliable promises to each other, and to specifically discuss and negotiate the handoff criteria or other conditions of satisfaction that are mutually understood and agreed upon.

4.1.11 Work Plans. As part of the Lean™ phase planning, the PMT in collaboration with the PWTs will establish a work plan to review upcoming design and construction performance requirements and establish the frequency of look-ahead meetings and work plan schedules. The work plan schedules will document all portions of the Work performed during the prior week’s period and to be performed during the upcoming week(s). The work plans are to be used as a working tool to reflect commitments made in look-ahead meetings, evaluate any upcoming constraints or schedule slippages, identify workable backlog, and collaborate on methods for labor efficiency. Workflow will be scheduled to optimize the flow of Work through the Project and reduce bottlenecks and activities that will not advance timely completion of the

Project within the Contract Time and achievement of Milestones.

4.1.12 Certifications. Upon the Owner's written request, the Design-Builder will obtain from the appropriate Design-Build Team Member, and furnish to the Owner, certifications with respect to the documents and services provided by the Design-Build Team Member (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Contract Documents, except to the extent specifically identified in the certificate and (ii) comply with the Legal Requirements; and (b) that the Owner will be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Build Team Members will not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of their services.

4.1.13 Design-Builder's Submittals.

4.1.13.1 Prior to submission of any Submittals, the Design-Builder will prepare a Submittal schedule and will submit the schedule for the Owner's approval. The Owner's approval will not unreasonably be delayed or withheld. The Submittal schedule will (i) be coordinated with the Project schedule provided in Section 4.1.9.1, (ii) allow the Owner reasonable time to review Submittals, and (iii) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder will not be entitled to any increase in Final Target Cost or extension of Contract Time based on the time required for review of Submittals.

4.1.13.2 By providing Submittals, the Design-Builder represents to the Owner that it has (i) reviewed and approved them; (ii) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (iii) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

4.1.13.3 The Design-Builder will perform no portion of the Work for which the Contract Documents require Submittals until the Owner has approved the respective Submittal.

4.1.13.4 The Work will be in accordance with approved Submittals except that the Design-Builder will not be relieved of its responsibility to perform the Work consistent with the requirements of the Contract Documents. The Work may deviate from the Contract Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Contract Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder will not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

4.1.13.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings, and other Submittals, will contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, will bear the licensed design professional's written approval. The Owner and Owner's separate contractors and consultants, if any, will be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals.

4.1.14 Warranty.

4.1.14.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Contract Documents and will be performed in a skillful and workmanlike manner free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Contract Documents, and that the Work will comply with the Legal Requirements. The Owner has the right to consider Work, materials, or equipment not conforming to these requirements defective unless waived in writing by the Owner. The Design-Builder's warranty excludes remedy for damage or defect

caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder will furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents will survive completion, acceptance, and final payment.

4.1.14.2 The Design-Builder will collect, assign, and deliver to the Owner any specific written warranties given by others. The Design-Builder will cause each Trade Contractor to execute and will countersign, secure, and furnish directly to the Owner all required written warranties and guarantees, which will extend to the Owner all rights, claims, benefits, and interests that the Design-Builder may have under express or implied warranties or guarantees against Trade Contractors for defective or non-conforming Work. Prior to furnishing Owner with executed guarantees and warranties, the Design-Builder will provide copies to the Owner for review and approval. These warranties are in addition to the warranty in Section 4.1.14.1 and will not diminish that warranty.

4.1.15 Indemnification.

4.1.15.1 The Design-Builder will defend, indemnify, and hold the Owner, the Owner's Board of Regents, and the employees and agents of each of the forgoing (together, the "Indemnified Parties") 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:

- (a) The sole negligence of Design-Builder or any Design-Build Team Member; and
- (b) The concurrent negligence of Design-Builder or any Design-Build Team Member but only to the extent of the negligence of Design-Builder or such Design-Build Team Member.

4.1.15.2 In any action against any of the Indemnified Parties by any employee of any Design-Build Team Member, agents, or anyone directly or indirectly employed by any of them, the indemnification obligations of this Section will not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or any Design-Build Team Member under Title 51 RCW (Industrial Insurance), or any other employee benefit acts. In addition, the Design-Builder and each Design-Build Team Member specifically waive immunity as to the Indemnified Parties only in accordance with Title 51 RCW.

4.1.16 Design-Builder's Insurance and Bonds. The Design-Builder will purchase and maintain insurance and provide bonds as set forth in Exhibit A-2.

4.2 Supervision.

4.2.1 The Design-Builder will employ a competent, experienced superintendent and necessary assistants who will be in attendance at the Project site during performance of the Work. The superintendent will represent the Design-Builder and communications given to the superintendent will be as binding as if given to the Design-Builder. Important communications will be confirmed in writing. Other communications will be similarly confirmed on written request in each case.

4.2.2 The superintendent will be an employee of the Design-Builder and the superintendent (or approved designee) will remain on the Project site whenever personnel of the Design-Build Team Members are present, unless the Project site is closed down, as allowed under this Agreement, until Final Completion is attained. The project manager will also be an employee of the Design-Builder. The superintendent and the project manager will be the persons identified in the Business Terms Sheet, and neither will be changed without the

approval of the Owner, which will not be unreasonably withheld. The Design-Builder will also have available experienced, skilled employees, such as carpenters, laborers, erection specialists, etc., to perform Work as needed.

4.2.3 At the time of execution of this Agreement, the Design-Builder will furnish to the Owner a list of telephone numbers for all key personnel of the Design-Builder and its Specialty Consultants and Trade Contractors for purposes of contacting personnel after hours in the event of an emergency. The list will be periodically updated as necessary to ensure the Owner has the most current information.

4.3 Design-Builder's Payment Obligations.

4.3.1 The Design-Builder will pay Specialty -Consultants and Trade Contractors, in accordance with its contractual obligations to such parties and applicable Legal Requirements, amounts Design-Builder has received from Owner on account of the Work of such Specialty Consultants and Trade Contractors. The Design-Builder will impose similar requirements on Specialty Consultants and Trade Contractors to pay those parties with whom they have contracted.

4.3.2 The Design-Builder will indemnify, defend, and hold the Owner harmless from any claims or mechanic's or retainage liens brought against the Owner or against the Project as a result of the failure of the 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 3 days of receiving written notice from the Owner that such a claim or mechanic's or retainage lien has been filed, the Design-Builder will commence to take the steps necessary to discharge the claim or lien, including, if necessary, the furnishing of a bond. If the Design-Builder fails to do so, the Owner will have the right to discharge the claim or lien and hold the Design-Builder liable for costs and expenses incurred, including attorneys' fees.

4.4 Accounting Records.

4.4.1 The Design-Builder will develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Design-Builder will identify variances between actual and estimated costs and report the variances to the Owner at monthly intervals. The Design-Builder will include a monthly Project status report in a format acceptable to the Owner, listing (i) all pending and/or approved Change Orders and Owner's Directives (including amounts), (ii) projected cash flow of construction costs, (iii) an allocation of the amount of the Application for Payment, and (iv) other information that may be required by any funding source.

4.4.2 The Design-Builder will keep full and detailed records and accounts related to the Chargeable Costs and as necessary to substantiate all costs incurred. The Owner and the Owner's auditors will, during regular business hours and upon 7 days' notice, be afforded access to, and will be permitted to audit and copy, including electronically copy, the Design-Builder's original records and accounts, including complete documentation supporting all Chargeable Costs. The Design-Builder will preserve these records for a period of 6 years after final payment, or for such longer period as may be required by Legal Requirements.

4.4.3 The Design-Builder will maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, the Model, drawings, specifications, addenda, Change Orders, and other Modifications; shop drawings; product data; samples; Submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions that arise out of agreement with the Design-Build Team Members or the Work. These records will be available to the Owner and, at completion of the Project, delivered to the Owner.

4.5 Required Flow-Down Provisions.

By written agreement, the Design-Builder will require that each Design-Build Team Member, to the extent of the Work to be performed by such Design-Build Team Member, to be bound to the Design-Builder by the terms of the Contract Documents, and to assume toward the Design-Builder all the obligations and responsibilities that the Design-Builder assumes toward the Owner through the Contract Documents. Each subcontract, purchase order, and consulting agreement will preserve and protect the rights of the Owner under the Contract with respect to the Work to be performed by others so that subcontracting will not prejudice the Owner's rights. Where appropriate, the Design-Builder will require each Design-Build Team Member to enter into similar agreements with lower-tier Trade Contractors and Specialty Consultants. In addition to this general flow-down requirement, the Design-Builder will specifically incorporate the following requirements in each subcontract, purchase order, and consulting agreement:

4.5.1 Risk/Reward Team Members.

4.5.1.1 **Compensation and Incentive Compensation.** Risk/Reward Team Members will be subject to substantially similar compensation and Incentive Compensation provisions as set forth in Article 2; and

4.5.1.2 **Change Orders and Permitted Delays.** Risk/Reward Team Members will be tied to similar provisions governing Contract Time under Article 10 and changes under Article 8.

4.5.2 All Design-Build Team Members, including Risk/Reward Team Members.

4.5.2.1 **Assignment.** All subcontracts, purchase orders, and consulting agreements will include provisions allowing, at the Owner's discretion, assignment by the Design-Builder to the Owner after termination of the Contract by the Owner for cause pursuant to Section 15.2;

4.5.2.2 **Insurance.** Insurance provisions equivalent and commensurate with the size and work of the subcontract, to those applicable in Exhibit A-2 will be included in all subcontracts, purchase orders, and consulting agreements;

4.5.2.3 **Indemnification.** Indemnity provisions substantially similar to those set forth in Section 4.1.15 will be included in all subcontracts, purchase orders, and consulting agreements. The Owner and the other Indemnified Parties must be indemnified under all such provisions;

4.5.2.4 **Governance.** Project governance provisions substantially similar to those set forth in Section 4.6 will be included in all subcontracts, purchase orders, and consulting agreements;

4.5.2.5 **Dispute Resolution Proceedings.** Dispute resolution provisions substantially similar to those set forth in Article 16 will be included in all subcontracts, purchase orders, and consulting agreements;

4.5.2.6 **Open Book, Records, and Auditing.** Open book and record retention provisions substantially similar to those set forth in Sections 1.8.1 and 4.4, and audit provisions substantially similar to those set forth in Article 17 will be included in all subcontracts, purchase orders, and consulting agreements.

4.6 Project Governance.

4.6.1 **PMT.** The PMT is responsible for developing benchmarks, metrics, or standards for progress evaluation.

4.6.1.1 **Authority and Responsibility.** Each PMT member will use its best efforts to develop the Target Program within the Base Target Cost. The PMT will manage and coordinate achievement of the Project Charter and provide direction to the PWTs. Subject to the requirement that its decisions be unanimous, the PMT is authorized to manage and

direct the Project. The PMT is not, however, authorized to direct or supervise the actions of the Owner and is not responsible for any failure of the Design-Builder to perform its obligations. PMT decisions are final and not subject to review or modification except by the PEC, as described in this Agreement, or by the Owner's use of an Owner's Directive.

4.6.1.2 Reliable Participation. Fundamental to the success of the PMT is the willingness and ability of each member to participate reliably throughout the Project by providing dependable commitments, promises, and information in the best interest of the Project. The Owner, the Architect, and the Design-Builder commit to supporting the full engagement of their respective PMT member by providing the necessary resources to allow the PMT member to meet or exceed its commitments.

4.6.1.3 PWT Management. The PMT will create, organize, manage and mentor the PWTs and, through a designated PMT member, maintain a direct management/mentoring connection with each PWT.

4.6.1.4 Project Controls. The PMT, directly or through PWTs created for these purposes, will create a Co-Location Plan and strategy, risk, and opportunities registers, cost models, and such other management plans, strategies, and controls, necessary for innovative, efficient design development and execution of the Work.

4.6.1.5 Interpretation of Target Program and Implementation Documents. The PMT has the authority to interpret the Target Program and Implementation Documents subject to PEC review and approval. Work related to a clarification that affects cost or schedule must be documented in a PMT Bulletin pursuant to Sections 4.6.1.7 and 4.6.3, but will not result in a Change Order unless agreed by the PEC. The PMT will resolve questions, discrepancies, ambiguities, and other clarifications regarding the requirements of the Target Program and Implementation Documents according to this Agreement, the Project Charter, and the best interests of the Project.

4.6.1.6 Project Meetings. The PMT will hold regular meetings and special meetings as set forth in this Section 4.6.1.6. The PMT will designate a person to schedule regular meetings, facilitate communications between the Design-Build Team Members, lead regular and special meetings, prepare minutes of all PMT meetings, and prepare PMT Bulletins for execution by the PMT members.

- (a) **Regular Meetings.** The PMT will establish a regular meeting schedule that in general will occur weekly. Regular meetings held in accordance with the agreed meeting schedule do not need to be noticed. Regular meetings will be held to review, discuss, and evaluate the current status of the Project with respect to design issues, cost, and schedule, and implement programs to improve overall Project performance. A minimum of 1 PMT regular meeting per month shall include a review, discussion, and evaluation of the execution of the BEE Inclusion Plan. The UW Assistant Director, Procurement and Sourcing, may occasionally attend the meeting to review the BEE performance. The regular meetings may include PEC members, as well as any other necessary Design-Build Team Members that may be required to attend based on the meeting agenda.
- (b) **Special Meetings.** Special meetings may be requested by any PMT member to allow the PMT to address a matter of urgency. The entity requesting the special meeting will provide at least 1 business day's electronic notice, unless all PMT members agree to a shorter time frame. Notice of a special meeting will identify the issues to be addressed.
- (c) If a PMT member is not able to attend either a regular meeting or special meeting because of a scheduling conflict, an alternate representative may be designated pursuant to Section 4.6.1.9.

4.6.1.7 Direct Communications. The PMT members and personnel of the Owner and Design-Build Team Members are encouraged to communicate directly as necessary to efficiently manage the Project and to execute each individual PMT member's

responsibilities. All decisions affecting design, cost, or Contract Time must be recommended to the PEC by the PMT according to Section 4.6.1.8 and confirmed in writing in a PMT Bulletin.

4.6.1.8 Decision Making. PMT decisions must be by unanimous agreement and are documented in PMT Bulletins. If the PMT is unable to reach agreement, the PMT will refer the issue to the PEC under Section 4.6.2. All PMT decisions that change the Base Target Cost, Final Target Cost, Contract Time, or Incentive Compensation are not binding until documented through a Change Order.

4.6.1.9 Parties' Representatives. Each member of the PMT will attend all PMT meetings, will have authority to act on behalf of the entity he or she represents, and will fulfill his or her responsibilities as a PMT member. The PMT may approve any member's designation of an alternate member, but any proposed replacement of a PMT member will be subject to the PEC approval, which will not be unreasonably withheld.

4.6.2 SMT; Owner's Directive. Each SMT member will act on behalf of its respective entity during the dispute resolution procedures set forth in Article 16 and, upon request, will meet with the PMT at any regular or special meetings. The SMT will endeavor to meet at least once per month (and more often as necessary) to review the status of the Project and will periodically attend regular meetings to gain deeper familiarity with the Project and provide executive coaching and support to the PMT.

4.6.2.1 SMT Decisions. Any matters requiring SMT decisions or action will be decided collaboratively and unanimously by the SMT. Any SMT decision or action will be communicated to the PMT and documented in a PMT Bulletin as set forth in Section 1.5.1.1, subject to the Owner's right to issue an Owner's Directive. Any dispute resulting from an Owner's Directive that is not resolved by the SMT, will be resolved under the dispute resolution provisions set forth in Article 16.

4.6.3 Written Confirmation of Decisions. All PMT decisions affecting design, cost, schedule, or reallocation of the Work will be recorded in writing in a PMT Bulletin per Section 4.6.1.7 and will be issued directly to the Design-Build Team Members. PMT Bulletins must be signed by all members of the PMT to signify their concurrence with the decision. PMT Bulletins that impact the Base Target Cost, Final Target Cost, Contract Time, or Incentive Compensation are not binding until documented through a Change Order. All other decisions will be recorded through written meeting minutes, or in another mutually agreed written format, as directed by the PMT. PMT Bulletins and meeting minutes will be circulated to the Design-Build Team Members and maintained on a collaborative web portal accessible to the Design-Builder Team Members and the Owner.

4.7 Prevailing Wages.

4.7.1 Pursuant to Chapter 39.12 RCW (Prevailing Wages on Public Works) no worker, laborer, or mechanic employed in the performance of any part of the Work will be paid less than the "prevailing rate of wage" (in effect as of the date of execution of this Agreement) as determined by the Industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where the Work will be performed is made a part of the Contract Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the Effective Date for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is also available for review at the Owner's office and will be mailed upon request. The Design-Builder will keep a paper copy at the Project site. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under Chapter 296-127 WAC, or if no schedule is attached, the applicable published rates will apply. It is the Design-Builder's responsibility to ensure that the correct prevailing wage rates are paid. The Design-Builder will provide the Design-Build Team Members with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data will be

addressed to the Industrial Statistician upon request.

Mailing Department of Labor and Industries

Address: Prevailing Wage Office
P.O. Box 44540
Olympia, WA 98504

Telephone: (360) 902-5335

Facsimile: (360) 902-5300

4.7.2 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter will be referred for arbitration to the director of the Department of Labor and Industries of the state, and his or her decision therein will be final and conclusive and binding on all parties involved in the dispute.

4.7.3 The Design-Builder will defend, indemnify, hold harmless, and reimburse the Owner, including attorneys' fees, from any violation or alleged violation of Chapter 39.12 RCW and Title 51 RCW, including without limitation RCW 51.12.050, by any Design-Build Team Member.

4.8 Apprenticeship Utilization Requirements.

4.8.1 The Design-Builder will 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. An Apprentice Utilization Plan will be required prior to the start of construction activities that would document opportunities for Apprentices.

4.8.1.1 Total labor hours include additional hours worked as a result of Change Orders.

4.8.1.2 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 will include the hours worked by supervisors, foremen, and superintendents if it is determined they are subject to prevailing wage requirements pursuant to WAC 296-127-015.

4.8.1.3 Total labor hours include all hours worked by the Design-Builder and all Trade Contractors on the Project.

4.8.2 The Design-Builder will meet or exceed the apprentice utilization requirements of the Contract Documents on all labor hours on the Project. The Owner has determined a monetary incentive of \$ [REDACTED] for meeting the goals, and a monetary penalty of \$ [REDACTED] for not meeting the goals.

4.8.3 The Design-Builder will include the apprentice utilization requirements of this Section in all subcontracts executed for the Project.

4.8.4 If, during the term of the Contract, the Design-Builder determines that it will be unable to meet the percentage utilization requirement in Section 4.8.1 above, the Design-Builder may make a written request to the Owner to reduce the required percentage. The request will include documentation of:

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

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

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

4.8.5 The Owner will evaluate the request, and if appropriate, a Change Order will be prepared by the Owner reducing the utilization requirement.

4.8.6 With its monthly Application for Payment, the Design-Builder will submit the Apprentice and Journey Level Worker Utilization Report on a form provided by or acceptable to the Owner.

4.9 Business Equity. The Owner is committed to providing the maximum practicable opportunity for participation in contracting by Business Equity Enterprises (BEE), both state-certified and non-certified, on public works projects. The Owner and Design-Builder have agreed on an aspirational goal of (to be filled in upon acceptance of the inclusion plan and prior to award of contract [redacted]%) participation in the Project.

4.9.1 To achieve the agreed aspirational goal, the Design-Builder will implement an Inclusion initiative, as a part of the Procurement and Equity Plan, reviewed and approved in writing by the Owner, outlining the following:

- All the Specialty Consultant and Trade Contractor work scopes the Design-Builder will be subcontracting.
- The work scopes in which substantial opportunity for BEE participation is anticipated;
- The agreed specific strategies, processes and, resource commitments to be used in pursuit of the BEE aspirational goal for the project;
- Solutions to any identified challenges relative to achieving the aspirational goal, including how to optimize the opportunities.

4.9.2 The Design-Builder will comply with the following requirements: In accordance with Chapter 39.19 RCW, it is the policy of the State of Washington to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses in public works.

4.9.3 Even though not an exclusive requirement for this Agreement, the Washington State Office of Minority and Women's Business Enterprises (OMWBE) certifies firms that are owned and controlled by minorities or women, and can provide information regarding the certification process. Information about the certification status of a particular firm is available at the OMWBE website (<http://www.omwbe.wa.gov/biznetwas/>), or by contacting OMWBE at (360) 753-9693, 406 South Water, P.O. Box 41160, Olympia, Washington 98504-4611.

4.9.4 Affirmative Efforts.

4.9.4.1 Design-Builder will:

- (a) Leverage available data bases and outreach events to build a project specific availability list of BEE. The expectation is that the Design-Builder and all team members will use an extensive list of databases to craft a project availability that meet the specific project needs and targets several BEEs in each category of sub-consultant and sub-contractor categories.
- (b) Advertise opportunities for consultants and contractors in a manner designed to provide BEE capable of performing the Work with timely notice of such opportunities, and all advertisements will include a provision encouraging participation by BEE. Advertising may be done through general advertisements (e.g., newspapers, and journals, the OMWBE, National Association of Minority Contractors, and Washington State Procurement Technical Assistance Center) or by soliciting directly to BEE.
- (c) Provide BEE that express interest with adequate and timely information about the Project.

- (d) Follow up with phone calls to all notified firms that do not respond to advertised opportunities and collect feedback as to why the firm will not/did not submit for the work. This feedback must be part of the monthly updates.

4.9.4.2 Design-BUILDER is further encouraged to:

- (a) Break down total Project requirements into smaller packages, where economically feasible, in order to permit maximum participation by BEE. Packages must also represent the skills and capabilities of the BEEs.
- (b) Include bonding and insurance requirements that are commensurate with the size and liability of the subcontract package.
- (c) Utilize the services of available women/minority community business organizations, minority contractor groups, and other organizations that provide assistance in recruitment and placement of BEE.
- (d) Mentor firms that have never performed work for the Design-BUILDER or the Owner and provide assistance in preparing paperwork, scheduling, obtaining supplies and equipment, or similar as a new firm would need to be successful on the project.

4.9.5 Reporting Requirements.

4.9.5.1 Prior to submission of the first Application for Payment and as needed during this Project, the Design-BUILDER will submit a Procurement and Equity Plan in a format acceptable to the Owner.

4.9.5.2 Prior to Final Acceptance, the Design-BUILDER will submit a report of total amounts paid to each BEE.

4.9.5.3 With each monthly Application for Payment, the Design-BUILDER will submit a report in a format provided or approved by the Owner showing the Procurement and Equity Plan it has utilized during the preceding month and the amounts paid to those firms and any changes to the Plan.

4.9.6 Non-Discrimination.

4.9.6.1 The Design-BUILDER will not create barriers to open and fair opportunities to all businesses, including BEE, to participate in Owner 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 Trade Contractors and Specialty Consultants, the Design-BUILDER will not discriminate on the basis of race, color, creed, religion, sex, age, nationality, honorably discharged veteran or military status, marital status, sexual orientation, or the presence of any mental or physical disability in an otherwise qualified disabled person.

4.9.7 Violations.

4.9.7.1 Failure to comply with any of the mandatory requirements of this part of the Contract may subject the Design-BUILDER to remedies or damages as provided for by RCW 39.19.090, or by other applicable Legal Requirements.

Article 5 **PROJECT DEFINITION PHASE**

5.1 Generally. During the Project Definition Phase, the Owner and Design-BUILDER will develop the Target Program, establish the Base Target Cost, and establish Milestones.

5.2 Kickoff and Partnering. As soon as possible after the execution of this Agreement, the Design-BUILDER and the Owner will participate in a kickoff partnering workshop to establish a strategy and plan for a successful collaborative partnering process.

5.2.1 The partnering plan will address the following elements:

5.2.1.1 A statement of mutual goals, including core project goals, project-specific goals, and mutually supported goals; and

5.2.1.2 A partnering maintenance and close-out plan, including partnering session attendees and frequency of workshops.

5.2.2 The Design-Builder and the Owner may participate in additional partnering workshops during the Project as they agree are necessary and appropriate.

5.3 Procurement of Specialty Consultants and Trade Contractors.

5.3.1 The Design-Builder will develop and submit to the Owner for approval a procurement and equity plan (the "Procurement Plan") for the purpose of procuring, tracking and reporting on Trade Contractors, Business Equity Enterprises, and Specialty Consultants necessary to perform the Work in accordance with the Contract Documents.

5.3.2 The PMT (as accepted by the SMT), will mutually agree on the greatest project risks and the disciplines that will be engaged as early in the Project Definition Phase as practical, pursuant to Section 4.5:

5.3.2.1 Specialty Consultants to be considered for engagement might be:

- (a) Structural Engineer
- (b) Civil Engineer
- (c) Mechanical Engineer (HVAC & Plumbing) (if needed, subject to agreement of the PMT)
- (d) Electrical Engineer (if needed, subject to agreement of the PMT)
- (e) Building Envelope

5.3.2.2 Trade Contractors to be considered might be:

- (a) Mechanical
- (b) Electrical
- (c) Plumbing
- (d) Steel Fabricator

5.3.2.3 Other Specialty Consultants or Trade Contractors recommended by the PMT and accepted by the SMT.

5.3.3 Each of these Specialty Consultants and Trade Contractors may also be considered for Risk/Reward Team Members during the Design/Preconstruction Phase and the Construction Phase.

5.4 Development of the Target Program.

5.4.1 Visioning Session. The Design-Builder will facilitate a visioning session where it will work with the Owner to identify, discuss, and prioritize values and goals that will impact the Project, including institutional purposes, growth objectives, and cultural, technological, temporal, aesthetic, symbolic, economic, environmental, safety, sustainability, and other relevant criteria.

5.4.1.1 The Design-Builder will discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches.

5.4.2 Research and Data Gathering. The Design-Builder will then (i) research programming criteria; (ii) conduct meetings with the appropriate Design-Build Team Members;

and (iii) conduct additional meetings with the Owner to confirm the scope and intent of the Project.

5.4.2.1 The Design-Builder will identify and evaluate the constraints and opportunities that will have an impact on the Project, such as Legal Requirements, financial resources, location, access, visibility, and building services.

5.4.2.2 **Site Investigation.** The Design-Builder, and other Design-Build Team Members (as appropriate), will conduct investigations at or concerning the Project site to review all existing site information; perform investigations and conduct surveys; document all site-related information needed to design and construct the Project; verify existing conditions within the Project site, including all points of connection; and verify the accuracy of any existing surveys and other documentation provided by the Owner.

5.4.2.3 The Design-Builder will compile and review Project-related documentation, including the following:

- (a) Relevant government documents such as applicable codes and ordinances;
- (b) Applicable non-governmental building and planning standards;
- (c) Relevant historical documents and archival materials; and
- (d) The Facilities Design Standard and approved deviations.

5.4.2.4 The Design-Builder will conduct group sessions with the Owner's stakeholders and endeavor to achieve consensus as to which values, goals, facts, needs, and ideas will influence the design of the Project.

5.4.3 Draft Target Program. Based on the information gathered, the Design-Builder will develop a draft Target Program, including proposed performance and design criteria for the Project.

5.4.3.1 The Design-Builder will make a preliminary recommendation of space requirements, space relationships and circulation, including consideration of special requirements, such as data and telephones, ambient environment, safety and security, furnishings, flexibility and site information, re-stalking and use considerations, where appropriate.

5.4.3.2 The Design-Builder will recommend Project standards such as area allowances, space allocation, travel distances, and furniture and equipment.

5.4.3.3 The Design-Builder will recommend space quality standards for the Project related to such elements as lighting levels, equipment performance, acoustical requirements, security, and aesthetics.

5.4.3.4 The Design-Builder will also provide the Owner with recommendations on constructability; availability of materials and labor; time requirements for procurement, installation, and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

5.4.4 Target Program. Based on the Owner's feedback, the Design-Builder will prepare a proposed Target Program detailing all items identified in Section 5.4.3 for the Owner's approval. When approved by the Owner, this will establish the Target Program.

5.5 Building Information Modeling Execution Plan. Early in the Project Definition Phase, the PMT and other relevant Design-Build Team Members, as well as the Owner and the Owner's consultants, if any, will participate in a BIM workshop to establish a BIM Execution Plan that addresses the uses specified in this Section or otherwise identified in the Target Program. The BIM Execution Plan will be approved by the PMT.

5.5.1 At a minimum, the BIM Execution Plan will:

- 5.5.1.1 Specify where and how the Model will be maintained, including the parties with substantive responsibility for controlling the information within specific models or model elements;
- 5.5.1.2 Provide minimum hardware and software requirements, including the software (including software revision or build date if applicable) that will be used to develop the Model;
- 5.5.1.3 Specify protocols for naming conventions, data structure, version control, roll-back, gatekeeping, and archiving;
- 5.5.1.4 Establish a common coordinate system and conventions as to units;
- 5.5.1.5 Specify the level of detail that will be modeled and incorporate appropriate allowances for differing construction tolerances. Designers are required to design to accurate dimensions in the Model;
- 5.5.1.6 Specify when and how information regarding constructability and cost will be derived from the Model and provided to the designers to inform design;
- 5.5.1.7 Specify when and how existing site information is incorporated into the Model;
- 5.5.1.8 Specify how clarifications, shop drawings, and Submittal information will be reviewed and incorporated into the Model;
- 5.5.1.9 Specify when and how clash detection/conflict resolution sessions will occur;
- 5.5.1.10 Determine what information is more efficiently developed and conveyed using traditional 2D design tools and develop protocols for assuring consistency between the BIM and ancillary 2D information;
- 5.5.1.11 Specify how the Model will be updated and function as a Record Model; and
- 5.5.1.12 Specify what design information, if any, will be developed or maintained outside of the Model.

5.5.2 Model Administrator. Each Design-Build Team Member is responsible for maintaining any individual design or analysis models and providing their modeling information, at appropriate intervals, to the Model Administrator.

5.6 Establishing the Base Target Cost.

5.6.1 The PMT will jointly and collaboratively develop a Base Target Cost that includes all costs necessary to design and construct the Project based on the Target Program. The Base Target Cost will be used as the threshold for which the Added Value Incentive Items, if established, and Target Program are compared in order to determine whether Incentive Compensation is provisionally earned during the Design/Preconstruction Phase.

5.6.2 Project Contingency. In developing the Base Target Cost, the PMT may include an appropriate amount in Project Contingency based on the PMT's assessment of Project risks. In setting the Project Contingency, the PMT will develop a risk matrix that identifies different potential risks that could impact the cost of the Project and/or the Contract Time and the likelihood of the occurrence of each risk and the expected impact, if any. The Project Contingency will be updated by the PMT as the Project progresses based on a budget issues log maintained and used by the PMT and included in the Final Target Cost. Upon Final Completion, unused Project Contingency will be included in calculating the Savings.

5.6.3 Allowances. In developing the Base Target Cost, the PMT may include a limited number of Allowances. Any Allowance items will be specifically listed in the Base Target Cost Breakdown Exhibit B-2. The Final Target Cost will not include Allowance items unless approved in writing by the Owner.

5.6.4 Escalation. The Final Target Cost will account for any escalation in labor costs and a reasonable estimate for material escalation.

5.6.5 Not-to-Exceed Amount. The Base Target Cost will include a not-to-exceed amount for Design-Builder's compensation prior to execution of the Final Target Cost Amendment as set forth in Section 2.3.

5.7 Establishing Milestones.

5.7.1 The Owner and Design-Builder will jointly develop and document Milestones based on the Owner's requirements. The Milestones will be set forth in Exhibits B-3 and C-3.

5.8 Establishing the Incentive Compensation.

5.8.1 Incentive Distribution Spreadsheet. The PMT will develop the Incentive Distribution Spreadsheet and update it to include those Risk/Reward Team Members identified during the Project Definition Phase and indicate the respective Incentive Compensation and Incentive Compensation Percentages of the Risk/Reward Team. The Incentive Distribution Spreadsheet will be set forth in Exhibit B-5 and may be updated via Exhibit C-5.

5.9 Generating the Contract Task Matrix.

5.9.1 The Owner and Design-Builder will jointly develop the Contract Task Matrix. The Contract Task Matrix will be part of the Procurement and Equity Plan.

5.10 Design/Preconstruction Proposal. The items listed in Sections 5.4.4, 5.5, 5.7, 5.8, and 5.9 will form the Design/Preconstruction Proposal, which will be submitted to the Owner within the duration specified in the Contract Documents for completion of the Project Definition Phase.

5.11 Establishing the Design/Preconstruction Amendment.

5.11.1 Upon acceptance of the Design/Preconstruction Proposal by the Owner, with input from the PEC, updated requirements for the Project will be incorporated in to the Contract through the Design/Preconstruction Amendment, which is comprised of (i) the Target Program; (ii) the Base Target Cost Breakdown; (iii) the Incentive Compensation; (iv) any updates to the Contract Time; (v) the Contract Task Matrix; and (vi) any other matters agreed upon.

5.11.2 The Design/Preconstruction Amendment establishes the Project requirements and standards for measuring the success of the Project during the subsequent phases.

5.12 Termination. The Contract may be terminated prior to execution of the Design/Preconstruction Amendment in accordance with Article 15.

Article 6

DESIGN/PRECONSTRUCTION PHASE

6.1 Generally. During the Design/Preconstruction Phase, the Design-Builder will engage in Target Value Design to develop Implementation Documents within the Base Target Cost and obtain approval of the Implementation Documents from Governmental Authorities.

6.1.1 The Design-Builder will develop the Implementation Documents for the Project in accordance with the Target Program, and will complete the following design and preconstruction activities.

6.2 Procurement of Other Design-Build Team Members. During the Design/Preconstruction Phase, any remaining Trade Contractors or Specialty Consultants will be contracted by the Design-Builder in accordance with the Procurement and Equity Plan and pursuant to Section 4.5.

6.2.1 Update Contract Task Matrix. The PMT will update the Contract Task Matrix as

required to include the Design-Build Team Members procured during the Design/Preconstruction Phase that will be performing certain tasks. The Contract Task Matrix will be updated from time to time as the PMT deems necessary to reflect the status of the Project and assign necessary tasks to the most qualified Design-Build Team Member.

6.2.2 Early Release and Prefabrication. The Owner may authorize early release of certain systems, phases, or prefabrication of materials or equipment.

6.2.3 Risk/Reward Team Member. Any Specialty Consultant or Trade Contractor added as a Design-Build Team Member during the Design/Preconstruction Phase whose contract value is, or is expected, to be zero point two percent (0.2%) of the Base Target Cost or more may be evaluated for designation as a Risk/Reward Team Member. The PMT, in consultation with the SMT, will determine all Risk/Reward Team Members.

6.3 Project Working Teams. A PWT leads the design of its respective portion of the Work and will ensure that such design is consistent with the Target Program, Base Target Cost, and Added Value Incentive Items. The PWTs will meet regularly with the PMT or its representatives throughout the Target Value Design process to evaluate functionality, constructability, sustainability, life-cycle cost analysis, and Added Value Incentive Items. The PWTs will not have binding decision making authority, but the PMT will actively seek and consider input and counsel of the PWTs.

6.3.1 Cost Model. With the assistance of the PWTs, the PMT will develop a detailed cost model based on the Base Target Cost Breakdown. The cost model will track paid Chargeable Costs, incurred but unpaid Chargeable Costs, a current estimate of future Chargeable Costs, the percentage of the Work completed, Fee, Added Value Incentive Items, any provisionally earned Incentive Compensation, the predicted variance of each line item, and the projected variance from the Base Target Cost. The cost model will be updated by the Design-Builder based on a schedule developed by the PMT and will be reviewed by the PMT.

6.3.2 Project Scheduling. The PMT and PWTs will jointly develop an initial pull-based Project schedule per Section 4.1.9 based on the design requirements and the Substantial Completion date set forth as a Milestone. The pull-based Project schedule will define the flow of developing the Implementation Documents, avoiding bottlenecks, or advancing aspects of the design beyond what has been anticipated and approved for any given time period. The PMT and PWTs will jointly develop Lean™ phase plans per Section 4.1.10 based on the initial pull-based Project schedule for submission and approval by the PMT. Under PMT direction, the applicable Design-Build Team Members will collaboratively create and update work plans for Design/Preconstruction Phase activities per Section 4.1.11. The applicable Design-Build Team Members will perform only Work that is approved on the applicable work plan or has been identified as workable backlog.

6.4 Target Value Design Process. The PMT and PWTs will utilize the Target Value Design process to optimize and coordinate the design in accordance with the Target Program and endeavor to create additional value by identifying alternative systems, means, and methods to reduce capital expenditures and life-cycle costs, analyze and improve workflow, improve constructability and functionality, provide more operational flexibility, and endeavor to reduce the actual Chargeable Costs while maintaining or increasing the quality and overall function of the Project.

6.4.1 The Target Value Design process will emphasize designing to the Target Program within the Base Target Cost, with the Design-Build Team Members providing guidance regarding the relative value of different design options before they are designed, as well as the cost and schedule implications of design decisions as they are being made. The Design-Builder will utilize Target Value Design to cause this Project to be constructed within the Base Target Cost.

6.5 Innovation and Added Value Incentive Program. The Owner wants to encourage innovation and increase Project value without exceeding the Base Target Cost. If savings are generated during the Design/Preconstruction Phase by reducing the estimated cost of the Target Program below the Base

Target Cost, the PMT will recommend and the Owner will decide whether to accept Added Value Incentive Items. If accepted, the Incentive Compensation will be adjusted in accordance with Section 2.5.

6.5.1 The Owner may update the list of Added Value Incentive Items, and the PMT may recommend other items or innovations that the Owner, in its sole discretion, may choose to have added as Added Value Incentive Items.

6.6 Implementation Documents. The PMT will finalize the design in accordance with the Target Program and as necessary to obtain a permit for the construction Work. The Implementation Documents will be incorporated into the Contract Documents as Exhibit C-1 through a Modification, once reviewed and accepted by the Owner.

6.7 Final Target Cost. The PMT will establish the proposed Final Target Cost based on the Implementation Documents and will incorporate the Final Target Cost Breakdown into the Contract Documents as Exhibit C-2 through a Modification. The Final Target Cost cannot exceed the Base Target Cost without Owner approval and must include any Added Value Incentive Items selected by the Owner and incorporated during the Design/Preconstruction Phase. The Final Target Cost supersedes the Base Target Cost. Once the Contract is amended to include the Final Target Cost, further Incentive Compensation will be measured against the Final Target Cost.

6.7.1 Update Incentive Distribution Spreadsheet. The PMT may update the Incentive Distribution Spreadsheet (Exhibit B-5) to include Incentive Compensation Percentages for each Risk/Reward Team Member and Milestones for the Construction Phase. The updated Incentive Distribution Spreadsheet will be incorporated into the Contract Documents as Exhibit C-5 through a Modification.

6.7.2 Update Cost Model. The PMT will update the cost model to incorporate the Final Target Cost.

6.8 Final Target Cost Proposal. The items listed in Sections 5.5, 6.5, 6.6, and 6.7 will form the Final Target Cost Proposal, which will be submitted to the Owner within the duration specified in the Contract Documents for completion of the Design/Preconstruction Phase.

6.9 Updating the Project Targets Through the Final Target Cost Amendment.

6.9.1 Upon acceptance of the Final Target Cost Proposal by the Owner, with input from the PEC, updated requirements for the Project will be incorporated into the Contract through the Final Target Cost Amendment, which will include (i) the updated Contract Time; (ii) the Final Target Cost; (iii) the Implementation Documents; (iv) the Final Target Cost Breakdown; (v) the updated Incentive Distribution Spreadsheet, if any; (vi) the updated Milestones, if any; and (vii) additions or updates to any other agreed upon items.

6.10 Termination. The Contract may be terminated prior to execution of the Final Target Cost Amendment in accordance with Article 15.

Article 7

CONSTRUCTION PHASE

7.1 Generally. During the Construction Phase, the remainder of the Specialty Consultants and Trade Contractors, if any, will be procured in accordance with the Procurement and Equity Plan and the Work will be performed in accordance with the Implementation Documents and the requirements of the Contract Documents.

7.2 Commencement. Except as permitted in Section 7.2.1, construction will not commence prior to execution of the Final Target Cost Amendment.

7.2.1 Subject to Section 10.1.2, the Owner and Design-Builder agree in writing, construction for specific portions of the Work may proceed prior to the execution of the Final

Target Cost Amendment. However, such authorization will not waive or prejudice the Owner's right to reject the Final Target Cost Proposal.

7.3 Performance of the Work.

7.3.1 The Design-Builder will supervise and direct the Work, using the Design-Builder's best skill, care, diligence, and attention in conformity with the Contract Documents. The Design-Builder will be solely responsible for, and have control over, construction means, methods, techniques, sequences, assembly details, and procedures, and for coordinating all portions of the Work under the Contract, including coordination of inspections in compliance with applicable Legal Requirements. The Design-Builder will be fully and solely responsible for the Project site safety.

7.3.2 The Design-Builder will be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no conditions will a portion of Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive the related Work. Responsibility for timely installation of all materials and equipment under the Design-Builder's scope rests solely with the Design-Builder, who will maintain coordination control at all times. The Design-Builder will ensure that the responsible Design-Build Team Member has carefully examined all preparatory work that has been executed to receive its Work and has notified the Design-Builder (who will notify the Owner in writing) of any defects or imperfections in preparatory work that will, in any way, affect satisfactory completion of the Work. The lack of such notification will constitute an acceptance of preparatory work by the Design-Builder, which will waive any later Claim of defect therein subsequently asserted by the Design-Builder.

7.3.3 The Design-Builder will perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the Implementation Documents and the QA/QC Work Plan. The Design-Builder will determine when it is necessary to perform, and will perform, tests (in addition to those requested by the Owner or required by the specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents.

7.3.4 The Design-Builder will plan and lay out all Work in advance of operations so as to coordinate all Work without delay or revision. The Design-Builder will establish and maintain existing lot lines, restrictions, and benchmarks. The Design-Builder will establish and maintain all other lines, levels, and benchmarks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Design-Builder will employ a professional, licensed, and registered land surveyor to initially lay out and be responsible for the accuracy of the Work.

7.4 Labor and Materials.

7.4.1 Unless otherwise provided in the Contract Documents, the Design-Builder will provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

7.4.2 Materials will conform to the manufacturer's standards as of the Effective Date and, unless otherwise agreed in writing by the PMT (and approved by the PEC), will be installed in strict accordance with the manufacturer's instructions, specifications, and directions. The Design-Builder will, if required in writing by the Owner, furnish satisfactory evidence regarding the kind and quality of any materials, and warrant their quality and compliance with the Contract Documents.

7.4.3 A written substitution request must include the specifications for the material or product, any proposed change in the Final Target Cost or Contract Time, and warranty

information. The Design-BUILDER will not proceed with any substitution without the written approval of the Owner.

7.4.4 All products and materials incorporated into the Project as part of the Work will be certified as “asbestos-free” and “lead-free” by United States standards. At the completion of the Project, the Design-BUILDER will certify that all materials and products incorporated into the Work meet the requirements of this Section.

7.4.5 The Design-BUILDER will be fully responsible for determining which materials are long-lead items, will discuss with the PMT if any such items should be procured prior to the execution of the Final Target Cost Amendment, and will be responsible to ensure that such items are ordered in a manner to ensure the timely completion of the Project.

7.5 Taxes. The Owner will pay Washington State Sales Tax (WSST) to the Design-BUILDER based on approved progress payments. The Design-BUILDER will pay sales, consumer, use, B&O, income, and similar taxes, for the Work provided by the Design-BUILDER that are legally enacted when the Final Target Cost Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

7.6 Concealed or Unknown Conditions.

7.6.1 If the Design-BUILDER encounters conditions at the Project site that are subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature that 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 will give written notice to the PMT within seven (7) days of first observance of the conditions. Conditions will not be disturbed prior to such notice.

7.6.2 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 Final Target Cost, or both, provided a request for equitable adjustment is made.

7.7 Allowances.

7.7.1 Unless otherwise provided in the Contract Documents:

7.7.1.1 Allowances will cover the cost to the Design-BUILDER of materials and equipment delivered at the Project site and all required taxes, less applicable trade discounts;

7.7.1.2 Whenever costs are more than or less than an Allowance, the Base Target Cost or, if applicable, the Final Target Cost, will be adjusted by Change Order. The amount of the Change Order will reflect the difference between the actual Chargeable Costs for the Allowance item and the Allowance.

7.7.2 The Owner will make selections of materials and equipment with reasonable promptness for Allowances requiring Owner selection.

7.8 Key Personnel and Design-Build Team Members.

7.8.1 The Design-BUILDER will enforce strict discipline and good order among the Design-BUILDER’s employees and other persons carrying out the Work. The Design-BUILDER will not permit employment of unfit persons or persons not properly skilled in tasks assigned to them or to whom the Owner has made reasonable and timely objection.

7.8.2 Except for those persons or entities already identified or required in the Final Target Cost Amendment, the Design-BUILDER, as soon as practicable after execution of the Final Target Cost Amendment, will furnish in to the PMT the names of persons or entities (including

those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work through the updated Procurement and Equity Plan. The Owner will reply promptly to confirm whether the Owner has an objection to any such proposed person or entity.

7.8.2.1 If the Owner has an objection to a person or entity proposed by the Design-Builder, the Design-Builder will propose another to whom the Owner has no objection.

7.8.3 If the Design-Builder needs to change any of the personnel or Design-Build Team Members identified in the Final Target Cost Amendment, the Design-Builder will notify the PMT and provide the name and qualifications of the new personnel or Design-Build Team Member. The Owner will promptly notify the Design-Builder if the Owner has reasonable objection to the proposed personnel or Design-Build Team Member.

7.8.4 The Design-Builder will be responsible for labor peace on the Project and will at all times use its best efforts and exercise its best judgment as an experienced design-builder to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances.

7.8.5 The Design-Builder will maintain a daily log containing a record of weather; the personnel and Design-Build Team Members working on the Project site; number of workers; equipment at the Project site; deliveries; Work accomplished; problems encountered; and other similar relevant data as the Owner may reasonably require. The log will be available to the Owner, but information therein will not constitute notice to the Owner.

7.9 Use of the Project Site. The Design-Builder will confine operations at the Project site to areas permitted by the Legal Requirements and the Contract Documents.

7.10 Cutting and Patching.

7.10.1 The Design-Builder will not cut, patch, or otherwise alter fully or partially completed construction by the Owner or Owner's separate contractor except with written consent of the Owner and of such Owner's separate contractor; such consent will not be unreasonably withheld.

7.10.2 Existing landscaping, utilities, topography, streets, curbs, and walks that are damaged or removed due to excavations or other construction work will be patched, repaired, or replaced by the Design-Builder to the satisfaction of the Owner, the owner of such structures and facilities, and Governmental Authorities. In the event a Governmental Authority requires that such repairing and patching be done with its own labor and/or materials, the Design-Builder will abide by such requirement and it will pay for such Work as a Chargeable Cost within the Final Target Cost.

7.11 Cleaning Up.

7.11.1 The Design-Builder will keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and will remove such waste materials or rubbish from the Project site once a week. At the Owner's request and, in any event, at the completion of the Work, the Design-Builder will remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

7.12 Access to Work. The Design-Builder will provide the Owner and Owner's separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder will notify the Owner regarding Project safety criteria and programs, which the Owner, and Owner's separate contractors and consultants, will comply with while at the Project site.

7.13 Construction by Owner or by Separate Contractors.

7.13.1 Owner's Right to Perform Construction and to Award Separate Contracts.

The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project, or other construction or operations on the Project site. The Owner will notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder asserts that delay or additional cost is involved because of such action by the Owner, the Design-Builder will make a Claim as provided in Article 16.

7.13.2 The Design-Builder will work together with all entities working at the Project site, including the Owner and Owner's separate contractors and consultants, in a positive atmosphere and according to professional standards in order to achieve the Project goals in respect to system performance, quality, safety, and Milestones.

7.13.3 The Design-Builder will verify the scope of work for all entities performing a portion of the Project, including Owner's separate contractors, to verify that the various connections and interfaces between each entities' work are complete including the: (i) technical coordination and communication with connected installations including the building; (ii) direct reporting of discrepancies with connected installations; (iii) organization of respective stages of completion and certification phases; (iv) incorporated planning of the Work at the Project site; and (v) preparation activities with the Design-Builder and connected installations.

7.13.4 The Design-Builder is responsible for ensuring the technical coordination of the Work and the interface of the Work with the work of other entities, including Owner's separate contractors. The Owner will have the right to postpone the remaining payments to the Design-Builder if a coordination or interface error, discrepancy, or omission is caused by the Design-Builder and is not resolved by Design-Builder immediately following the Owner's request to remedy such coordination error, discrepancy, or omission.

7.13.5 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or Owner's separate contractors, the Owner will be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

7.14 Mutual Responsibility.

7.14.1 The Design-Builder will afford the Owner and Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and will connect and coordinate the Design-Builder's construction and operations with theirs as required by the Contract Documents.

7.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or an Owner's separate contractor, the Design-Builder will, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or Owner's separate contractors that would render it unsuitable for proper execution of the Design-Builder's Work. Failure of the Design-Builder to report will constitute an acknowledgment that the Owner or Owner's separate contractors completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

7.14.3 The Design-Builder will reimburse the Owner for costs the Owner incurs that are payable to an Owner's separate contractor because of the Design-Builder's delays, improperly timed activities, or defective construction. Such costs may be compensated from any available Project Contingency with written approval of the PMT.

7.14.4 The Design-Builder will promptly remedy damage the Design-Builder causes to completed or partially completed construction or to property of the Owner or Owner's separate contractors, as provided in Section 12.2.5.

- 7.15 BIM.** The Model will be continually updated throughout the Construction Phase in accordance with the BIM Execution Plan so that the Model is current with the actual "as-built" condition, and, when completed, will become the Record Model.
- 7.16 Commissioning.** The Design-Builder and other necessary Design-Build Team Members, and Owner's maintenance personnel, will schedule and oversee the final testing and start-up of utilities, operational systems, and equipment, and assist the Owner with the building commissioning. All inspections and testing will be conducted by the Owner, any third-party commissioning agent, and, if applicable, the Governmental Authorities. During commissioning and before Final Completion, the Design-Builder will oversee the operation, adjustment, and balancing of all equipment, and training of Owner's employees in the correct operation and maintenance of equipment.

Article 8

CHANGES IN THE WORK

8.1 Generally.

8.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order or Owner's Directive, subject to the limitations stated in this Article 8 and elsewhere in the Contract Documents.

8.1.2 A Change Order will be based upon agreement of the PMT. The Owner may issue an Owner's Directive without agreement by the PMT.

8.1.3 Changes in the Work will be performed under applicable provisions of the Contract Documents, and the Design-Builder will proceed promptly, unless otherwise provided in the Change Order, accepted Change Order Proposal, order for a minor change in the Work, or Owner's Directive.

8.1.4 Before effectuating a change in the Work, the Owner may request that Design-Builder prepare a Change Order Proposal. The Design-Builder will submit its responsive Change Order Proposal to the PMT as soon as possible (and within seven (7) days), and will in good faith specify the components and amounts by which the Base Target Cost, Final Target Cost, and/or Contract Time would change. Labor, materials, and equipment will be limited to Chargeable Costs plus Fee. The Owner may reject the Change Order Proposal, in which case the Owner may either not agree to the change in the Work or may order the change through an Owner's Directive or an order for a minor change in the Work.

8.1.5 If the Design-Builder adds a reservation of rights that has not been initialed by the Owner to any Change Order, Owner's Directive, Change Order Proposal, Application for Payment or any other document, all amounts therein will be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner to indicate agreement with the reservation, and if the Design-Builder negotiates the check for such payment, then the reservation of rights will be deemed waived, withdrawn and of no effect.

8.2 Change Orders.

8.2.1 A Change Order is a written instrument executed by the Owner and Design-Builder stating its agreement upon all of the following:

- 8.2.1.1 The change in the Work;
- 8.2.1.2 The amount of the adjustment, if any, in the Base Target Cost or Final Target Cost; and
- 8.2.1.3 The extent of the adjustment, if any, in the Contract Time.

8.3 Owner's Directives.

8.3.1 An Owner's Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Base Target Cost, Final Target Cost, and/or Contract Time. The Owner may by Owner's Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Base Target Cost, Final Target Cost, and/or Contract Time being adjusted accordingly.

8.3.2 An Owner's Directive will be used in the absence of total agreement on the terms of a Change Order.

8.3.3 If the Owner's Directive provides for an adjustment to the Base Target Cost or Final Target Cost, the adjustment will be based on the Chargeable Costs and Fee applicable to such Chargeable Costs.

8.3.4 Upon receipt of an Owner's Directive, the Design-Builder will promptly proceed with the change in the Work involved. As soon as possible, and within seven (7) days of receipt, the Design-Builder will notify the Owner in writing of the Design-Builder's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Owner's Directive for determining the proposed adjustment in the Base Target Cost, Final Target Cost, and/or Contract Time. The Design-Builder's response will reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. If the Design-Builder and Owner have not reached resolution on the proposed adjustment to the Base Target Cost, Final Target Cost, and/or Contract Time within a reasonable time after the Design-Builder's notice of disagreement under this Section, then the SMT will confer to reach prompt resolution of the proposed adjustment. If the SMT is unable to reach resolution of the proposed adjustment within a reasonable time after the conference, the dispute regarding the proposed adjustment will be resolved as set forth in Article 16.

8.3.5 An Owner's Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including any adjustment in Base Target Cost, Final Target Cost, and/or Contract Time or the method for determining them. Such agreement will be effective immediately and will be incorporated into a Change Order.

8.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Base Target Cost or Final Target Cost the cost is to be determined based on the Chargeable Costs and Fee applicable to such Chargeable Costs, and the Design-Builder must separately track its Chargeable Costs incurred in complying with the Owner's Directive together with appropriate supporting data.

8.3.7 Pending final determination under Section 8.3.4 of the total cost of an Owner's Directive, and provided that any reservations of rights in respect to the Owner's Directive have been initialed by the Owner, amounts not in dispute for such changes in the Work will be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

8.3.8 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Base Target Cost, Final Target Cost, and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement will be documented by Change Order. A Change Order may be issued for all or any part of an Owner's Directive.

8.4 Minor Changes in the Work.

8.4.1 The Owner will have authority to order minor changes in the Work not involving adjustment in the Base Target Cost or Final Target Cost, or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order and will be binding on the Design-Builder. The Design-Builder will carry out such written orders promptly. If the Design-Builder believes that such order causes an increase

in the Base Target Cost or Final Target Cost, or an extension of the Contract Time, the Design-Builder must properly submit a notice to the Owner within seven (7) days of the issuance of the order. If the Design-Builder and Owner have not reached resolution regarding whether the minor change in the Work increases the Base Target Cost, Final Target Cost, or Contract Time, within a reasonable time after the Design-Builder's notice under this Section, the PMT will confer to reach prompt resolution. If the PMT is unable to reach resolution within a reasonable time after the conference, then the SMT will confer to reach prompt resolution of the proposed adjustment. If the SMT is unable to resolve the proposed adjustment within a reasonable time, the dispute regarding the proposed adjustment will be resolved as set forth in Article 16.

- 8.5 Change in Contract Time.** Any adjustment in the Contract Time arising from a change or a Claim will be limited to the change in the actual critical path of the Project schedule for the Work directly caused thereby.

Article 9

OWNER'S RESPONSIBILITIES

9.1 Generally.

9.1.1 The Owner will designate in writing in the Business Terms Sheet a representative who will have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

9.1.2 The Owner will render decisions in a timely manner and in accordance with the Project schedule agreed to by the Owner.

9.2 Information and Services Required of the Owner.

9.2.1 The Owner will furnish information or services required of the Owner by the Contract Documents upon written request, with reasonable promptness.

9.2.2 The Owner will obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

9.2.3 The Owner will cooperate with the Design-Builder in securing building and other permits, licenses, and inspections. The Design-Builder is responsible to secure and pay for all permits within the Final Target Cost. The Design-Builder will cooperate with the Owner to secure the Master Use Permit and assist with the preparation of the Environmental Impact Statement.

9.2.4 The services, information, surveys and reports to be provided by the Owner under this Agreement will be furnished at the Owner's expense and, except as otherwise specifically provided in this Agreement or elsewhere in the Contract Documents, or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder will be entitled to rely upon the accuracy and completeness thereof. In no event will the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

9.2.5 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Contract Documents, the Owner will give written notice thereof to the PMT. The Owner's failure to so notify will not relieve the Design-Builder of its responsibilities under this Agreement, and except as otherwise required by applicable building codes the Owner will have no duty of observation, inspection, or investigation.

9.2.6 The Owner will purchase and maintain insurance as set forth in Exhibit A-2.

9.3 Submittals.

9.3.1 The Owner will review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and

completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for determining that the Submittals are in conformance with the Contract Documents, all of which remain the responsibility of the Design-Builder as required by the Contract Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the PMT or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals will not relieve the Design-Builder of the obligations under the Contract Documents. The Owner's review will not be deemed as an acceptance of the Submittals, or approval of safety precautions or any construction means, methods, techniques, sequences, or procedures.

9.3.2 Upon review of the Submittals required by the Contract Documents and in conformance with the level of review described in Section 9.3.1, the Owner will notify the PMT of any identified non-conformance with the Contract Documents.

- 9.4** Visits to the Project site by the Owner will not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The presence of the Owner at the Project site will not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived. The Owner will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Contract Documents.
- 9.5** The Owner will not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Contract Documents or Legal Requirements. The Owner will not have control over or charge of, and will not be responsible for acts or omissions of the Design-Build Team Members, their agents or employees, or any other persons or entities performing portions of the Work.
- 9.6** The Owner has the authority to reject Work that does not conform to the Contract Documents. The Owner will have authority to require inspection or testing of the Work in accordance with Section 18.5.2 or to perform such inspections or testing on its own, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Owner nor a decision either to exercise or not to exercise such authority will give rise to a duty or responsibility of the Owner to Design-Build Team Members, their agents or employees, or other persons or entities performing portions of the Work.
- 9.7** The Owner will determine the date or dates of Substantial Completion in accordance with Section 11.4 and the date of Final Completion in accordance with Section 11.5.

9.8 Owner's Right to Stop Work.

If the Design-Builder fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 13.2 or persistently or materially fails to carry out Work in accordance with the Contract Documents, or an immediate danger exists, or a Washington Industrial Safety and Health Act (WISHA) violation exists and corrective actions have not been taken by the Design-Builder, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work will not give rise to a duty on the part of the Owner to exercise this right for the benefit of any Design-Build Team Member. The Owner may issue a non-written order due to the existence of an immediate danger or a WISHA violation, which shall be followed-up in writing within 24 hours of issuance of the order.

9.9 Owner's Right to Carry Out the Work.

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Contract

Documents and fails within a 10 day period after receipt of written notice from the Owner to commence and continue to make reasonable progress toward the correction of such default or neglect with diligence and promptness, the Owner may, after such 10 day period, and without prejudice to other remedies the Owner may have, correct such deficiencies. The right of the Owner to correct the Work pursuant to this Section will not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others. In such case, an appropriate Change Order will be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder will pay the difference to the Owner.

Article 10

TIME

10.1 Progress and Completion.

10.1.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement, the Design/Preconstruction Amendment, and/or the Final Target Cost Amendment, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

10.1.2 The Design-Builder will not, except by agreement of the Owner in writing, enter the Project site or commence the Work prior to the effective date of insurance. The Contract Time will not be adjusted as a result of the Design-Builder's failure to obtain required insurance.

10.1.3 The Design-Builder will proceed expeditiously with adequate forces and will achieve the Milestones and Substantial Completion within the Contract Time and will achieve Final Completion within the dates set forth in Exhibit C-3.

10.1.4 The Timely Completion of This Project Is Essential to the Owner. The Owner will incur serious and substantial damages if the Milestones and Substantial Completion do not occur as set forth in the Contract Documents. The Design-Builder will furnish sufficient forces, construction plant and equipment, and will work such hours, including night shifts, overtime operations, and weekend and holiday work as may be necessary to ensure the production of the Work in accordance with the Milestones and required date of Substantial Completion set forth in Exhibit C-3 and the Project schedule. If the Design-Builder fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of any Design-Build Team Member, fails to meet the Project schedule, the Design-Builder will take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work, all without increasing the Base Target Cost or Final Target Cost.

10.2 Delays and Extensions of Time.

10.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by (a) an act or neglect of the Owner or of Owner's separate contractors or consultants; (b) changes ordered in the Work by the Owner; (c) abnormal inclement weather (see Section 10.2.4), (d) unexpected industry-wide labor disputes, fire, unusual delay in deliveries, delays by Governmental Authorities (including permit delays not caused by the Owner), or unavoidable casualties or force majeure events; (e) delay authorized by the Owner pending mediation and binding dispute resolution; or (f) other causes that the Owner determines may justify delay, then the Contract Time will be extended, limited to the change in the actual critical path of the Project schedule directly caused thereby, by Change Order for such reasonable time as the Owner may determine consistent with the provisions of the Contract Documents. In no event, however, will the Design-Builder be entitled to any extension of time absent proof of (a) delay to an activity on the critical path of the Project schedule so as to actually delay the Project completion beyond the required date of Substantial Completion or (b) delay transforming an activity into the critical path of the Project schedule, so as to actually delay the Project completion beyond the required date of Substantial Completion.

10.2.2 Claims relating to time will be made in accordance with applicable provisions of Article 16 and will include any proposed changes in the Project schedule or the Contract Time, a description of any event that could delay performance or supplying of any item of the Work, the expected duration of the delay, the anticipated effect of the delay on the Project schedule, and the action being taken to correct the delay situation. That the Owner may be aware of the occurrence or existence of a delay through means other than the Design-Builder's written notification will not constitute a waiver of a timely or written notice or Claim.

10.2.3 This Section 10.2 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

10.2.3.1 If the delay was not caused by the Owner or a Design-Build Team Member or anyone acting on behalf of any of them, the Design-Builder is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not an increase in the Base Target Cost or Final Target Cost. If the delay was caused by any Design-Build Team Member, or anyone acting on behalf of any of them, the Design-Builder is not entitled to an increase in the Contract Time or in the Base Target Cost or Final Target Cost. The Design-Builder will not be entitled to an increase in the Base Target Cost, Final Target Cost, or Contract Time where the Design-Builder could have reasonably avoided the delay by the exercise of due diligence. The Design-Builder will be entitled to an increase in the Base Target Cost or Final Target Cost, provided it is consistent with the terms of the Contract Documents, only if the delay was in the critical path, was unreasonable, and was caused by the Owner or anyone acting on its behalf as permitted under the Contract Documents. The Owner is not obligated directly or indirectly for an increase in the Base Target Cost or Final Target Cost for any delay suffered by Design-Builder that does not increase the Contract Time.

10.2.3.2 No damages will be allowed to the Design-Builder for any time prior to seven (7) days before receipt by the Owner of written notice of the Claim of the delay pursuant to Section 16.1.

10.2.3.3 The Design-Builder will not in any event be entitled to an increase in the Base Target Cost or Final Target Cost arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; expectant underrun; trade stacking; reassignment of workers; rescheduling of work, concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages. Any effect that such alleged costs may have upon any Design-Build Team Member is fully compensated through Chargeable Costs, if any, or through Change Orders.

10.2.3.4 Any float time in the schedule, whether or not the float time is described as such on the Project schedule, may be utilized by any Design-Build Team Member or the Owner as approved in writing by the PMT. The Design-Builder will not be entitled to any adjustment in the Contract Time or the Base Target Cost or Final Target Cost, or to any additional payment of any sort, by reason of the loss or the use of any float time.

10.2.4 If inclement weather conditions are the basis for a Claim for additional time, such Claim will be documented by data substantiating that the inclement weather conditions were abnormal for the period of time, could not have been reasonably anticipated or mitigated, and had an adverse effect on the Project schedule. Neither the Base Target Cost, nor the Final Target Cost, nor the Contract Time will be adjusted for normal inclement weather; however, costs resulting from the impacts of inclement weather may be compensated from any available Project Contingency with written approval of the PMT. The Design-Builder will be entitled only to a change in the Contract Time (but not the Base Target Cost or the Final Target Cost) if the Design-Builder can substantiate to the reasonable satisfaction of the Owner that there was materially greater than normal inclement weather using a 10 year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project during the time period at issue, and that the inclement weather actually extended the critical path of the Work. If the total net accumulated number of calendar days lost due to inclement weather

during the time period at issue exceeds the total net accumulated number to be expected for the same period based on this data, thus constituting abnormal inclement weather, the Contract Time will be extended by the corresponding number of calendar days indicated on the critical path of the Project schedule.

Article 11

PAYMENTS AND PROJECT COMPLETION

11.1 Schedule of Values.

11.1.1 Within 10 days of the Effective Date or execution of the Final Target Cost Amendment, the Design-Builder will submit for Owner's review and approval a schedule of values in a format provided by the Owner 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.

11.1.2 The Owner will review and approve the schedule of values so as not to delay the submission of the Design-Builder's subsequent Application for Payment. The Owner and Design-Builder will resolve any differences so as not to delay the Design-Builder's submission of its subsequent Application for Payment.

11.2 Progress Payments.

11.2.1 Progress payments will be made monthly for the Compensation earned, as set forth in Article 2, during the calendar month preceding the Application. The approved schedule of values will serve as the basis for monthly progress payments.

11.2.1.1 Draft Application. On or about the 25th of each month, the Design-Builder will submit to the Owner a report on the current progress of the Work as compared to the Project schedule, and a draft, itemized Application for Payment for the Compensation earned during the current calendar month on a form supplied or approved by the Owner. This will not constitute an Application for Payment. The Design-Builder and the Owner will confer regarding the current progress of the Work and the amount of payment to which the Design-Builder is entitled. The Owner may on occasion request the Design-Builder to provide data substantiating the Design-Builder's right to payment, and reflecting retainage as provided for in the Contract Documents.

11.2.1.2 Payment Request. After the Design-Builder and the Owner have met and conferred regarding the updated draft application, and the Design-Builder has furnished all progress information required and all data requested by the Owner under Section 11.2.1.1 above, the Design-Builder will submit to the Owner on or before the 10th day of each month, beginning with the first month after the commencement, the Design-Builder's Application for Payment for the Compensation earned during the previous calendar month on a form supplied or approved by the Owner. Among other things, each Application for Payment will state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with the Owner and that all payments due to the Design-Build Team Members from the Owner's prior progress payments have been paid.

11.2.1.3 Disputed Amounts. If the Design-Builder believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Design-Builder may, also by the 10th day of the month, submit to the Owner along with the Application for Payment a separate written payment request specifying the exact additional amount due, the category in the schedule of values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, the Design-Builder and all Design-Build Team Members will file with the Owner by the 10th day of the month certified copies of all payroll records relating to the additional amount due.

11.2.1.4 Validity of Payment Requests. An Application for Payment will not be valid unless it complies with the requirements of the Contract Documents.

11.2.2 The Owner will make payment within 30 days after Owner's receipt of each Application for Payment, but in each case less the total of payments previously made, less retainage, and less amounts properly withheld pursuant to Section 11.8.

11.2.3 Design-Builders and subcontractor of every tier shall file Certified Payrolls directly with the Department of Labor and Industries at least once per month.

11.3 Retainage on Progress Payments.

11.3.1 Pursuant to Chapter 60.28 RCW (Lien for Labor, Materials, Taxes on Public Works), the Owner will retain 5% of each approved Application for Payment submitted during the Construction Phase 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 that 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.

11.3.2 The Owner will release to Design-Builder all retained amounts in accordance with Chapter 39.12 RCW and Chapter 60.28 RCW. Prior to such release of retainage, the Design-Builder will provide, pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from Design-Builder and from each Design-Build Team Member, approved by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by Design-Builder or Design-Build Team Member, and, pursuant to RCW 60.28.021, and the Owner has received lien releases from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries. 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.

11.4 Substantial Completion.

11.4.1 The Work has not achieved Substantial Completion until all Work, other than incidental corrective or punch list Work or final cleaning has been completed, including but not limited to the following:

11.4.1.1 The Design-Builder has obtained applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of the completed Work;

11.4.1.2 All major building systems have been completed;

11.4.1.3 Final changeover of locks has occurred and the Design-Builder has transmitted new keys to the Owner; and

11.4.1.4 Temporary facilities and services have been discontinued and or removed from the Project site or, if requested in writing by the Owner, turned over to the Owner.

The Work is not Substantially Complete unless the Owner reasonably judges that the Work can achieve Final Completion by the required date for Final Completion. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work has achieved Substantial Completion or is acceptable in whole or in part.

11.4.2 The Design-Builder will notify the Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, has achieved Substantial Completion. Within 5 days of the Owner's receipt of the Design-Builder's notice, the Owner and the Design-Builder will jointly inspect such Work to verify that it has achieved Substantial Completion in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, the Owner will prepare and issue a letter of Substantial Completion

that will set forth (i) the Substantial Completion date for the Work or portion thereof, (ii) the remaining punch list items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing the Owner's and the 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 Substantial Completion date, except as may otherwise be noted in the letter of Substantial Completion.

11.4.3 The Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a letter of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 11.4.1, (ii) the Design-Builder and Owner have obtained the consent of their sureties and insurers, and, if applicable, the Governmental Authorities, and (iii) the Owner and the Design-Builder agree that the Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

11.5 Final Completion.

11.5.1 The Design-Builder will complete all punch list items to be completed by the required date for Final Completion or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period) provided that the Design-Builder commences to correct the item within that period and thereafter diligently and in good faith pursues the corrective action to completion. If, after the date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed by the date established for Final Completion (or such other period of time as is specified in the Contract Documents), the Owner may, upon 7 days' written notice to the Design-Builder, take over and perform some or all of the punch list items.

11.5.2 The Work has not achieved Final Completion until the entire Work has been completed in accordance with the Contract Documents, including but not limited to the following:

11.5.2.1 Permanent occupancy permits (if only temporary occupancy permits were previously issued) have been obtained;

11.5.2.2 Tools, spare parts, extra stock of material, and similar physical items have been delivered to the Owner as required by the Contract Documents;

11.5.2.3 Final cleaning after punch list Work has been completed;

11.5.2.4 Instruction and training sessions on all major building systems including MEP, controls, fire alarm, fire sprinkler, and security have been conducted;

11.5.2.5 Executed warranties have been submitted; and

11.5.2.6 The final commissioning report has been accepted.

11.5.3 The Design-Builder will notify the Owner when it believes the Work has achieved Final Completion. Within 5 days of the Owner's receipt of the Design-Builder's notice, the Owner and the Design-Builder will jointly inspect such Work to verify that it has achieved Final Completion in accordance with the requirements of the Contract Documents.

11.5.4 Pursuant to Chapter 60.28 RCW, completion of the contract work will occur upon Final Acceptance.

11.6 Final Payment.

11.6.1 After receipt of the Design-Builder's final Application for Payment, the Owner will make final payment (not including the payment of retainage, which will be made pursuant to Chapter 60.28 RCW) to the Design-Builder within 30 days, provided that the Design-Builder has achieved Final Completion.

11.6.2 At the time of submission of its final Application for Payment, the Design-Builder will comply with the requirements of the Contract Documents, including but not limited to providing the following information:

11.6.2.1 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 the Owner's interests;

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

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

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

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

11.6.2.6 Certification that the materials in the Work are "lead-free" and "asbestos-free"; and

11.6.2.7 Determination of the final earned Incentive Compensation for the Risk/Reward Team Members per Section 2.5.

11.7 Interest. Payments due and unpaid by the Owner to Design-Builder, whether progress payments or final payment, will bear interest as specified by Chapter 39.76 RCW (Interest on Unpaid Public Contracts).

11.8 Withholding of Payments.

11.8.1 Except as set forth in Article 7 of the Contract, on or before the date established in the Contract, the Owner will pay Design-Builder all amounts properly due in accordance with Chapter 39.76 RCW and the Contract.

11.8.2 If, at any time after the Construction Phase Work achieves fifty percent (50%) completion, the Owner reasonably determines that the Final Actual Cost is likely to exceed the Final Target Cost, the Owner may offset the expected overruns for which Design-Builder will be responsible against the Chargeable Costs included in subsequent Applications for Payment. Any offset under this Section will be reconciled upon Final Completion if the Final Actual Cost does not exceed the Final Target Cost.

Article 12

PROTECTION OF PERSONS AND PROPERTY

12.1 Safety Precautions and Programs.

12.1.1 The Design-Builder will be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Design-Builder will be solely and completely responsible for conditions of the Project site, including safety of all persons and property, during performance of the Work, and the performance of the Design-Build Team Members, and any of the Owner's separate contractors or consultants. The Design-Builder will maintain the Project site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement will apply continuously and not be limited to working hours. Any review by the Owner will not be construed to include a review of the adequacy of the Design-Builder's safety measures in, on, or near the Project site.

12.1.2 No action or inaction of the Owner relating to safety or property protection or a

violation thereof will: (i) relieve the Design-Builder of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (ii) impose any obligation upon the Owner to inspect or review the Design-Builder's safety program or precautions or to enforce the Design-Builder's compliance with the requirements of this Article; (iii) impose any continuing obligation upon the Owner to ensure the Design-Builder performs the Work safely or to provide such notice to the Design-Builder or any other person or entity; (iv) affect the Design-Builder's sole and complete responsibility for performing the Work safely or the Design-Builder's responsibility for the safety and welfare of its employees; and/or (v) affect the Design-Builder's responsibility for the protection of property, the Owner's employees, and the general public.

12.2 Safety of Persons and Property.

12.2.1 The Design-Builder will be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury, or loss to:

12.2.1.1 employees on the Work and other persons who may be affected thereby;

12.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of any Design-Build Team Member, or other person or entity performing Work for the Design-Builder; and

12.2.1.3 other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

12.2.2 The Design-Builder will comply with, and give notices required by any of the Legal Requirements, bearing on safety of persons or property, or their protection from damage, injury, or loss. The Design-Builder will comply with all notices and comply with all requests from the Owner regarding the safety and protection of the Owner's employees. The Design-Builder will comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations will apply to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement will apply.

12.2.3 The Design-Builder will implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities of the safeguards and protections.

12.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder will exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

12.2.5 The Design-Builder will promptly remedy damage and loss (other than damage or loss insured under the Owner's insurance required by the Contract Documents) to property referred to in Sections 12.2.1.2 and 12.2.1.3, caused in whole or in part by any Design-Build Team Member, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 12.2.1.2 and 12.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 4.1.15.

12.2.6 The Design-Builder will designate a responsible member of the Design-Builder's

organization, at the Project site, whose duty will be the prevention of accidents. This person will be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

12.2.7 The Design-Builder will not permit any part of the Work or Project site to be loaded so as to cause damage or create an unsafe condition.

12.2.8 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Design-Builder will protect from damage, weather, deterioration, theft, vandalism and malicious mischief all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion.

12.2.9 Any notice given to the Design-Builder by the Owner of a safety or property protection violation will not: (i) relieve the Design-Builder of sole and complete responsibility for the violation and the correction thereof, or for sole liability for the consequences of said violation; (ii) impose any obligation upon the Owner to inspect or review the Design-Builder's safety program or precautions or to enforce the Design-Builder's compliance with the requirements of this Article 12; and/or (iii) impose any continuing obligation upon the Owner to provide such notice to the Design-Builder or any other persons or entity.

12.2.10 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, immediate notice of the injury or damage, whether or not insured, will be given to the other party and, if immediate notice was not in writing, followed-up in writing within 24 hours after discovery. The notice will provide sufficient detail to enable the other party to investigate the matter. This Section does not apply to Claims, damages for additional costs, acceleration, or delay.

12.3 Hazardous Conditions.

12.3.1 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 Project 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, the Governmental Authorities.

12.3.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner will take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures will include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered and (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless, which may include engaging the Design-Builder to perform remedial measures.

12.3.3 The Design-Builder may be entitled to an adjustment in the Final Target Cost to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions and for any remedial measures performed by the Design-Builder in accordance with Section 12.3.2.

12.4 Emergencies.

In an emergency affecting safety of persons or property, the Design-Builder will act, at the Design-Builder's reasonable discretion, to prevent threatened damage, injury, or loss. To the extent that the Owner directs the Design-Builder to assist in resolving such an emergency, the Design-Builder will work as so instructed. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency will be determined as provided in Article 8.

12.5 Public Safety and Convenience.

12.5.1 The Design-Builder will conduct its Work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and the residents in the vicinity of the Work and to ensure the protection of persons, property, and natural resources. No road or street will be closed to the public except with the written permission of the Owner and the Governmental Authorities. Fire hydrants on or adjacent to the Work will be accessible to fire-fighting equipment at all times. Temporary provisions will be made by the Design-Builder to ensure the use of sidewalks, fire lanes, and private and public driveways, and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches, and natural water courses, if any, on the Project site.

Article 13 **UNCOVERING AND CORRECTION OF WORK**

13.1 Uncovering of Work.

13.1.1 If a portion of the Work is covered contrary to the request of the Owner or requirements of a Governmental Authority or as otherwise specifically required in the Contract Documents, it must be uncovered for the Owner's or Governmental Authority's examination and be replaced at the Design-Builder's expense without change in the Contract Time or Final Target Cost.

13.1.2 If a portion of the Work has been covered which the Owner or a Governmental Authority has not specifically requested to examine prior to its being covered and for which the Contract Documents did not require inspection, the Owner or a Governmental Authority may request to examine such Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Contract Documents, which the Design-Builder will uncover. If such Work is in accordance with the Contract Documents, a Change Order will be issued to adjust the Contract Time and Final Target Cost, as appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering and correcting the Work will first be compensated from any available Project Contingency amounts. If the Project Contingency is exhausted, then any remaining amount under this Section 13.1.2 may be a Chargeable Cost subject to the Final Target Cost and the other terms of the Contract Documents and the Design-Builder will not be entitled to a change in the Contract Time unless the condition was caused by the Owner or Owner's separate contractor, in which event the Owner will be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

13.2 Correction of Work.

13.2.1 Before or After Substantial Completion. The Design-Builder will promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed.

13.2.1.1 Before Substantial Completion, costs of correcting rejected Work will first be compensated from any available Project Contingency. If the Project Contingency is exhausted, then any remaining amount expended will be a Chargeable Cost subject to the Final Target Cost and the other terms of the Contract Documents.

13.2.1.2 After Substantial Completion, costs of correcting rejected Work will at the Design-Builder's expense.

13.2.2 One Year Correction Period.

13.2.2.1 In addition to the Design-Builder's obligations under Section 4.1.14, if, within 1 year of the date of Substantial Completion, or within the time period established by any applicable special warranty, any of the Work is found not to be in accordance with the

requirements of the Contract Documents, the Design-Builder will correct it at the Design-Builder's expense (and without reimbursement from the Owner) promptly after receipt of written notice from the Owner to do so unless such requirements are modified by the Owner. The Owner will provide prompt notice following discovery of a nonconforming condition. If the Design-Builder does not initiate corrective Work within the timelines outlined below, the Owner may then proceed to correct the Work and the Design-Builder will be liable for all costs. This correction-period obligation will survive acceptance of the Work under the Contract and/or termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

- (a) If the nonconforming Work either prevents the use of a portion of the building and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard, the Design-Builder will initiate corrective Work at the Project site the same day if the Design-Builder is notified prior to noon, or by noon the following day if notified after noon, and will complete corrective action within 48 hours.
- (b) If the nonconforming Work has the potential of becoming a safety hazard, of affecting internal security, or of limiting the use of the building, the Design-Builder will initiate corrective Work at the Project site within 2 working days and will complete such corrective Work within 5 working days.
- (c) If the nonconforming Work does not have an impact on the use of the building, but must be fixed, the Design-Builder will initiate corrective Work at the Project site within 14 days and will complete such corrective Work within 28 days.

13.2.2.2 The 1-year period for correction of Work will be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

13.2.3 The Design-Builder will remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

13.2.4 Costs of correcting destroyed or damaged construction of the Owner or Owner's separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Contract Documents may be compensated from the Project Contingency. If the Project Contingency has been exhausted, or if the corrections are performed after Final Completion, the Design-Builder will correct the construction of the Owner or Owner's separate contractors at the Design-Builder's expense (and without reimbursement from the Owner).

13.2.5 Nothing contained in this Section 13.2 will be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Contract Documents. Establishment of the 1 year period for correction of Work as described in Section 13.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

13.3 Acceptance of Nonconforming Work.

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Final Target Cost will be reduced as appropriate and equitable. Such adjustment will be effected whether or not final payment has been made.

Article 14

OWNERSHIP OF WORK PRODUCT

- 14.1 Instruments of Service.** The drawings and specifications (including the Implementation Documents), renderings, surveys, reports, and other documents, including those prepared as 3D electronic models (including the Model), 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 will be permitted to retain copies, including reproducible and original 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, expand the Project, correct any deficiencies, make any renovations or repairs to the Project, or for future projects.
- 14.2 Design-Builder to convey Instruments of Service to Owner.** Upon the Owner's request if made during the Project or within 6 years of Substantial Completion, the Design-Builder will 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 above.
- 14.3 Submission of Instruments of Service Does Not Waive Rights.** Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project will not be construed as publication in derogation of any rights reserved in this Section.
- 14.4 Patent and Copyright Infringement.**

14.4.1 The Design-Builder will defend any action or proceeding brought against the Owner based on any claim that the Instruments of Service, 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. The Owner will give prompt written notice to the Design-Builder of any such action or proceeding and will reasonably provide authority, information, and assistance in the defense of same. The Design-Builder will indemnify and hold harmless the Owner and the other Indemnified Parties from and against all damages and costs, including but not limited to attorneys' fees and expenses. The Design-Builder agrees to keep the Owner informed of all developments in the defense of such actions.

14.4.2 If the 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, the Design-Builder will at its sole expense take reasonable steps to procure the right to operate or use the Work. If the Design-Builder cannot so procure such right within a reasonable time, the Design-Builder will promptly, at the Design-Builder's option and at the Design-Builder's expense, (a) modify the Work so as to avoid infringement of any such patent or copyright or (b) replace said Work with Work that does not infringe or violate any such patent or copyright.

14.4.3 The obligations set forth in this Section 14.4 will constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

Article 15

TERMINATION OR SUSPENSION

15.1 Termination by the Parties.

15.1.1 The Parties, by mutual agreement, may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of any Design-Build Team Member, for any of the following reasons:

15.1.1.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

15.1.1.2 An act of government, such as a declaration of national emergency, that

requires all Work to be stopped; or

15.1.1.3 Failure of the Owner to make payment of undisputed amounts on an Application for Payment within the time stated in the Contract Documents.

15.1.2 If one of the reasons described in Section 15.1.1 exist, the Design-Builder may, upon an additional 7 days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Chargeable Costs then incurred, Fee due based on Chargeable Costs incurred (but not for Chargeable Costs not incurred), and costs incurred by reason of such termination. The Owner may cure any default within such 7 day period, in which case the Design-Builder may not terminate the Contract. In no event will the total recovery of the Design-Builder exceed the compensation established for the phase of the Work when the termination occurs or, if no compensation is established, the Final Target Cost. No Incentive Compensation will be paid following a termination by the Design-Builder.

15.2 Termination by the Owner for Cause.

15.2.1 The Owner may, upon 7 days' written notice to the Design-Builder, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Design-Builder:

15.2.1.1 fails to submit the Design/Preconstruction Proposal or the Final Target Cost Proposal by the dates required by the Contract Documents;

15.2.1.2 persistently or repeatedly refuses or fails to supply enough properly skilled Design-Build Team Members, or personnel, workers, or proper materials;

15.2.1.3 fails to make prompt payment to Design-Build Team Members for services, materials or labor properly rendered in accordance with their respective agreements with the Design-Builder;

15.2.1.4 materially disregards any of the Legal Requirements;

15.2.1.5 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the completion of any Milestone or the Substantial Completion within the Contract Time;

15.2.1.6 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency; or

15.2.1.7 is otherwise guilty of a material or substantial breach of or default under a provision of the Contract Documents.

15.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, 7 days' written notice, terminate employment of the Design-Builder on all or a portion of the Work and may, subject to any prior rights of the surety:

15.2.2.1 Exclude the Design-Builder from the Project site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

15.2.2.2 Accept assignment of Design-Build Team Member agreements pursuant to Section 15.8;

15.2.2.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner will furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work; and

15.2.2.4 take or direct any or all of the actions in Section 15.6.1.

15.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 15.2.1, the Design-Builder will not be entitled to receive further payment until the Work is finished.

15.2.4 If the Owner's costs and damages exceed the Final Target Cost, the Design-Builder will pay the difference to the Owner. The obligation for such payments will survive termination of the Contract.

15.2.5 If the Owner terminates a portion of the Work, the Design-Builder will continue the performance of the remainder of the Work in accordance with the Contract Documents to the extent not terminated.

15.2.6 If, after the Design-Builder has been terminated pursuant to this Section, it is determined that none of the circumstances set forth in Section 15.2.1 exist, then such termination will be considered a termination for convenience pursuant to Section 15.4.

15.3 Suspension by the Owner for Convenience.

15.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

15.3.2 The Final Target Cost and Contract Time will be adjusted for changes in the cost and time caused by suspension, delay, or interruption as described in Section 15.3.1. Adjustment to the Final Target Cost will be consistent with the terms of the Contract Documents. No adjustment will be made to the extent:

15.3.2.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

15.3.2.2 that an equitable adjustment is made or denied under another provision of the Contract Documents.

15.4 Termination by the Owner for Convenience.

15.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Contract for the Owner's convenience and without cause.

15.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder will:

15.4.2.1 cease operations as directed by the Owner in the notice;

15.4.2.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

15.4.2.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements and purchase orders with Design-Build Team Members, and enter into no further Project agreements and purchase orders.

15.4.3 In case of such termination for the Owner's convenience, the Design-Builder will be entitled to receive payment consistent with the Contract Documents for Work properly executed and cost necessarily incurred by reason of such termination for (i) all Chargeable Costs incurred prior to the effective date of termination, (ii) the Fee due based on Chargeable Costs incurred (but not for Chargeable Costs not incurred), and (iii) reasonable expenses related to the termination, including demobilization and securing the Project site. Any dispute over the amount to be paid upon termination will be resolved under the dispute resolution procedures in Article 16. No Incentive Compensation will be paid following a termination for the Owner's convenience.

15.5 Termination for Failure to Agree on a Base Target Cost, Final Target Cost, or Milestones.

15.5.1 If the Owner and Design-Builder are unable to agree on a Base Target Cost, Final

Target Cost, and/or Milestones, or are unable to mutually negotiate and agree to the Design/Preconstruction Amendment or the Final Target Cost Amendment for any reason, the Owner may terminate the Contract and will pay the Design-Builder for the Chargeable Costs properly incurred prior to termination up to the Final Target Cost or the established maximum compensation for the applicable phase in which the termination occurs. No Incentive Compensation will be paid. As a condition precedent to any payment, the Design-Builder will provide to the Owner all Instruments of Service for the Project.

15.6 Effects of Termination by Owner.

15.6.1 Unless the Owner directs otherwise, after receipt of a Notice of Termination from the Owner pursuant to Sections 15.2, 15.4, or 15.5, the Design-Builder will promptly:

15.6.1.1 stop Work under the Contract on the date and as specified in the Notice of Termination;

15.6.1.2 place no further orders or contracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;

15.6.1.3 procure cancellation of all orders and contracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;

15.6.1.4 assign to the Owner all of the right, title and interest of the Design-Builder under all orders and contracts, as directed by the Owner, in which case the Owner will have the right, in its discretion, to settle or pay any or all Claims arising out of the termination of such orders and contracts;

15.6.1.5 with the Owner's approval, settle all outstanding liabilities and all Claims arising out of such termination of orders and contracts not assigned to the Owner;

15.6.1.6 transfer title and deliver to the entity or entities designated by the Owner all fabricated or unfabricated parts, Work in process, partially completed supplies, and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information, and other property related to the Work;

15.6.1.7 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Design-Builder in which the Owner has an interest; and

15.6.1.8 continue performance only to the extent not terminated.

15.6.2 In arriving at any amount due the Design-Builder after termination, the following deductions will be made:

15.6.2.1 all advance or other prior payments on account made to the Design-Builder applicable to the terminated portion of the Contract;

15.6.2.2 any Claim the Owner may have against the Design-Builder; and

15.6.2.3 an amount necessary to protect the Owner against outstanding or potential Claims.

15.6.3 The Design-Builder will refund to the Owner any amounts paid by the Owner to the Design-Builder in excess of costs reimbursable under the Contract Documents.

15.6.4 The Design-Builder will, for 6 years after the effective date of termination unless modified by the Owner, preserve and make available to the Owner, at all reasonable times at the office of the Design-Builder and without charge to the Owner, all books, records, documents, photographs, and other evidence bearing on the costs and expenses of the Design-Builder under the Contract and relating to the terminated Work. The Owner may have

costs reimbursable under this Article 15 audited and certified by independent certified public accountants selected by the Owner, who will have full access to all the books and records of the Design-Builder.

15.6.5 The Owner's rights to use the Instruments of Service in the event of a termination of the Contract are set forth in Article 14 and will survive any termination of the Contract.

15.7 The damages and relief from termination by the Owner specifically provided in this Article will be the Design-Builder's sole entitlement in the event of termination.

15.8 Contingent Assignment of Agreements.

15.8.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that:

15.8.1.1 assignment is effective only after termination of the Contract by the Owner, pursuant to Sections 15.2 or 15.4, and only for those agreements that the Owner accepts by written notification to the Design-Builder and Specialty Consultants and Trade Contractors whose agreements are accepted for assignment; and

15.8.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

15.8.2 When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under such agreement.

15.8.3 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the compensation under the assigned agreement will be equitably adjusted for increases in cost resulting from the suspension.

15.8.4 Upon such assignment to the Owner under this Section 15.8, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner will nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under such agreement.

Article 16 **CLAIMS AND DISPUTE RESOLUTION**

16.1 Claims. If either the Design-Builder or the Owner believes that it is entitled to relief against the other for any event arising out of or related to the Contract, then written notice will be given to the other stating the basis for its Claim. Such notice will, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in Contract Documents. In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed 7 days after the event giving rise to the Claim or after the claiming party reasonably should have recognized the event or condition giving rise to the Claim, whichever is later. Such notice will include sufficient information to advise the other party of the circumstances giving rise to the Claim and the specific contractual adjustment or relief requested.

16.2 Dispute Avoidance and Resolution.

16.2.1 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.

16.2.2 The Design-Builder and the Owner will first attempt to resolve disputes or

disagreements through the PMT which will conclude within twenty-one (21) days of the written notice required under Section 16.1 unless the Owner and Design-Builder mutually agree otherwise.

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

16.3 Mediation. Any Claim that has not been resolved in accordance with the procedures set forth in Section 16.2, 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 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 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.

16.4 Litigation. Any Claim that has not been resolved in accordance with the procedures set forth in Sections 16.2 and 16.3, 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 time limits of the Contract Documents, and litigation is served and filed no later than 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 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.

16.5 Claims between the Owner and the Design-Builder and any Design-Build Team Member, will, upon demand by the Owner, be submitted in a single forum, or the Owner may consolidate such Claims or join any of the above-named parties in the same forum.

16.6 If a Claim is resolved prior to Final Acceptance, the terms of the resolution will be incorporated in a Change Order. The Change Order, including any adjustment in the Base Target Cost, Final Target Cost, and/or Contract Time, will be full compensation for any changes in the Work, including full payment for costs of all delays in connection with such changes and including full payment for any expense or inconvenience, disruption of schedule, and loss of efficiency or productivity by the Design-Builder.

16.7 Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, the Design-Builder will continue to perform the Work and the Owner will continue to satisfy its payment obligations to the Design-Builder, pending the final resolution of any Claim.

16.8 Waiver of Consequential Damages.

16.8.1 Notwithstanding anything herein to the contrary (except as set forth in Section 16.8.2), neither the Design-Builder nor the Owner will 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.

16.8.2 The consequential damages limitation set forth in Section 16.8.1 will not affect the Owner's or the Design-Builder's duties with respect to claims by third parties, including the indemnification and insurance obligations of the Contract.

Article 17

AUDIT

- 17.1 Audit of Project Records.** The Owner or its designee will have the right to inspect, audit, or copy the project records of the Design-Builder, and any Design-Build Team Member during regular business hours and upon seven (7) days' notice, for the evaluation and determination of any issue, including, but not limited to, changes in the Work, that are related to the Contract or to the Design-Builder's performance thereunder. At a minimum, Project records will be considered those listed in Section 4.4.
- 17.2 Audit of Claims.** All Claims filed against Owner will be subject to audit at any time following the filing of the Claim. Failure of Design-Builder, or any Design-Build Team Member, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Design-Builder or such Design-Build Team Member will bar any recovery.
- 17.3 Audit Procedures.** Any audit of records or Claims may be performed by employees of or a representative of Owner. The Design-Builder and Design-Build Team Members will provide adequate facilities acceptable to Owner for the audit during normal business hours. Design-Builder and Design-Build Team Members will make a good faith effort to cooperate with Owner's auditors.

Article 18

MISCELLANEOUS PROVISIONS

- 18.1 Governing Law.** The Contract will be governed by the law of Washington State, without regard to its choice-of-law provisions.
- 18.2 Successors and Assigns.**
- 18.2.1** The Design-Builder binds itself and its partners, successors, assigns, and legal representatives, to the covenants, agreements and obligations contained in the Contract Documents. The Design-Builder will not assign the Contract as a whole without written consent of the Owner. If the Design-Builder attempts to make such an assignment without Owner's consent, that Design-Builder will nevertheless remain legally responsible for all obligations under the Contract Documents.
- 18.2.2** If a majority of the ownership or the control of Design-Builder is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate the Contract at any time pursuant to Section 15.2, except that the Owner will give the Design-Builder thirty (30) days written notice of termination and the opportunity for the Design-Builder to cure prior to termination.
- 18.3 Written Notice.** Whenever the Contract Documents require that notice be provided, notice will be deemed to have been validly given (a) if delivered in person to the representative designated in the Contract Documents, (b) 4 days after being sent by registered or certified mail, postage prepaid to the address indicated in the Contract Documents, or (c) if transmitted by facsimile or email, by the time stated in a machine generated confirmation that notice was received at the facsimile number or email address of the representative.
- 18.4 Rights and Remedies.**

- 18.4.1** Duties and obligations imposed by the Contract Documents, and rights and

remedies available thereunder, will be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The Design-Builder's sole remedy for Claims, disputes, and other matters in question of the Design-Builder, direct or indirect, arising out of, or relating to, the Contract Documents or breach thereof, except Claims which have been waived under the terms of the Contract Documents, however, is the dispute resolution procedure of Article 16.

18.4.2 No action or failure to act by the Owner or Design-Builder will constitute a waiver of a right or duty afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

18.4.3 If any portion of the Contract is held to be void or unenforceable, the remainder of the Contract will be enforceable without such portion.

18.5 Tests and Inspections.

18.5.1 Tests, inspections, and approvals of portions of the Work will be made as required by the Contract Documents and any of the Legal Requirements. Unless otherwise provided, the Design-Builder will make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner will bear all related costs of tests, inspections and approvals, except that the Design-Builder will be responsible for any costs of retesting and any extra costs caused by the Design-Builder. The Design-Builder will give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The independent testing agency will prepare the test reports, logs, and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner will bear costs of (i) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded and (ii) tests, inspections or approvals where the Legal Requirements prohibit the Owner from delegating their cost to the Design-Builder.

18.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 18.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner, and the Design-Builder will give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 18.5.3, will be at the Owner's expense.

18.5.3 If such procedures for testing, inspection, or approval under Sections 18.5.1 and 18.5.2 reveal a failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure will first be compensated from any available Project Contingency. If the Project Contingency is exhausted, then any remaining amount under this Section 18.5.3 may be a Chargeable Cost subject to the Final Target Cost and the other terms of the Contract Documents.

18.5.4 Required certificates of testing, inspection, or approval will, unless otherwise required by the Contract Documents, be secured by the Design-Builder and promptly delivered to the Owner.

18.5.5 If the Owner is to observe tests, inspections, or approvals required by the Contract Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

18.5.6 Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work.

18.5.7 If the Owner is responsible under the Legal Requirements to pay for an inspection of any inspector, consultant, or architect, the Owner will be required to pay only for the first

actual inspection. To the extent caused by the Design-Builder, costs incurred as a result of an inspector being required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or re-inspect, or otherwise to expend time other than for the primary inspection, will be the Design-Builder's responsibility.

18.5.8 No acceptance by the Owner of any Work will be construed to result from any inspections, tests, or failures to inspect or test by the Owner or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner or any other person will relieve the Design-Builder of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality, or the ease of its discovery. If the Owner is affirmatively aware that any Work does not meet the requirements of the Contract Documents, the Owner will so notify the Design-Builder.

18.6 Interpretation.

18.6.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

18.6.2 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

18.6.3 Reference in the singular to an article, device, item, or piece of equipment will include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation. If there is any inconsistency in the Contract Documents, unless otherwise ordered in writing by the Owner, the Design-Builder will provide the better quality of, or the greater quantity of, work or materials.

18.7 Statutes. The Design-Builder will abide by the provisions of the Legal Requirements. Although a number of statutes may be referenced in the Contract Documents, any such references are not meant to be a complete list and will not be relied upon as such.

18.8 CPARB Reporting. The Design-Builder will provide the Owner any project information required to be submitted by the Design-Builder, or Design-Build Team Members, in accordance with the provisions of Chapter 39.10 RCW and the requirements of the Capital Projects Advisory Review Board (CPARB).

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:

University of Washington

(Name of Owner)

(Signature)

(Printed Name)

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

(Title)

Date: _____