CHILDREN AND FAMILY JUSTICE CENTER

Contract 00863C13

Volume 1 of 14

Agreement

Contract Execution Forms

December 2014

King County

Department of Executive Services
Facilities Management Division

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CONTRACT C00863C13

DESIGN-BUILD AGREEMENT

By and Between

KING COUNTY
(Owner)

and

Balfour Beatty Construction, LLC dba Howard S. Wright
(Design-Builder)

for the

KING COUNTY CHILDREN AND FAMILY JUSTICE CENTER

CONTRACT NO. C00863C13

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DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT ("Agreement") for the King County Children and Family Justice Center is made and entered into this _____ day of _____, 2014 ("Agreement Date") between King County, WA (the "Owner") and **Balfour Beatty Construction, LLC dba Howard S. Wright**, a [limited liability company] organized and existing under the laws of the State of Deleware and authorized to do business in the State of Washington ("Design-Builder"). Owner and Design-Builder are referred to herein individually as a "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, on or about August 23, 2013, Owner issued a Request for Qualifications ("RFQ") for the design and construction of the King County Children and Family Justice Center in Seattle, WA ("Project"); and

WHEREAS, on or about November 7, 2013, after evaluating the Statements of Qualifications submitted in response to the RFQ, Owner invited three proposers to submit Proposals ("Proposals") in response to Owner's Request for Proposals; and

WHEREAS, on or about December 13, 2013, Owner issued the Request for Proposal to the proposers, which Request for Proposal contained electronic, downloadable materials (collectively the "Request for Proposal Documents"); and

WHEREAS, on or about April 18 , 2014, Design-Builder submitted its Proposal in response to the Request for Proposal; and

WHEREAS, on or about August 1, 2014, Owner issued the Request for Best and Final Offer to the proposers, which Best and Final Offer contained electronic, downloadable materials (collectively, the "Best and Final Offer Documents); and

WHEREAS, on or about September 16, 2014, Design-Builder submitted its Best and Final Offer in response to the Request for Best and Final Offer; and

WHEREAS, after evaluating Design-Builder's Proposal and Best and Final Offer in accordance with the procedures and criteria set forth in the Request for Proposal and Request for Best and Final Offer, Owner determined that Design-Builder was the top ranked finalist and the Owner's interests would be best-served by negotiating with Design-Builder and attempting to reach agreement on the terms of a design-build contract; and

WHEREAS, Owner and Design-Builder successfully concluded the negotiation process, resulting in Owner issuing a Notice of Intent to Award this Design-Build Agreement to Design-Builder.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties agree as follows:

ARTICLE 1
AGREEMENT; INTERPRETATION; DEFINITIONS

1.1 Documents Included. The "Contract" or "Contract Documents" include this Design-Build Agreement between Owner and Design-Builder (this "Agreement"), as modified or amended, and the following documents which are attached hereto or shall be attached hereto in accordance with the provisions of this Agreement (collectively, "Appendices"), and which are specifically incorporated and made a part of the Contract Documents by this reference:

- Construction Documents prepared and approved in accordance with Section 3.3.6.2
- Request for Proposal Documents, Parts A-D, and F-H (except Part E Reference Documents) and Appendix A, and any addenda to the Request For Proposal, and Request for Best and Final Offer Documents, changes to Parts A-D, and any addenda to the Request for Best and Final Offer Documents
- Design-Builder's Proposal, including exhibits thereto (as may be negotiated with Owner) and Design-Builder's Best and Final Offer
- Design-Builder's Statement of Qualifications dated October 17, 2013.
- Exhibits referenced in this Agreement

1.2 Entire Agreement. Those Contract Documents in existence as of the Agreement Date set forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Agreement Date, and supersede any and all negotiations, agreements and representations made or dated prior thereto. Contract Documents may be supplemented, modified or otherwise amended after the Agreement Date by mutual written agreement or otherwise in accordance with the terms of this Agreement.

1.3 Conflicting Provisions/Order of Precedence. The Contract Documents are intended to be complementary and a requirement shown in one Contract Document is intended to be as binding as if included in all Contract Documents. In the event of any conflict or inconsistency between or among the Contract Documents, such conflict shall be resolved in accordance with the following order of precedence:

(1) All written modifications and amendments to this Agreement;
(2) This Agreement, including all exhibits and attachments, if any;
(3) Written addenda to Request for Best and Final Offer
(4) Request for Best and Final Offer Documents in the following descending order of precedence:
    (a) Changes to Part B Facility Performance Standards
    (b) Changes to Part C Facility Program
    (c) Changes to Part D Room Data Sheets
    (d) Changes to Division One General

Requirements (Division One),
(e) Changes to Remainder of the Request for Best and Final Offer, except Part E

(5) Written addenda to the Request for Proposal Documents
(6) Request for Proposal Documents in the following descending order of precedence:
(a) Part B Facility Performance Standards
(b) Part C Facility Program
(c) Part D Room Data Sheets
(d) Division One General Requirements (Division One)
(e) Remainder of the RFP, except Part E
(7) Construction Documents prepared and approved in accordance with Section 3.3.6.2 of this Agreement;
(8) Design-Builder's Proposal , in the following descending order of precedence:
(a) Best and Final Offer submitted in response to to Request for Best and Final Offer
(b) Initial Proposal submitted in response to Request for Proposals;;
(9) Design-Builder's Statement of Qualifications dated October 17, 2013;
(10) All other Appendices to this Agreement.

Either Party, upon becoming aware of any conflict or inconsistency between or among any of the Contract Documents, shall promptly notify the other Party in writing of such conflict or inconsistency, with the resolution of such conflict or inconsistency to be made by Owner and provided to Design-Builder in writing.

1.4 Rules of Interpretation.

1.4.1 Terminology. Unless otherwise required by the context in which any term appears:

(1) Capitalized terms used in this Agreement shall have the meanings specified in this Article or defined elsewhere in this Agreement.

(2) The singular shall include the plural and the masculine shall include the feminine and neuter.

(3) References in this Agreement to "Articles," "Sections," or "Appendices" shall be to articles, sections, or appendices of this Agreement, and references to paragraphs shall be to separate paragraphs of the section or subsection in which the reference occurs.

(4) The words "herein," "hereof," "hereto" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words "include," "includes" or "including" shall mean "including, but not limited to."

(5) All accounting terms not specifically defined herein shall be construed in accordance with Generally Accepted Accounting Principles in the United States of America, consistently applied.

(6) Use of the word "and" herein shall be construed in the conjunctive form and shall not be construed to mean "or."

(7) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Wherever in the Contract Documents an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

1.4.2 **Headings**. The titles of the articles and sections herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.4.3 **Joint Responsibility for Drafting**. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.5 **Definitions**. For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below:

1.5.1 **Agreement**. This executed Design-Build Agreement between Owner and Design-Builder. For the purposes of Division One, the terms "Contract and General Conditions" and "General Conditions" mean this Agreement.

1.5.2 **Agreement Date**. The date first set forth on the first page of this Agreement.

1.5.3 **Allowance Item**. A stated requirement of the Contract Documents whereby a specified sum of money is incorporated, or allowed, into the Contract Sum to sustain the cost of a stipulated material, assembly, piece of equipment, or other part of the construction contract. This allowance may be used in cases where the particular item or items cannot be fully described in the Contract Documents.

1.5.4 **Allowance Value**. A stated reasonable estimate of cost to be applied to an Allowance Item.

1.5.5 **Appendices**. The documents identified as appendices in Section 1.1.

1.5.6 **Application for Final Payment**. The Application for Payment submitted by Design-Builder after the Certificate of Final Acceptance has been issued and which meets all of the requirements set forth in Section 6.4.1 and Division One.

1.5.7 **Application for Payment**. A written request submitted by Design-Builder for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner may require, as more fully described in Division One.

1.5.8 Certificate of Final Acceptance. Written certification by Owner that all conditions of Final Acceptance have been met.

1.5.9 Change of Law. Any of the following events, to the extent they materially increase Design-Builder's cost to perform the Work or materially adversely impacts Design-Builder's ability to achieve the Substantial Completion Date(s): (a) the enactment, adoption, promulgation, modification or repeal, after the Agreement Date, of any Governmental Rules; or (b) the imposition of any material condition on the issuance or renewal of any Governmental Approval after the Agreement Date; or (c) the failure to issue or renew any Governmental Approval; provided, however, that none of the following shall be a Change of Law: (i) any Governmental Rules issued, enacted, or adopted before the Agreement Date but which does not become effective until after the Agreement Date; (ii) the general requirements contained in any Governmental Approval at the time of application or issuance to comply with future laws, ordinances, codes, rules, regulations, or similar legislation; (iii) a change in applicable national or any other income or gross receipts tax law, enacted or effective after the Agreement Date; or any event identified in (a) through (c) above that was caused by Design-Builder's negligence, willful misconduct, or failure to comply with its obligations under this Agreement.

1.5.10 Change Order. A Change Order may authorize an addition, deletion, or revision in the Work, a change to the Contract Sum, and/or an adjustment to the Contract Time. A Change Order is an executed written order to Design-Builder signed by Owner and Design-Builder representing their full, final, and complete agreement related to the following: (a) the scope of a change in the Work; (b) the amount of any adjustment to the Contract Sum, including all costs related to, resulting from, or affected by such change in Work including, but not limited to, all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related in any way, whether direct or indirect, to the acts, events or conditions giving rise to the change; (c) the extent of any adjustment to the Contract Time; and (d) any other amendment to this Agreement or other Contract Documents. A Change Order shall be considered to be a modification to this Agreement.

1.5.11 Claim. Design-Builder's exclusive remedy for resolving disputes with Owner regarding the terms of a Cost Proposal, Construction Change Directive, or Contractor Initiated Notice, as more fully set forth in Section 8.6 and Article 11.

1.5.12 Construction Change Directive (CCD). A written directive from Owner to Design-Builder to proceed with changed Work when the processing time for an approved Cost Proposal and Change Order would impact the Project.

1.5.13 Construction Documents. Documents developed by Design-Builder pursuant to Section 3.3.6.2 describing the requirements for construction of the Work.

1.5.14 Contingency. The financial sum set forth in Section 5.8.1.2 which is available for Design-Builder's exclusive use for unanticipated costs it incurs to complete the Work.

1.5.15 Contract Documents. This Design-Build Agreement between Design-Builder and Owner and the Appendices referenced in Section 1.1.

1.5.16 Contract Sum. The Guaranteed Maximum Price (GMP) payable to Design-Builder as set forth in Section 5.1, as such amount may be adjusted pursuant to the terms of this Agreement.

1.5.17 Contract Time. The number of calendar days allotted in the Contract Documents for Design-Builder to achieve Substantial Completion of the Work, including those days allotted for Substantial Completion of Phase 1A, Phase 1B, or any other designated portion of the Work.

1.5.18 Contractor (Design-Builder) Initiated Notice (CIN). A document, designated as a Contractor Initiated Notice, prepared by the Design-Builder requesting either (1) a change in Contract Sum; (2) a change in Contract Time; (3) a change in Contract Work; (4) a payment of money or damages; and/or, (5) any other relief arising out or relating to this Contract.

1.5.19 Cost of the Work. Means those costs specified in Section 5.5 that are reasonably and actually incurred by Design-Builder in the proper performance of the Work.

1.5.20 Cost Proposal. A written proposal submitted by the Design-Builder setting forth: (a) scope definition and costs related to a change in the Work; (b) details regarding the development of costs proposed for any adjustment to the Contract Sum; and (c) the extent of any adjustment to the Substantial Completion Date(s).

1.5.21 Day(s) or day(s). Unless otherwise specified, shall mean calendar day(s).

1.5.22 Design-Builder. Party entering into this Agreement with Owner in which the party agrees to both design and complete the Work as specified in this Agreement.

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

1.5.24 Design Verification Period. The time period set forth in Section 3.3.5.1.

1.5.25 Design Work Product. All drawings, documents, specifications, and other documents and electronic data furnished by or through Design-Builder to Owner under this Agreement.

1.5.26 Differing Site Conditions. Means: (1) Subsurface or latent physical conditions at the Site which differ materially from those described or shown in the Contract Documents and not reasonably foreseeable based on the information available to the Design-Builder at the time of Proposal submission and conclusion of the Design Verification Period (Type I), or (2) Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the construction activities of the character provided for in this Agreement and not reasonably foreseeable based on the information available to the Design-Builder at the time of

Proposal submission and conclusion of the Design Verification Period (Type II).

1.5.27 Equipment and Materials. All of the equipment, materials, machinery, apparatus, structures, supplies and other goods required by the terms of this Agreement to complete the Work and are incorporated into the Project.

1.5.28 Excusable Delay. Those events defined in Section 10.4.

1.5.29 Fee. Design-Builder's Fee, which shall be the amount specified in Section 5.4.

1.5.30 Final Acceptance. The formal written acceptance issued to Design-Builder by Owner after Design-Builder has completed the requirements of the Contract Documents and achieved Final Completion as more fully set forth in Section 7.4.

1.5.31 Final Completion. Satisfaction of the conditions set forth in Section 7.4.1.

1.5.32 Final Completion Date. The date by which Design-Builder guarantees to achieve Final Completion of the Project, pursuant to Section 7.2.5.

1.5.33 GMP Exhibit. All documents utilized to develop Design-Builder's Guaranteed Maximum Price Proposal (Exhibit A).

1.5.34 GMP Proposal. The Guaranteed Maximum Price proposal set forth in Design-Builder's Base Contract Price Proposal Form (RFP) (attached as Form C to the RFP).

1.5.35 Governmental Approvals. Any authorizations, consents, approvals, licenses, leases, rulings, permits, certifications, exemptions, or registrations by or with any Governmental Unit.

1.5.36 Governmental Rules. Any and all statutes, laws, regulations, ordinances, codes, rules, judgments, orders, decrees, directives, guidance documents, by-laws or requirements, or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Unit.

1.5.37 Governmental Unit. Any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative regulatory agency, authority, body or other entity having jurisdiction over the performance of the Work, the Project or the Parties.

1.5.38 Guaranteed Maximum Price (GMP) or Owner's Budgeted GMP. The Contract Sum specified in Section 5.1, which will limit the amount to be paid to Design-Builder in accordance with Article 6 and shall be complete compensation for all Work to be performed by Design-Builder under the Contract Documents, subject to increases or decreases by Change Order only as specifically provided in this Agreement.

1.5.39 Hazardous Materials. Any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) and implementing regulations, any "hazardous substance" under the Washington Model Toxics Control Act (Ch. 70.105D RCW) and implementing regulations, and any "hazardous substance" or "hazardous waste" as defined by the Comprehensive Environmental Response, Compensation and

Liability Act of 1980 (42 USC §§ 9602 et seq.) and implementing regulations, as these laws are amended from time to time; underground storage tanks, whether empty, filled or partially filled with any substance; asbestos; urea formaldehyde foam insulation; PCBs; and any other substance, waste, material or chemical deemed or defined as hazardous, toxic, a pollutant, contaminant, dangerous or potentially dangerous, noxious, flammable, explosive, or radioactive, the removal of which is required or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated or penalized by any federal, state, county, municipal or other local governmental statute, regulation, ordinance or resolution as these laws are amended from time to time.

1.5.40 LEED. Leadership in Energy and Environmental Design.

1.5.41 Liquidated Damages. Delay damages payable to Owner pursuant to Section 7.5.

1.5.42 Notice. A written notice delivered to the designated representative of the applicable party (e.g., Owner's Representative and Design-Builder's Project Manager).

1.5.43 Notice to Proceed. Formal written notice that defines the date on which the Contract Time begins to run provided by Owner to Design-Builder pursuant to Section 7.1.

1.5.44 Notice to Proceed Date. The date that Design-Builder receives the Notice to Proceed.

1.5.45 Overhead. Charges that may be incurred or allocated in support of this Agreement but are not part of the cost of directly performing a physical construction activity of the Work. Overhead includes site or field overhead and home office overhead.

1.5.45.1 Site or Field Office Overhead.

Site or field office overhead costs are those indirect costs that are necessary for the prosecution of the Work, and include, but are not limited to the following: (a) Project superintendence, including salaried staff with higher level responsibilities, such as planning the day's or week's tasks; allocating labor and equipment; or managing materials; (b) the work of support staff related to administration of the Project; (c) the lease or rental rates and maintenance of Project jobsite facilities, such as office trailers and storage facilities; (d) equipment assigned to the Project for the duration, such as superintendents' vehicles, surveyors' vehicles, computers, and yard equipment (overhead equipment); (e) services, such as utilities, office equipment, communications (such as email, internet, phones, facsimile, mail courier service, copying) petty cash, office supplies, sanitary provisions, and safety supplies; (f) hand and other small tools provided by Design-Builder for its workforce's use; and (g) travel, meal and lodging costs associated with Project superintendence and support staff.

1.5.45.2. Home Office Overhead.

Home office overhead costs are those costs that include all general home office expenses, and include but are not limited to the following: (a) officer and office salaries and related payroll taxes and benefits; (b) costs of home office occupancy and maintenance; (c) all home office support services, such as utilities, office machines, computers, and related items and support; (d) business taxes; and licenses; and (e) and all such other costs necessary to operate the business entity. Home office overhead includes unabsorbed home office overhead.

1.5.45.3. Other Overhead Costs.

Regardless of whether treated as site or field overhead or as home office overhead, costs of any and all bonds, insurance(s), and taxes associated with this Agreement not specifically reimbursed at the actual cost under Section 5.5. are to be considered as Overhead. All such items as those identified above in subsection 1. and subsection 2. are to be treated as Overhead for this purpose no matter how the Design-Builder chooses to account for them in its books of account. Under no circumstances shall Owner pay Design-Builder for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.

1.5.46 Owner. King County, a municipal corporation and home rule charter county of the state of Washington.

1.5.47 Owner's Design-Build Consultant. The firm engaged by Owner and identified to Design-Builder in accordance with Section 2.5.

1.5.48 Owner's Project Criteria. The Owner's performance and programming criteria identified in the RFP, including Part B, "Facility Performance Standards", Part C, "Facility Program", and Part D, "Room Data Sheets".

1.5.49 Owner's Representative. The individual designated by Owner pursuant to Section 2.3, who shall have the responsibility and authority specifically delegated to such individual by Owner and made known in writing to Design-Builder. The Owner's Representative may be referred to as the Project Representative elsewhere in the other Contract Documents.

1.5.50 Owner's Separate Contractors. Those contractors identified in Section 2.4.

1.5.51 Performance Guarantee. Design-Builder's guarantee for energy, operations, and performance set forth in Section 3.14.

1.5.52 Performance Guarantee Period. The time period for performance assurance and measurement and verification, which shall be for three (3) years from the date of Notice to Proceed with Construction of Phase 1B.

1.5.53 Prior Occupancy. Owner's use of all or parts of the Project before Substantial Completion as more fully described in Section 7.3.3.

1.5.54 Project. The King County Children and Family Justice Center, located in Seattle, WA.

1.5.55 Project Manager or Design-Builder's Representative. The Project Manager designated by Design-Builder and made known in writing to Owner, who shall be authorized to act on behalf of Design-Builder as more fully set forth in Section 3.2.1. The Project Manager may also be referred to as the Design-Builder's Representative.

1.5.56 Project Schedule. The specified Critical Path Method (CPM) schedule identified in Section 25.1 and Division One, updated pursuant to the Contract Documents.

1.5.57 Proposal. Design-Builder's response to the RFP.

1.5.58 Punchlist. The list of minor or incidental Work, submitted by Design-Builder and approved by Owner, which remains to be completed after Substantial Completion, and updated thereafter as herein provided, which shall be only those items of Work: (a) that do not preclude the Project from operating or functioning as it was designed and intended to operate; (b) the absence of which does not create any occupational hazard or hazard to the Work; and (c) the completion of which will not unreasonably interrupt or interfere with Owner's ability to occupy and conduct its operations.

1.5.59 Request for Proposal. The Design-Build Request for Proposal for the King County Children and Family Justice Center, No. C00863C13.

1.5.60 Retainage. Funds withheld by Owner pursuant to RCW 60.28.011 and Section 6.3.3.

1.5.61 Savings. The amount by which the sum of the Design-Builder's Cost of the Work and Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project.

1.5.62 Schedule of Values. A written breakdown allocating the total Contract Sum to each principal category of work.

1.5.63 Not Used.

1.5.64 Site. The location of the Project to be constructed by the Design-Builder pursuant to this Agreement.

1.5.65 Subcontractor. Any person or entity, including any vendor or Design Consultant, with whom Design-Builder has entered into any contract to perform any part of the Work, and shall specifically include any person, entity, or subconsultant and supplier at any tier with whom any Subcontractor has further contracted any part of the Work.

1.5.66 Substantial Completion. The stage in the progress of the Work of Phase 1A or Phase 1B, as applicable, or designated portion of the Work where: (a) Owner has full and unrestricted use and benefit of the Work for the purpose intended; (b) all systems and parts of the Work are functional as required by the Contract Documents; (c) all utilities are connected and operating normally; (d) only minor incidental work or correction or repair remains to complete all Contract requirements; and, (e) Design-Builder has provided all occupancy permits and easement releases.

1.5.67 Substantial Completion Date(s). The dates by which Design-Builder guarantees to achieve Substantial Completion, pursuant to Section 7.2.

1.5.68 Value Engineering Change Proposal ("VECP"). A proposal developed and documented by Design-Builder which: (a) would modify or require a change in a requirement of any Contract Document; and (b) reduces the cost of the Project without impairing essential functions or characteristics of the facility (including service life,

economy of operation, ease of maintenance, desirability and safety) as determined by Owner, in its sole discretion, and provided that it is not based solely upon a change in quantities.

1.5.69 Work. All administrative, design, procurement, supply, installation, construction, supervision, management, testing, labor, equipment and materials and other duties and services set forth in and performed in accordance with the requirements of this Agreement, including the Project Criteria, and, to the extent not covered by this Agreement, in accordance with customarily accepted design, construction, and operations standards for a detention facility, a courthouse, a government office and parking structure facilities in the United States, and related site work necessary to provide a complete, fully functional, and operational project. **Base Work** shall mean the Work for which the Design-Builder has proposed to complete as part of the original GMP (Section 5.5.1-5.5.23) and shall not include any additive Change Order Work**.**

ARTICLE 2
RESPONSIBILITIES OF OWNER

2.1 Owner's Responsibilities. Owner shall be responsible for the following matters and actions:

2.1.1 Access to Site. Provide reasonable rights of ingress and egress to and from the Site for Design-Builder and all Subcontractors, subject to Section 3.5.5 and Site access requirements in Division One. The Site shall be available to Design-Builder for all aspects of the Work on the Notice to Proceed Date.

2.1.2 Not Used.

2.1.3 Owner's Governmental Approvals. Obtain, or cause to be obtained, City of Seattle zoning amendments and a Mitigated Determination of Non-Significance at Owner's expense, except as designated a Design-Builder expense in paragraph 1.5.6.A of the Request for Best and Final Offer, all of which shall be the only Governmental Approvals Owner will be responsible for obtaining, or causing to be obtained, under the Contract Documents. Owner shall provide, or cause to be provided, reasonable cooperation and assistance to Design-Builder in obtaining Governmental Approvals for which Design-Builder is responsible. Owner's reasonable cooperation and assistance to Design-Builder shall not relieve Design-Builder of its obligations to obtain the Governmental Approvals for which Design-Builder is responsible.

2.1.4 Relevant Information for Design-Builder. Provide, or cause to be provided, information reasonably requested by Design-Builder that is within Owner's possession or control to enable Design-Builder to fulfill its obligations pursuant to the Contract Documents.

2.1.5 Not Used.

2.1.6 Other Items of Owner Supply. Provide the other items of equipment, materials, and services specifically identified in the Contract Documents as being the responsibility of

Owner.

2.1.7 Payment Obligations to Design-Builder. Pay to Design-Builder the Contract Sum pursuant to the terms of this Agreement.

2.2 Authority

2.2.1 County Executive or Designee. Unless the Owner, in writing, indicates otherwise, the authority to (1) commit to or bind the Owner to any Change Orders or change in Contract Work, Contract Sum and/or Contract Time; or (2) sign the Contract or Change Orders rests solely in the King County Executive or its designee.

2.3 Owner's Representative.

2.3.1 Notice of Delegation. The Owner shall provide the Design-Builder with a written Notice of delegation of authority, which identifies the person who has authority to sign Change Orders and/or bind the Owner to changes in the Work, Contract Sum, and Contract Time. In the event the Owner's Representative is no longer assigned to the Contract, the County shall notify the Design-Builder in writing of the change providing the name of the new Owner's Representative and effective date of the change.

2.3.2 Authority of Owner's Representative. The Owner's Representative shall have the authority to administer the Contract. Administration of the Contract by the Owner's Representative includes but is not limited to:

1. Receiving all correspondence and information from the Design-Builder;
2. Issuing Construction Change Directives;
3. Issuing Request for Change Proposals, as provided in Section 8.2;
4. Responding to requests for information directed to the Owner by the Design-Builder;
5. Reviewing the Schedule of Values, Project Schedules, Submittals, testing and inspection reports, substitution requests, and other documentation submitted by the Design-Builder;
6. Negotiating Request for Change Proposals, Contractor Initiated Notices and Change Orders;
7. Recommending Change Orders for approval by the King County Executive or its designee;
8. Issuing decisions with respect to Contractor Initiated Notices and Claims;
9. Processing payment requests submitted by the Design-Builder, and recommending payment;
10. Monitoring the quality of the Work, rejecting noncompliant Work, and recommending acceptance of the Work;
11. Transmitting executed Change Orders, amendments, and other Contract correspondence to the Design-Builder, and
12. Performing all other contract administrative functions.

2.3.3 Correspondence, Questions and Documentation. All correspondence, questions, and/or documentation shall be submitted to the Owner's Representative.

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

2.5 Engagement of Owner's Design-Build Consultant. Owner has retained a construction management firm, OAC Services, Inc., to assist Owner in carrying out designated project management and oversight services for which Owner is responsible. The Owner's Design-Build Consultant will assist the Owner's Representative to represent Owner, but has no authority to bind Owner to an adjustment in the Contract Sum or Contract Time.

ARTICLE 3
RESPONSIBILITIES OF DESIGN-BUILDER

3.1 Design-Builder's General Obligations.

3.1.1 Obligation to Perform the Work. Design-Builder shall fully perform all the Work in accordance with and subject to the terms and conditions of the Contract Documents.

3.1.2 Responsibility for Subcontractors. Design-Builder shall be responsible to Owner for all acts and omissions of Design-Builder, any Subcontractor, and their respective employees, agents and representatives.

3.1.3 Incorporation Into Subcontractor Contracts. Design-Builder shall incorporate all obligations and understandings of the Contract Documents into all subcontracts and require that such obligations and understandings flow down to all subcontracts of any tier.

3.2 Design-Builder's Representative and Key Personnel.

3.2.1 Design-Builder's Representative. Design-Builder shall designate, by written notice to Owner on or before the Notice to Proceed, an individual ("Project Manager") who shall be authorized to act on behalf of Design-Builder, with whom Owner may consult at all reasonable times, who shall have full supervision over the completion of the Work, who shall be designated to act as the primary point of contact with Owner regarding all matters relating to the Work, and who shall have full authority to bind Design-Builder except to the extent such authority is limited as described in such notice. If the Project Manager's authority is limited, the notice will identify such persons within Design-Builder's organization who do have full authority to bind Design-Builder for all purposes under the Contract Documents. Design-Builder may, at any time by written notice to Owner, change the persons, if any, previously identified as having authority beyond that of the Project Manager. Any changes in the Project Manager shall require Owner's prior written approval.

3.2.2 Project Management: Key Personnel. Design-Builder shall provide management for the Work in accordance with the organization chart set forth in the Statement of Qualifications and RFP Proposal, a final, conformed copy of which is attached hereto as Exhibit A. Design-Builder acknowledges that the experience and skill of the Key Personnel was an important factor in determining the responsibility of the Design-Builder and continues to be an important factor to successful and timely completion of the Project. Except in the event that a Key Personnel individual is no longer employed (or otherwise under the direction and control) by the Design-Builder, none of the Key Personnel may be withdrawn from the Project without prior written approval of Owner. Design-Builder will provide Owner with at least thirty (30) days written notice of an intent to withdraw any Key Personnel and shall provide Owner a copy of the resume of any proposed replacement Key Personnel for Owner's review and acceptance.

3.3 Design Services.

3.3.1 General. Design-Builder has full responsibility for the design of the Project in accordance with the Contract Documents. Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independently-licensed Design Consultants, those design services necessary for Design-Builder to perform and complete the Work consistent with the Contract Documents. Such design services include, without limitation, those architectural and engineering services required for the preparation of Construction Documents and any other design submittal required under the Contract Documents.

3.3.2 Licenses. Any design professional performing design, engineering, architecture, or landscape architecture services on the Project shall be appropriately licensed as required by the laws of the State of Washington.

3.3.3 Standard of Care. The standard of care for all design services performed by or through Design-Builder on the Project shall be the care and skill ordinarily used by members of the design profession on projects of similar size, nature and complexity, practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, Design-Builder agrees that if the Contract Documents contain performance standards for any aspect of the Work, the design services shall be performed to achieve such standards notwithstanding the standard of care set forth in the preceding sentence.

3.3.4 Design Consultants Not Third Party Beneficiaries. No Design Consultant is intended to be, nor shall any Design Consultant be deemed to be, a third party beneficiary of this Agreement. Owner is intended to be and shall be deemed a third-party beneficiary of all contracts between Design-Builder and any Design Consultant.

3.3.5 Design Verification and Identification of Scope Issues.

3.3.5.1 Design Verification Period. During the one hundred twenty (120) day period following the Notice to Proceed for Phase 1A ("Design Verification Period"), Design-Builder shall perform the tasks set forth below.

3.3.5.1.1 Design-Builder Verification. Design-Builder shall thoroughly review and compare all of the then-existing Contract Documents, including the RFP and

any incorporated documents and the Proposal, to verify and validate Design-Builder's proposed design concept for the entire Project, and identify any errors, omissions, inconsistencies, constructability problems, Site conditions or any other defects or concerns of any kind (collectively referred to as "Scope Issues") that may affect Design-Builder's ability to complete its proposed design concept within the Contract Sum and Substantial Completion Date(s). If Design-Builder finds any Scope Issues, it shall notify Owner in writing of such findings within the Design Verification Period. Upon such notice, the Parties shall promptly meet and confer to discuss the resolution of such issues. If a Scope Issue could not have reasonably been identified by Design-Builder prior to the Agreement Date, and if resolution of the issue materially impacts Design-Builder's price or time to perform the Work, Design-Builder may submit a Contractor Initiated Notice, and Owner shall have the right to act upon such request, in accordance with Article 8. Notwithstanding anything to the contrary in the Contract Documents or as a matter of law, Design-Builder shall have the burden of proving that the alleged Scope Issue could not have been reasonably identified prior to the Agreement Date and that such Scope Issue materially impacts its price or time to perform the Work.

3.3.5.1.2 Owner Confirmation of Design Concept. Design-Builder shall meet with Owner, including any stakeholders identified by Owner, to review, confirm, clarify or refine Design-Builder's proposed design concept for the entire Project. This may include subjects and activities such as, space planning, pricing, selection of alternates or Value Engineering to finalize the conceptual design.

3.3.5.2 Design-Builder's Assumption of Risk of Scope Issues. Except for those changes made pursuant to Section 3.3.5.1.2, the Parties acknowledge that the purpose of the Design Verification Period is to enable Design-Builder to identify those Scope Issues, if any, that could not reasonably be identified prior to the Agreement Date. By executing this Agreement, Design-Builder acknowledges that the Design Verification Period is a reasonable time to enable Design-Builder to identify Scope Issues that will materially impact Design-Builder's price or time to perform the Work. Following completion of the Design Verification Period, with the sole exception of those Scope Issues identified during the Design Verification Period and identified to Owner in accordance with Section 3.3.5.1 or changes agreed to in accordance with this Section 3.3.5.2, the Parties agree as follows:

(1) Design-Builder shall assume and accept all risks, costs, and responsibilities of any Scope Issue arising from or relating to the Contract Documents, including but not limited to conflicts within or between the RFP Documents and Proposal;

(2) Design-Builder shall be deemed to have warranted that the Contract Documents existing as of the end of the Design Verification Period are sufficient to enable Design-Builder to complete the design and construction of the Project without any increase in the Contract Sum or extension to the Substantial Completion(s); and

(3) Owner disclaims any responsibility for, and Design-Builder waives its right to seek any increase in the Contract Sum or extension to the Substantial Completion Date(s) for, any Scope Issue associated with any of

the Contract Documents.

3.3.6 Design Development Services.

3.3.6.1 Interim Design Submissions. Upon receiving written authorization from Owner to proceed, Design-Builder shall prepare and submit to Owner all interim design submissions for the Work as required by and in accordance with Division One. On or about the time of the scheduled design submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following a design review meeting, Owner shall review the interim design submissions and respond in a time that is consistent with the turnaround times agreed upon by the Parties and set forth in the Project Schedule. If the Design-Builder is required to resubmit an interim design submission, the Owner shall note any exceptions and, or inform Design-Builder if further refinement of the interim design submissions is required.

3.3.6.2 Construction Documents. After Owner's review of the interim design submissions is complete, Design-Builder shall prepare and submit to Owner Construction Documents setting forth in detail drawings, specifications, and such other materials describing the requirements for construction of the Work pursuant to the Project Criteria. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in design review meetings. The Parties shall have design review meetings as needed to discuss, and Owner shall review the Construction Documents and respond, in accordance with the procedures set forth in Section 3.3.6.1 above and Division One. Once all of Owner's exceptions have been resolved, Design-Builder shall proceed with procurement and construction in accordance with those reviewed Construction Documents for that portion of the Work covered by the Construction Documents, as may be allowed by Section 3.3.6.4.

3.3.6.3 Owner's Review. Owner's review of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Work, including the Project Criteria. Neither Owner's review nor approval of any interim design submissions and/or Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner, and Design-Builder shall remain responsible for meeting all obligations required under the Contract Documents.

3.3.6.4 Design-Builder's Ability to Proceed with Procurement and Construction. Subject to written agreement with Owner and to the extent not prohibited by the Contract Documents, Design-Builder may prepare design submittals and Construction Documents for a portion of the Work to permit procurement and construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

3.3.6.5 Electronic Files. All design submissions of Design-Builder shall be forwarded to Owner in electronic and hard-copy format pursuant to the requirements of the Contract Documents.

3.4 Site Conditions.

3.4.1 Inspection of Site Conditions Prior to Agreement Date. Subject to the Design Verification Period in Section 3.3.5, Design-Builder has, as of the Agreement Date, ascertained the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface and subsurface ground and soil conditions, and other general and local conditions (including labor) which might affect its performance of the Work or the cost thereof.

3.4.2 Reference Documents. Owner has made available to the Design-Builder Site-related Reference Documents identified in Part E of the RFP. As discussed in the RFP, Reference Documents contained within this list are being made available solely as additional information to the Design-Builder. Such reference materials are not to be considered Contract Documents and do not relieve the Design-Builder of its duties and responsibilities under this Contract nor constitute any representation or warranty by the Owner as to the Site or geotechnical conditions or other matters related to the Project. Design-Builder acknowledges that any reliance on these reference materials shall be at the Design-Builder's own technical and commercial risk.

3.4.3 Inspection of Site Conditions After the Notice to Proceed. Design-Builder will, after the Notice to Proceed, undertake such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including additional geotechnical evaluations. If Design-Builder intends to conduct additional geotechnical evaluations to supplement or corroborate the information contained in the Reference Documents, it shall do so during the Design Verification Period.

3.4.4 Assumption of Risk for Site Conditions During Construction. Based on the Site investigations and other inquiries made by the Design-Builder prior to the execution of this Agreement and during the Design Verification Period of the Project, the Design-Builder assumes the risk of all reasonably ascertainable surface and subsurface or reasonably ascertainable latent physical conditions encountered by the Design-Builder during the construction of the Project that may affect the Design-Builder's excavation, or the Design-Builder's construction costs and/or schedules. The Design-Builder agrees that any such surface or subsurface or latent physical conditions revealed during excavation or construction that is considered reasonably ascertainable will not be considered a Differing Site Condition. If the Design-Builder believes that a material or obstacle discovered during excavation, demolition and/or construction was not known or reasonably ascertainable and a Differing Site Condition exists which impacts Contract Sum and/or Contract Time, the Design-Builder shall follow the procedures in Section 3.4.5.

3.4.5 Differing Site Conditions. If Design-Builder encounters a Differing Site Condition, Design-Builder shall immediately provide written notice to Owner of such condition. Design-Builder shall provide such immediate notice before the Differing Site Condition has been disturbed or altered. If Design-Builder seeks an adjustment in the Contract Time or Contract Sum, then not more than fourteen (14) days after Design-Builder's initial written notice, Design Builder shall submit a Contractor Initiated Notice to Owner as provided in Section 8.6. Owner shall investigate the alleged Differing Site Conditions and respond to Design-Builder in accordance with the procedures in Section 8.6. Design-Builder shall

not disturb the condition until receipt of written authorization from the Project Repesentative that work can resume at the location of the alleged Differing Site Condition. Design-Builder shall continue with performance of all other Work.

3.5 Construction-Related Services. Except as otherwise expressly set forth in the Contract Documents, Design-Builder shall provide the equipment and materials, personnel and supervision, tools, equipment and materials and the services required, and shall be responsible for completing the Work in accordance with the terms of the Contract Documents. In furtherance of the foregoing (and not as a limitation thereof), Design-Builder shall:

3.5.1 Handling of Equipment and Materials. Provide for the handling of equipment and materials and construction equipment and materials, including, as necessary, inspection, expediting, shipping, unloading, receiving, customs clearance and transportation to the Site and storage until Substantial Completion, provided, however, that such responsibility shall continue after Substantial Completion as required for Design-Builder to perform its Punchlist and warranty obligations.

3.5.2 Quality of Equipment and Material. Ensure that all equipment and materials incorporated into the Work shall be new (unless otherwise agreed by Design-Builder and Owner), of the most suitable grade for the purpose intended, and shall meet the requirements of the Contract Documents and all applicable Governmental Approvals. References in the RFP Documents to equipment and materials, articles or patented processes by trade name, make or catalog number, shall be regarded as establishing a standard of quality expected by Owner. Unless stated otherwise in the Project Criteria, Design-Builder may use equipment and materials, articles, or patented processes that are equal to those named in the RFP Documents, subject to the prior written approval of Owner, which approval shall not be unreasonably withheld. Design-Builder shall use equipment and materials for which spare parts or replacements (or reasonable substitutes) are commercially available and obtainable under normal circumstances without undue delay or difficulty.

3.5.3 Construction Means, Methods. Be solely responsible for all construction means, methods, techniques, sequences, procedures, safety and security programs in connection with the performance of the Work, irrespective of approval or consent of Owner's Representative, and take full responsibility for the adequacy, stability and safety of all Site operations.

3.5.4 Care, Custody and Control/Risk of Loss of Design-Builder. Have full responsibility for care, custody, and control of the Work (including all equipment and materials in connection therewith, whether incorporated therein or located on or off the Site) and bear the risk of loss of the Work in each case until Substantial Completion.

3.5.5 Site Security. Procure, supervise, and provide the security measures at the Site set forth in the Contract Documents.

3.5.6 Construction Utilities and Facilities at Site. As further described in Division One, cause to be provided, power, communication system, water (including potable water), waste water lines and sewer lines required for the performance of the Work and provide, within the Site, temporary roads, office furniture, telephone facilities, secretarial services, drinking water and sanitary facilities to be used by Design-Builder and/or Subcontractors in the performance of the Work. Such obligations shall include obtaining

and registering all required easements and obtaining all required Governmental Approvals for power lines, telephone lines, gas lines, waste water lines, sewer lines and lines for other utilities, whether on or off the Site. Design-Builder also shall install and maintain all meters required to measure the amount of each activity used for the purpose of determining charges. Prior to the date of Final Acceptance, Design-Builder shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

3.5.7 Maintenance of Site. As further described in Division One, keep the Site free on a daily basis from accumulation of waste materials, rubbish, and other debris resulting from performance of the Work by depositing same in waste receptacles furnished by Design-Builder, which receptacles shall be removed and replaced on an as-needed basis. Design-Builder shall make special provisions, in accordance with applicable Governmental Rules, for storing and removing any Hazardous Materials waste generated during construction. Within thirty (30) days after the Substantial Completion Date for Phase 1A or Phase 1B, as applicable, Design-Builder shall remove from the portion of the Site for that phase, in conformity with applicable Governmental Rules, all such waste materials, rubbish and other debris, as well as all tools, construction equipment and materials, machinery and surplus material (other than surplus material acquired by Owner and other than materials, tools and construction equipment necessary to complete Punchlist items). Before Final Completion, after completion of the Punchlist items, Design-Builder shall remove all remaining waste and rubbish generated during performance of Punchlist work, and all remaining materials, tools and construction equipment, and leave the Site in neat, clean and usable condition. If Design-Builder fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Design-Builder.

3.5.8 Access to Work. Provide Owner, Owner's Design-Build Consultant, and Owner's Representative access to the Work in progress wherever located.

3.5.9 Notification of Excavation. Before commencing any excavation, notify Owner's Representative and provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services. The term "excavation" for purposes of the preceding sentence means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve (12) inches in depth for landscape purposes.

3.5.10 Protection of Existing Structures, Equipment, Vegetation. Protect from damage all existing structures, equipment, improvements, utilities, and vegetation at or near the Site. Design-Builder shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place. Design-Builder shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Design-Builder fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Design-Builder.

3.5.11 Cooperation with Owner's Separate Contractors. Reasonably cooperate with Owner's Separate Contractors and carefully adapt scheduling and performance of the Work in accordance with these Contract Documents to reasonably accommodate the work performed by Owner's Separate Contractors.

3.5.12 Maintaining Documents at Site. Keep on the Site in such form as required by Owner, a copy of all Contract Documents, reviewed shop drawings, Governmental Approvals, and any other documents specified in Division One.

3.5.13 Testing and Inspections. Make arrangements for all such tests, inspections, and Government Approvals as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents, with the testing agency designated by the Owner, or with the appropriate Governmental Unit. Design-Builder shall: (a) give Owner timely notice of when and where tests and inspections are to be made; and (b) maintain complete inspection records and make them available to Owner.

3.6 Responsibility for Health, Safety and First Aid.

3.6.1 Responsibility for Safety. Design-Builder shall be fully responsible for the safety (the term "safety" as used in this Section 3.6 being deemed to include working conditions that either are free from known health hazards or provide safeguards against such health hazards) of all persons employed by Design-Builder, Subcontractors, their agents or invitees, or any other person who enters the Site for any purposes relating to Design-Builder's performance of its obligations under the Contract Documents. Design-Builder shall have the right to refuse entry onto the Site by, or to direct removal from the Site of, any employees, agents or invitees of Owner or Owner's Design-Build Consultant who fail to comply with Design-Builder's safety requirements at the Site. Design-Builder promptly shall notify Owner of any incidents in which such refusal or removal occurs.

3.6.2 Compliance with Safety and Health Rules. Design-Builder shall take all measures to ensure that the employees, agents and invitees of itself and all Subcontractors, while engaged in the Work comply with and adhere to: (a) all applicable Governmental Rules, including those promulgated by WISHA, relating to safety and health; and (b) Design-Builder's accident prevention program and safety procedures and rules for the Work. For these purposes, Design-Builder shall:

(1) Follow WISHA regional directives and provide safety programs that will require an accident prevention and hazard analysis plan for Design-Builder and each Subcontractor on the Site.

(2) Provide adequate safety devices and measures, including but not limited to, the appropriate safety literature, notice, training, permits, placement and use of barricades, signs, signal lights, ladders, scaffolding, staging, runways, hoist, construction elevators, shoring, temporary lighting, grounded outlets, wiring, hazardous materials, vehicles, construction processes, and equipment required by Chapter 19.27 RCW, State Building Code (International Building, Electrical, Mechanical, Fire, and Plumbing Codes); Chapter 212-12 WAC, Fire Marshal Standards, Chapter 49.17 RCW, WISHA; Chapter 296-155 WAC, Safety Standards for Construction Work; Chapter 296-65 WAC; WISHA Asbestos Standard; WAC 296-62-071, Respirator Standard; WAC 296-62, General Occupation Health Standards, WAC 296-24, General Safety and Health Standards, Chapter 49.70 RCW, and Right to Know Act.

(3) Post all Governmental Approvals in a conspicuous location at the Site.

(4) Provide any additional measures that Owner determines to be reasonable and necessary for ensuring a safe environment in areas open to the public; provided, however, that nothing in this Agreement shall be construed as imposing a duty upon Owner to prescribe safety conditions relating to employees, general public, or agents of Design-Builder, or as constituting any express or implied assumption of control or responsibility over Site safety.

3.6.3 Safety Program. Prior to conducting any work at the Site, and in accordance with Division One and any other requirements of the Contract Documents, the Design-Builder shall prepare and provide to the Owner a written Site specific safety program demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Design-Builder shall ensure its Subcontractors have a written "safety program" or formally adopt the Design-Builder's Site specific safety program. Owner's review of such programs shall not be deemed to constitute approval or acceptance thereof and shall not relieve or diminish the Design-Builder's sole responsibility for Site safety.

3.6.4 Restriction to Site. Design-Builder shall confine to the Site the activities of its employees, agents and invitees, and those employees, agents and invitees of all Subcontractors and prohibit such personnel from entering upon any other properties or facilities of Owner except as specifically authorized by Owner's Representative.

3.6.5 Preventative Measures. Design-Builder shall take all reasonable measures to prevent injury to persons or damage to any property on the Site, or in the vicinity thereof, as a result of Design-Builder's or Subcontractors' performance of the Work, whether or not a hazardous or potentially hazardous condition exists due to the prosecution of the Work or due to work or activities being performed by Owner or others. Such reasonable measures shall include: (a) prevention of fires; (b) furnishing of temporary construction fences, flagmen, warning signs, and barricades; (c) elimination of excessive dust or smoke emission; (d) protection of overhead utility lines, underground pipes, conduit, or cables; and (e) protection of existing Work or work in progress by Owner or others.

3.6.6 First Aid. Design-Builder shall arrange to supply first aid to anyone who may be injured in connection with the Work.

3.6.7 Safety Coordinator. Design-Builder shall designate a Safety Coordinator at the Site. The Safety Coordinator shall be on the Site at all times that any Work is being performed and shall have no additional responsibilities other than safety. The Safety Coordinator shall be responsible for safe working conditions and compliance with all applicable Governmental Rules relating to safety and health

3.6.8 Breach of Safety Obligations. Failure of Design-Builder to perform the obligations set forth in this Section 3.6 may be deemed by Owner to constitute a material default under Section 15.1.6.

3.7 Hazardous Materials.

3.7.1 Design-Builder's Responsibilities. Design-Builder is responsible for any Hazardous Materials encountered during performance of the Work, including but not

limited to hazardous building materials and contaminated soil and groundwater. Design-Builder shall review existing information to become familiar with Hazardous Materials at the Site and shall be responsible for all subsequent investigations necessary to perform the Work, including but not limited to further characterization of building materials and soil and groundwater as needed to determine management and disposal options.

3.7.2 New Hazardous Materials Encountered on the Site; Notice and Plan. Upon encountering any new Hazardous Materials on the Site not previously identified in the existing information made available by the Owner before the Agreement Date, Design Builder will stop Work immediately in the affected area and stop any Work that may hinder or preclude investigation and remediation of the Hazardous Materials. Design-Builder will give Notice to the Owner as soon as possible and, if required by Government Rules, all government or quasi-government entities with jurisdiction over the Project or Site. Design-Builder will then propose a plan to the Owner detailing the proposed handling of the new Hazardous Materials, for the Owner's approval. In the event the new Hazardous Material encountered on the Site occurs in the form of a sudden release of liquid or gas from a tank, pipeline, or similar storage or conveyance feature, Design-Builder shall take immediate emergency actions as needed to stop and contain such release and insure safety of workers and the public. Except for such emergency actions, Design-Builder shall not conduct any remediation actions or otherwise remove or disturb the Hazardous Materials until receipt of an Owner-approved plan.

3.7.3 Handling. Upon receipt of an Owner-approved plan under Section 3.7.2, Design-Builder shall take the necessary measures and retain qualified professionals required to ensure that the Hazardous Materials encountered on the Site as part of the Work are handled in accordance with the Owner-approved plan and all applicable Government Rules.

3.7.4 Design-Builder Liability. Owner is not responsible for Hazardous Materials introduced to the Site by Design-Builder, whether part of the Work or otherwise, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Materials introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

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

3.8 Environmental Work Plans.

3.8.1 Work Plans. The Design-Builder shall prepare and submit to the Owner's Representative such environmental work plans as may be required by the Contact Documents, including but not limited to, a Hazardous Material Work Plan and a Soil Management Plan.

3.9 Labor.

3.9.1 Hours of Labor. Design-Builder shall comply with all applicable provisions of RCW Chapter 49.28.

3.9.2 Notice to Owner of Labor Disputes. If Design-Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of the Work, Design-Builder immediately shall give notice, including all relevant information, to Owner.

3.9.3 Project Labor Agreement (PLA). This Contract is subject to the terms and conditions contained in the Project Labor Agreement for the King County Children and Family Justice Center Project. The PLA is attached hereto and incorporated into the Contract as Exhibit B. Design-Builder agrees to comply with all terms and conditions contained in the PLA**.**

3.10 Subcontractors.

3.10.1 Responsibility. Design-Builder shall use Subcontractors who are experienced and qualified, and meet the requirements of the Contract Documents. Design-Builder shall schedule, supervise, and coordinate the operations of all Subcontractors. No subcontracting of any of the Work shall relieve Design-Builder from its responsibility for the performance of the Work in accordance with the Contract Documents.

3.10.2 Subcontract Requirements. Design-Builder shall require each Subcontractor to comply with all Contract Document requirements applicable to the Subcontractor's scope of work. Each subcontract also shall provide for an assignment by Design-Builder to Owner, provided that:

(1) The assignment is effective only after termination by Owner for default pursuant to Article 15 and only for those subcontracts which Owner accepts by notifying the Subcontractor in writing; and

(2) After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Design-Builder assumed in the subcontract.

(3) The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

(4) As to Design Consultants, Design-Builder shall ensure that the contracts of all Design Consultants of any tier are subject to the right of Owner to receive an assignment of such contract, regardless of who is in privity of contract with such Design Consultant.

3.10.3 Subcontractor Identification. Before submitting the first Application for Payment, Design-Builder shall furnish in writing to Owner the names, addresses, telephone numbers, and Tax Identification Numbers (TIN) of all then-known Subcontractors, except those supplying materials with a value of less than $2,500, under contract with Design-Builder

at such time. Design-Builder shall supplement such form(s) on a monthly basis for those Subcontractors (except those supplying materials with a value of less than $2,500) who are contracted with Design-Builder after the first Application for Payment. Design-Builder shall not use any Subcontractor to whom Owner has a reasonable objection, including failure to meet the requirements of Division One, and shall obtain Owner's written consent before making any substitutions or additions to Subcontractors previously identified to Owner.

3.11 Governmental Rules and Governmental Approvals.

3.11.1 Governmental Rules. Subject to the terms and conditions of the Contract Documents, Design-Builder shall comply and shall cause all Subcontractors, employees, agents and representatives to comply with all applicable Governmental Rules in connection with the performance of Design-Builder's obligations under the Contract Documents. Design-Builder agrees to indemnify, defend, and hold Owner harmless from and against all fines, penalties, related costs and expenses arising from violations of such Governmental Rules by Design-Builder or any Subcontractors, employees, agents or representatives in connection with the performance of Design-Builder's obligations under the Contract Documents, and to take all reasonable actions to enforce compliance with this provision.

3.11.2 Governmental Approvals. Except for those Governmental Approvals specifically identified in Section 2.1.3 as being Owner's responsibility, Design-Builder shall pay for and obtain all Governmental Approvals required to perform the Work in accordance with the Contract Documents. Design-Builder shall submit copies of each Governmental Approval to Owner's Representative and shall post Governmental Approvals at the Site, as required by Governmental Rules. Prior to Final Acceptance, the approved, signed Governmental Approvals shall be delivered to Owner.

3.12 Assistance to Owner. Design-Builder shall provide information reasonably requested by Owner to enable Owner to fulfill its obligations under the Contract Documents. This obligation shall include providing such assistance as is reasonably requested by Owner in dealing with any Governmental Unit in matters relating to the Work and the Project.

3.13 LEED Energy & Sustainability Performance Requirements. Design-Builder shall meet all LEED Energy & Sustainability Performance Requirements contained in Division One and the Project Criteria. Design-Builder shall maintain LEED rating checklist throughout the design-build process and provide all the LEED consulting services required to obtain the targeted LEED rating. The Design-Builder shall submit and coordinate all documentation on LEED to the United States Green Building Council for the Project.

3.14 Performance Guarantee. Design-Builder shall provide Owner with a Performance Guarantee for the Project as set forth herein.

3.14.1 Scope. Design-Builder shall guarantee the performance of all building systems, environmental controls, and building elements that are related to providing energy efficiencies so that the energy efficiencies established in Section 3.14.3 are achieved.

3.14.2 Performance Guarantee Period. Measurement and verification of overall building energy performance shall occur annually for three (3) years from the date of Notice to

Proceed with Construction of Phase 1B.

3.14.3 Measurement and Verification Plan. Design-Builder shall submit a plan for measurement and verification (M&V Plan) acceptable to Owner which shall establish and guarantee the achievement of targeted building energy performance benchmarks for each building on the Project. The plan shall cover how the Performance Guarantee is administered, reviewed and measured during the Performance Guarantee Period.

Performance validation shall be measured annually by evaluating whether the building meets the designated performance criteria identified in the M&V Plan. Such measures, at a minimum, shall include:

(1) the M&V Plan results and annual reports over the stipulated performance period; and

(2) the building energy use performance target as compared to actual metered utility usage at or near the end of the one-year period.

If at the end of any of the first two years a building does not meet the designated energy performance criteria identified in the M&V Plan, Design-Builder shall identify and implement steps to satisfy the criteria when measured at the end of the succeeding year at no cost to Owner.

3.14.4 Financial Guarantee. Prior to Notice to Proceed with Construction of Phase 1B, Design-Builder shall deposit five hundred thousand dollars ($500,000.00) (Financial Guarantee) in escrow with a bank acceptable to Owner. The Financial Guarantee is equivalent to the approximate value of the estimated energy operations savings for the first year. Release of the Financial Guarantee amount to Design-Builder, plus any interest earned, shall be contingent upon the final confirmation that the energy use performance benchmarks for the building have been achieved as verified pursuant to the M&V Plan conducted at the end of year three of the Performance Guarantee Period.

If the actual energy operations savings as presented in the M&V findings and recommendations for year three is equal to or better than the guaranteed energy performance benchmarks, the entire Financial Guarantee shall be released to the Design-Builder. If the actual energy operations savings for year three is less than the guaranteed energy performance benchmarks, the entire Financial Guarantee amount shall be released to Owner.

Nothing in this section is intended to supersede Design-Builder's obligations to comply with the requirements of the warranty or any extended warranty provided under this Contract.

3.15 Design-Builder's Performance and Payment Bonds. Concurrently with execution of this Agreement, Design-Builder shall provide Owner a performance and payment bond in the principal amount of one hundred percent (100%) of the Contract Sum plus Sales Tax. The bond shall be in a form acceptable, and with an acceptable surety. The costs for such bond shall be included in the Contract Sum.

ARTICLE 4
DESIGN-BUILDER'S REPRESENTATIONS AND WARRANTIES; LICENSES

4.1 Representations and Warranties of Design-Builder. Design-Builder makes the following representations and warranties to Owner, each of which is true and correct as of the Agreement Date:

4.1.1 Due Organization, Power and Authority. Design-Builder is a corporation duly organized, existing, and in good standing in the State of Washington. Design-Builder possesses all requisite power and authority to enter into and perform this Agreement. Design-Builder has all legal power and authority to own and use its properties and to transact the business in which it is engaged and holds or expects to obtain in a timely manner all material franchises, licenses, and permits required therefor.

4.1.2 Binding Obligation. Design-Builder's execution, delivery, and performance of this Agreement have been duly authorized by, and are in accordance with, its articles of incorporation and by-laws; this Agreement has been duly executed and delivered for it by the signatories so authorized; and this Agreement constitutes Design-Builder's legal, valid, and binding obligation.

4.1.3 No Existing Breach or Default. Design-Builder is not currently in breach of, in default under, or in violation of, and the execution and delivery of this Agreement and the performance of its obligations hereunder will not constitute or result in any breach of, default under or violation of, any applicable Governmental Rules of any Governmental Unit, or the provisions of Design-Builder's articles of incorporation or by-laws, or any franchise or license, or any provision of any indenture or any evidence of indebtedness or security therefor, lease, contract, license or other agreement by which it is bound, except for such breaches, defaults or violations as will not, either individually or in the aggregate, result in a material adverse effect on the ability of Design-Builder to perform its obligations hereunder.

4.1.4 No Pending Litigation. No suit, claim, action, arbitration, or legal, administrative or other proceeding is pending or, to the best knowledge of Design-Builder, threatened against Design-Builder that could affect the validity or enforceability of this Agreement, the ability of Design-Builder to fulfill its commitments hereunder in any material respect, or that would result in any material adverse change in the business or financial condition of Design-Builder.

4.1.5 Design-Builder Qualified to Perform the Work. Design-Builder has full experience and proper qualifications to perform the Work and to construct the Project.

4.1.6 Evaluation of Conditions Affecting the Work. Design-Builder has carefully examined the RFP Documents, including any Addenda issued to such documents, and undertaken further verification activities during the Design Verification Period, and any and all conditions that could in any way affect its performance of the Work, including:

(1) visiting the Site and becoming familiar with and satisfying itself as to the general, local, and Site conditions that may affect the cost, progress, or performance of the Work, including the impact that required security measures may have on ingress and egress to the Site;

(2) becoming familiar with and satisfying itself as to all Governmental Rules that may affect the cost, progress, or performance of the Work;

(3) determining that the RFP Documents were sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work and sufficient to enable Design-Builder to commit to the Contract Sum and Contract Time; and

(4) conducting such further verification and investigation during the Design Verification Period as it deems necessary.

By representing that it has evaluated the above-referenced conditions, Design-Builder confirms that it will complete the Work within the Contract Sum and on or before the Contract Time. Design-Builder assumes the risk of any and all such conditions set forth above, and agrees that it shall not submit a Contractor Initiated Notice for such conditions, subject to Design-Builder's rights under Section 3.3.5 and Section 3.4 above.

4.2 **Licenses**. Design-Builder shall be registered or licensed as required by Governmental Rule.

ARTICLE 5
CONTRACT SUM AND TAXES

5.1 **Contract Sum/Guaranteed Maximum Price**. The Contract Sum shall be the Guaranteed Maximum Price of One Hundred Fifty Four Million Dollars ($154,000,000). Owner will pay Design-Builder up to this amount for Work performed in accordance with Article 6. The Contract Sum consists of the Design-Builder's Fee (as described in Section 5.4), the Cost of the Work (as described in Section 5.5), the Contaminated Media (soil and groundwater) Allowance (as described in Section 5.6.1 and Division One), the Utility Allowance (as described in Division One), and Contingency (as described in Section 5.8.1.2). The Contract Sum shall be complete compensation for all Work to be performed by Design-Builder under the Contract Documents, and is subject to increases or decreases by Change Order only as specifically provided in this Agreement.

5.2 **Taxes**. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Project, including: (a) withholding, payroll and any other employee-related taxes on employees of Design-Builder or Subcontractors; (b) taxes based on the income or revenues of Design-Builder or Subcontractors; (c) taxes related to construction consumables; and (d) taxes levied by any Governmental Unit upon the services and labor provided by Design-Builder in connection with the Work, including Washington State Business and Occupation Tax.

5.3 **Washington State Sales Tax**. Notwithstanding Section 5.2 above, the Contract Sum does not include Washington State Sales Tax (WSST). Owner will include applicable WSST in progress payments, and Design-Builder shall pay the WSST to the Department of Revenue and shall furnish proof of payment to Owner upon Owner's request.

5.4 Design-Builder's Fee.

5.4.1 Fee. Design-Builder's Fee shall be: One percent (1.0%) of the Cost of the Work. Design-Builder agrees that this Fee is a reasonable payment for profit.

5.4.2 Change Order. Design-Builder's Fee will only be included in a Change Order for an adjustment in the Contract Sum or Contract Time as provided in Article 9.

5.5 Cost of the Work. The Cost of the Work shall include only the following:

5.5.1 Actual wages of employees of Design-Builder, as verified by certified payroll reports, performing the Work at the Site or, with Owner's agreement, at locations off the Site.

5.5.2 Actual wages or salaries of Design-Builder's supervisory and administrative personnel, as verified by certified payroll reports, engaged in the performance of the Work and who are located at the Site. Supervisory and administrative personnel include IT support, accounting staff, safety manager, supervision and management staff assigned to the Project and working at the Site. The cost of each member of the supervisory and administrative personnel at the Site shall be chargeable as an item of the Cost of Work in any given month provided that, in no event, shall any member's actual monthly compensation exceed that member's monthly salary (for salaried personnel), with increases, if any, subject to the approval of the Owner's Representative.

5.5.3 Actual wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, as verified by certified payroll reports, but only to the extent said personnel are identified in Exhibit A and performing the function set forth in said exhibit, and actually doing work on the Project.

5.5.4 Costs actually incurred and paid by Design-Builder for employee benefits, premiums, taxes (including, but not limited to, Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), and State Unemployment Tax Act (SUCA)), insurance, industrial insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 5.5.1 through 5.5.3.

5.5.5 The reasonable cost of travel, accommodations and meals, necessarily and directly incurred by Design-Builder's personnel in connection with the performance of the Work and where the travel required is more than 250 miles from the Site and/or involves overnight accommodation. Costs do not include housing costs or allowances and related subsistence costs for Design-Builder's employees on the Project. For all travel expenses, Design-Builder must provide documentation identifying the purpose of the trip so that it is clear the travel expenses are a required expense for the Project. Airfare must be at the lowest available coach rates. Food and lodging for business travel will be paid at actual costs, not to exceed the applicable federal per diem rate for the location (see http://www.gsa.gov/portal/category/21287). The Owner will not reimburse costs for alcohol, entertainment, or business development. All travel by Design-Builder personnel that involves air travel or overnight stay must be approved in advance by the Owner's Representative. This will be accomplished by providing Notice to the Owner's

Representative stating the destination, purpose of the trip, who is traveling, and the expected duration of the trip. The Owner will respond within twenty-four (24) hours to such requests.

5.5.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. All Design Consultants and their corresponding rates (including associated Overhead and profit) shall be listed in Exhibit A to this Agreement.

5.5.7 All price escalation for labor, equipment, material, design and engineering services provided as part of the Work over the lifetime of the Project.

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

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

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

5.5.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office in accordance with Division One.

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

5.5.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work. All insurance and bond premiums incurred by Design Builder, Subcontractors and Design Consultants are to be identified in Exhibit A in order to be considered a Cost of the Work.

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

5.5.15 Tariffs or duties incurred in the performance of the Work, but not including sales, use or similar taxes.

5.5.16 <u>Not Used</u>.

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

5.5.18 The cost of defending suits or claims for infringement of patent rights arising from

the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

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

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

5.5.21 Accounting and data processing costs related to the Work.

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

5.5.23 Two and Five Hundreths percent (2.05%) of the Cost of the Work as defined in the preceding sections of this Section 5.5, which is agreed to represent reasonable compensation for all elements of Overhead as defined in Section 1.5.45 or not otherwise included above.

5.6 Allowance Items and Allowance Values; Proposal Alternates.

5.6.1 Allowances. Allowance Items, and their corresponding Allowance Values, are described in Division One. The Contaminated Media (soil and groundwater) and Utility Allowance are included within the GMP. All other Allowance Items are not included within the initial GMP, and it is intended that they will be added to the GMP by Change Order, at a later date.

5.6.2 Determination of Items and Values. Design-Builder and the Owner will work together collaboratively to review the Allowance Items and Allowance Values to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and the Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values.

5.6.3 Written Authorization Required. No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner.

5.6.4 Proposal Alternates. Proposal alternates are described in Form D of the Request for Proposal. Alternates are not included within the initial GMP. It is intended that, if selected by Owner, an alternate will be added to the GMP by Change Order.

5.7 Non-Reimbursable Costs.

5.7.1 The following shall not be deemed as Cost of the Work:

5.7.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Section 5.5.

5.7.1.2 Overhead and general expenses, except as provided for in Section 5.5, or which may be recoverable for changes to the Work.

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

5.7.1.4 Any costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

5.7.1.5 Costs not actually incurred by the Design-Builder. The Owner shall receive the full benefit of all trade discounts, rebates or refunds received by the Design-Builder from any source in regard to the cost of the Work.

5.7.1.6 Costs due to negligent, defective or nonconforming Work of the Design-Builder, Subcontractors, and anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction, repair or replacement of the Work, including insurance deductibles paid on account thereof.

5.7.1.7 Any cost not specifically and expressly described in Section 5.5.

5.8 The Guaranteed Maximum Price (GMP).

5.8.1 GMP.

5.8.1.1 Design-Builder represents, warrants, and guarantees that it shall not exceed the GMP. Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement (Exhibit A "GMP Exhibit Documents"). Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it shall be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

5.8.1.2 The GMP includes a Contingency in the amount of Six Million Four Hundred Fifty One Thousand Dollars ($6,451,000) which is available for Design-Builder's exclusive use for unanticipated costs it incurs on the Work. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) correction of negligent, defective, damaged or nonconforming Work, design errors or omissions, however caused; (d) Subcontractor defaults, terminations and reprocurement of services; (e) those events under Article 10 of this Agreement that result in an extension of the Contract Time but do not result in an increase in the Contract Sum; (f) schedule recovery costs; (g) detail resolution refinements (e.g., minor items required to complete a detail that may have not been perfectly clear in the Construction Documents); (h) utility coordination difficulties; and (i) items missed in development of the GMP, but which are required expressly or by necessary implication by the Contract Documents for a complete Project. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under

the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly update to the Project Schedule required by Section 25.1 an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

5.8.2 **Savings**. Any and all Savings shall revert one hundred percent (100%) to Owner prior to final reconciliation and invoicing. In determining whether there are savings (or the final GMP has been exceeded) the total Cost of the Work, calculated according to Section 5.5.1 through Section 5.5.22, shall be decreased by the total amount of Change Orders and the resulting number shall be marked up by Overhead according to Section 5.5.23 and Fee according to Section 5.4. Then the total amount of Change Orders shall be added back and the total compared to the final GMP.

ARTICLE 6
PAYMENT TERMS

6.1 **Schedule of Values**.

6.1.1 **Submittal**. Within fourteen (14) Days after the Agreement Date, and in accordance with Division One, Design-Builder shall submit to Owner for review a detailed Schedule of Values with breakdown allocating the total Contract Sum to each principle category of work, in such detail as requested by Owner. The Schedule of Values will: (a) subdivide the Work into its respective parts; (b) include values for all items comprising the Work; (c) contain appropriate amounts for demobilization, record drawings, and any other requirements for Project close-out; and (d) be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

6.1.2 **Owner Review**. Owner will timely review and approve the Schedule of Values or provide Design-Builder with a written explanation of why the Schedule of Values was not approved. Unless otherwise specified in the Contract Documents, Owner shall use reasonable efforts to review the Schedule of Values within thirty (30) Days of Owner's receipt of the Design-Builder's submittal of its Schedule of Values. Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first Application for Payment.

6.1.3 **Effect of Acceptance**. Owner's acceptance of the Schedule of Values shall not relieve the Design-Builder from its sole responsibility for the accuracy of the Schedule of Values and its compliance with all Contract requirements. The Design-Builder shall revise the Schedule of Values as necessary to accurately reflect Change Orders.

6.1.4 Current Status. Each Application for Payment shall include a current status of the Schedule of Values. No Application for Payment will be considered until the current status of the Schedule of Values has been submitted and accepted.

6.1.5 Conformance with Project Schedule. The items and activities, which the Design-Builder identifies within its Schedule of Values, shall be specifically referenced within, and conform and be consistent with, the activities set forth within the Project Schedule.

6.2 Applications for Payment.

6.2.1 Form of Application. On or about the first day of each month, the Design-Builder shall submit to Owner an Application for Payment. Each application shall be in a format as specified in Division One and shall include such documentation or information as required in Division One and the following:

(a) Current status of the Schedule of Values;

(b) Project Schedule and the most current updates;

(c) Affidavits signed by all Subcontractors performing Work to date, stating that each of them has been paid, less earned retainage, as their interests appeared in the last preceding Application For Payment;

(d) The contract purchase agreement number, CPA #_____ (which shall be placed on each Application for Payment submitted by the Design-Builder); and

(e) Statement by Design-Builder that it has paid prevailing wages as required by Section 23.1.3.

6.2.2 Failure to Include Required Documentation. Inclusion of the required documentation is a condition precedent to payment. Design-Builder is not entitled to payment for any Work unless the Application for Payment includes all required documentation. Owner reserves the right to withhold payment pursuant to Section 6.5 if it is subsequently determined that Design-Builder has not submitted all required documentation.

6.2.3 Reconciliation; Additional Cost Items. The application shall correlate the amount requested with the Schedule of Values and with the state of completion of the Work, as measured by the current Project Schedule. In addition to Work performed by the Design-Builder, applications may include (1) the invoiced cost of major materials or equipment (major material or equipment to be identified on the Schedule of Values) suitably stored on the Site, and (2) with Owner's consent, up to 75% of the invoiced cost of major materials or equipment suitably stored off the Site if the Owner's interest in those major materials or equipment is protected through insurance and the Design-Builder provides documentation of such insurance.

6.3 Progress Payments.

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

6.3.2 Prompt Payment of Subcontractors. Design-Builder shall ensure that Subcontractors are promptly paid as required by RCW 39.04.250.

6.3.3 Retainage. Owner shall retain five percent (5%) of the amount of each progress payment due under an Application for Payment. No retention shall be held for design and engineering services. Pursuant to RCW 60.28.011 and RCW 39.08.030, claims or "liens" by Subcontractors against the retained fund or the retainage bond must be in writing and submitted to the Owner's Representative at the address given for notices in this Contract, for filing with the Project documents. The Owner's Representative will maintain a copy of all claims "liens" against the retainage in the Project document.

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

6.3.5 Payment for Punchlist. Design-Builder's right to be paid for the Punchlist is set forth in Section 7.3.1.4.

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

6.4 Final Payment.

6.4.1 Application for Final Payment. Upon submitting a notice of Final Completion to Owner pursuant to Section 7.4, Design-Builder shall be entitled to submit an Application for Final Payment, which application, in addition to any other information required by the Contract Documents, shall include the following:

(1) Submittal by Design-Builder and all Subcontractors of Affidavits of Wages Paid in accordance with state law;

(2) Design-Builder's release of claims against Owner, except for Claims specifically described in the release document and submitted in accordance with Article 11;

(3) Design-Builder certification that all Subcontractors have been paid and there are no outstanding liens;

(4) Right of way, easement and property releases; and,

(5) All reports identified in the Affidavit and Certificate of Compliance with the King County Code 12.16.

6.4.2 Payment. Within thirty (30) days after receipt of an acceptable Application for Final Payment, Owner shall pay to Design-Builder the unpaid balance of the Contract Sum, reduced by any amounts owed by Design-Builder to Owner pursuant to this Agreement which have not been paid by Design-Builder. Retainage funds shall be released in accordance with Chapter 60.28 RCW.

6.4.3 Effect of Final Acceptance and Final Payment.

(1) Neither Final Acceptance nor Final Payment shall release Design-Builder or its sureties from any obligations under this Contract or the performance and payment bonds, or constitute a waiver of any claims by Owner arising from or related to Design-Builder's performance or failure to perform the Work and to meet all contractual obligations, including but not limited to:

a. Unsettled liens, security interests or encumbrances;

b. Damaged, non-conforming, or defective Work discovered by Owner;

c. Terms of any warranties or guarantees required by the Contract; and,

d. Payments made in error.

6.4.4 Waiver and Release. Except for those Claims properly preserved and expressly identified in the notice of Final Completion, acceptance of final payment by Design-Builder or any Subcontractor shall constitute a waiver and release to Owner of all claims by Design-Builder, or any such Subcontractor, for:

(1) Any and all disputes or claims, including but not limited to claims for damages, fines, interest, taxes, attorney fees, or costs, demands, rights, actions or causes of actions, known or unknown, arising out of or in any way related to the Parties' performance under the Contract and/or Project; and

(2) Any and all known and/or unknown liabilities, obligations, demands, actions, suits, debts, charges, causes of action, requests for money and/or payment under the Contract, outstanding invoices, or claims directly or indirectly arising out of or related to the Contract and/or Project.

6.5 Owner's Right to Withhold Payment and Offset.

6.5.1 Withholding of Payment. Without waiver of any other available remedies, the Owner has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to the Design-Builder as may be necessary to cover the Owner's costs or to protect the Owner from loss or damage for the following reasons:

1. Failure of the Design-Builder to submit or obtain acceptance of a Progress Schedule, Schedule of Values, and any updated Schedules;
2. Defective or non-conforming Work;
3. Costs incurred by the Owner to correct, repair or replace defective or non-conforming Work, or to complete the Work;

4. Assessment of liquidated damages;
5. Reasonable expectation of claims by third parties resulting from the Design-Builder's or Subcontractor's acts, omissions, fault, or negligence;
6. Deduction in Contract Work;
7. Failure of Design-Builder to repair damaged materials, equipment, property, or Work;
8. Failure of the Design-Builder to provide or obtain review of Submittals;
9. Failure to keep record documents up to date;
10. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
11. Failure to obtain and maintain applicable permits, insurance, and bonds;
12. Failure of the Design-Builder to disclose all material facts or accurate information upon which the Owner relied when agreeing to a Change Order;
13. Failure to provide Statement of Intent to Pay Prevailing Wage and/or Affidavits of Wages Paid;
14. Failure to recognize or obtain relief from Washington State sales tax obligations through resale certificates or similar means.

6.5.2 Payment Disputes. If Design-Builder disputes Owner's determination of payments due hereunder, or disputes any offsets or withholding by Owner, Design-Builder shall submit a Contractor Initiated Notice, in accordance with Section 8.6. Pending resolution of any such dispute, Design-Builder shall continue its performance of the Work in accordance with the Contract Documents.

6.6 Interest. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in Chapter 39.76 RCW.

6.7 Cost Records. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement. Design-Builder and Subcontractors shall maintain Project cost records by cost codes and shall contemporaneously segregate and separately record at the time incurred all costs: (1) directly associated with each work activity; and (2) directly or indirectly resulting from any event, occurrence, act, condition or direction for which the Design-Builder receives or seeks an adjustment in the Contract Sum, Contract Time and/or damages, such as delay and impact costs, acceleration costs, loss of productivity or efficiency, and increased or extended overhead. In addition to the requirements set forth in Article 8 through Article 10, Design-Builder shall only be entitled to extra compensation for any event, occurrence, act, condition or direction and/or the recovery of damages only to the extent that Project cost records are kept in full compliance with all requirements of this Agreement, including the requirement to segregate costs at the time incurred in accordance with this Article.

6.8 Maintenance and Inspection of Documents. All Design-Builder and Subcontractor documents and records relating to the Contract shall be open to inspection, audit, and/or copying by the Owner or its designee: (1) during the Contract Time; and (2) for a period of not less than six years after the date of Final Completion of the Project; or if any Claim, audit or litigation arising out of, in connection with, or related to this Agreement is initiated, all documents shall be retained until such Claim, audit, or litigation involving the records is resolved or completed, whichever occurs later. Design-Builder shall guarantee that all Subcontractor documents and records are

retained and open to inspection, audit and/or copying. Failure to: maintain and retain sufficient records in full compliance with all requirements of this Agreement; allow Owner to verify all costs or damages; or permit Owner access to the books and records shall constitute a waiver of the rights of the Design-Builder and Subcontractor to any Claim or be compensated for any damages, additional time or money under this Agreement.

6.8.1 Design-Builder to Provide Facilities and Shall Cooperate. Inspection, audit, and/or copying of all documents described herein, may be performed by the Owner or its designee at any time with not less than seven (7) days' Notice. However, if an audit or inspection is to be commenced more than sixty (60) days' after the date of Final Acceptance of the Project, the Design-Builder will be given twenty (20) days' Notice of the time when the audit or inspection is to begin. Design-Builder, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the inspection, audit and/or copying during normal business hours. Design-Builder, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

6.8.2 Documents. At a minimum, the following documents, including all machine readable electronic versions, shall be available for inspection, audits, and/or copying:

(1) Daily time sheets and all daily reports, Supervisor's reports, and inspection reports;

(2) Collective bargaining agreements;

(3) Insurance, welfare, and benefits records;

(4) Payroll registers;

(5) Earnings records;

(6) All tax forms, including payroll taxes;

(7) Material invoices and requisitions;

(8) Material cost distribution worksheet;

(9) Equipment records (list of Design-Builder's and Subcontractors' equipment, rates, etc.);

(10) Contracts, purchase orders and agreements between Design-Builder and each Subcontractor;

(11) Subcontractors' payment certificates;

(12) Correspondence, including email, with Subcontractors;

(13) All meeting notes by and between Design-Builder and Subcontractors and/or any third parties related to the Project;

(14) Canceled checks (payroll and vendors);

(15) Job cost reports, including monthly totals;

(16) Job payroll ledger;

(17) Certified payrolls;

(18) General ledger;

(19) Cash disbursements journal;

(20) Escrow bid documents, take off sheets, and calculations used to prepare the bid and/or quotes;

(21) Take off sheets, calculations, purchase orders, vouchers quotes, other financial data to support Cost Proposals, Contractor Initiated Notices, Claims and any other request for damages or additional money or;

(22) Financial statements for all years during the Contract Time. In addition, the Owner may require, if it deems appropriate, additional financial statements for three (3) years preceding execution of the Contract and 6 years following Final Acceptance of the Contract;

(23) Depreciation records on all Design-Builder's and Subcontractor's equipment, whether these records are maintained by the Design-Builder and Subcontractors involved, its accountant, or others;

(24) If a source other than depreciation records is used to develop costs for the Design-Builder's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;

(25) All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;

(26) Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;

(27) Worksheets, software, and all other documents used by the Design-Builder (a) to prepare its GMP Proposal or schedule(s) and/or (b) to prepare quotes and bids to the Design-Builder;

(28) All schedule documents, including electronic versions, planned resource codes, or schedules and summaries, including but not limited to those that support the Design-Builder's request for change in the Contract Time in each Contractor Initiated Notice with specificity;

(29) All Submittals; and,

(30) All other documents, including email, related to the Project, Claims, or Change Orders.

ARTICLE 7
TIME FOR PERFORMANCE

7.1 Commencement of Work. The Project will be constructed in two phases. Phase 1A includes construction of a new courthouse and detention facility on the north half of the Site. Phase 1B includes demolition of the existing detention facility, after completion of Phase 1A, and construction of a new parking structure on the south half of the Site. Design-Builder shall commence the Work for Phase 1A on the date specified in the Notice to Proceed for Phase 1A ("Phase 1A Date of Commencement"), whereupon Design-Builder shall diligently pursue performance of the Work in accordance with the Contract Documents. Design-Builder shall commence the Work for Phase 1B on the date specified in the Notice to Proceed for Phase 1B

("Phase 1B Date of Commencement"), whereupon Design-Builder shall diligently pursue performance of the Work in accordance with the Contact Documents. Except as provided in Section 7.1.1, Notice to Proceed for Phase 1B shall be issued after Substantial Completion of Phase 1A is achieved and the new detention facility is fully occupied.

7.1.1. **Separate Notice for Design and Construction.** Notwithstanding Section 7.1, Owner, in its discretion, after consulting with Design-Builder, may further divide the Notice to Proceed issued for Phase 1A Work and 1B Work into separate Notice to Proceed with Design, and Notice to Proceed with Construction. In addition, Owner, in its discretion, after consulting with Design-Builder, may issue Notice to Proceed with Design for Phase 1B, prior to Substantial Completion of Phase 1A.

7.2 Substantial Completion and Final Completion.

7.2.1 Phase 1A. Design-Builder guarantees that Substantial Completion of Phase 1A shall be achieved no later than one thousand four hundred (1,400) Days after the Phase 1A Date of Commencement ("Phase 1A Substantial Completion Date"). Substantial Completion of the Phase 1A Work shall be deemed to have occurred when all Phase 1A Work meets the requirements for Substantial Completion, as described in Section 7.3 and Division One.

7.2.2 Phase 1B. Design Builder guarantees that Substantial Completion of Phase 1B shall be achieved no later than three hundred sixty-five (365) Days after the Phase 1B Date of Commencement ("Phase 1B Substantial Completion Date"). Owner intends to issue Notice to Proceed with Phase 1B after it completes additional systems and performance testing of the new courthouse and detention center, conducts on-site operations training, and fully occupies the facilities. Owner estimates Phase 1B Date of Commencement will occur approximately ninety (90) Days after Substantial Completion of Phase 1A Work. Substantial Completion of the Phase 1B Work shall be deemed to have occurred when all Phase 1B Work meets the requirements for Substantial Completion, as described in Section 7.3 and Division One.

7.2.3 Adjustments to the Substantial Completion Date(s). The Substantial Completion Date(s) for Substantial Completion and Final Completion shall be subject to adjustment in accordance with Articles 8 and 10.

7.2.4 Performance of the Work. Design-Builder represents that the Work shall be planned, organized and executed in accordance with the Project Schedule to achieve the Substantial Completion Date(s). Should Owner have a reasonable belief that the Project Schedule or Substantial Completion Date(s) will not be met for causes that do not constitute an Excusable Delay, Owner has the right, but not the obligation, to so notify Design-Builder, and Design-Builder shall then work additional overtime, engage additional personnel and take such other measures as necessary to complete the Work within the Project Schedule and by the Substantial Completion Date(s). Design-Builder shall bear all costs related to such overtime, additional personnel, and other measures.

7.2.5 Final Completion of Project. Design-Builder guarantees that Final Completion of the entire Project shall be achieved no later than ninety (90) Days after the Phase 1B Substantial Completion Date. Final Completion of the Project shall be deemed to have occurred when all Work meets the requirements for Final Completion, as described in Section 7.4 and Division One.

7.3 Substantial Completion Procedures.

7.3.1 Punchlist.

7.3.1.1 Design-Builder's Creation of Punchlist. Design-Builder shall prepare separate Punchlists for Phase 1A and Phase 1B and provide them to Owner together with an estimate of the cost and time to complete and/or correct each Punchlist item.

7.3.1.2 Owner's Action on Punchlist. Owner shall notify Design-Builder within ten (10) business days after receipt of the Punchlist for Phase 1A and Phase 1B, as applicable, that it accepts such Punchlist and estimate or shall otherwise state its reasons for disagreement therewith in reasonable detail; provided, however, that: acceptance or rejection thereof shall not relieve Design-Builder of its liability to complete or correct the Punchlist items. If the Parties fail to agree on any aspect of the Punchlist, then: (a) Design-Builder shall be obligated to proceed in accordance with Owner's instructions and interpretations and additions relative to the Punchlist; and (b) submit a Contractor Initiated Notice under Section 8.6.

7.3.1.3 Condition Precedent to Substantial Completion. Design-Builder's creation of a Punchlist, and Owner's Approval of such Punchlist, shall be a condition precedent to achieving Substantial Completion for Phase 1A or Phase 1B, as applicable.

7.3.1.4 Payment of Punchlist Amount. Owner may withhold an amount equal to one hundred fifty percent (150%) of the estimated value of each Punchlist item. Payment of the estimated amount of the Punchlist shall not be due until Design-Builder has completed all Punchlist items. If Design-Builder fails to complete all Punchlist items within sixty (60) days after the date of Substantial Completion for Phase 1A or Phase 1B, as applicable, Owner may complete, or cause to be completed, any item which Design-Builder has so failed to complete. In such case, Owner may deduct the related cost of such item from the amount withheld with respect to such item and pay the remaining amount withheld, if any, to Design-Builder.

7.3.2 Substantial Completion Certificate.

7.3.2.1 Design-Builder's Issuance of Certificate. When Design-Builder believes that Substantial Completion of Phase 1A or Phase 1B has occurred, Design-Builder shall issue a Substantial Completion Certificate for that phase, supported by such information required by the Contract Documents.

7.3.2.2 Owner's Review of Certificate. Owner shall review and accept or reject the Substantial Completion Certificate issued by Design-Builder within ten (10) business days of its receipt of such certificate, and, if applicable, will specifically identify its reasons for rejection. If Design-Builder accepts the reasons for such rejection, it shall take corrective action and submit a new certificate to Owner. If Design-Builder disagrees with the reasons for the rejection, it shall promptly

notify Owner, whereupon Design-Builder and Owner shall meet to attempt to resolve the disagreement. If the disagreement cannot be resolved within five (5) business days, Design-Builder shall act in accordance with the instructions of Owner without prejudice to its rights under Article 11.

7.3.3 Prior Occupancy. Owner may, upon written notice thereof to Design-Builder, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: (a) be deemed an acceptance of any portion of the Work; (b) accelerate the time for any payment to Design-Builder; (c) prejudice any rights of Owner provided by any insurance, bond, or the Contract Documents; (d) relieve Design-Builder of the risk of loss or any of the obligations established by the Contract Documents; (e) establish a date for termination or partial termination of the assessment of liquidated damages; or (f) constitute a waiver of claims. Notwithstanding the above, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy.

7.4 Final Completion of the Project.

7.4.1 Conditions for Final Completion. Final Completion of the Project shall occur when all of the following have been satisfied:

(1) the Work is fully and finally complete in accordance with the Contract Documents, including: (i) the completion of all Punchlist items; (ii) all as-built information and other documents required by the Contract Documents have been received and accepted by Owner; and (iii) all special tools, spare parts, operating instructions and manuals, and certificates required by the Contract Documents and all other items to be provided by Design-Builder to Owner hereunder shall have been delivered to Owner free and clear of all liens;

(2) the Design-Builder has completed all of the requirements, up to and including submittal of a proper application for the LEED Certificate;

(3) Design-Builder has notified Owner that subsections (1) and (2) have occurred and submitted an Application of Final Payment to Owner; and

(4) Owner has concurred that subsections (1) and (2) have been satisfied and approved the Application for Final Payment.

7.4.2 Issuance of Final Acceptance Certificate. When Owner believes that all conditions in Section 7.4.1 have occurred and all other requirements for Final Acceptance contained in Division One have been met, Owner shall issue a Final Acceptance Certificate.

7.5 Delay Damages.

7.5.1 Liquidated Damages for Late Substantial Completion.

(1) **Phase 1A**. If Design-Builder fails to achieve Substantial Completion for Phase 1A by the Substantial Completion Date, Design-Builder shall be liable for the payment of liquidated damages to Owner in the amount of Five Thousand Dollars ($5,000) per each calendar day of delay until Substantial Completion of Phase 1A is achieved.

(2) **Phase 1B**. If Design-Builder fails to achieve Substantial Completion for Phase 1B by the Substantial Completion Date, Design-Builder shall be liable for the payment of liquidated damages to Owner in the amount of One Thousand Dollars ($1,000) per each calendar day of delay until Substantial Completion of Phase 1B is achieved.

7.5.2 Liquidated Damages Not Penalty. The Parties acknowledge, recognize and agree on the following:

(1) that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Design-Builder's failure to achieve Substantial Completion on or before the Substantial Completion Date for Substantial Completion; and

(2) that any sums which would be payable under this Article 7 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated from such failure.

7.5.3 Actual Damages for Late Final Completion. After Substantial Completion of Phase 1B is achieved, actual damages will be assessed for failure to achieve Final Completion by the date for Final Completion. Actual damages will be calculated on the basis of direct consultant, administrative, and other related costs attributable to the Project as a result of such failure.

7.5.4 Payment of Delay Damages. Delay Damages shall accrue daily, and Owner may offset these costs against any payment due Design-Builder.

7.5.5 Default. If the Design-Builder is in default under Article 15, whether or not the Owner elects to terminate for cause, the Owner may elect to impose liquidated damages or actual damages for delay. The Owner will not be entitled to recover both types of damages for the same delay.

ARTICLE 8
CHANGES

8.1 Right to Make Changes. Owner may, at any time and without notice to Design-Builder's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Substantial Completion Date(s), an adjustment shall be made as provided in Articles 8, 9, and 10, and incorporated into a Change Order.

8.2 Owner Request for Change Proposal (RFP) From Design-Builder. If Owner desires to order a change in the Work, it may issue an RFP to Design-Builder. Design-Builder shall submit a Cost Proposal as described in Division One within fourteen (14) Days of the request from Owner, or within such other period as mutually agreed in writing. Design-Builder's Cost Proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

8.2.1 Cost Proposal Negotiations. Upon receipt of the Cost Proposal, as provided in Articles 9 and 10, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Design-Builder and execute a Change Order. Pending agreement on the terms of the Change Order, Owner may direct Design-Builder to proceed immediately with the proposed Work. Design-Builder shall not proceed with any change in the Work until it has obtained Owner's written approval or Owner's Construction Change Directive as provided in Section 8.3. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.

8.2.2 Failure to Agree Upon Terms of Change Order. If Owner and Design-Builder are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Design-Builder shall submit a Contractor Initiated Notice under Section 8.6.

8.3 Construction Change Directives. The Owner may direct the Design-Builder to proceed with a change in the Work through a written Construction Change Directive (may also be referred to as a Field Directive) when the time required to price and execute a Change Order would impact the Project. The Construction Change Directive shall describe and include the following: (a) the scope of work; (b) an agreed upon maximum not-to-exceed amount; (c) any estimated adjustment in Contract Time; (d) the method of final cost determination in accordance with the requirements of Article 9; and (e) the supporting cost data to be submitted in accordance with the requirements of Article 9.

Upon satisfactory submittal by the Design-Builder in accordance with Division One and approval by the Owner of supporting cost data, a Change Order will be executed. The Owner will pay the Design-Builder for Construction Change Directive work only upon satisfactory completion of performed work and execution of a Change Order. If the Design-Builder has been directed to perform Work and the Parties are unable to agree on a Change Order, Owner shall direct Design-Builder to submit a Contractor Initiated Notice under Section 8.6.

8.4 Owner's Rights to Undertake or Reject Proposed Changes. Owner shall have the right, at any time and in its sole discretion: (a) to direct Design-Builder to proceed immediately with the proposed change under a Construction Change Directive, pending agreement by the Parties on the terms of a Change Order; or (b) not to undertake any contemplated change, provided, however, that in such event, if Design-Builder was required to prepare a design as part of the proposed change, then Design-Builder shall be paid the reasonable costs it has incurred in preparing such design.

8.5 Changes of Law. Design-Builder may submit a Contractor Initiated Notice in accordance with Section 8.6 to compensate Design-Builder for the effects of any changes in Government Rule enacted after the Agreement Date affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents after construction has begun because of changes in Government Rules.

8.6 Contractor (Design-Builder) Initiated Notices (CIN). To the extent Design-Builder believes that any act, event or condition arising out of or relating to the Work, including those caused by Owner or anyone for whose acts Owner is responsible: (a) effects an increase in its cost of, or time required for the performance of, any part of the Work, and (b) under the terms of the Contract Documents such act, event or condition entitles Design-Builder to an adjustment to the Contract Sum or Contract Time or other relief, then Design-Builder shall comply with the following processes.

8.6.1 Contractor Initiated Notice. Design-Builder shall provide Owner with written Notice, in accordance with Section 8.6.2, of any act, event, or condition that Design-Builder believes entitles it to an adjustment in the Contract Sum and/or Contract Time within fourteen (14) days after the occurrence of the act, event, or condition giving rise to the request. For purposes of this part, "occurrence" means when Design-Builder knew, or in its diligent prosecution of the Work should have known, of the act, event, or condition giving rise to the request. If Design-Builder believes it is entitled to an adjustment in the Contract Sum, Design-Builder shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Design-Builder shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.

8.6.2 Contents of the Initial CIN; Failure to Comply. Design-Builder shall not be entitled to any adjustment in the Contract Sum or Contract Time for any occurrence of acts, events or conditions or costs that occurred more than fourteen (14) days before Design-Builder's written CIN to Owner.

8.6.2.1 Contract Sum. If an adjustment in the Contract Sum is requested, the Notice shall set forth, at a minimum, a description of: (a) the event giving rise to the request for an adjustment in the Contract Sum; (b) the nature of the impacts to Design-Builder and its Subcontractors of any tier, if any; (c) a Cost Proposal of the amount of the adjustment in Contract Sum requested; and (d) the method used in Section 9.1.2 to calculate the adjustment in the Contract Sum.

8.6.2.2 Contract Time. If an adjustment in the Contract Time is requested, the Notice shall set forth, at a minimum, a description of: (a) the act, event or condition, giving rise to the request for an adjustment in the Contract Time;

(b) the nature of the impacts to Design-Builder and its Subcontractors of any tier, if any; (c) the impact to the Critical Path; and (d) to the extent possible the amount of the adjustment in the Contra t Time requested.

Failure to comply with the requirements of this section shall constitute a waiver of Design-Builder's right to an adjustment in the Contract Sum or Contract Time.

8.6.3 Contents of the Supplemental Notice; Failure to Comply. Within thirty (30) days after the initial CIN is submitted to Owner, unless Owner agrees in writing to allow an additional period of time, Design-Builder shall supplement the written notice provided under Section 8.6.2 with additional supporting data, including responding to a directive from Owner to calculate the adjustment in Contract Sum by an alternative method under Section 9.1.2.

8.6.3.1 Contract Sum. Such additional supporting data shall include, in addition to any requirements set forth in Division One, the following: (a) the amount of compensation requested, itemized in accordance with the procedure set forth herein; (b) specific facts, circumstances, and analysis that confirms not only that Design-Builder suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an adjustment to Design-Builder; and (c) documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request relates to a delay or change in the Contract Time Design-Builder shall also be obligated to comply with all of the requirements of Article 10.

8.6.3.2 Contract Time. Such additional supporting data shall include, in addition to any requirements set forth in Division One, the following: (a) the amount of delay claimed, itemized in accordance with the procedure set forth herein; (b) specific facts, circumstances, and analysis that confirms not only that Design-Builder suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an adjustment in the Contract Time; (c) supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner; and (d) an acceleration schedule on a fragment basis to demonstrate how such delay can be eliminated.

Failure to comply with the requirements of this section shall constitute a waiver of Design-Builder's right to an adjustment in the Contract Sum or Contract Price.

8.6.4 Combined Requests for Price and Time Adjustments. Any requests by Design-Builder for an adjustment in the Contract Sum and in the Contract Time that arise out of the same act(s), event(s), or condition(s) shall be submitted together.

8.6.5 Owner's Response to Design-Builder's CIN. Owner will make a written determination on Design-Builder's CIN within thirty (30) days after receiving Design-Builder's supplemental notice and supporting data under Section 8.6.3. However, Owner may request additional information and specify a reasonable time period for receipt of the information, in which case Owner will make a written determination within thirty (30) days following such receipt. If Owner does not make a written determination within the applicable time period, the CIN shall be deemed denied.

8.7 Fault or Negligence of Design-Builder. No change in the Contract Sum or Contract Time, including Substantial Completion Date(s), shall be allowed when the basis for the change arises out of or relates to acts, events or conditions to the extent caused by the fault or negligence of Design-Builder, or anyone for whose acts Design-Builder is responsible

8.8 Computation of Adjustments.

8.8.1 Contract Sum. The computation of the value of any Change Order, Design-Builder request for an adjustment under Section 8.6, or any other adjustment to the Contract Sum, shall be determined in accordance with Article 9.

8.8.2 Contract Time. The computation of any adjustments to the Contract Time as the result of any Change Order, or of any Design-Builder Contractor Initiated Notice under Section 8.6, or any other event or reason, shall be as set forth in Article 10.

8.9 Change Order as Full Payment and Final Settlement. If Owner and Design-Builder reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all adjustments for time and for direct, indirect, and consequential costs or damages, including costs or damages associated with delay, inconvenience, disruption of schedule, impact, dilution of supervision, loss of efficiency or productivity, ripple effect, acceleration of Work, lost profits, related in any way, to any Work, whether direct or indirect, either covered or affected by the Change Order, or related in any way, whether direct or indirect, to the acts, events or conditions giving rise to the change.

8.10 Duty to Proceed. No dispute under the Contract Documents, including those relating to the entitlement, cost, or time associated with a contemplated change or Design-Builder request for adjustment under Section 8.6, shall interfere with the progress of the Work and Owner shall continue to satisfy its payment obligations to Design-Builder in accordance with the Contract pending the final resolution of any dispute or disagreement. Design-Builder shall have the duty diligently to proceed with the Work in accordance with Owner's instructions despite any dispute or claim, including those events where the Parties are in disagreement as to whether instructions from Owner constitute a valid claim or change to the Contract Documents and justify adjustments to the Contract Sum or Contract Time. Design-Builder's sole recourse in the event of a dispute will be to pursue its rights under Article 11.

ARTICLE 9
ADJUSTMENTS TO THE CONTRACT SUM

9.1 Change in the Contract Sum – General Application.

9.1.1 Contract Sum Changes Only By Change Order. The Contract Sum shall only be changed by a Change Order. Design-Builder shall include any request for a change in the Contract Sum in its:

a. Cost Proposal
b. Contractor Initiated Notice
c. Claim, provided the related Cost Proposal or Contractor Initiated Notice

included a request to adjust the Contract Sum.

9.1.2 Methods for Calculating Change Order Amount. The value of any Work covered by a Change Order, or of any request for an adjustment in the Contract Sum, shall be determined by one of the following methods:

a. **Unit Prices**: By application of unit prices to the quantities of the items involved as determined in Section 9.2.

b. **Firm Fixed Price**: On the basis of a fixed price as determined in Section 9.3.

c. **Time and Materials**: On the basis of time and material as determined in Section 9.4.

Regardless of the method selected to calculate the change in the Contract Sum, the Design-Builder agrees that it will be entitled to Overhead and profit on Change Order Work as set forth in this Article 9. Under no circumstances shall Design-Builder be entitled to receive Overhead and the Design Builder's Fee beyond the Base Work, except as allowed by Section 9.4.9.3.a for Change Order Work.

9.1.3 Owner May Direct Method. When Owner has requested Design-Builder to submit a Cost Proposal, Owner may direct Design-Builder as to which method in Section 9.1.2 to use when submitting its proposal.

9.2 Unit Price Method.

9.2.1 Whenever the Owner authorizes Design-Builder to perform Work on a Unit Price basis, the Owner's authorization shall clearly state the:

a. **Scope**: Scope of work to be performed;

b. **Unit Price**: Applicable Unit Price; and,

c. **Not to Exceed**: Not to exceed amount of reimbursement as established by the Owner.

9.2.2 The applicable unit price shall include a detailed cost breakdown supporting the Design-Builder's request for reimbursement for all direct and indirect costs required to complete the changed Work, including any additional design or engineering costs as required to complete the Work, including Overhead and profit.

9.2.3 Design-Builder shall be paid under this method only for the actual quantity of materials incorporated in or removed from the Work and such quantities must be supported by field measurement statements verified by the Owner. The GMP shall be adjusted in accordance with the agreed upon Change Order amount.

9.3 Firm Fixed Price Method.

9.3.1 The Design-Builder and Owner may mutually agree on a fixed amount as the total compensation for the performance of changed work.

9.3.2 The Design-Builder shall provide a detailed cost breakdown supporting the Design-Builder's requested adjustment to the Contract Sum and any other financial documentation requested by the Owner's Representative.

9.3.3 Any adjustments to the Contract Sum using the Firm Fixed Price Method shall include all reasonable direct and indirect costs of the changed Work, including Overhead and profit. Such Overhead and profit shall be calculated in accordance with Section 9.4.9.

9.3.4 Whenever the Owner authorizes Design-Builder to perform changed Work on a Firm Fixed Price Method, the Owner's authorization shall clearly state:

a. Scope of changed Work to be performed; and
b. Total agreed price for performing such changed Work. The GMP shall be adjusted consistent with the total agreed price in the corresponding Change Order.

9.4 Time and Materials Method.

9.4.1 Owner Authorization. Whenever the Owner authorizes the Design-Builder to perform Work on a Time and Materials basis, Owner's authorization shall clearly state:

a. Scope of Work to be performed; and,
b. A not to exceed amount of reimbursement as established by the Owner.

9.4.2 Design-Builder's Responsibility. Design-Builder shall:

a. Cooperate with the Owner and assist in monitoring the Work being performed;
b. Substantiate and keep separate records of the additional labor, design and engineering hours, materials and equipment charged to work under the Time and Materials Method by detailed time cards or logs completed on a daily basis before the close of business each working day;
c. Present the time card and/or log at the close of business each day to the Owner's Representative so that the Owner may review and initial each time card/log for the work done under the Time and Materials Method;
d. Perform all Work in accordance with this provision as efficiently as possible;
e. Not exceed any cost limit(s) without the Owner's prior written approval; and
f. Maintain all records of the work, including all records of the Subcontractors and make such records available for inspection as required in Section 6.8.

9.4.3 Submission of Costs. Design-Builder shall submit costs and any additional information requested by the Owner to support Design-Builder's requested price adjustment. Design-Builder shall be responsible for keeping all Change Order costs segregated from the costs for the Base Work as set forth in Article 5.

9.4.4 Reasonable Costs of the Work. The Design-Builder shall only be entitled to be paid for reasonable direct and indirect costs of the changed Work actually incurred and documented to Owner's satisfaction. The Design-Builder has a duty to control costs. If the Owner determines that the Design-Builder's costs are excessive or unreasonable, the Owner, at its discretion, shall determine the reasonable amount for payment. Any

adjustments to the Contract Sum using the Time and Materials method shall be based on the direct and indirect costs of the Work as defined in Section 9.4.5 through Section 9.4.9.

9.4.5 Labor. For all labor, the Design-Builder shall be reimbursed for its labor costs in accordance with the applicable provisions of Section 5.5.

9.4.6 Materials. The cost of materials resulting from an event or condition shall be calculated in one or more of the following methods, at the Owner's election:

a. **Invoice Cost**. The Design-Builder may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back-charges, notwithstanding the fact that they may not have been taken by the Design-Builder. This method shall be considered only to the extent the Design-Builder's invoice costs are reasonable and the Design-Builder provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to the Owner. As to materials furnished from the Design-Builder's stocks for which an invoice is not available, the Design-Builder shall furnish an affidavit certifying its actual cost of such materials and such other information as the Owner may reasonably require;

b. **Wholesale Price**. The Design-Builder may be paid the lowest current wholesale price for which the materials are available in the quantities required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back-charges; or,

c. **Owner Furnished Material**. The Owner reserves the right to furnish such materials as it deems advisable, and the Design-Builder shall have no Claim for any costs, overhead or profit on such materials.

9.4.7 Equipment. The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following rules:

9.4.7.1 Equipment Rates. Rates shall be based on the Design-Builder's actual allowable costs incurred or the rates established according to the Rental Rate Blue Book for Construction Equipment, published by Equipment Watch, PRIMEDIA, whichever is less. The Design-Builder's own charge rates may be used if verified and approved by the Owner and based on the Design-Builder's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the Design-Builder's historical acquisition costs, utilization, and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. The Rental Rate Blue Book established equipment rate shall be the monthly rental rate for the equipment plus the monthly rental rate for required attachments, divided by 176, multiplied by the appropriate regional adjustment factor, plus the hourly operating cost. The established equipment rate shall apply for actual equipment usage up to eight hours per day. For all hours in excess of eight hours per day or 176 hours per month, the established equipment rate shall be the monthly rental rate plus the monthly rental rate for required attachments, divided by 352, multiplied by the regional adjustment factor, plus the hourly operating cost.

9.4.7.2 Transportation. If the necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other work under

the terms of the Contract, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.

9.4.7.3 Standby. The Design-Builder shall be entitled to standby equipment costs only if (a) the equipment is ready, able, and available to do the Work at a moment's notice; (b) Design-Builder is required to have equipment standby because of an event or condition solely caused by the Owner and (c) the Design-Builder can demonstrate that it could have and intended to use the equipment on other projects/jobs. If entitled to standby costs, the Design-Builder shall be compensated at 50% of the monthly rental rate for the equipment, divided by 176, and multiplied by the appropriate regional adjustment factor, as identified in the Rental Rate Blue Book for Construction Equipment, published by Machinery Information Division of PRIMEDIA Information Inc. Standby shall not be paid during periods of Design-Builder-caused delay, concurrent delay, Force Majeure, during any seasonal shutdown, routine maintenance, down-time or broken equipment, late delivery of equipment or supplies, or other anticipated occurrence specified in the Contract Documents. No payment shall be made for standby on any piece of equipment, which has been used on the Project in any 24 hour period. Standby costs shall not be paid for weekends, holidays, and any time the equipment was not intended to be used on the Project as demonstrated by the Project Schedule.

9.4.8 Subcontractor.

9.4.8.1 Direct costs associated with Subcontractors shall exclude Overhead and profit markups and shall be calculated and itemized in the same manner as prescribed in Section 9.4.5 through Section 9.4.7 for Design-Builder. Design-Builder shall provide detailed breakdown of Subcontractor invoices.

9.4.9 Overhead and Profit Markup.

9.4.9.1 On a change to the Contract Sum by the Design-Builder, the Owner will only pay Overhead, including home office overhead, site or field office overhead, and unabsorbed home office overhead, and profit in accordance to the provisions set forth herein, which are agreed to cover all Overhead and profit, regardless of how the Design Builder chooses to account for various costs in its books of account.

9.4.9.2 Overhead and profit markups shall not be paid on freight, delivery charges, express charges, or sales tax.

9.4.9.3 Overhead and profit markup shall be paid by a markup on direct costs and shall not exceed the following:

a. If the Design-Builder is self-performing work: Design-Builder is limited to the combined Overhead and Fee percentages on the Design-Builder's direct costs as set forth in Section 5.5.23 and Section 5.4.

b. If a Subcontractor is performing work: Subcontractor is limited to 18% combined Overhead and profit markup for the Subcontractor's direct costs and Design-Builder is limited to 7% combined Overhead and profit markup on the direct costs of the Subcontractor.

c. In no event shall the total combined Overhead and profit markup for Design-Builder and all Subcontractors of any tier exceed twenty-five percent (25%) of the direct cost to perform the Change Order Work.

9.5 Direct Costs.

Direct costs shall include labor (as defined in Section 9.4.5), materials (as defined in Section 9.4.6), equipment, (as defined in Section 9.4.7) and Subcontract costs (as defined in Section 9.4.8.)

9.6 Deductive Changes to the Contract Sum.

9.6.1 A deductive change to the Contract Sum may be determined by taking into account:

a. Costs incurred and saved by the Design-Builder as a result of the change, if any;

b. The costs of labor, material, equipment, overhead and profit saved by the change. These costs shall be calculated following as closely as possible with the provisions identified in Article 9; and/or,

c. At the discretion of the Owner, costs set forth in the documents used by the Design-Builder to develop its Proposal.

9.6.2 Where the Owner has elected not to correct incomplete or defective Work, the adjustment in the Contract Sum shall take into account:

a. The decreased value to the Owner resulting from the incomplete or defective Work; and,

b. The increased future costs which the Owner may incur by reason of the incomplete or defective Work

9.7 Compensation for Adjustments to the Substantial Completion Date(s). Design-Builder's rights to seek compensation for the cost of an adjustment to the Substantial Completion Date(s), are set forth in Section 10.3.

9.8 GMP Adjustment. The GMP shall be adjusted consistent with the amount of each Change Order.

ARTICLE 10
ADJUSTMENTS TO CONTRACT TIME

10.1 Requests for Contract Time. The Contract Time shall only be changed by a Change Order. Design-Builder shall include any request for a change in the Contract Time in its:

a. Cost Proposal.

b. Contractor Initiated Notice.

c. Claim, provided the related Cost Proposal or Contractor Initiated Notice included a request to adjust the Contract Time.

10.2 Adjustment of Contract Time. The Contract Time shall be adjusted by the amount of time Design-Builder actually is delayed by an Excusable Delay in the performance of the Work, provided that: (a) written initial and supplemental notice is given by Design-Builder within the time periods provided in Section 8.6; (b) the delay impacts the Critical Path (as reflected on the most recent monthly Project Schedule update), such delay could not be avoided by resequencing the Work, and the delay is outside the reasonable control of Design-Builder; (c) Design-Builder's performance would not have been concurrently delayed or interrupted by any event other than those identified in Section 10.4; and (d) Design-Builder, in view of all the circumstances, has exercised reasonable efforts to avoid the delay and did not cause the delay. Delays of Subcontractors shall be deemed to be within the reasonable control of Design-Builder, unless such delays are themselves excusable in accordance with the provisions of this Agreement.

10.3 Adjustment of Contract Sum for Excusable Delays.

10.3.1 Compensable and Non-Compensable Excusable Delays. If Design-Builder encounters an Excusable Delay under Sections 10.4 (1), (2), (3), (4), (5), (10), (11), or (13), for which it is entitled to a time extension pursuant to Section 10.2, Design-Builder also shall be entitled to an adjustment of the Contract Sum, as provided in Section 10.3.2. Except as provided in the preceding sentence, Design-Builder expressly waives any and all monetary relief for any delay to the Work, whether or not such delay is an Excusable Delay, and specifically agrees that its sole and exclusive remedy for Excusable Delay, including any loss of productivity of impact costs associated with such Excusable Delays, will be an adjustment to the Substantial Completion Dates(s).

10.3.2 Adjustments to Contract Sum. The daily cost of any change in the Contract Time allowed under Section 10.3.1 shall be limited to the items below. Design-Builder shall not be entitled to any Overhead and profit for an adjustment in Contract Time except as provided below:

(1) Cost of nonproductive field supervision or labor extended because of the delay;

(2) Cost of weekly meetings or similar indirect activities extended because of the delay;

(3) Cost of temporary facilities or equipment rental extended because of the delay;

(4) Cost of insurance extended because of the delay; and

(5) General and administrative overhead in an amount to be agreed upon, but not to exceed the sum of items (1) through (4) multiplied by the combined Overhead and Fee percentages set forth in Section 5.5.23 and Section 5.4.1.

10.4 Events Constituting Excusable Delay. The following events shall constitute Excusable Delay, provided, however, that before any event is deemed to be an Excusable Delay, Design-Builder shall be required to meet the conditions set forth in Section 10.2 for each such event:

(1) Owner's suspension of all or part of the Work pursuant to Article 17;

(2) Any failure of Owner to act within the times expressly provided in this Agreement;

(3) Any unreasonable delay caused by an act, event or condition caused by Owner or persons acting on Owner's behalf;

(4) Owner changes pursuant to Article 8;

(5) **Not used**.

(6) Major earthquakes or floods;

(7) Weather conditions that meet the criteria established in Division One;

(8) Public disorders, insurrection, rebellion, epidemic, terrorism, acts of war;

(9) Fire or other casualty for which Design-Builder is not responsible;

(10) Actions of Governmental Units enjoining the Project from proceeding or in unreasonably delaying the issuance of a Government Approval;

(11) Changes in Laws; and

(12) Labor strikes lasting in excess of seven (7) consecutive days that affect a specific trade on a national or regional level and such strike was not caused by the acts or omissions of Design-Builder or Subcontractors.

(13) Differing Site Conditions as set forth in Section 3.4.5.

(14) Supplier delay of sole source products, provided the delay is completely outside the control of the Design-Builder.

10.5 Events Not Considered As Excusable Delay. The following events shall not constitute Excusable Delay, and Design-Builder assumes all risk of such events:

(1) Actions or inactions of Government Units except as provided in Section 10.4(10);

(2) Delays in obtaining or delivery of goods or services from Design-Builder or any Subcontractor unless such delay is caused by an Excusable Delay encountered by the Subcontractor;

(3) Economic conditions, including labor shortages, inexperienced or unqualified labor, material shortages, or increases in the prices of labor or material.

(4) Delays of common carriers;

(5) Delays or disruptions arising out of or related to security clearances at the Site unless such delays or disruptions are not due to the actions or omissions of the Design-Builder or its subcontractors;

(6) Adverse weather conditions, except as provided in Sections 10.4(6) and 10.4(7); and

(7) Any other delay not specifically enumerated in Section 10.4.

10.6 Design-Builder To Proceed With Work As Directed. Pending final resolution of any request in accordance with this article, unless otherwise agreed in writing, Design-Builder shall proceed diligently with performance of the Work.

10.7 Disputes; Burden of Proof. In case of a dispute regarding the application of the provisions of this Article 10, including any dispute as to whether an Excusable Delay has occurred, either Party shall have the right to submit the dispute for resolution pursuant to Article 11, and Design-Builder shall bear the burden of proof, by clear and convincing evidence, in establishing its entitlement to adjustments to the Contract Time and its entitlement to relief under this Article 10.

ARTICLE 11
CLAIMS AND DISPUTE RESOLUTION

11.1 Condition Precedent to Filing a Claim. Compliance with the requirements of Article 8, Article 9, and Article 10, is a condition precedent to filing a Claim.

11.2 Claims Process.

11.2.1 Claim Filing Deadline for Design-Builder. Design-Builder shall file its Claim within forty-five (45) days from Owner's denial or deemed denial of a Contractor Initiated Notice under Section 8.6.

11.2.2 Claim Must Cover All Costs and Be Documented. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Design-Builder may be entitled. It shall be fully substantiated and documented and, at a minimum, shall contain the following information:

(1) A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;

(2) The date on which facts arose which gave rise to the Claim;

(3) The name of each employee, agent or representative of Owner and Design-Builder knowledgeable about the Claim;

(4) The specific provisions of the Contract Documents which support the Claim;

(5) The identification of any documents and the substance of any oral communications that support the Claim;

(6) Copies of any identified documents, other than the Contract Documents, that support the Claim;

(7) If an adjustment in the Contract Time is sought, then: (a) the specific number of days sought; (b) the specific reasons Design-Builder believes an extension in the Contract Time should be granted; and (c) Design-Builder's analysis of its Project Schedule and relevant schedule updates as required by Article 25 to demonstrate the reason for such an adjustment;

(8) If an adjustment in the Contract Sum is sought, the exact amount sought, calculated in accordance with the Contract, a breakdown of that amount into the categories set forth in, and in the detail required by, Article 9 and the cost categories in Section 6.7; and

(9) A statement certifying, under penalty of perjury, that Design-Builder has exercised reasonable diligence in investigating the Claim and that after its investigation, it has determined that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Design-Builder's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time to which Design-Builder believes Owner is liable.

11.2.3 Limitation on Claim Amendment. Design-Builder shall not be allowed to change the alleged basis for a Claim or to increase the amount of money, time or other relief requested after the applicable time period for bringing a Claim, if the change is based in any way upon data or information that a reasonable and diligent investigation would have uncovered prior to making the Claim.

11.2.4 Time for Owner's Response to Claim. After Design-Builder has submitted a fully documented Claim that complies with all applicable provisions of Section 11.2.2, Owner shall respond in writing to Design-Builder, Owner shall respond in writing within sixty (60) days from the date the Claim is received with either:

(1) A decision regarding the Claim; or

(2) Written Notice extending the Owner's time to respond to the Claim for another thirty (30) Days.

Absent a thirty (30) Day extension, the Claim shall be deemed denied upon the sixty-first (61st) Day following receipt of the Claim by Owner. If Owner used a thirty (30) Day extension, the Claim shall be deemed denied upon the ninety-First (91st) Day following receipt of the Claim by the Owner.

11.2.5 Owner's Review of Claim & Finality of Decision. To assist in the review of any Claim, Owner or its designee may visit the Site, request additional information or documentation in order to fully evaluate and/or audit the Claim. Design-Builder shall proceed with performance of the Work pending final resolution of any Claim in accordance

with Section 8.8. Owner's written decision on a Claim shall be final and conclusive as to all matters set forth in the Claim, unless Design-Builder follows the procedures set forth in Section 11.3.

11.2.6 Waiver of Design-Builder Rights for Failure to Comply with This Section. Any Claim of Design-Builder against Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by Design-Builder unless timely made in accordance with the requirements of this Section 11.2.

11.3 Alternative Dispute Resolution and Litigation.

11.3.1. As a mandatory condition precedent to the initiation of litigation by the Design-Builder against the Owner, Design-Builder shall:

11.3.1.1 Comply with all provisions set forth in this Contract;

11.3.1.2 Complete all Work required for, and request that the Owner issue, a Certificate of Substantial Completion of the Work;

11.3.1.3 Request initiation of an Alternate Dispute Resolution (ADR) process agreeable to both Parties no later than 180 Days after the Design-Builder submits its final Application for Payment, or, if the dispute arises out of an event that occurs after the final Application for Payment, within 180 Days after such event.

11.3.1.4 Participate in an effort to complete the ADR process within 180 Days after Design-Builder requests initiation of the ADR process.

11.3.2 Any litigation brought against the Owner shall be filed and served on the Owner within 365 Days after the Design-Builder submits its final Application for Payment, or, if the dispute arises out of an event that occurs after the final Application for Payment, within 365 Days after such event. The requirement that the Parties participate in ADR does not waive the requirements of this subparagraph.

11.3.3 Failure to comply with these mandatory condition time requirements shall constitute a waiver of the Design-Builder's right to pursue judicial relief for any Claim arising from Work performed under the Contract.

11.4 Continuation of Work. Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder pending final resolution of any dispute or disagreement.

11.5 Owner May Audit Claims. In its discretion, Owner may exercise its right under Section 6.8 to audit any Claim following the filing of the Claim.

ARTICLE 12
INSPECTION AND CORRECTION OF WORK

12.1 Periodic Inspections. Owner and its respective agents and representatives, including Owner's Design-Build Consultant, shall have the right to inspect and test the Work at the Site or

where the same is being prepared, manufactured, fabricated or assembled (including but not limited to any item of equipment and materials, design, engineering, or other service or the workmanship associated therewith). Design-Builder shall, at the request of Owner, arrange for any such inspection and testing at reasonable times and upon reasonable advance notice. Owner's inspection and testing may include, to the extent Owner deems it appropriate, testing of such Work. Owner shall inform Design-Builder promptly of any defects or deficiencies in the Work it discovers in any inspection or test of the Work. Any inspection or test by Owner, Owner's Design-Build Consultant or any of their representatives of any part of the Work, or any failure to inspect or test, shall in no way: (a) affect Design-Builder's obligations to perform the Work in accordance with the Contract Documents; (b) constitute or imply acceptance; (c) relieve Design-Builder of responsibility for risk of loss or damage to the Work; or (d) impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled. All such inspections and tests shall be conducted in a manner that does not unreasonably interfere with the normal performance and progress of the Work. Notwithstanding anything to the contrary in the Contract Documents, Owner shall have the right to take photographs of the Work and Site at any time.

12.2 Access to and Dismantling of Work. Design-Builder shall cooperate fully with Owner at any reasonable time that Owner shall determine that inspection of the Work is necessary or appropriate. Such cooperation shall include furnishing Owner with access to the Work whenever and wherever Work is in progress, even to the extent of dismantling finished Work where necessary to permit such inspection. If such dismantling and subsequent inspection reveals defects or deficiencies, such Work and all associated Work shall be corrected at the expense of Design-Builder. If such dismantling and subsequent inspection reveals no defects or deficiencies, such Work shall be restored at the expense of Owner.

12.3 Correction of Work. Design-Builder promptly shall correct any defects or deficiencies in any part of the Work, regardless of the stage of its completion or the time or place of discovery of such errors. If Design-Builder fails to take corrective actions, Owner may replace, correct, or remove the non-conforming work and charge the cost thereof to Design-Builder. At Design-Builder's discretion, correction of such work shall be either at its expense or, if sufficient funds are available to cover the costs, charged against the Design-Builder's Contingency.

12.4 Work Affected By Corrective Work. Design-Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.5 Owner Acceptance of Non-Conforming Work. If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum shall be reduced as appropriate and equitable.

12.6 Removal From Site. Design-Builder shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Design-Builder nor accepted by Owner.

12.7 Observance of Tests. Owner shall have the right to observe all tests of the Work and the Project performed by Design-Builder pursuant to the Contract Documents.

ARTICLE 13
WARRANTIES; CORRECTION OF DEFECTS OR DEFICIENCIES AFTER SUBSTANTIAL COMPLETION

13.1 Design-Builder's Warranty. Design-Builder warrants that: (a) the equipment and materials will be new, free of defects or deficiencies in materials and workmanship, and fit and sufficient for their intended purpose as set forth in the Contract Documents; (b) the Work will be performed in accordance with the standards and requirements specified in the Contract Documents; and (c) the Project shall be designed and constructed to meet the requirements of the Contract Documents and to produce a fully functional facility that is capable of achieving all performance objectives of the Contract Documents and of operating free of defects in its major components.

13.2 Warranty Period. For Phase 1A, the warranty period shall be for the longer period of: one (1) year from the date of Substantial Completion of the Phase 1A Work, or the duration of any special extended warranty offered by a supplier or common to the trade. For Phase 1B, the warranty period shall be for the longer period of: one (1) year from the date of Substantial Completion of the Phase 1B Work, or the duration of any special extended warranty offered by a supplier or common to the trade.

13.3 Additional Warranty Obligations. With respect to all warranties for Work, Design-Builder shall:

(1) Obtain all warranties that would be given in normal commercial practice and any specific warranties as set forth in the Contract Documents;

(2) Require all warranties to be executed, in writing, for the benefit of Owner;

(3) Enforce all warranties for the benefit of Owner, if directed by Owner; and

(4) Be responsible to enforce any Subcontractor warranties.

13.4 Correction of Defects or Deficiencies.

13.4.1 Obligation to Correct. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including those subject to the warranties identified in Sections 13.1 and 13.3 above, within the warranty period stated in Section 13.2.

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

seven (7) day periods identified herein shall be inapplicable.

13.5 No Limitation on Other Obligations. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Design-Builder might have according to the Contract Documents. Establishment of the warranty period in Section 13.2 relates only to Design-Builder's specific obligation to correct the Work, and has no relationship to the time within which Owner may enforce Design-Builder's obligation to comply with the Contract Documents, including the time within which such enforcement proceedings may be commenced.

13.6 Warranty Survey. Owner shall schedule warranty surveys to take place nine (9) months after Substantial Completion of Phase 1A and Substantial Completion of Phase 1B. Design-Builder will be given an opportunity to attend each warranty survey at its own expense. In accordance with Section 13.3, Owner will provide Design-Builder notice of all defects and deficiencies discovered during the warranty survey.

ARTICLE 14
TITLE AND OWNERSHIP OF WORK PRODUCT

14.1 Clear Title. Design-Builder warrants and guarantees that legal title to and ownership of the Work shall be free and clear of any and all liens, claims, security interests, or other encumbrances when title thereto passes to Owner. With respect to all computer programs used in connection with the operation and maintenance of the Project, Design-Builder warrants legal title to, or a legal license to use, such programs when title thereto passes to Owner. Title to all Work, equipment and materials, tools, supplies provided by Design-Builder as part of the Work will pass to Owner as and to the extent: (a) payment therefor is made by Owner in accordance with this Agreement; (b) they are incorporated into the Project; or (c) upon termination of this Agreement for an Event of Design-Builder Default pursuant to Article 15, whichever is earlier. Design-Builder shall deliver to Owner such assignments, bills of sale, or other documents as reasonably requested by Owner to evidence such transfer of title.

14.2 Design Work Product.

14.2.1 Ownership of Design Work Product. Unless otherwise provided, all Design Work Product ("Materials") produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Owner. Owner shall be considered the author of such Materials. In the event the Materials are not considered "works for hire," under the U.S. Copyright Laws, Design-Builder hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to Owner effective from the moment of creation of such Materials. Materials means all items in any format and includes Construction Documents, specifications, electronic data, CAD files, drawings, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under this Agreement, but that incorporate preexisting

materials not produced under this Agreement, Design-Builder hereby grants to Owner a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. Design-Builder warrants and represents that Design-Builder has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to Owner. Design-Builder shall exert all reasonable effort to advise Owner, at the time of delivery of data furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. Owner shall receive prompt written notice of each notice or claim of infringement received by the Design-Builder with respect to any data delivered under this Agreement. Owner shall have the right to modify or remove any restrictive markings placed upon the data by the Design-Builder.

14.2.2 Reuse of Design Work Product. The Design Work Product is not intended or represented to be suitable for reuse by Owner or others on expansions of the Project or on any other project. Any reuse without prior written verification or adaptation by Design-Builder or applicable Subcontractors for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design-Builder.

ARTICLE 15
DEFAULT OF DESIGN-BUILDER

15.1 Events of Default by Design-Builder. Design-Builder shall be in default hereunder upon the occurrence of any one of the following events, which shall be events of default (each an "Event of Design-Builder Default") if not cured by Design-Builder following delivery to Design-Builder of a notice of such event from Owner:

15.1.1 Failure to Prosecute Work. Design-Builder fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion or Final Completion within the Substantial Completion Date(s);

15.1.2 Failure to Correct Work. Following Substantial Completion Design-Builder fails to replace or correct Work not in conformance with the Contract Documents;

15.1.3 Failure to Provide Adequate Labor and Materials. Design-Builder fails to supply skilled workers or proper equipment and materials

15.1.4 Failure to Pay. Design-Builder repeatedly fails to make prompt payment due to Subcontractors or any other entity or person who provides services or performs any aspect of the Work;

15.1.5 Failure to Comply with Laws. Design-Builder materially fails to comply with Governmental Rules or Governmental Approvals;

15.1.6 Material Breach. Design-Builder is in material breach of any provision of the Contract Documents.

15.2 Owner's Remedies Against Design-Builder. In issuing notice pursuant to Section 15.1, Owner, at its option, shall require the Design-Builder to either promptly correct the Event of Design-Builder Default noted or provide Owner with a corrective action plan, within the time period specified in the notice, as to how such Event of Design-Builder Default will be cured in a timely fashion. The provisions of Article 11 notwithstanding, if after receipt of the proposed cure the Owner has a reasonable basis for concluding that the Design-Builder has (a) failed or is unwilling to cure the Event of Design-Builder Default, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, Owner shall have the right immediately to terminate this Agreement, in addition to any rights and remedies that may be available at law or in equity or as provided herein. If it is subsequently determined that Owner was not entitled to terminate this Agreement for Design-Builder default, this Agreement shall be deemed terminated under Article 16.

15.3 Additional Owner's Rights Upon Design-Builder Default. If Owner elects to terminate this Agreement pursuant to Section 15.2, Design-Builder shall provide Owner with the right to continue to use any and all Work, including but not limited to any Work developed by Design Consultants, Owner deems necessary. Furthermore, Owner shall have the right to take possession of, and Design-Builder shall make available to, Owner all equipment and materials, construction equipment and other components of the Work, whether located at the Site or elsewhere, on the date of such termination for the purpose of completing the Work, and Owner may employ any other person or entity (sometimes hereinafter referred to as "Replacement Design-Builder") to finish the Work in accordance with the terms of this Agreement by whatever method Owner may deem expedient. Owner shall make such expenditures as in Owner's sole judgment will best accomplish the timely completion of the Project, provided Owner shall not be required or expected to mitigate any such costs by terminating, repudiating or renegotiating any agreement entered into between Design-Builder and any Subcontractor, including those agreements with Design Consultants.

15.4 General Obligations. If Owner elects to terminate this Agreement pursuant to Section 15.2, Design-Builder shall, at Owner's request and at Design-Builder's expense, perform the following services relative to the Work so affected:

15.4.1 Inventory Equipment, Etc. Assist Owner in preparing an inventory of all equipment and other components of the Work in use or in storage at the Site and elsewhere;

15.4.2 Assign Subcontracts, Etc. Assign to Owner or to any Replacement Design-Builder designated by Owner, without any right to compensation not otherwise provided for herein, title to all Work not already owned by Owner, together with all subcontracts and other contractual agreements (including warranties) and rights thereunder as may be designated by Owner, all of which subcontracts and contractual agreements shall be so assignable, and assign to Owner to the extent assignable all issued permits, licenses, authorizations and approvals then held by Design-Builder pertaining to the Work which have been procured in connection with performance of the Work, including but not limited to those associated with Design Consultants;

15.4.3 Deliver Design Work Product. Deliver to Owner all Design Work Product as may be requested by Owner for the completion and/or operation of the Project; and

15.5 Payment Obligations.

15.5.1 Owner's Right to Termination and Completion Expenses. If Owner terminates this Agreement, then as soon as practicable after Final Completion of the Project Owner shall determine the total reasonable and necessary expense incurred and accrued in connection with such termination (including all legal fees and expenses) and the completion of the Work including, without limitation, all amounts charged by any Replacement Design-Builder to finish the Work based on the obligations such Replacement Design-Builder assumes under this Agreement and under any of Design-Builder's subcontract(s) or other contractual agreement(s) that Design-Builder has assigned to Owner or to such Replacement Design-Builder pursuant to Section 15.4.2 and additional reasonable and necessary overhead incurred and accrued by Owner to effect such takeover and to complete the Work.

15.5.2. Contract Sum Balance. Design-Builder shall be entitled to receive the balance due of the Contract Sum minus the sum of: (a) Owner's expenses incurred in connection with the termination of this Agreement and the completion of the Work as determined in accordance with Section 15.5.1, and (b) all Liquidated Damages owed by Design-Builder. If the sum of such Liquidated Damages and the total expense so incurred by Owner in completing the Work exceeds the balance of the Contract Sum unpaid at the time of Design-Builder's default, then Design-Builder shall be liable for and shall pay to Owner the amount of such excess within twenty (20) business days following receipt of Owner's demand for such payment. Design-Builder obligations for payment shall survive termination.

15.6 No Relief of Responsibility. Termination of the Work in accordance with this Article 15 shall not relieve Design-Builder or its surety of any responsibilities for Work performed.

ARTICLE 16
TERMINATION FOR CONVENIENCE

16.1 Owner's Right to Terminate Agreement for Convenience. Owner has the right, upon written notice, to terminate this Agreement for its convenience if Owner determines that such termination is in Owner's best interests.

16.2 Design-Builder's Responsibility Upon Termination for Convenience. Unless Owner directs otherwise, after receipt of a written notice of termination for convenience, Design-Builder promptly shall:

(1) Stop performing Work on the date and as specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;

(3) Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;

(4) Assign to Owner all of the right, title, and interest of Design-Builder in all orders and subcontracts;

(5) Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Site, and any other property related to this Project in the possession or control of Design-Builder (or Design-Builder's agents) in which Owner has an interest; and

(6) Continue performance only to the extent not terminated.

16.3 Adjustment for Termination for Convenience. If Owner terminates the Work for convenience, Design-Builder shall be entitled to be paid for all Work properly performed by Design-Builder prior to the effective date of the termination for convenience, plus the reasonable administrative and wind-down expenses associated with such termination. The preceding amount shall be reduced by amounts previously paid by Owner to Design-Builder and any amounts which Owner has the right to offset or withhold by the terms of the Contract Documents. Notwithstanding the above, in no event shall Design-Builder ever be entitled to recover: (a) profit or Overhead in connection with work not actually performed or future work; (b) amounts that would result in the Design-Builder receiving payments that it would not have been entitled to receive under the Contract Documents if the Design-Builder was not terminated for convenience; or (c) amounts that would cause the total payments received by the Design-Builder to exceed the Contract Sum.

ARTICLE 17
SUSPENSION OF WORK

17.1 Owner's Suspension of Work for Convenience. Owner may, for its convenience and for any reason, suspend the Work in whole or in part at any time by written notice to Design-Builder, stating the nature, effective date and anticipated duration of such suspension, whereupon Design-Builder shall suspend the Work to the extent specified and shall place no further orders or subcontracts relating thereto. During the period of any such suspension, Design-Builder shall protect and care for all Work, equipment and materials at the Site or at the storage areas under its responsibility. If Design-Builder claims that the suspension has affected either the Contract Sum or Contract Time Design-Builder shall be entitled to submit a Contractor Initiated Notice in accordance with Article 8. Design-Builder shall use its best efforts to minimize the costs and expenses associated with a suspension of the Work.

17.2 Owner's Suspension of Work for Cause. If Design-Builder fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Design-Builder, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken. Design-Builder shall not be entitled to an adjustment in the Contract Sum or Contract Time for any increased cost or time of performance attributable to Design-Builder's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

ARTICLE 18
INSURANCE

18.1 Insurance Carried by Design-Builder

Design-Builder shall comply with all insurance requirements stated in Volume 8 – Request For Proposal - Part A, 2.23, as modified by addenda.

ARTICLE 19
INDEMNIFICATION

19.1 Patent and Copyright Infringement

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

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

19.1.3 Sections 19.1.1 and 19.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 19.1.1 above.

19.1.4 The obligations set forth in this Section 19.1 shall constitute the sole agreement between the Parties relating to liability for infringement of violation of any patent or copyright.

19.2 Payment Claim Indemnification

19.2.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, defend and hold harmless Owner from any claims or payment bond liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within seven (7) Days of receiving written notice from Owner that such a claim or lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorney fees.

19.3 Design-Builder's General Indemnification

19.3.1 The Design-Builder shall protect, defend, indemnify, and hold harmless the Owner, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the Design-Builder's, its officers, employees, agents, partners, respective members, parent corporations, subsidiaries or affiliates, and/or Subcontractors of all tiers, acts or omissions, performance or failure to perform its obligations under this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

19.3.2 The Design-Builder's obligations under this Section 19.3 shall include, but not be limited to, the duty to indemnify and defend the Owner from any claim, demand, and/or cause of action brought by or on behalf of any of Design-Builder's employees, agents, representatives, or Subcontractors. The foregoing duty is specifically and expressly intended to constitute a waiver of the Design-Builder's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the Owner with a full and complete indemnity and defense of claims made by the Design-Builder's employees and representatives. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.3.3 The Owner may, in its sole discretion and after notice to the Design-Builder, (1) withhold amounts sufficient to pay the amount of any claim for injury or damage, and/or (2) pay any claim for injury or damage of which the Owner may have knowledge, arising out of the performance of this Contract.

19.3.4 Any amount withheld will be held until the Design-Builder secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, the Design-Builder shall reimburse and otherwise be liable for costs incurred by the Owner, including, without limitation, costs for claims adjusting services, attorneys, engineering, and administration.

19.3.5 In the event the Owner incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the Design-Builder.

19.3.6 The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

19.3.7 Nothing in this section shall affect and/or alter the application of any other provision contained within this Contract. The Owner's rights and remedies in this Contract are in addition to any other rights and remedies provided by law.

ARTICLE 20
NON-DISCLOSURE OF CONFIDENTIAL DOCUMENTS: PUBLIC RECORDS ACT

20.1 Distribution of Records. Design-Builder shall keep records of the distribution of documents, including those to all Subcontractors.

20.1.1 Disposal Methods. Design-Builder shall stipulate the method of disposal (shredding, burning, etc.) that is required to destroy the retired documents.

20.1.2 Backcharges. Instances of improper distribution of documents which create Owner expenses to control and secure the Contract Documents will be charged to Design-Builder.

20.1.3 Security of Documents. All parties having access to Contract Documents shall maintain reasonable security control over the premises in which they reside.

20.2 Public Records Act.

20.2.1 Public Records. All proceedings, records, contracts, and other public records relating to this Design-Build Contract shall be open to the inspection of any interested person, firm, or corporation in accordance with the chapter 42.56 RCW, the Public Records Act, and RCW 39.10.470, except as provided in subsection (2) below.

20.2.2 Confidential Records. The term "confidential record" includes trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by the Design-Builder in connection with an alternative public works transaction authorized by RCW 39.10. Such confidential records shall not be subject to chapter 42.56 RCW if the Design-Builder specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected. RCW 39.10.470(2).

If Owner receives any public records request for identified confidential records, Owner will notify the Design-Builder of the request and of the date that Owner will disclose such confidential records, which shall not be less than ten (10) Days from the date of such notice unless the Design-Builder obtains a court order directing Owner to withhold such confidential records pursuant to RCW 42.56.540.

ARTICLE 21
INDEPENDENT CONTRACTOR

21.1 Independent Contractor. Design-Builder is an independent contractor and nothing contained herein shall be construed as constituting any other relationship with Owner. Neither Design-Builder nor any of its employees shall be deemed to be employees of Owner.

21.2 Design-Builder's Responsibilities for Its Employees. Subject to the provisions of the Contract Documents, Design-Builder shall have sole authority and responsibility to employ, discharge and otherwise control its employees.

21.3 Responsibilities of Design-Builder as Principal for Its Subcontractors. Design-Builder has complete and sole responsibility as a principal for its agents, Subcontractors and all other hires to perform or assist in performing the Work.

ARTICLE 22
[Not used]

ARTICLE 23
PREVAILING WAGES

23.1 Prevailing Wages. Design-Builder shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW Ch. 39.12 and the Governmental Rules of the Washington State Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is Design-Builder's responsibility to verify the applicable prevailing wage rate at the time of its Proposal.

23.1.1 Wage Rates. Before commencing the Work, Design-Builder shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Design-Builder and all Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

23.1.2 Disputes. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all Parties involved in the dispute as provided for by RCW 39.12.060.

23.1.3 Applications for Payment. Each Application for Payment submitted by Design- Builder shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent to pay prevailing wages, as approved.

23.1.4 Fees. Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

23.1.5 Intent to Pay Prevailing Wages. Copies of approved intents to pay prevailing wages for Design-Builder and all Subcontractors shall be submitted with Design-Builder's first Application for Payment. As additional Subcontractors perform Work on the Project, their approved intent forms shall be submitted with Design-Builder's next Application for Payment. Copies of the approved intent statement(s) shall also be posted on the Site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

23.1.6 Certified Payroll Copies. Design-Builder and all Subcontractors shall promptly submit to Owner certified payroll copies if requested by Owner.

23.2 Violation. Any violation by Design-Builder of the mandatory requirements of this Article 23 shall be a material breach of this Agreement

ARTICLE 24
NOTICES AND COMMUNICATIONS

24.1 Notices. Any formal notice pursuant to the terms and conditions of the Contract Documents shall be in writing and either: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service with delivery receipt required; or (d) when permitted, entered into Owner's Unifier project tracking system using protocols and processes established in Division One:

If to Design-Builder:
Howard S. Wright
501 Eastlake Avenue E, Suite 100
Seattle, WA 98109 USA
Phone: 206-321-3069
Email: Snorksyp@hswc.com
Attention: Paul Snorksy
With a copy to:
_____

If to Owner:
King County Facilities Management Division
500 4th Avenue, Suite 800
Seattle, WA 98104
Phone: 206-296-0300
Email: _____
Attention: _____
With a copy to:
Project Manager,
Children and Family Justice Center Project
King County Facilities Management Division
500 4th Avenue, Suite 800
Seattle, WA 98104

Either Party may change its address or the Party to notify by a notice delivered in accordance with this Section.

24.2 Effectiveness of Notices. Notices shall be effective when received by the Party to whom it is addressed.

ARTICLE 25
PROJECT PLANNING AND CONTROL

25.1 Project Schedule. Design-Builder shall prepare and submit a schedule for the execution of the Work for Owner's review and response ("Project Schedule") and such other schedules as may be required by the Contract Documents. The Project Schedule shall show the sequence in which the Design-Builder proposes to perform the Work, indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information, comments and approvals are required to enable Design-Builder to achieve the Contract Time(s), indicate the Critical Path, indicate Substantial Completion within the Substantial Completion Date(s) and indicate a date for Final Completion. The Design-Builder shall update the Project Schedule monthly with each Application for Payment to show actual progress of the Work, an accounting of the Contingency, and extensions in Contract Time, if any, approved by the Owner. The Project Schedule, and updates thereto, shall also meet all requirements and be prepared in such format as may be set forth in more particularity in Division One.

25.2. Schedule to Represent Expectation of Performance. The Project Schedule shall be realistic, comprehensive, achievable, and accurately represent Design-Builder's true expectation of performance, and Design-Builder must be able to demonstrate same in the event of disputes regarding delay, early completion or late completion or other schedule issues.

25.3 Owner Review of Project Schedule. Review and comment by the Owner of the Project Schedule, or updates thereto, shall not relieve the Design-Builder: (a) of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work within the Contract Time; or (b) from its sole responsibility for the accuracy of the Project Schedule, and its compliance with all Contract requirements.

25.4 Owner's Separate Contractors. Design-Builder shall include the activities of Owner's Separate Contractors into the Project Schedule. Design-Builder shall cooperate with Owner's Separate Contractors and coordinate its activities with those of such contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

ARTICLE 26
VALUE ENGINEERING

26.1 Required Information. If Design-Builder is interested in developing and submitting a Value Engineering Change Proposal (VECP), it shall, at its own expense, provide the following information to Owner with each VECP:

(1) A statement that the submission is a VECP, and a narrative description of the proposed change;

(2) A description of the existing requirements under the Contract Documents that are involved in the proposed change;

(3) A discussion of the differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;

(4) An itemization of the requirements of the Contract Documents (with reference to specific sections) that must be changed if the VECP is approved;

(5) The justification for changes in function or characteristics of each item, and the effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents;

(6) The date by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Project Schedule or in the Contract Time;

(7) A complete cost analysis including: (a) a cost estimate for the existing requirements under the Contract Documents compared to Design-Builder's cost estimate of the proposed changes; and (b) an estimate of any additional costs that will be incurred by Owner;

(8) Costs of development and implementation of the VECP by Design-Builder; and

(9) Any additional information requested by Owner.

26.2 Owner's Action on a VECP

26.2.1 Owner's Processing of VECP. Upon receipt of a VECP, Owner will process it expeditiously. However, if Owner determines that a VECP requires excessive time or costs for review, evaluation or investigations, or the VECP is not consistent with Owner's design policies and basic design criteria, then Owner shall have the right to reject the VECP without any review. Design-Builder may withdraw all or part of any VECP at any time prior to any action by Owner. Owner shall bear its own costs in connection with the review and processing of a VECP.

26.2.2 Owner's Approval or Rejection of a VECP. Owner may approve in whole or in part, by Change Order, any VECP submitted. Until a Change Order is executed on a VECP, Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of Owner as to the rejection or approval of any VECP shall be at the sole discretion of Owner, shall be final, and shall not be subject to any further dispute resolution or appeal.

26.2.3 Liability. Owner shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article 26. Design-Builder shall have no claim against Owner for any additional costs or delays resulting from the rejection of a VECP. If a VECP is approved, Design-Builder bears full responsibility for all aspects of the VECP, including the ability of the changed design to meet all requirements of the Contract Documents (as may be modified by the VECP).

ARTICLE 27
MISCELLANEOUS

27.1 Severability. If any provision of this Agreement or the Contract Documents is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Agreement or the Contract Documents, and to this end the provisions of this Agreement and the Contract Documents are declared to be severable. If such invalidity becomes known or apparent to the Parties, the Parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Agreement of the Contract Documents.

27.2 Governing Law, Jurisdiction, & Venue. The validity, construction, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its conflict of laws rules. The Parties agree that in any action or dispute resolution process arising out of the terms, enforcement, or breach of this Agreement jurisdiction and venue shall lie in King County Superior Court.

27.3 Waiver. Failure of either Party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or

to notify the other Party in the event of breach, shall not release the other Party of any of its obligations under this Agreement, nor shall any purported oral modification or rescission of this Agreement by either Party operate as a waiver of any of the terms hereof. No waiver by either Party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

27.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns. Neither party shall assign the Work without written consent of the other, except that Design-Builder may assign the Work for security purposes, to a bank or lending institution authorized to do business in the State of Washington. If either party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

27.5 Not Used.

27.6 Third-Party Beneficiaries. The provisions of this Agreement are intended for the sole benefit of Owner and Design-Builder, and there are no third-party beneficiaries other than assignees contemplated by the terms herein.

27.7 Not Used.

27.8 Time Computations. When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday in the State of Washington, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

27.9 Not Used.

27.10 Antitrust Assignment. Owner and Design-Builder recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Design-Builder hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Design-Builder shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Design-Builder.

27.11 Time Is of the Essence. Time is of the essence for each and every provision of this Agreement.

27.12 No Agency. The Parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither party is an agent of the

other party nor authorized to obligate it.

27.13 Survival. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Agreement shall survive and remain in effect following the expiration or termination of this Agreement, provided, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.

27.14 Integrated Agreement; Modification. This Agreement in combination with the other Contract Documents constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. All appendices, annexes, and exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety. There are no representations or understandings of any kind not set forth herein. This Agreement and the other Contract Documents may not be modified except in writing and signed by the Parties.

27.15 Interpretation. Each Party acknowledges that it and its legal counsel have reviewed this Agreement. The Parties agree that the terms and conditions of this Agreement shall not be construed against any party on the basis of such party's drafting, in whole or in part, of such terms and conditions.

27.16 Further Assurances. In addition to the actions specifically mentioned in this Agreement, the Parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Agreement.

27.17 Headings. The headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.

27.18 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the Parties shall not affect the validity thereof so long as all the Parties hereto execute a counterpart of this Agreement.

Executed and effective as of the date first above written.

KING COUNTY	**Balfour Beatty Construction, LLC dba Howard S. Wright**
By: _____	By: _____
Caroline Whalen County Administrative Officer Department of Executive Services *For Dow Constantine, King County Executive*	Title: _____

List
of
Exhibits

Exhibit A Balfour Beatty Design Build Team – Best And Final Offer, Form C

Exhibit B Request for Proposal Form Q – Project Labor Agreement Template

Exhibit A
Balfour Beatty Design Build Team – Best And Final Offer, Form C

BAFO FORM C

BAFO PRICE PROPOSAL FORM

The Finalist is required to complete this form. Failure to complete the form and submit to the County may result in the Finalist being declared non-responsive and disqualified from the BAFO process.

BAFO:

Having carefully examined the Request for BAFO for Design-Build Services for a New Children and Family Justice Center dated August 1, 2014 (BAFO) as prepared by King County's Facilities Management Division (County) and Addenda No's 1 through 14 inclusive, receipt of which is hereby acknowledged, we propose to perform the Work identified in the Request for BAFO and Addenda, described in our BAFO, under the terms and conditions contained in the RFP for the Guaranteed Maximum Price of:

$ 154,000,000 (Figures)

This Guaranteed Maximum Price excludes Washington State Sales Taxes and includes all other applicable federal, state, county, city and local taxes, as well as all fees, licenses, permits, business and occupational taxes for the Work. The GMP also includes all overhead and Profit to design and construct the CFJC Project.

DESIGN-BUILDER'S FEE

1 % (figure) of the actual Cost of the Work, in accordance with Article 5.4 of the Contract.

DESIGN-BUILDER'S OVERHEAD

2.05 % (figure) of the actual Cost of the Work, in accordance with Article 5.5.23 of the Contract as reasonable compensation for all elements of Field or Site Office and Home Office Overhead not other otherwise included in Article 5.5.1 through 5.5.22.

ESTIMATED COST BREAKDOWN OF THE WORK FOR THE PROJECT

Break out of the GMP into the following categories. All items must add up to the proposed GMP.

#	Description	Value
1	Architectural and Engineering Design Cost	$ 11,105,000
2	Pre-Construction Services	$ 1,191,000
3	Construction of Courthouse and Detention Structure	
	01 Foundations	$ 2,122,000
	02 Substructure	$ 3,258,000
	03 Superstructure	$ 15,841,000
	04 Exterior Closure	$ 9,136,000
	05 Roofing	$ 2,959,000
	06 Interior Construction	$ 15,209,000
	07 Conveying systems	$ 2,912,000
	08 Mechanical	$ 22,994,000
	09 Electrical	$ 18,414,000
	10 Equipment	$ 1,353,000
4	Construction of Parking Structure	$ 10,754,000
5	Site Work/Demolition for Project	$ 11,777,000
6	Trench Excavation Safety System per RCW 39.04.180	$ 10,000
7	Allowances:	
	Allowance 1: Contaminated Media	$ 3,500,000
	Allowance 2: Utility Allowance	$ 1,500,000
8	Design Builder Contingency	$ 6,451,000
9	Design Builder General Conditions	$ 8,928,000
10	Design Builder Overhead ((Total of items 1 – 9) x Stated OH rate identified above))	$ 3,059,000
11	Design Builder Fee ((Total of items 1 – 10) x Stated OH rate identified above))	$ 1,527,000
	Total GMP (total of items 1 – 11)	$154,000,000

IDENTIFICATION OF KEY PERSONNEL LABOR RATE

Finalist is required to identify the Direct Labor Rate for all Key Personnel identified in the RFQ and those personnel identified in the RFP Section 3.3.2C2. Please note that the County's current acceptable maximum direct labor rate is $68.99 for Architectural, Engineering and Professional Services. The County will review the maximum labor rate limitation and adjust it either upward or downward on or promptly after the anniversary date of Contract Execution.

#	Personnel	Labor Rate
	Design and Professional services	
1	Alan Bright, Lead Designer – HOK	$ 62.37
2	Duncan Broyd, Lead Courts Architect – HOK	$ 68.99
3	Larry Hurlbert, A/E Project Manager – Integrus	$ 62.37
4	Jerry Winkler, Lead Detention Architect – Integrus	$ 62.37
5	Tom Corcoran, Lead Structural Engineer, Detention - Integrus	$ 58.95
6	Tom Hudgings, Lead Structural Engineer, Courts – KPFF	$ 42.70
7	Andy Ewing, Lead Parking Garage Designer - KPFF	$ 44.14
8	Paul Allyn, Lead Security Electronics Engineer – Justice Systems	$ 63.81
9	Colin Moar, Senior MEP Coordinator – Heery	$ 68.99
10	Martin Newhard, Lead Commissioning Coordinator – Heery	$ 45.10
11	Doug Tapp, Lead Civil Engineer – AHBL	$ 64.52
12	Scott Vollmoeller, Lead Mechanical Engineer – Glumac	$ 68.99
13	Rick Rubie, Lead Electrical Engineer – Glumac	$ 49.00
14	Julie Wiebush, Acoustical Engineer – The Greenbusch Group, Inc.	$ 55.00
15	Nicole Corbett, Lead Scheduler – SIS	$ 46.00
16	Elizabeth Powers, LEED Administrator – O'Brien	$ 42.63
17	David Cook, Environmental Specialist – GeoEngineers, Inc.	$ 68.99
18	Colie Hough-Beck, Lead Landscape Architect – Hough Beck & Baird Inc.	$ 64.50
	Construction Services	
19	Mike Ryan, Principal-in-Charge / Project Executive – BBC	$ 80.00
20	Paul Snorsky, Team Leader – BBC	$ 88.94
21	John Parker, Sr Project Manager – BBC	$ 76.92
22	Mike Levison, General Superintendent – BBC	$ 80.29
23	Curtis Cox, Senior Estimator – BBC	$ 88.94
24	Elizabeth Angel, BIM Manager – BBC	$ 42.51
25	Jim Maloney, Safety Officer – BBC	$ 35.58
26	Rhonnda Edmiston, Labor Relations Admin – BBC	$ 45.19

FUTURE ALLOWANCES

After Contract Execution, the County has the option to add, by Change Order, two Allowance items that total $5 million for the Design Builder to assist the County in the purchase and installation of furniture, fixtures, and equipment (FFE). The County may exercise this option during the design phase of the Project.

BAFO GUARANTEE

The undersigned agrees that this BAFO may be accepted by the County anytime within the one hundred fifty (150) calendar days after the BAFO Due Date, and the undersigned further agrees to submit a fully executed Agreement, insurance certificates, and performance and payment bond within ten (10) calendar days after receipt of the Notice of Intent to Award Contract from the County.

BAFO FROM:

Balfour Beatty Construction, LLC dba Howard S. Wright

(BAFO firm name)

(Authorized BAFO representative - Signature)

Dan Peyovich, Washington Division President

(Representative's printed name and title)

Date: September 15, 2014

Address: 501 Eastlake Avenue East, Suite 100

Seattle, Washington 98109

Phone: 206-447-7620

Email: PeyovichD@hswc.com

State of Washington Contractor's License No: CC HOWARSW960R2

Exhibit B
Request for Proposal Form Q – Project Labor Agreement Template

TEMPLATE

This Template is being provided to the Proposers to assist them in the future development of a final Project Labor Agreement between the selected Design Build Team and all applicable Unions. Selected Design Build Team will be required provide any changes to this document for Owner review during the submittal phase of the Project prior to construction.

Project Labor Agreement

for the

Children and Family Justice Center

March 2014

King County

PROJECT LABOR AGREEMENT

FOR THE

Children and Family Justice Center

BETWEEN

Design Builder

_____

AND

SEATTLE/KING COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL

NORTHWEST CONSTRUCTION ALLIANCE, and

_____(others)_____

TABLE OF CONTENTS

ARTICLE 1 - PREAMBLE

1.1

This Project Labor Agreement (hereinafter, the "PLA") is entered into on _____ by and between, the name of Design Build Team selected for the Project, as defined in Article 5.1 herein, (hereinafter "Contractor"), for and on behalf of themselves and their Sub-contractors (hereinafter Sub-contractor), and the Seattle/King County Building and Construction Trades Council and the Northwest Construction Alliance and the Local Unions who become signatory hereto with respect to the construction of the Children and Family Justice Center (the "Project"), who become signatory hereto (hereinafter, collectively called the "Union(s)" or "Local Union(s)") with respect to the construction of the Children and Family Justice Center.

For purposes of this Agreement the term Parties shall mean_____.

Nothing in this PLA shall modify, amend, or supersede any of the provisions set forth within the Contract between King County (“Owner”) and the selected Contractor and its Sub-contractors, as identified within Contract C00863C13.

1.2

NOT USED

1.3

This PLA represents the complete understanding of the parties, and no Contractor or Sub-contractor is or will be required to sign any other agreement with a signatory Union as a condition of performing work within the scope of this Agreement.

1.4

It is understood that this Agreement constitutes a self-contained, stand-alone agreement. No practice, understanding or agreement between a Contractor or Sub-contractor and a Union party which is not specifically set forth in this Agreement will be binding on any other party except that if the PLA is silent on any issue the local crafts collective bargaining agreement (CBA) shall prevail.

1.5

The Unions hereby pledge to work cooperatively with all businesses awarded work governed by this PLA, despite any other dispute they may have with a business over, for example, trust or benefit payments that arose on non-covered work.

ARTICLE 2 - PURPOSE

2.1

The purpose of the PLA is to implement a formal agreement between the parties to insure that all construction work at the Project, and operation of the existing facility, will proceed continuously and without interruption, efficiently, economically, and with due consideration for the protection of labor standards, wages and working conditions.

2.2

In recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace and stability during the term of this PLA, the Parties agree to establish and put into practice effective and binding methods for settlement of all misunderstandings, disputes or grievances that may arise between the Contractor, it's Sub-contractors, and the Unions, or their members, to the end that the Owner is assured of complete continuity of its operations and construction without slowdown or interruption of any kind. The Owner shall monitor the performance the Agreement to ensure compliance by the Parties.

2.3

The parties are committed to providing open access to procurement opportunities for all contractors and to assuring an adequate supply of craft workers possessing the requisite skills and training in order to provide the Owner a project of the highest quality.

ARTICLE 3 - RECOGNITION

The Contractor recognizes the signatory Unions are the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this PLA. This sub-section shall not alter the preexisting legal status of any bargaining relationship between any individual Contractor and signatory Union.

ARTICLE 4 - SCOPE OF AGREEMENT

4.1

This PLA shall apply and is limited to all new construction as defined in this Article and performed by those Contractor(s) and their Sub-contractor(s) of any tier who have been awarded contracts for such work, or for whom bids have been received for contracts on or after the effective date of this PLA and covering all Work (exclusive of design work) identified in the Contract. This PLA shall also apply to any art work installed by the Contractor or its Sub-contractors. Any work defined in RCW 39.12 will be subject to the PLA.

It is agreed that the Contractor shall require all Sub-Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this PLA by executing the Letter of Assent (Attachment A) prior to commencing work. The Contractor shall assure compliance with this Agreement by the

Contractors. It is further agreed that, if the PLA is silent on any issue the local crafts CBA shall prevail; where there is a conflict, the terms and conditions of this PLA shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the _____.

It is understood that this is a self-contained, stand alone, PLA and that by virtue of having become bound to this Project Labor Agreement, neither the Contractor nor the Sub-Contractors will be obligated to sign any other local, area, or national agreement.

A critically important aspect of the construction work will be close coordination with the Owner to allow unimpeded Court and Detention operations throughout the Contract.

4.2

Items specially excluded from the scope of the Agreement include the following:

(a) Work of non-manual employees, including but not limited to, superintendents, supervisors, assistant supervisors, staff engineer inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, community relations or public affairs, environmental compliance, supervisory and management employees.

(b) Artists retained by the Owner during the course of the Project.

(c) Furniture, fixture and equipment installers retained by the Owner to be performed after building trades Sub-contractors have completed construction related work and or contract completion date.

(d) Employers and their Employees controlled by the Owner.

(e) Employees engaged in any work performed on or near, or leading to or into, the Project Site by State, County, City or other governmental bodies, their retained contractors, or by public utilities or their contractors, or by other public agencies or their contractors.

(f) Employees engaged in maintenance on leased equipment and on-site supervision of such work.

(g) Employees engaged in warranty functions and warranty work, and on-site supervision of such work.

(h) Startup, testing and commissioning personnel employed by the Contractor or the Owner, Laboratory for specialty testing or inspections not ordinarily done by the signatory Local Unions.

(i) All off-site manufacture of materials, equipment, or machinery except as identified in _____.

(j) Non-construction support services contracted by the Owner or the Contractor in connection with this Project.

(k) All employees, Sub-consultants and agents of the Owner for specialty testing, architectural/engineering design and other professional services.

(l) Any work on the Project site that is not funded by the Children and Family Justice Center levy, such as ongoing Capital Projects within the existing Youth Services Center structures or separate contracts not covered by Contract C00863C13 CFJC. To avoid conflict and confusion, the Owner will provide notice of such work to the Project Administrative Committee (PAC) prior to commencement of that work.

4.3

None of the provisions of this PLA shall apply to the Owner and nothing contained herein shall be construed to prohibit or restrict the Owner, or their employees from performing work not covered by this PLA on the Project site. As areas and systems of the Project are inspected and construction tested by the Contractors and accepted by the Owner, the PLA shall not have further force or effect on such items or areas, except when the Contractors is directed by the Owner to engage in repairs, modifications, checkout and/or warranty functions required by its contract.

4.4

The Owner or the Contractor, as appropriate, has the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any contracts or collective bargaining agreement between such bidder and any party to this PLA: provided that, except as provided under Article 7 such bidder shall be willing, ready and able to execute and comply with this PLA should it be designated the successful bidder.

4.5

It is understood by the parties that the Owner may at any time and in its sole discretion determine to add, modify or delete facilities. If facilities are added to the Project scope, they would be automatically covered by this Agreement.

The provisions of this PLA shall apply to the construction of the CFJC, notwithstanding the provisions of local, area and/or national agreements which may conflict or differ from the terms of this PLA. Where a subject covered by the provisions of this PLA is also covered by a conflicting provision of a collective bargaining agreement, the provisions of this PLA shall prevail.

4.6

This PLA shall only be binding upon the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

4.7

It is agreed that all contractors, who have been awarded contracts for work covered by this PLA that is bid and awarded after the effective date of this PLA shall be required to accept and to be bound by the terms and conditions of this PLA, and shall evidence their acceptance by the execution of a Letter of Assent, prior to the commencement of work. A copy of the Letter of Assent executed by the Sub-contractor shall be immediately transmitted to the signatory Local Unions prior to the dispatch of employees to the job site.

4.8

The Unions agree that this PLA does not have the effect of creating any joint employment status between or among the Owner, the Contractor or any of their Sub-contractors.

4.9

None of the provisions of this PLA shall apply to King County and nothing contained herein shall be construed to prohibit King County or its employees from performing their routine work on the Project Site. King County employees will not perform work which is covered by the terms of this PLA.

4.10

It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any and all portions of the CFJC Contract C00863C13 at any time.

ARTICLE 5 - UNION REPRESENTATION

5.1

Authorized representatives of the Unions shall have reasonable access to the Project, provided they do not interfere with the work of employees, and further provided that such representatives fully comply with the visitor, safety and security rules and any environmental compliance requirements established for the Project, which shall be subject to review by the Project Administrative Committee (as described in Article 8). It is understood that because of the scope of the Project and the type of work being undertaken, all visitors will be required to check in and may be limited to certain times or areas. They may also be required to be accompanied at all times while on the Project Site. However, in such circumstances, project workers shall be allowed to confer privately with their authorized Union representatives. The Contractors recognize the right of access set forth in the Section and such access will not be unreasonably withheld from an authorized representative of the Union. Authorized representatives of the Unions will make a good faith effort to report to the Contractor supervision personnel prior to entering the Project Site.

5.2

The Unions signatory shall have the right to designate for each Sub-contractor for each craft type, one (1) working journeyman as a Steward for all related craft personnel, who shall be recognized as the Union's representative for a signatory hereto. Such designated Stewards

shall be a qualified worker assigned to a crew and shall perform the work of their craft. Under no circumstances shall there be a non-working Steward on the Project.

5.3

The working Steward will be paid at the applicable prevailing wage rate for the job classification in which he/she is employed.

5.4

The Union may appoint a Steward for each shift, should multiple shifts be utilized.

5.5

A Steward for each craft of the signatory Unions employed on the Project shall be permitted on the Project site at all times. They shall not be subjected to discrimination or discharge on account of proper Union activities. The Unions agree that such activities shall not unreasonably interfere with the Steward's work for the Contractor or its Sub-contractors.

5.6

It is recognized by the Contractor that the employee selected as Steward shall remain on the job as long as there is work within their craft for which they are qualified, willing and able to perform. The Contractor shall be notified in writing of the selection of each Steward. The Contractor shall be responsible for notifying the Unions prior to terminating a Steward as follows:

For Cause or Voluntary Quit	As soon as possible after it becomes known to the Contractor either by telephone call or electronic means.
Reduction in Force	48 Hours prior written notice

5.7

The Steward may not cause or encourage work stoppage, and, if found guilty of instigating such action, will be subject to discipline by the Contractor, and/or the Contractor's Sub-contractors, up to and including discharge or/and removal from the Project.

5.8

The Steward's duties shall not include hiring and termination, nor shall he/she cause any interference with work progress.

5.9

The Steward shall be given the option of working all reasonable overtime within his/her craft and shift providing he/she is qualified to perform the task assigned.

5.10

In addition to his/her work as an employee, the steward shall have the right to receive complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor.

ARTICLE 6 - MANAGEMENT RIGHTS

6.1

Subject to the terms of this PLA, the Contractor and the Contractor's Sub-contractors retain full and exclusive authority for the management of its operations. The Contractor and the Contractor's Sub-contractors shall direct their working forces at their sole prerogative, including, but not limited to, hiring, promotion, transfer, lay-off discipline or discharge for just cause; the selection of foremen and general foremen; the assignment and scheduling of work; the promulgation of reasonable work rules shall be subject to the review of the Project Administrative Committee (as described in Article 8); and, the requirement of overtime work, the determination of when it will be worked and the number and identity of employees engaged in such work. No rules, customs, or practices, which limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed.

6.2

No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractors and the Contractor's Sub-contractors may, in its sole discretion, utilize the most efficient method or techniques of construction, tools, or other labor-saving devices.

6.3

The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth. The Contractors and the Contractor's Sub-contractors therefore, retain all legal rights not specifically covered by this Agreement.

6.4

Except as otherwise expressly stated in this PLA there shall be no limitation or restriction upon the Owner or the Contractor's choice of materials or design, nor, regardless of source or location upon the full use, and installation and utilization of equipment, machinery, package units, pre-casts, pre-fabricated, prefinished, or pre-assembled materials, tools, or other labor-saving devices. The Owner or the Contractor may without restriction install or otherwise use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be generally performed by the craft having jurisdiction over such work. Provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 19 of this PLA.

ARTICLE 7 - PRE-JOB CONFERENCES

7.1

The Contractor and the Contractor's Sub-contractors at all tier levels shall be required to hold a pre-job jurisdictional mark-up meeting two (2) weeks prior to the commencement of construction activities including any expansion of the original scopes on the Project. The Contractor agrees to notify the Owner, two weeks in advance, of the time and date of the pre-job conferences to allow Owner’s attendance. In addition to the information developed relative to jurisdiction of work at the pre-job conference, the Contractor and its Sub-contractors will present all information available regarding starting date for the work, duration of job, estimated peak employment and any other conditions deemed peculiar to the particular contract or subcontract.

7.2

The Contractor and any of its Sub-contractors who fail to hold such pre-job conference prior to the commencement of work shall be considered in violation of this PLA. The appropriate Building Trades Council and/or NCA representative shall immediately notify the Owner of this violation. The Owner may require the Contractor to take corrective action regarding this matter.

ARTICLE 8 - PROJECT ADMINISTRATIVE COMMITTEE

8.1

The parties to this PLA, and the Owner, hereby recognize the necessity of cooperation and the elimination of disputes, misunderstandings or unfair practices on the part of any party, and to secure this end, it is hereby agreed that a Project Administrative Committee (PAC) shall be established to be comprised of the Contractor's representatives and/or representatives of Sub-contractors at every tier level, as may be required, the Unions party to the PLA, a representative of the Building Trades Council, and the NCA who shall meet at the jobsite or other agreed location according to a mutually agreeable monthly schedule. The parties further agree that the Owner may attend these meetings as an interested third party. A Contractor representative shall serve as the chair of the PAC.

8.2

The Unions shall at such meetings present facts concerning any violations of any part of the PLA by the Contractors or its Sub-contractors. Additionally, the Unions agree to notify the Owner’s Representative upon discovery of a potential violation of this PLA. They shall also bring up any practice by the Contractor or the Contractor's Sub-contractors, which in their opinion might lead to a misunderstanding or dispute between the parties. The Contractors or the Contractor's Sub-contractors shall bring in any complaints regarding failure of any employee or employees, or of the Unions to carry out any and all provisions of the PLA.

8.3

Any agreement or resolution reached pursuant to the preceding paragraph shall not supersede, alter, modify, amend, add to or subtract from this Agreement unless specifically expressed

elsewhere in this Agreement. Prior to being effective, any amendments or revisions to this PLA shall be in writing and signed by all the parties hereto.

8.4

All parties signatory to this PLA acknowledge the importance of attendance and active support of the Project Administrative Committee and agree to participate in the meetings as their responsibility on the Project requires.

8.5

The Administrative Committee shall meet as required, but not less than once each month, to review the operation of the PLA.

8.6

This Committee shall be convened within 48 hours on an emergency basis at the request of any party to the PLA.

8.7

The Owner is an interested third party to the PLA and shall be sent contemporaneous copies of all notifications required under this article. At the Owner's option, the Owner may participate as either a observer, mediator, or arbitrator to the proceedings initiated under this Article.

ARTICLE 9 - HIRING PROCEDURES

9.1

It is agreed that affirmative action shall be taken to afford equal employment opportunity to all qualified persons without regard to race, creed, color, sex, age, marital status, religion, sexual orientation, ancestry, veteran status, disability or national origin. This shall be applicable to all matters relating to hiring, training, promotion, transfer or termination of employees. Furthermore, the parties agree to cooperate to the fullest extent to achieve the intent and purpose of the applicable regulations of Title VII, Civil Rights Act of 1964, and Executive Order No. 11246, or such laws or Executive Orders as may supersede them. This Agreement is subordinate to the Equal Employment/Affirmative Action Resolutions and Apprenticeship Program requirements for the Project. To the extent the Contractors and its Sub-contractors, despite reasonable efforts, are unable to meet the objectives and requirements set forth in this Article 9 through use of craft employees represented by any Union signatory, the Contractors and its Sub-contractors shall be allowed to recruit from any other source and such recruits will have seven (7) days to join the applicable Local Union for the performance of work on this Project.

9.2

The Contractors shall have the right to determine the competency of all employees, the number of employees required and shall have the sole responsibility for selecting employees to be laid off, consistent with Article 9.3 below.

9.3

(a) For Local Unions having a job referral system, the Contractors agree to comply with such system and it shall be used exclusively by the Contractor and its Sub-contractors. Such job referral system will be operated in a nondiscriminatory manner and in full compliance with federal, state, and local laws and regulations which require equal employment opportunities and nondiscrimination, and referrals shall not be affected by obligations of Union membership or the lack thereof.

(b) The Contractor may reject any referral for any lawful nondiscriminatory reason, provided they comply with Article 10.8 regarding reporting pay.

9.4

In the event that Local Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by any contractor (with the exception of Saturdays, Sundays, and holidays), the Contractor may employ applicants from any other available source. The Contractor shall inform the Union in writing of the name and social security number of any applicants hired from other sources and shall refer the applicant to the Local Union for dispatch to the Project, and such applicant will have seven (7) days to join the Local Union for the performance of work on this Project.

9.5

Failure of an employee to pay or tender fees or dues as required by this Article shall, upon the request of the Union in writing, may result in the immediate termination of such employee.

9.6

Except as required by law, the Local Unions shall not knowingly refer an employee currently employed by the Contractor or its Sub-contractors working under this PLA to any other contractor.

9.7

The parties recognize the Owner's commitment to provide opportunities to participate on the Project to business enterprises which may not have previously had a relationship with the Unions signatory to this PLA. To ensure that such enterprises will have an opportunity to employ their "core" employees on this Project, the parties agree that in those situations where any contractor, not a party to a current collective bargaining agreement with the signatory Union having jurisdiction over the affected work is a successful contractor, such Contractor, or their Sub-contractor, may request by name, and the Local will honor, up to a maximum of _____ designated core employees, provided that the Contractor first demonstrate that those persons possess the following qualifications:

(a) possess any license required by state or federal law for the Project work to be performed.

(b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years.

(c) were on the Contractor's active payroll for at least sixty (60) out of the one hundred eighty (180) calendar days prior to the Contract Execution.

(d) have the ability to perform safely the basic functions of the applicable trade.

9.8

Core employees who meet the aforementioned qualifications will be dispatched as follows:

(a) The Contractor or Sub-contractors may request by name, and the Union will honor by referral, up to a maximum of _____ designated core employees on an alternating basis with the Contractor or its Sub-contractors selecting first.

All subsequent referrals will be through the respective Union hiring hall.

(b) It is agreed that specific terms and conditions governing hiring and assignment of Union workers in supplement to small Contractors existing core employees (who would be displaced by the local referral procedure) may be negotiated jointly by the Contractor and applicable local Union.

(c) For the duration of the Contractor's work the ratio of "Core" employees to hiring hall referrals shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio as was applied in the initial hiring.

(d) The Contractor and any of its Sub-contractors attempting to circumvent the hiring provisions of this PLA by misclassifying any of its employees as supervisors or foremen shall forfeit their right to employ "Core" employees on this project.

(e) No "Core" employee covered by this PLA shall be required to join any Union as a condition of being employed on the Project; provided, however, that an employee who is a member of the referring Union at the time of the referral shall maintain that membership in good standing while employed under the PLA. All Core employees not currently a member of the appropriate Union signatory to this PLA shall, however, be required to pay a representational fee equal to ___% of the regular dues of the appropriate Union, for the period during which they are performing on-site work. The Contractor agree to deduct Union dues or representation fees, whichever is applicable, from the pay of any employee who executes a voluntary authorization for such deductions and to remit the dues or fees to the Union(s).

9.9

The selection of craft foremen and/or general foremen and the number of such foremen and/or general foremen required shall be entirely the responsibility of the contractors. Craft foremen shall be designated working foremen at the request of the contractors. Craft workers covered by this PLA will, in the normal day-to-day operations, take their direction and supervision from their foreman.

ARTICLE 10 - HOURS OF WORK, OVERTIME, SHIFTS, HOLIDAYS

10.1 Hours of Work

Eight (8) hours shall constitute a standard work day. Five days, Monday through Friday, shall constitute a standard work week. Standard shift workday shall be worked between the hours of _____ a.m. to _____ p.m. Monday through Friday for first shift with one-half hour unpaid lunch period. The Contractor may vary the start time to take advantage of daylight hours, weather conditions or shifts, to permit an even and manageable flow of workers to the jobsite. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week. Notification of change in hours of work will be given to the Union and the Owner in writing five (5) working days prior to implementation. Work hours shall be uniform for all crafts.

10.2 4/10 Work Schedule

A Contractor may elect to work a four ten-hour day schedule ("4/10"), Monday through Thursday or Tuesday through Friday. Ten (10) hours, between _____ a.m. and _____ p.m., shall constitute a workday on a 4/10 schedule. Any 4/10 schedule must be worked for a minimum of two (2) weeks. The Contractor shall contact the Union and the Owner to notify them of which shift they will be using.

10.3 Lunch Period

The Contractor and its Sub-contractors will schedule an unpaid meal period of not more than one-half (1/2) hour's duration at the work location approximately at the midpoint of the scheduled work shift.

1. Any employee required to work through the regularly established lunch period shall be paid an additional one-half (1/2) hour at the applicable overtime rate and shall eat their lunch on the Contractor’s time.

2. By mutual agreement between the Union and the Contractor an additional hour of overtime pay may be provided in lieu of above.

3. Employees required to work more than two (2) hours after the end of the regular eight (8) hour shift or one (1) hour after the end of the regular four (4) tens (10), ten (10) hour shift shall be furnished a meal and paid one-half (1/2) hour at the applicable wage rate and every five (5) hours thereafter, employees shall be given time for a meal. Mealtime shall be paid at the regular overtime rate and adequate lunch be provided by the Employer at the job site.

4. By mutual agreement between the Union and the Contractor an additional hour of overtime pay may be provided in lieu of above.

Break periods will be in accordance with applicable Washington State laws/rules and regulations.

10.4 Shifts

Shift work may be performed at the option of the Contractor upon five (5) working days' prior written notice to the Union(s) and shall continue for a period of not less than five (5) working days. If two shifts are worked, each shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and shall be paid at the regular rate of pay.

10.5 Saturday and Sunday Work

Saturday and Sunday work hours shall be as allowed by the local authorities having jurisdiction. If Contractors elects to work Saturday or Sunday notice shall be provided to both Unions and Owner at least five (5) working days prior to the commencement of Work.

10.6 Overtime

Except as otherwise required by the applicable prevailing wage determination, overtime will be paid at the rate of one and one-half (1-1/2) times the applicable straight-time hourly rate for work performed by an employee in excess of eight (8) hours daily, Monday through Friday on a five eight-hour day schedule, or for work performed in excess of ten (10) hours daily, Monday through Thursday or Tuesday through Friday, on a four ten-hour day schedule, or forty (40) hours per week. All work on Saturday, Sunday and holidays will be paid at the applicable overtime calculation rate as required by RCW 39.12. There will be no restriction on the Contractors' scheduling of overtime or the non-discriminatory designation of employees who will work the available overtime. There shall be no pyramiding of overtime pay under any circumstances.

10.7 Holidays

Recognized holidays shall be as follows: (1) New Year's Day, (2) Martin Luther King's Birthday, (3) Memorial Day, (4) Fourth of July, (5) Labor Day, (6) Thanksgiving Day and (7) Friday after Thanksgiving Day and (8) Christmas Day. Recognized holidays under this PLA shall be celebrated on the date the holiday is celebrated by the Owner. Work may be performed on Labor Day when circumstances warrant, i.e. the preservation of life and/or serious property damage. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate overtime rate as provided for by RCW 39.12.

10.8

It will not be a violation of the PLA when the Contractor considers it necessary to shut down the project in whole or in part to avoid the possible loss of human life because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Contractor or the Sub-contractors requests employees to stand by, the employees will be compensated for the stand by time as per the provisions of Article 10.9(a).

10.9 Reporting Time (Show-Up Time)

(a) Reporting Pay. Employees reporting for work and for whom no work is provided, except when given notification, two (2) hours prior, not to report to work, shall receive two (2) hours pay at the regular straight-time hourly rate. Employees who are directed to start work shall receive four (4) hours pay at the regular straight time hourly rate. Employees who work beyond four (4) hours, shall be paid for actual

hours worked. Whenever reporting pay is provided for employees, they may be required to remain at the Project site available for work for such time as they receive pay, unless released earlier by their supervisor. Each employee shall furnish his/her Contractor with his/her current address and telephone number, and shall promptly report any changes in each to the Contractor. When an employee is sent to the jobsite from the Union referral facility in response to a request from the Contractor for an employee for one (1) day and starts work at the designated starting time for his/her shift, the employee will be paid a minimum of eight (8) hours for that day.

(b) Make-up Day. Should any of the Contractors be unable to work forty (40) hours in any workweek due to weather or other conditions over which they have no control, the Contractor(s) may, to the extent permitted by the applicable prevailing wage law, schedule a make-up day (Saturday for 5/8 schedule; Friday or Monday for 4/10 schedule). All hours worked on a make-up to complete the forty (40) hours for the standard workweek shall be paid at the straight time rate of pay. Any hours in excess of the standard workweek worked on Saturday shall be paid at time and one-half the straight time rate of pay. For make-up day work, the full crew must be scheduled. The make-up day may not be utilized on an individual employee basis or to make up holidays. Make-up days are voluntary and should a crew member decline the make-up day's work, the Contractor may select a member of another crew as a replacement, or allow the crew to work without the regular crew member. All make-up day work will be scheduled for a full work day.

(c) Discharge Departure. When an employee leaves the job or work location of his/her own volition or is discharged for cause or is not working as a result of any contractor's invocation of Article 10.8, the employee shall be paid only for actual time worked.

(d) Premium Rate Day. In all cases, if the employee is reporting on a day on which an overtime rate is paid, reporting pay shall be calculated at that rate.

10.10 Project Security

In the event the Contractor and Owner deem it necessary the parties agree, as part of the Project Security Plan, as required in Division 01, Section 01 35 50 Contract Documents, to develop a mutually acceptable system for employee verification for checking in and out of the Project site. If necessary, the system will be developed by the Project Administrative Committee.

ARTICLE 11 - APPRENTICESHIP

11.1

The parties recognize the need to maintain continuing support of apprenticeship programs designed to develop adequate numbers of competent workers in the construction industry. Such programs enable workers to enter the labor pool fully qualified to earn a family wage on construction jobs. The Unions agree to support and to enhance such programs to provide training and job opportunities to these new work force entrants. The Contractors will employ apprentices in their respective craft to perform work customarily performed by the craft in which they are registered and within their capabilities.

11.2. Apprenticeship Requirements and Utilization Goals

Consistent with any restrictions contained in applicable state or federal law and regulations, including those governing equal employment opportunity, prevailing wage and apprenticeship requirements and limitations, the parties will jointly use good faith efforts to meet or exceed the following Project goals for apprenticeship utilization:

(a) The Contractor and the Sub-contractors at all tier levels shall be required to make good faith efforts to achieve a requirement of 15% of all labor hours to be performed by apprentices on their particular contract or subcontract.

(b) "Good faith efforts" means the strongest possible efforts that the Contractor and its Sub-contractors can reasonably make to meet the established apprentice requirements and goals.

(c) The following identifies the diversity goals for this project:

a. Minorities	21%
b. Women	25%
c. Persons with disabilities	2%
d. Economically disadvantaged youth	7%

11.3 Development of a Skilled Construction Workforce

King County supports the development of a skilled construction workforce through appropriate apprenticeship and training organizations, particularly for minorities, women and others facing significant employment barriers. The County also supports pre-apprenticeship programs such as the Seattle Vocational Institute Pre-Apprenticeship Construction Training program (PACT), ANEW and Helmets to Hard Hats in their goals to assist workers with particular barriers.

11.4 Apprentice Utilization Plan

The Contractor and the Contractor's Sub-contractors shall prepare and submit a plan for participation of SAC-registered apprentices to the Owner at the pre-job conference. The Contractor and each Sub-contractor shall estimate the total contract labor hours to be worked on the construction contract awarded to it and shall establish the anticipated apprenticeship participation by craft and hours. Diversity goals for the use of apprentices are identified in Section 11.2 of this Article.

During the contract construction phase, the Contractor shall submit a monthly report for its self and all Sub-contractors to King County's online Contract and Apprenticeship Report Tracking System (CARTS) on the numbers of apprentices used by craft and trade at each tier and level of work.

11.5 Support for Pre-Apprenticeship through Preferred Entry

The parties agree to construct and expand pathways to livable wage jobs and careers in the construction industry for community residents through collaborative workforce development systems involving community-based training providers and Union-based apprenticeship programs. The purpose of this program is to facilitate a workforce reflective of the diversity of the County's population.

The Preferred Entry program, as defined by this agreement will identify individuals meeting certain criteria, and who are compliant with the entry standards for those apprenticeship programs that allow for preferred entry of qualified applicants into their programs. Preferred Entry candidates shall be placed with contractors working on the CFJC Project utilizing an interview process, as first period apprentices. The purpose of this program is to facilitate a workforce reflective of the population of King County, supporting goals of workforce inclusiveness.

Overall the Contractor would need to demonstrate how one (1) of each five (5) Apprentices would come from Pre-Apprenticeship programs including Seattle Vocational Institute Pre-Apprenticeship Construction Training program (PACT), Apprenticeship and Non-Traditional Employment Program for Women and Men (ANEW), Helmets to Hard Hats Program or others serving primarily low-income communities of color or women.

The Unions and the Contractors agree to hire preferred entry apprentices as early as possible in the Project. The provisions of this agreement will include Preferred Entry qualified applicants hired from Local Pre Apprenticeship Training Programs. To give preferred entry apprentices an opportunity to become established in their apprenticeship training, Contractors are required to provide a minimum of 700 hours of work, after

hiring, unless terminated for cause. Contractors will provide a minimum of 700 hours of work for all preferred entry apprentices.

If preferred entry apprentices are available, proceed with the hiring process and provide appropriate documentation to Contractor and the Owner.

If preferred entry of the candidate(s) into the SAC approved apprentice program is denied, request and obtain documentation of the denial from the SAC approved program. Forward this documentation of contacts with recruitment/referral agencies and other efforts to recruit targeted apprentices to Contractor and the Owner.

ARTICLE 12 – HELMETS TO HARDHATS

The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center or Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring support network, employment opportunities and other needs as identified by the parties.

The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 13 - PAYDAY

13.1

All employees covered by this PLA may be paid by check and shall be paid no later than the end of the work shift Friday. Paychecks shall be drawn on a local bank, or the Contractors shall make local check-cashing facilities available to the employees. No more than five (5) days' wages may be withheld. Any employee who is discharged or laid off shall be entitled to receive all accrued wages immediately upon discharge or layoff. Notification of layoff shall be at the Contractor's discretion but shall not be given later than the end of the work shift on the date the layoff is to be effective. Such notification may be verbal.

13.2

A penalty of two (2) hours taxable, straight time pay for each 24 hour period or portion thereof (Saturdays and Sundays included) following the day in which the payroll became delinquent, shall be paid in addition to all wages due to the employee based upon when settlement is made up to, but not exceeding two (2) weeks. Penalty payment may be made by jointly issued checks.

ARTICLE 14 - CRAFT JURISDICTION AND JURISDICTIONAL DISPUTES ADJUSTMENT

14.1

The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the Plan) or any successor Plan.

14.2

All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions, NCA Unions, parties to this PLA, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this PLA. Written notification and a copy of the decision shall be provided to the Owner within five (5) days of the decision being rendered.

14.3

All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractors assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

14.4

Any award or resolution made pursuant to this procedure, shall be final and binding on the disputing Unions and the involved Contractor under this PLA only, and may be enforced in any court of competent jurisdiction in accordance with the Plan. Such award or resolution shall not establish a precedent on any construction work not covered by this PLA. In all disputes under this Article, the Contractor shall be considered a party in interest.

ARTICLE 15 - WORK RULES

15.1

Employment begins and ends at the jobsite.

15.2

Employees shall be at their place of work at the designated starting time and shall remain at their place of work until the designated quitting time. Place of work shall mean gang boxes, change shacks or other designated tool storage areas or at assigned equipment. Employees shall remain on the Project and at their place of work through the work day except during breaks and lunch, at which time employees may access vending areas or snack trucks.

15.3

There shall be no limit on production by workers nor restrictions on the full use of tools or equipment. Craftsmen using tools shall perform any of the work of the trade and shall work under supervision of craft foremen. There shall be no restrictions on efficient use of manpower

other than as may be required by safety regulations: provided, however, legitimate manning practices that are a part of national and/or local agreements shall be followed.

15.4

Security procedures for control of tools, equipment and materials are solely the responsibility of the Contractors and/or its Sub-contractors. Employees having any company property or property of another employee in their possession without authorization are subject to immediate discharge. The Contractors will be responsible for the establishment of reasonable job security measures for the protection of personal company and client property.

15.5

Slowdowns, standby crews and featherbedding practices will not be tolerated.

15.6

Recognizing the nature of the work being conducted on the site, employee access by private automobile may be limited to certain roads and/or parking areas.

15.7

The Owner or the Contractor(s) may establish reasonable Project rules, as they deem appropriate and not inconsistent with this Agreement, however, such rules shall be subject to review by the Joint Administration Committee. These rules will be explained at the pre-job conference and posted at the Project site by the Contractor(s) and may be amended thereafter as necessary. Failure to observe these rules and regulations by any employee may be grounds for discipline, including discharge.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1

All inspection of incoming shipments of equipment, apparatus, machinery and construction materials of every kind shall be performed at the sole discretion of the Owner, or Contractors by persons of their choice.

16.2

The Owner or Contractors shall have the right to have equipment, apparatus, machinery and construction materials of every kind delivered to the jobsite by persons of their choice except as otherwise set out herein.

16.3

The Owner shall have the right to test, operate, maintain, remove and replace all equipment, apparatus or machinery installed, or to be used in connection with such installation on the work site with employees, agents or representatives of the Owner who shall work under the direct supervision of the Owner, as applicable if such supervision is deemed desirable.

16.4

Any employee who willfully damages the work of any other employee, or any material, equipment, apparatus, or machinery shall be subject to immediate termination.

16.5

In the interest of the future of the construction industry in the Puget Sound area, of which labor is a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work with management on this Project to produce the most efficient utilization of labor and equipment in accordance with this PLA.

ARTICLE 17 - SAFETY, HEALTH AND SANITATION

17.1

The Contractor, its Sub-contractors and the Unions signatory to this Agreement will form a Joint Labor/Management Safety Committee that shall be incorporated into the Project Administrative Committee. At this meeting reports will be given on safety programs instituted by the Contractor, the Contractor and the individual contractors on the Project site and to discuss and advise such parties of the PLA with regard to recommended safety programs and procedures in order to maintain the highest level of occupational safety possible on the Project Site.

17.2

The Contractor, the Contractor's Sub-contractors and their respective employees shall comply with all applicable provisions of State and Federal laws and regulations including the Occupational Safety and Health Act of 1970 as amended.

17.3

The Contractor or its Sub-contractors shall provide a convenient and sanitary supply of drinking water, cooled in the summer months, and sanitary drinking cups.

17.4

The Contractor or its Sub-contractors shall provide adequate sanitary toilet facilities, water and clean up facilities for the employees. Dry shacks for breaks and employee’s personal equipment storage shall be per the local CBAs.

17.5

Violators of the safety program will be subject to termination for cause and may be rehired after 90 days.

17.6

All required safety equipment shall be provided by the Contractor or its Sub-contractors.

ARTICLE 18 - NO STRIKE - NO LOCKOUT

18.1

During the term of this PLA there shall be no strikes, including sympathy strikes, picketing including informational picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Union, its applicable Local Union or by any employee, and there shall be no lockout by the Contractor. Failure of any Union, Local Union or employee to cross any picket line established at the Project site is a violation of this Article.

18.2

The Union and its applicable Local Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

18.3

Neither the Union nor its applicable Local Union shall be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union.

The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

18.4

In the event of any work stoppage, strike, picketing or other disruptive activity in violation of this Article, the Contractor may suspend all or any portion of the Project work affected by such activity at the Contractor's discretion and without penalty.

18.5

There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity affecting the Project site during the duration of this PLA. Any Union or Local Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another Union or Local Union which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 18.6 of this Article.

18.6

In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) or Local Union(s) has been notified of the fact. The party instituting the following procedures shall also notify, in writing, the Owner, and provide to the Owner a written explanation of the factual and legal grounds for use of this procedure. The contractors and/or Unions instituting the procedure shall allow the Owner to observe and comment on and during the course of the procedure to the arbitrator.

(a) The party invoking this procedure shall notify (to be mutually determined) who the parties agree shall be the Arbitrator under this procedure. Notice to the Arbitrator

shall be by the most expeditious means available, with notice by facsimile, email or any other effective written means, to the party alleged to be in violation and the International Union President and/or Local Union.

(b) Upon receipt of said notice, the Arbitrator shall set and hold a hearing within twenty-four (24) hours if it is contended the violation still exists.

(c) The Arbitrator shall notify the parties by email, facsimile, or any other effective written means, of the place and time he or she has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

(d) The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The award shall be issued in writing within three (3) hours after the end of the hearing, and may be issued without an Opinion. If any party desires an Opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the award. The Arbitrator may order cessation of the violation of this Article, and such Award shall be served on all parties by hand or registered mail upon issuance.

(e) Such award may be enforced by any court of competent jurisdiction upon the filing of this PLA and all other relevant documents referred to herein above in the following manner. Facsimile or expedited mail or personal service of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 6 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address by registered mail.

(f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by parties to whom they accrue.

(g) The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

(h) If the Arbitrator determines that a work stoppage has occurred in accordance with Section 18.6 d above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: For the first shift in which the violation occurred, $10,000; for the second shift, $15,000; for the third shift, $20,000; for each shift thereafter on which the craft has not returned to work, $25,000 per shift. The specific damages in this Section shall be paid to the Owner. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Article.

18.7

The procedures contained in Section 18.6 through 18.6 (h) shall be applicable to violations of this Article. Disputes alleging violation of any other provision of this PLA, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance adjudication procedures of Article 19 Grievance Procedure.

18.8

The Owner and Contractor are each a party of interest in all proceedings arising under this Article and Articles 14 and 19 and shall be sent copies of all notifications required under these Articles and shall initiate or participate as a full party in any proceeding initiated under this Article.

ARTICLE 19 - GRIEVANCE PROCEDURE

19.1

This PLA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

19.2

The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance arbitration provisions set forth in this Article.

19.3

Any question or dispute arising out of and during the term of this PLA (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following steps:

(a) Step 1. When any employee subject to the provisions of this PLA feels they have been aggrieved by a violation of this PLA, through their local Union business representative or job steward, shall, within five (5) working days after receiving notice of the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local Union or the job steward and the work-site representative of the involved Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance,

including a short description thereof, the date on which the grievance occurred, and the provision(s) of the PLA alleged to have been violated. Should the Local Union(s) or any contractor(s) have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

(b) Step 2. The International Union Representative and the involved Contractor(s) shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) working days thereafter.

(c) Step 3. If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) working days thereafter that the grievance be submitted to the mutually agreed upon Arbitrator. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the contractor(s) and the involved Local Union(s). Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented, and shall not have authority to change, amend, add to or detract from any of the provisions of this PLA.

19.4

The Owner and Contractor shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE 20 - GENERAL SAVINGS CLAUSE

20.1

If any article or provisions of this Agreement shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the Federal or any State government (including such authorities as established within Project enabling legislation referred to under Article I within this Agreement). The Contractors and the Union shall suspend the operation of such article or provision during the period of its invalidity and shall substitute, by mutual consent in its place and seal an article or provision which will meet the objections to its validity and which will be in accord with the intent and purpose of the article or provision in question.

20.2

If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the

remainder of this agreement or the applications of such article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

ARTICLE 21 - TERMS OF AGREEMENT

21.1

This Project Labor Agreement shall become effective on _____, and shall continue only until the Project is completed or abandoned by the Owner, or by the Contractors for the Project.

(a) Turnover. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segments has been turned over to the Owner by the Contractor(s) and the Owner has accepted such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved by the Owner, the Agreement shall have no further force or effect on such items or areas, except when a Sub-contractor is directed by the Contractor(s) or the Owner to engage in repairs or modifications required by its contract(s) with the Owner.

(b) Notice. Written notice of each final acceptance received by the Contractor(s) will be provided to the Building Trades Council(s) with a description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a "punch list," and in such case, the Agreement will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner and a letter of completion/Final Acceptance is given by the Owner to the Contractor(s). A copy of the "punch list" will be available to the Unions.

(c) Termination. Final termination of all obligations, rights and liabilities and disagreements shall occur upon receipt by the Building Trades Council(s) of a written notice from the Owner or Contractor(s) saying that no work remains within the scope of the Agreement for the Contractor(s) or their successor(s).

ARTICLE 22 - WAGE SCALES AND FRINGE BENEFITS

22.1

In consideration of the desire of the Owner, the Contractors and the Unions for all construction work to proceed efficiently and economically and with due consideration for protection of labor standards, wages and working conditions, all parties agree that:

22.2

All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing rates as required by Chapter 39.12 of the Revised Code of Washington, as amended. This requirement applies to laborers, workers and mechanics, employed by the Contractors, or by any other person who performs a portion of the work contemplated by this Agreement and which is covered by the terms hereof.

22.3

The Contractor(s) and its Sub-contractors will recognize ·the applicable Federal and/or State Prevailing Wage Rate Determinations as the minimum rates to be paid to all craft employees, including general foreman, foreman and apprentices during the life of the project. Further, the Contractor(s) and its Sub-contractors will recognize all changes of wages and fringes on the effective date(s) of the individual craft local collective bargaining agreement. It is further agreed that any retroactive increases will be recognized provided it is part of the negotiated settlement.

22.4

The current Washington State Prevailing Wage Rates (PWR) for the inception of this project are dated _____. Such Washington State PWR which have been provided to the parties hereto by the industrial statistician of the Washington State Department of Labor and Industries will be available for review at the L&I website at: http://www.lni.wa.gov/prevailingwage/ and are incorporated into this Agreement as if set forth herein.

22.5

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 shall be referred for arbitration to the DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES of the State of Washington, and the Directors decision therein shall be final and conclusive and binding on all parties involved in the dispute, as provided for by Section 39.12.060 of the Revised Code of Washington as amended.

22.6

The Contractor(s) and its Sub-contractors adopt and agree to be bound by the written terms of the legally established trust agreements, for each craft hired, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractor(s) and its Sub-contractors authorize the parties to such Trust Funds to appoint Trustees and successor Trustees to administer the Trust Funds and hereby ratifies and accepts the Trustees so appointed as if made by the Contractor(s) or its Sub-contractors.

22.7

If any Sub-contractor is delinquent in any Trust Fund contributions, the Union or the Trust Fund shall first make every effort to resolve the delinquency. After all efforts have been exhausted, the Union or Trust Fund shall provide timely notification to the Owner and the Contractor(s), together with all documentary evidence of the delinquency endorsed by the Fund. Upon such notification, the Contractor(s) will attempt to resolve the delinquency among its Sub-contractor, the Union and the Fund. If the delinquency is not resolved within ten (10) days thereafter, the Contractor(s) shall withhold an amount to cover the delinquency from any retained funds otherwise due and owing to the Sub-contractor and shall not release such withholding until the Sub-contractor is in compliance. If the delinquent amounts are undisputed in whole or in part between the Fund and the delinquent Sub-contractor, the Contractor(s) shall issue a joint check to the Fund and the Sub-contractor in the amount of the undisputed delinquency.

22.8

Copies of the Union Trust Agreements are available upon request.

ARTICLE 23 - DRUG FREE WORKPLACE

23.1

The parties to this PLA agree that the Contractor shall implement a Drug Free Workplace Policy and Program for the duration of this PLA. Such policy will be administered in accordance with the provisions of the ALCOHOL AND DRUG POLICY included as an Exhibit to this PLA. The drug and alcohol testing program implemented must be equal to or better than the King County program. All drug and alcohol testing procedures must be administered by an independent third party agency reviewed in advance by the Owner. The Owner has the right and authority to conduct an audit of the administration of the drug and alcohol testing procedures being implemented.

ENDORSEMENTS

The authorized signature by the undersigned affirms the approval of this Agreement by _____ and its adoption of this Agreement as a bid specification for contracts covering all work within the scope of this Agreement.

ATTACHMENT 1
LETTER OF ASSENT
PROJECT LABOR AGREEMENT
FOR THE
Children and Family Justice Center

The undersigned, as a Contractor or Sub-contractor on the CFJC Project, for and in consideration of the award of a Contract to perform work on said Project, and in further consideration of the mutual promises made in the Project Labor Agreement (PLA), a copy of which was received and is acknowledged, hereby:

1. On behalf of itself and all its employees, accepts and agrees to be bound by the terms and conditions of the PLA, together with any and all amendments and supplements now existing or that are later made thereto, and understands that any act of non-compliance with all such terms and conditions, will subject the non-complying Contractor or employee(s) to being prohibited from the Project site until full compliance is obtained.

2. Certifies that it has no commitments or agreements that would preclude its full compliance with the terms and conditions of said PLA.

3. Agrees to secure from any Sub-contractor, of any tier (as defined in said PLA), a duly executed Letter of Assent in form identical to this document prior to commencement of any work.

Dated:_____

_____
(Name of Contractor/Company)

_____
(Signature of Authorized Representative)

_____
(Print Name and Title)

_____
(Phone Number)

_____
(Billing Address)

_____
(City, State and Zip Code)

_____
(General Contractor)

C00863C13
(King County Contract Number)

EXHIBITS

Exhibit 1: King County Drug & Alcohol Policy

Modification to Appendix 9.1 and 9.2

The following sections have been modified from the revised policy dated February 2000. These revisions reflect additional language required by the Federal Department of Transportation, Transit and Motor Carrier Safety Administrations, 49 CFR Parts 40, 655 and 382 as amended, and merely clarify what is current practice. The Federal Transit Administration has combined 49 CFR parts 653 and 654 and replaced them with 49 CFR Part 655. All revisions have been made pursuant to Section XV – Modifications.

Lori Jones
Drug & Alcohol Program Manager

Policy Statement

A-4. is prohibited from consuming alcohol for specified on-call hours when on call; and

Section IV Substances Tested

B. All verified negative-dilute results will be treated as verified negative results.

Section V Types of Testing

The King County alcohol and drug testing procedures will incorporate all requirements outlined ***in the federal regulations 49 CFR Part 40 as amended*** to ensure employee confidentiality, the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct covered employee. Prior to performing each test, King County will notify each employee that the alcohol or controlled substances testing is required by the FTA or FMCSA.

Section VI Pre-employment Tests

C.1. e. refuse to consent to allow King County to obtain the driver's previous employers' information on positive controlled substances and/or alcohol test results and refusal to be tested within the previous two (2) years; or

C. 3. Persons who are disqualified from the position that required the pre-employment test shall be disqualified from applying for any covered King County position for a period of six (6) months. Applications from such persons will thereafter only be accepted if accompanied by a current; written statement from a qualified substance abuse professional ***verifying that he/she has successfully completed a referral, evaluation and treatment plan.***

C. 4. When a covered employee/applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in the random pool, the employee shall take a pre-employment drug test. ***King County must have a verified negative result prior to the employee performing safety-sensitive work.***

Section VII Post-Accident Tests

A. 3. a non-fatal accident involving a non-transit commercial motor vehicle operating on a public road that requires the driver to carry a commercial driver's license (CDL) has occurred in which

a. the driver receives a citation for a moving traffic violation within 8 hours (to test for alcohol) or within 32 hours (to test for controlled substances)

C. An employee required to submit a post-accident drug and alcohol testing must be testing as soon as possible. Drug tests must be conducted within thirty-two (32) hours following the accident; alcohol tests must be conducted within eight (8) hours of the accident. ***If an alcohol test is not completed within two hours, King County shall prepare and maintain a record stating the reason. If an alcohol test is not completed within 8 hours, King County shall cease attempt to administer test and maintain a record stating the reason.*** A covered employee who is required to submit to a reasonable suspicion alcohol and drug test under Section IX need not be required to also submit to a separate post-accident drug and alcohol test under this Section.

Section VIII Random Tests

B. A computer based random number generator, which is a scientifically valid method, is used for random selections. All covered employees shall have an equal chance of being selected each time selections are made. The random testing rate requirement for Federal Transit and ***Federal Motor Carrier Safety Administrations*** is to annually complete drug tests equivalent to 50% of the number of covered employees and complete alcohol tests equivalent to 10% of the number of covered employees.

C. ÷ ***Previous language deleted***

C. Employees selected for random alcohol and/or drug tests will be provided with transportation and are required to report immediately to the collection site where they will be required to provide a breath and/or urine sample.

D. Employees may be randomly tested for prohibited drug use anytime while on duty.

Section X Return to Work Testing

Employees who have been disciplined in accordance with Section XIII as a result of their first positive test indicating the presence of one or more of the substances listed in Section IV, ***or return to work after a violation other than a first positive through the grievance process***, will be required, prior to returning to work, to take a return to duty alcohol and/or drug test with a verified negative result in accordance with King County alcohol and drug testing procedures.

Section XII Refusal to Test

The following are behaviors which constitute a refusal to test. A refusal to test constitutes a violation of this policy and the Federal regulations and a verified positive drug/alcohol test result.

A. Refusal to submit (to an alcohol test). A covered employee is considered to have refused to take an alcohol test if s/he:

1. Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer;
2. Fails to remain at the testing site until the testing process is complete;
3. Fails to attempt to provide a breath specimen for any test required by 49 CFR Parts 382 or 655;
4. Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
5. Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined in 40.265;
6. Fails to sign the certification at Step 2 of the Alcohol Testing Form (ATF); or
7. Fails to cooperate with any part of the testing process.

If an employee refuses to take an alcohol test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

B. Refusal to submit (to a drug test). A covered employee is considered to have refused to take a drug test if s/he:

1. Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer;
2. Fails to remain at the testing site until the testing process is complete;
3. Fails to attempt to provide a urine specimen for any test required by 49 CFR Parts 382 or 655;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the specimen;

5. Fails to provide a sufficient amount of urine when directed, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take a second test the employer or collector has directed him/her to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures outlined in 40.193;
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process.)

If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.

If an employee has refused to take a drug test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

\+ ***Previous language deleted***

Section XIII Consequences

B.1. c) attends an appropriate King County approved education and/or treatment program and signs a monitoring agreement with King County's EAP to ensure successfully completion of the education/treatment program specified by the substance abuse professional; and

Section XIV Confidentiality

The laboratory and MRO shall maintain strict confidentiality of all test results in accordance with ***Section 655.73*** of FTA regulations and with Section 382.401 of ***FMCSA*** regulations.

Safety Sensitive Positions

A. Department of Transportation

Transit Division
- Operations
- Power and Facilities
- Safety
- Vehicle Maintenance

Roads Division*

Traffic Engineering*

Fleet Administration*

Airport Division*

B. Department of Natural Resources and Parks

Wastewater Treatment Division*

Employees who are required to operate vehicles which require the possession of a commercial driver's license (CDL). Specific employees subject to testing will be identified by ***WTD*** management and notified of the testing requirements.

Solid Waste Division* **Parks Division***

C. Department of Public Health

North Rehabilitation Facility*

(*see page 23)

Exhibit 1: King County Drug & Alcohol Policy

King County Administration Polices and Procedures

Executive Orders
Policies and Procedures

Title	Document Code No.
King County Prohibited Drug Use and Alcohol Misuse Education and Testing Program	PER 15-2-1 (AEP)
Department/Issuing Agency	**Effective Date**
Drug and Alcohol Program	October 25, 1995
Approved Gary Locke	

1.0 SUBJECT TITLE: Policy for King County Prohibited Drug Use and Alcohol Misuse Education and Testing Program

1.1 EFFECTIVE DATE

1.2 TYPE OF ACTION: Supersedes PER 15-2 (AEP)

1.3 KEYWORDS: Drug Use, Alcohol Misuse, Safety Sensitive, Testing Program, Education

2.0 PURPOSE: To establish the King County Program for Prohibited Drug Use and Alcohol Misuse Education and Testing Program Policy. This policy ensures King County compliance with the Omnibus Transportation Act of 1991.

3. ORGANIZATIONS AFFECTED: Applicable to all Executive Departments

4.0 REFERENCES:

4.1 Omnibus Transportation Act of 1991

4.2 49 CFR Parts 40, 382, 655 as amended

4.3 U.S. Drug Free Workplace Act of 1988

5.0 DEFINITIONS: Included in Appendix 9.1

6.0 POLICIES:

6.1 King County is committed to maintaining a drug-free workplace to promote both the quality of its services and the safety of its employees, its customers and the public. Every King County employee or employee of a transit contractor who holds a position which could be defined as safety-sensitive is subject to regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991; and, each employee, in accordance with this Act and under King County Authority shall follow policies as defined in Appendix 9.1.

6.2 Questions about this Prohibited Drug Use and Alcohol Misuse Policy, King County's Employees Assistance Programs and/or the attached Prohibited Drug Use and Alcohol Misuse Education and Testing Program should be addressed to Lori Jones, Program Manager for the King County Drug and Alcohol Program at (206) 684-1750.

7.0 PROCEDURES: N/A

8.0 RESPONSIBILITIES:

8.1 The Program Manager for the King County Drug and Alcohol Program is responsible for ensuring that a Prohibited Drug Use and Alcohol Misuse Education and Testing Program Policy for covered employees is written in the King County Council Ordinance format.

9.0 APPENDICES:

9.1 Prohibited Drug Use and Alcohol Misuse Education and Testing Program

9.2 Safety Sensitive Positions

Appendix 9.1

Prohibited Drug Use And Alcohol Misuse Education And Testing Program

Policy Statement

A. King County is committed to maintaining a drug-free workplace to promote both the quality of its services and the safety of its employees, its customers and the public. Every King County employee or employee of a transit contractor who holds a position which would be defined as safety-sensitive (covered employee) is subject to regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991 (the Act); and each covered employee, in accordance with the Act, is:

1. prohibited from using, possessing, selling, purchasing, manufacturing, distributing, or transferring alcoholic beverages (except off-duty use at public events) or controlled substances or other performance-impairing substances while on duty or on King County property; and
2. is prohibited from being present on King County property (except off-duty alcohol use at public events), reporting to work or performing work while that employee is under the influence of alcohol or has any controlled substance or other performance-impairing substance in his/her system; and,
3. is prohibited from the consumption of alcohol within four (4) hours of the employee's scheduled time to report for work, or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first; and,
4. is prohibited from consuming alcohol for specified on-call hours when on-call; and,
5. is required to submit to an alcohol and/or drug test when directed by King County; and, prohibited from tampering or attempting to tamper with such alcohol and/or drug test.

B. Each King County covered employee, pursuant to the Drug Free Workplace Act is required to notify his/her supervisor, within five (5) calendar days of any conviction, that he/she has been convicted of a drug crime occurring in the workplace; and

C. Each covered employee, under King County's own authority:

1. is responsible for informing his/her physician when being prescribed medication(s) that he/she is covered under the terms of this policy. The employee shall use medically authorized drugs or over the counter medications in a manner which will not impair on the job performance.
2. shall promptly report to his/her supervisor whenever he/she observes or has knowledge of another employee who poses a hazard to the safety and welfare of others.

D. In accordance with the Omnibus Transportation Employee Testing Act of 1991 and the regulations issued pursuant to this Act:

1. It is King County policy that every covered King County employee comply with the Prohibited Drug and Alcohol Misuse Education and Testing Program which details King County's program.
2. Employees must understand that strict compliance with King County's Alcohol and Drug Misuse Policy and Education and Testing Program is a condition of employment with King County.
3. Under King County's own authority, violations will result in discipline in accordance with Section XIII.

Section II – Covered Employees

As required by the regulations issued pursuant to the Omnibus Employee Testing Act of 1991, King County must conduct drug and alcohol testing for all covered employees. Covered employees are those employees who occupy positions which perform a 'safety-sensitive' function and applicants for a safety-sensitive position. 'Safety-sensitive' functions are defined as:

1. operating revenue service vehicles, including operation when the vehicle is not in revenue service;
2. operating nonrevenue service vehicles when operation of such vehicles requires the driver to hold a Commercial Driver's License (CDL);
3. controlling the dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
5. carrying a firearm for transit security purposes.

A list of all covered positions/classifications, by King County Department, is attached as Appendix 9.2. In addition, all employees of independent contractors who perform services for King County Department of Transportation, Transit Division in positions which are safety-sensitive as outlined above will also be subject to the testing requirements outlined in this program.

Section III – Education

Every covered King County employee will receive a copy of King County's Prohibited Drug Use and Alcohol Misuse Policy and this Prohibited Drug and Alcohol Misuse Education and Testing Program. Transit employees will receive a minimum of sixty (60) minutes of training regarding the Prohibited Drug Use and Alcohol Misuse Education and Testing Program and the effects of prohibited drug use and alcohol misuse. Detailed information on alcohol misuse will be provided, specifically referencing the effects of alcohol misuse which impacts an individual's biological, emotional, psycho-social well being. The effects of misuse can be seen in an individual's work performance, attitude and social interaction.

All King County supervisory personnel who are designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol and/or drug testing will also receive a minimum of one-hundred and twenty (120) minutes of training on the physical, behavioral, speech, and performance indicators of probable prohibited drug use and alcohol misuse.

Section IV – Substances Tested

A. Alcohol

Employees subject to alcohol testing will have a sample of their breath tested for the presence of the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol testing must be accomplished just before a covered employee performs safety sensitive duties, during that performance, or just after a covered employee has performed safety sensitive duties. King County, under its own authority, considers a breath alcohol level of .02 or greater a positive test.

Any refusal to submit to an alcohol test, and all positive alcohol tests, will be reported immediately by the testing facility to the King County Drug and Alcohol Program Manager as required by law.

B. Drugs

Employees subject to drug testing will have a sample of their urine tested for the presence of five (5) drugs, as follows:

1. Marijuana
2. Cocaine
3. Opiates
4. Amphetamines
5. Phencyclidine

All drug tests will be reported by the testing laboratory to a medical review officer (MRO) who will evaluate the results. After evaluation and interpretation, all verified positive test results will be reported by the MRO to the employee and the King County Drug and Alcohol Program Manager. Any refusal to submit to a drug test, will be immediately reported by the collection site to the King County Drug and Alcohol Program Manager. All verified negative-dilute results will be treated as verified negative results.

With respect to verified positive drug tests, employees will be notified by the MRO that they have seventy-two (72) hours following this notification in which they can request, at their own expense, that a split urine specimen be tested by another Department of Health and Human Services (DHHS) certified testing laboratory. However, in the event that the split sample test is negative, the employee will be reimbursed for the test.

Failure to request testing of the split specimen within seventy-two (72) hours of being notified of a positive test by the MRO will result in the test results from the original specimen being accepted as the final test results.

Section V – Types of Testing

The following tests will be required of all covered employees in accordance with King County alcohol and drug testing procedures:

1. Pre-employment tests
2. Post-accident tests
3. Random tests
4. Reasonable suspicion tests
5. Return to duty/Follow-up tests

The King County alcohol and drug testing procedures will incorporate all requirements outlined in the federal regulations 49 CFR Part 40 as amended to ensure employee confidentiality, the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct covered employee. Prior to performing each test, King County will notify each employee that the alcohol or controlled substances testing is required by the FTA or FMCSA.

Section VI – Pre-employment Tests

A. The following persons will be subject to pre-employment testing in accordance with King County alcohol and drug testing procedures:

   1. Applicants selected for hire into one of the covered positions listed in Section II.
   2. Current King County employees selected for assignment into one of the covered positions listed in Section II, if not previously employed in one of these positions, and if the assignment is intended to be for thirty (30) or more consecutive days.

B. Individuals identified in Section VI.A. will be informed that they are subject to pre-employment drug testing at the time they apply for a covered position. Such persons, once a job offer is made will have urine sample collected and tested for evidence of the substances listed in Section IV.B. For individuals noted in Section VI.A.1. and 2, tests may be conducted as part of a routine pre-employment physical examination. The time, date and location of the physical examination and drug test will be announced in advance of the test. Individuals applying for positions which do not require a routine pre-employment physical examination will be notified, in advance, of the time, date and location of the drug test only. King County must receive a negative drug test result prior to employee performing a safety-sensitive function. If a test is canceled, King County shall require employee/ applicant to take another pre-employment test and must receive a verified negative result.

C. Disqualification from King County Employment

   1. It is King County policy that applicants for initial hire will be disqualified from King County employment if they:

a. fail to appear for the physical examination and urine collection on the designated day unless excused by King County for good and verifiable cause;

b. refuse to test as defined in Section XII;

c. attempt to alter, taint, or otherwise provide a false sample; or

d. test positive for the presence of one of the substances listed in Section IV.B.

e. refuse to consent to allow King County to obtain the drivers' previous employers' information on positive controlled substances and/or alcohol test results and refusal to be tested within the previous two (2) years; or

f. have tested positive or have refused to be tested when required by a previous employer within the last (2) years and have not successfully completed required recommendations of a substance abuse professional.

2. Current employees subject to pre-employment testing will be disqualified from the position they are seeking if they commit one of the acts listed in 1.a - 1.f. of Section VI.C.1 above. Current employees subject to pre-employment testing will also be subject to discipline in accordance with Section XIII if they commit one of the acts listed in 1.c and 1.d in Section VI.C.1 above.

3. Persons who are disqualified from the position that required the pre-employment test shall be disqualified from applying for any covered King County position for a period of six (6) months. Applications from such persons will thereafter only be accepted if accompanied by a current, written statement from a qualified substance abuse professional verifying that s/he has successfully completed a referral, evaluation and treatment plan.

4. When a covered employee/applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in the random pool, the employee shall take a pre-employment drug test. King County must have a verified negative result prior to the employee performing safety-sensitive work.

Section VII – Post-Accident Tests

All employees in covered positions as identified in Section II will be subject to post-accident alcohol and drug testing in accordance with King County alcohol and drug testing procedures.

A. A King County safety officer, supervisor or other qualified person shall be responsible for making a determination as to whether a post-accident drug and alcohol test is required at the time any covered employee is involved in an accident. An 'accident' requiring an alcohol and drug test is any accident where:

1. a fatality has occurred;

2. a non-fatal accident involving a transit diesel or trolley bus, automobile, van or commercial motor vehicle that requires the driver to carry a commercial driver's license (CDL) has occurred in which

   a. injuries were sustained requiring the injured person to immediately receive medical attention away from the scene or any vehicle involved in the accident is disabled and towed away unless it is determined, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident.

OR

3. a non-fatal accident involving a non-transit commercial motor vehicle operating on a public road that requires the driver to carry a commercial driver's license (CDL) has occurred in which

   a. the driver receives a citation for a moving traffic violation within 8 hours (to test for alcohol) or within 32 hours (to test for controlled substances)

AND

b. injuries were sustained requiring the injured person to immediately receive medical attention away from the scene or any vehicle involved in the accident is disabled and towed away

OR

4. a non-fatal accident involving the waterfront streetcar has occurred in which

a. injuries were sustained which required the injured person to immediately receive medical attention away from the scene

OR

b. the waterfront streetcar is removed from revenue service

B. King County will also test any covered employee whose performance could have contributed to the accident.

C. An employee required to submit to post-accident drug and alcohol testing must be tested as soon as possible. Drug tests must be conducted within thirty-two (32) hours following the accident; alcohol tests must be conducted within eight (8) hours of the accident. If an alcohol test is not completed within two hours, King County shall prepare and maintain a record stating the reason. If an alcohol test is not completed within 8 hours, King County shall cease attempt to administer test and maintain a record stating the reason. A covered employee who is required to submit to a reasonable suspicion alcohol and drug test under Section IX need not be required to also submit to a separate post-accident drug and alcohol test under this Section.

D. A covered employee must remain readily available for post-accident drug and alcohol testing, including notifying King County of his/her location is he/she leaves the scene of an accident prior to submission of these tests. Failure to remain readily available for post-accident testing constitutes a refusal. Post-accident testing is delayed while the covered employee assists in the resolution of the accident or receives medical attention following the accident.

E. An employee required to submit to a post-accident drug and alcohol test, will be transported by King County to the collection site and will be required to sign a consent form. The employee must provide a urine and breath sample unless it is determined by medical personnel present that the employee is medically unable to provide the required samples. Following the test, the employee will be relieved of duty with pay pending King County's receipt of the results of the tests from the MRO.

F. It is King County's policy that employees who are required to submit to a post-accident drug and alcohol test will be subject to discipline in accordance with Section XIII if they:

1. refuse to sign a consent form or refuse to provide a breath and/or urine sample;
2. attempt to alter, taint, or otherwise provide a false sample; or
3. test positive for the presence of one or more of the substances listed in Section IV.

Section VIII – Random Tests

A. King County will maintain a listing of the names of all employees in the covered positions listed in Section II. During each calendar year, alcohol and/or drug tests will be administered to these employees on a random-selection basis in accordance with the federal alcohol and drug testing regulations and King County's alcohol and drug testing program. King County shall insure that random drug and alcohol tests conducted will be unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year. Testing can be conducted on all days and hours during which safety sensitive work is performed.

B. A computer based random number generator, which is a scientifically valid method, is used for random selections. All covered employees shall have an equal chance of being selected each time selections are made. The random testing rate requirement for Federal Transit and Federal Motor Carrier Safety Administrations is to annually complete drug tests equivalent to 50% of the number of covered employees and complete alcohol tests equivalent to 10% of the number of covered employees.

C Employees selected for random alcohol and/or drug tests will be provided with transportation and are required to report immediately to the collection site where they will be required to provide a breath and/or urine sample.

D. Employees may be randomly tested for prohibited drug use anytime while on duty.

E. It is King County policy that employees will be subject to discipline in accordance with Section XIII if they:

1. do not appear immediately and complete a random drug and/or alcohol test within two (2) hours following notification to appear for such tests, refuse to sign a form or refuse to provide a breath and/or urine sample;
2. attempt to alter, taint, or otherwise provide a false sample; or
3. test positive for the presence of one or more of the substances listed in Section IV.

Section IX – Reasonable Suspicion Test

A. All employees in the covered positions listed in Section II may be required to submit to a reasonable suspicion alcohol and/or drug test.

B. Employees who are reasonably suspected by a supervisor of violating King County's Prohibited Drug Use and Alcohol Misuse Policy will be required to submit to an alcohol and/or drug test in accordance with King County alcohol and drug testing procedures. A trained supervisor who makes a determination that a test is required will be required to complete a form indicating the grounds for his/her suspicion. The determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the employee.

C. Employees will be transported by King County to the collection site and will be required to provide a breath and/or urine sample. Following completion of the test, employees will be transported home and relieved of duty with pay pending King County's receipt of the results of the test from the MRO.

D. It is King County's policy that employees will be subject to discipline in accordance with Section XIII if they:

1. refuse to sign a form or refuse to provide a urine and/or breath sample;
2. attempt to alter, taint, or otherwise provide a false sample; or
3. test positive for the presence of one or more of the substances listed in Section IV.

Section X – Return to Work Testing

Employees who have been disciplined in accordance with Section XIII as a result of their first positive test indicating the presence of one or more of the substances listed in Section IV, or return to work after a violation other than a first positive through the grievance process, will be required, prior to returning to work, to take a return to duty alcohol and/or drug test with a verified negative result in accordance with King County alcohol and drug testing procedures.

Section XI – Follow-up Testing

Current employees who have been disciplined in accordance with Section XIII as a result of a positive alcohol and/or drug test required under Section V, except for random alcohol tests with a level of .02-.039 whose initial test was greater than the confirmation test, upon return to work shall be subject to a minimum of six (6) unannounced drug and/or alcohol follow up tests during the first twelve (12) months following the employee's return to work, and further testing as recommended by the substance abuse professional up to a maximum of sixty (60) months. In addition, employees who have been disciplined in accordance with Section XIII will also be subject to the testing requirements of Section V.

Section XII – Refusal to Test

The following are behaviors which constitute a refusal to test. A refusal to test constitutes a violation of this policy and the Federal regulations and a verified positive drug/alcohol test result.

A. **Refusal to submit to submit (to an alcohol test).** A covered employee is considered to have refused to take an alcohol test if s/he:

1. Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer (except for pre-employment);
2. Fails to remain at the testing site until the testing process is complete;
3. Fails to attempt to provide a breath specimen for any test required by 49 CFR Parts 382 or 655;
4. Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
5. Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined in 40.265;
6. Fails to sign the certification at Step 2 of the Alcohol Testing Form (ATF); or
7. Fails to cooperate with any part of the testing process.

If an employee refuses to take an alcohol test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

B. **Refusal to submit (to a drug test).** A covered employee is considered to have refused to take a drug test if s/he:

1. Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer (except for pre-employment test);
2. Fails to remain at the testing site until the testing process is complete (except for pre-employment when an employee/applicant leaves before the testing process begins);
3. Fails to attempt to provide a urine specimen for any test required by 49 CFR Parts 382 or 655;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the specimen;
5. Fails to provide a sufficient amount of urine when directed, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take a second test King County or collector has directed him/her to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures outlined in 40.193;
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process.)

If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.

If an employee has refused to take a drug test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

Section XIII – Consequences

Current employees who have a confirmed positive drug or alcohol test, or who have refused to a test as defined in Section XII, will be immediately removed from duty. The employee will be provided with information from King County's employee assistance program (EAP) regarding resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses and telephone numbers of substance abuse professionals and treatment programs as required by 49 CFR Part 40.

A. Termination

It is King County's policy that current employees will be terminated if the employee:

1. uses, possesses, sells, purchases, manufactures, distributes, or transfers alcoholic beverages (except off-duty use at public events) or controlled substances or other performance-impairing substances while on duty or on King County property; or,
2. consumes alcohol within four (4) hours of the employee's scheduled time to report for work, or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first; or,
3. refuses to submit to an alcohol and/or drug test (as defined in Section XII) when directed by King County; or, tampers or attempts to tamper with an alcohol and/or drug test; or,
4. does not notify his/her supervisor, within five (5) calendar days of any conviction, that he/she has been convicted of a drug crime occurring in the workplace; or
5. tests positive and was involved in an accident resulting in death, serious injury or extensive property damage; or
6. tests positive and is also being terminated for other misconduct which could independently result in their discharge; or
7. tests positive and has not completed their initial probationary period following hire into their first King County position.
8. does not appear and complete a random or follow-up drug and/or alcohol test within two (2) hours following notification to appear for such tests, refuses to sign a BAT form or refuses to provide a breath and/or urine sample;
9. has a second confirmed positive drug or alcohol test, except random alcohol tests with a level of .02-.039 where the initial test was greater than the confirmation test;
10. has a third confirmed positive random alcohol test with a level of .02-.039, where the initial test was greater than the confirmation test.

B. Consequences for a Positive Drug or Alcohol Test

1. Conditional Retention

It is King County's policy that current employees, who have a verified positive drug or alcohol test and are not subject to the terms under Section XIII.A., will be offered conditional retention of employment if the employee:

a) submits to an evaluation by a substance abuse professional approved by King County's EAP;

b) signs a conditional retention of employment agreement;

c) attends an appropriate King County approved education and/or treatment program and signs a monitoring agreement with King County's EAP to ensure successful completion of the education/treatment program specified by the substance abuse professional; and

d) prior to returning to work, is subject to a return to duty drug and/or alcohol test with a verified negative result(s). Follow up tests are required as recommended by the substance abuse professional.

The employee who is conditionally retained must fully comply with the conditions of retention of employment, including successful completion of the treatment program specified by the substance abuse professional.

2. **Discipline for a Positive Drug or Alcohol Test**
Current employees who have a confirmed positive drug or alcohol test will be removed from duty and disciplined as follows:

   A) Consequences for a Positive Drug or Alcohol Test (Except for Random Alcohol Tests of .02-.039 where the initial test was greater than the confirmation test).

   (1) Employees with their first confirmed positive drug or alcohol test, except random alcohol tests with a level of .02-.039 where the initial test was greater than the confirmation test, will be suspended for one (1) week without pay.

   B) Consequences for a Random Alcohol Level of .02-.039 (where the initial test was greater than the confirmation test).

   (1) Employees who have their first confirmed positive random alcohol test with a level of .02-.039, where the initial test was greater than the confirmation test, will be removed from duty for two (2) days without pay.

   (2) Current employees who have their second confirmed positive random alcohol test with a level of .02-.039, where the initial test was greater than the confirmation test, will be suspended for one (1) week without pay.

   C) Employees who have a confirmed positive alcohol test with a level of .02-.039 where the initial test was lower than the confirmation test will be disciplined in accordance with Section XIII.B.2.a.(1).

Section XIV – Confidentiality

All testing will be conducted in accordance with the federal regulations to ensure test results are accurate and reliable. Further, King County will carry out this policy in a manner which respects the dignity and confidentiality of those involved.

King County takes seriously its commitment to provide safe conditions to the public and its employees. Recognizing this commitment, King County maintains employee assistance programs which can provide access to professional services in an effort to aid any employee who has an alcohol or chemical dependency problem. All employees who suspect they may have alcohol or substance abuse problems are encouraged to utilize employee assistance program resources before the problem affects their employment status. Participation in this program is voluntary and confidential.

The laboratory and MRO shall maintain strict confidentiality of all test results in accordance with Section 655.73 of FTA regulations and with Section 382.401 of FMCSA regulations. This confidentiality shall be maintained at all times. At a minimum the contractor will:

1. Store all specimens that test verified for drugs in a secure locked freezer for one (1) year or as required by law. Evidence shall be stored in the original specimen container in which it arrived in order to guard against court claims of improperly conducted testing.
2. Store test results and chain of custody documents for five (5) years or as required by law in a secured area complying with legal requirements.
3. Test results shall be reported to the King County Program Manager or designee via a secure fax machine, or other means as appropriate, on a daily basis.
4. Any specimen that has a chain of custody problem is tested only with prior approval from the designated King County Program Manager.

   The laboratory, MRO and King County shall disclose information related to a positive drug test of an individual to the individual, the employer or the decision maker in a law suit, grievance or other proceeding initiated by or on behalf of the individual and arising from a verified positive drug test.

Questions about King County's prohibited drug use and alcohol misuse education and testing program and/or King County's employee assistance programs should be addressed to Lori Jones, Drug and Alcohol Program Manager.

Section XV – Modifications

It is King County policy that the Program Manager is authorized and directed to promulgate such modifications, amendments and revisions to the King County Drug and Alcohol Program as s/he deems necessary after a review process and concurrence by the affected departments to carry out the provisions of regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991 and to enact such additional policies and procedures as may be necessary to insure King County's compliance with state and federal law affecting drug and alcohol matters. Nothing herein is intended to waive a union's legal right to bargain over modifications, amendments and revisions to the extent that they are mandatory subjects of bargaining.

Section XVI – Effects of Alcohol

For information regarding the effects of alcohol refer to King County Drug and Alcohol Program Handbook (June 2003), page 87 Alcohol Fact Sheet. In addition, if an alcohol problem is suspected, please contact King County Employee Assistance Program or refer to the handbook, page 112 – Where to Get Help.

Section XVII – Information Disclosure

King County Drug & Alcohol Program Manager may only release drug and alcohol testing records and results under the following circumstances:

- When an employee gives written instruction that King County may release information or copies of records regarding his/her test results to a third party or subsequent employer;
- When, due to a lawsuit, grievance, or proceeding initiated on behalf of the employee tested, the result may be released to the decision-maker in the case;
- When an employee provides a written request for copies of his/her records relating to the test(s);
- When an accident investigation is being performed by the National Transportation Safety Board (NTSB) and the post-accident results are needed for the investigation;
- When the DOT or any DOT agency with regulatory authority over the employer or any of its employees requests records.

An employee request for release of information must specifically identify the person to whom the information is to be released, the circumstances under which the release is authorized, and the specific kind of information to be released. A separate release must be signed each time information is to be disclosed.

Terms and Definitions

Accident means an occurrence associated with the operation of a vehicle, if as a result:

(1) An individual dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle;

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service;

(5) With respect to an occurrence in which a commercial motor vehicle (non-transit) operating on a public road in interstate or intrastate commerce and one or more motor vehicles incurs disabling damage as the result of the accident and is transported away from the scene by a tow truck or other vehicle.

Actual Knowledge (FMCSA) means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in § 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under § 382.307.

Adulterated Specimen means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be presented but is at a concentration so high that it is not consistent with human urine.Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol Concentration (or content) means the amount of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol Use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Blind Sample or Blind Performance Test Specimen. A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Breath Alcohol Technician (BAT). An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

Cancelled Test means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

CDL Commercial Driver's License

Chain of Custody. Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody and control form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory Custody and Control form(s) account(s) for the sample or sample aliquots within the laboratory.

CFR Code of Federal Regulations

Commercial Motor Vehicle (FMCSA-Non-Transit). Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle 1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or 2) Has a gross vehicle weight rating of 26,001 or more pounds; or 3) Is designed to transport 16 or more passengers, including the driver; or 4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation or Confirmatory Test.

(1) In drug testing, a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines and phencyclidine.)

(2) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

Confirmed Drug Test means a confirmation test result received by an MRO from a laboratory.

Controlled Substances means those substances identified in 49 CFR 40.85.

Contractor (FTA) means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered Employee means a person, including an applicant, or transferee, who performs or will perform a safety-sensitive function for an entity subject to 49 CFR Parts 382 or 655.

Designated Employer Representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Dilute Specimen means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling Damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusion. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions

(a) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(b) Tire disablement without other damage if no spare tire is available.

(c) Headlamp or taillight damage.

(d) Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency. An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing, including the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, the FMCSA, the Federal Transit Administration, the Research and Special Program Administration, and the Office of the Secretary.

Drug Metabolite. The specific substance produced when the human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine.

Drug Test. The laboratory analysis of a urine specimen collected in accordance with 49 CFR part 40 and analyzed in a DHHS-approved laboratory.

EBT or Evidential Breath Testing Device. An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's 'Conforming Products List of Evidential Breath Measurement Devices' (CPL).

Employee Assistance Program (EAP). A program provided directly by an employer, or through a contracted service provider, to assist employees in dealing with drug or alcohol dependency and other personal problems. Rehabilitation and reentry to the work force are usually arranged through an EAP.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

FMCSA means the Federal Motor Carrier Safety Administration, an agency of the U.S. Department of Transportation.

Initial Test or Screening Test. In drug testing, an immunoassay screen to eliminate 'negative' urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

Licensed Medical Practitioner means a person who is licensed, certified and/or registered, in accordance with applicable Federal, State, local or foreign laws and regulations, to prescribe controlled substances and other drugs.

Medical Review Officer (MRO). A medical review officer is a medical doctor who not only has knowledge of substance abuse disorders, but who also has been trained to interpret and evaluate laboratory test results in conjunction with an employee's medical history. A medical review officer verifies a positive test result by reviewing a laboratory report and an employee's unique medical history to determine whether the result was caused by the use of prohibited drugs or by an employee's medical condition.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which s/he is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Prohibited Drug. The Controlled Substances Act has determined the following drugs to be a risk to public safety: marijuana, opiates, amphetamines, cocaine, or phencyclidine.

Qualified Laboratory. A laboratory certified by the DHHS to conduct urine drug testing and which permits unannounced inspections by the recipient, operator, or FTA Administrator.

Refuse to Submit (to an alcohol test). A covered employee is considered to have refused to take an alcohol test if s/he:

1. Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer;
2. Fails to remain at the testing site until the testing process is complete;
3. Fails to attempt to provide a breath specimen for any test required by 49 CFR Parts 382 or 655;
4. Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
5. Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined in 40.265;
6. Fails to sign the certification at Step 2 of the Alcohol Testing Form (ATF); or
7. Fails to cooperate with any part of the testing process.

If an employee refuses to take an alcohol test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

Refuse to Submit (to a drug test). A covered employee is considered to have refused to take a drug test if s/he:

1. Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer;
2. Fails to remain at the testing site until the testing process is complete;
3. Fails to attempt to provide a urine specimen for any test required by 49 CFR Parts 382 or 655;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the specimen;
5. Fails to provide a sufficient amount of urine when directed, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take a second test the employer or collected has directed him/her to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures outlined in § 40.193;
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process.)

   If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test..

   If an employee has refused to take a drug test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

Safety Sensitive Function (FTA-Transit). Any of the following duties:

- Operating a revenue service vehicle, including when not in revenue service;
- Operating a non-revenue service vehicle, when required to be operated by a holder of aCDL;
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 18 funding and contracts out such services;
- Carrying a firearm for security purposes.

Safety Sensitive Function (FMCSA-Non-Transit).

- Means all time from the time a driver begins work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety sensitive function shall include:
- All time at an employer shipper, plant, facility or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 49 CFR Part 392.7 and 49 CFR Part 392.8 or otherwise inspecting, servicing, or conditioning any motor vehicle at any time, all time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR Part 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening Test or Initial Test. In drug testing, an immunoassay screen to eliminate 'negative' urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

Shy Bladder. The inability to produce a sufficient (45 ml) urine specimen.

Shy Lung. The inability to produce a sufficient breath sample.

Split Specimen. An additional specimen collected with the original specimen, to be tested in the event the original specimen tests positive.

Substance Abuse Professional (SAP). A licensed physician (medical doctor or doctor of osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Substituted Specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary purposes.

Verified Negative Drug Test Result. A drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.

Verified Positive Drug Test Result. A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

List
of
Attachments

1. INSURANCE CERTIFICATE
2. PERFORMANCE AND PAYMENT BOND
3. W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER
4. FINANCIAL CAPABILITY VERIFICATION
5. CONFIRMATION MEMORANDUM OF UNDERSTANDING

INSURANCE CERTIFICATE

Willis

Telephone: (615) 872-3700
Fax: (615) 872-3896
Website: www.willis.com

Direct Line: (615) 872-3106
Direct Fax: (615) 872-3896
E-mail: Kevin.Glasgow@willis.com

September 3, 2014

Darren R. Chernick, Contract Specialist
King County Finance and Business Operations Division
Procurement & Contract Services Section
401 Fifth Avenue, 3rd Floor, Chinook Building
Seattle, Washington 98104

RE: Contractor: Balfour Beatty Construction, LLC dba Howard S. Wright
RFP: Children and Family Justice Center Project (Contract C00863C13)

Dear Mr. Chernick:

Balfour Beatty Construction, LLC dba Howard S. Wright ("HSW") is a valued customer of Willis. They have asked us to provide the following evidence of their capability to provide insurance. We understand this representation is being required under terms of the Request for Proposal, and that this response will be taken into consideration of the bidders. Their insurance limits are as follows:

HSW's Insurance Program for the period from 10/1/13 to 10/1/14:

- Commercial General Liability – Zurich American Insurance Company (AM Best Rating A+ XV)
  - $3,000,000 Each Occurrence / $6,000,000 General Aggregate.
- Automobile Liability Insurance – Zurich American Insurance Company (AM Best Rating A+ XV)
  - $3,000,000 Combined Single Limits
- Workers' Compensation – Zurich American Insurance Company (AM Best Rating A+ XV)
  - Statutory
  - Employer's Liability - $3M per incident
- Umbrella – Allied World Assurance Company (AM Best Rating A XV)
  - $25,000,000 Each Occurrence / $25,000,000 General Aggregate (Excess Liability follows form over the General Liability policy)
- Builder's Risk – Zurich American Insurance Company (AM Best Rating A+ XV)
  - Limits: Greater of the Full Estimated Replacement Cost of the Work or the Contract Price for the Project.

We are pleased to confirm our willingness to ensure that all of the insurance requirements set forth in the RFP document, including the additional insured and waiver of subrogation requirements, will be satisfied upon successful award of the project to Balfour Beatty Construction, LLC dba Howard S. Wright.

Should you have any questions, please feel free to give us a call.

Sincerely,

Kevin Glasgow
Senior Vice President
Willis of TN, Inc. (Nashville)

17972 Attachment A

Chinita Marlin | Senior Account Specialist | chinita.marlin@aon.com

September 4, 2014

Darren R. Chernick, Contract Specialist
King County Finance and Business Operations Division
Procurement & Contract Services Section
401 Fifth Avenue, 3rd Floor, Chinook Building
Seattle, Washington 98104

Re: Contractor: Balfour Beatty Construction, LLC dba Howard S. Wright
RFP: Children and Family Justice Center Project (Contract C00863C13)

Dear Mr. Chernick:

Balfour Beatty Construction, LLC dba Howard S. Wright ("HSW") is a valued customer of Aon. They have asked us to provide the following evidence of their capability to provide insurance. We understand this representation is being required under terms of the *Best and Final Offer* to King County Children and Family Justice Center Project, and that this response will be taken into consideration of the bidders. Their insurance limits are as follows:

HSW's Insurance Program for the period from 10/1/13 to 10/1/14:

- Professional Liability Insurance – Steadfast Insurance Company (AM Best Rating A+ XV)
  - Claims-made practice policy and the requirement for the extending reporting period will be satisfied with subsequent renewal policies that have a retroactive date prior to the effective date of this contract
  - $15,000,000 Each Claim / $15,000,000 Aggregate
  - Deductible: $100,000

- Contractor's Pollution Liability Insurance – Chartis Specialty Insurance Company (AM Best Rating A XV)
  - $5,000,000 Each Loss / $5,000,000 Aggregate
  - Deductible: $50,000

We are pleased to confirm our willingness to ensure that all of the insurance requirements set forth in the final contract, including the additional insured and waiver of subrogation requirements, will be satisfied upon successful award of the project to Balfour Beatty Construction, LLC dba Howard S. Wright.

Should you have any questions, please feel free to give us a call.

Sincerely,

Chinita Marlin

Aon Risk Solutions | Construction Services Group
501 Corporate Centre Drive | Suite 300 | Franklin | Tennessee | 37067
t +1.615.771.8100 | **d** +1.615.771.8123 | m +1.615.804-3280 | aon.com

PERFORMANCE AND PAYMENT BOND

PERFORMANCE AND PAYMENT BOND

Balfour Beatty Construction, LLC dba Howard S. Wright _____
Contractor Bond Number

KNOW ALL BY THESE PRESENTS: That we, **Balfour Beatty Construction, LLC dba Howard S. Wright**, as Principal, and _____ , as Surety, a corporation legally doing business in the State of Washington, are held and firmly bound and obligated unto the State of Washington and King County, pursuant to Chapter 39.08 RCW, in the full amount of the Contract Sum of One Hundred Fifty Four Million Dollars ($154,000,000.00), and including any and all adjustments to the Contract Sum by Change Order, for the faithful performance of the Agreement referenced below, and for the payment of which sum we do bind ourselves, and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, **THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT** the Principal entered into a certain Agreement with **KING COUNTY**, for **King County Children and Family Justice Center Contract C00863C13** incorporating herein by this reference all of the Contract Documents, as now and as hereinafter amended and modified.

NOW, THEREFORE, if the Principal shall faithfully perform all provisions of such Agreement and pay all laborers, mechanics and subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, then this obligation is void, otherwise to remain in full force and effect.

Provided, however, that the conditions of this obligation shall not apply to any money loaned or advanced to the Principal or to any subcontractor or other person in the performance of any such work.

IT IS FURTHER DECLARED AND AGREED that whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety, at the request of the Owner, shall promptly remedy the default in a manner acceptable to the Owner.

SIGNED this _____ day of _____ , 20_____.

Principal:		Surety:	
By:		By:	
Title:		Title:	
Address:		Address:	
City/Zip:		City/Zip:	
Telephone:		Telephone:	

Note: A power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this Performance and Payment Bond.

END OF SECTION

TRAVELERS

September 4, 2014

Darren R. Chernick, Contract Specialist
King County Finance and Business Operations Division
Procurement & Contract Services Section
401 Fifth Avenue, 3rd Floor, Chinook Building
Seattle, Washington 98104

RE: Children and Family Justice Center (Contract 00863C13)

Dear Mr. Chernick:

Balfour Beatty Construction, LLC dba Howard S. Wright requests consideration to provide Design-Build Services for the referenced project. In this regard, they have asked us to provide a letter outlining evidence of their single and aggregate bonding capacities.

Travelers Casualty and Surety Company of America serves as the lead surety for **Balfour Beatty Construction, LLC dba Howard S. Wright** in a co-surety for a program arranged with the following sureties: Travelers Casualty and Surety Company of America with an A.M. Best Rating of A+ XIV, Fidelity and Deposit Company of Maryland (a subsidiary of Zurich Financial Services Group) with an A.M. Best Rating of A+ XV, Liberty Mutual Insurance Company with an A.M. Best Rating of A XV, and Federal Insurance Company (a Subsidiary of the Chubb Group of Insurance Companies based in Warren, New Jersey) with an A.M. Best Rating of A++ XV. Each of these sureties is admitted and licensed to do business in all fifty states and the District of Columbia, as well as serving as an integral part of the overall co-surety program for **Balfour Beatty Construction, LLC dba Howard S. Wright**.

This is to advise that as co-surety partners, we have approved bonds on individual projects in excess of $300,000,000 with a total aggregate bond limit established at $6,250,000,000. Based on the information provided at this time, adequate backlog and bonding capacity remains for this project. At the request of **Balfour Beatty Construction, LLC dba Howard S. Wright**, we are prepared to issue the performance and payment bonds in the amount of the contract value for the referenced project if awarded.

Sincerely,

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Jennifer B. Gullett

Jennifer B. Gullett
Attorney-in-Fact

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17972 Attachment A

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERS

POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 227367 **Certificate No.** 005933154

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Matthew W. Varner, Jennifer B. Gullett, Catherine Thompson, Walter Caldwell, Carol S. Card, and Amy R. Waugh

of the City of Charlotte, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 30th day of May, 2014.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the 30th day of May, 2014, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.

MARIE C. TETREAULT NOTARY PUBLIC CONNECTICUT

Marie C. Tetreault
Marie C. Tetreault, Notary Public

58440-8-12 Printed in U.S.A.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

17972 Attachment A

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4th day of September, 20 14.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

17972 Attachment A

Willis

October 2, 2014

Phone: 704-376-9161
Fax: 704-342-0343

Darren R. Chernick, Contract Specialist
King County Finance and Business Operations Division
Procurement & Contract Services Section
401 Fifth Avenue, 3rd Floor, Chinook Building
Seattle, Washington 98104

Re: Balfour Beatty Construction, LLC dba Howard S. Wright
Co-Surety Bond Programs

Dear Mr. Chernick:

Co–Surety relationships have been a part of the surety and construction industry for decades. They usually arise in one of two ways: When the contractor has an extremely large work program and multiple sureties share the work program on a percentage basis. Under this basis, each surety agrees on their respective co-surety participation and a designated lead surety is named for the purposes of underwriting and claims management. Travelers has been the lead surety for Balfour for many, many years. The other co-surety partners are Zurich, Chubb and Liberty. All of the sureties are jointly and severally liable to an obligee on bonds executed for the shared account. Since each surety is jointly and severally liable to the obligee, if one surety is unable or unwilling to pay claims, the other surety or sureties must step up and satisfy those claims and seek reimbursement from the non-contributing co-surety pursuant to their agreement. It is unlikely this would occur, however, if one surety is insolvent then the remaining sureties must guarantee its obligations to an obligee. This is of particular importance to any Owner or Obligee knowing that more than one surety is jointly and severally responsible for the contractor's obligation.

The other situation is where the principal is a joint venture and the joint venture is made up of distinct companies with separate ownership. Each of the venture partners may be bonded with respect to their overall construction program by a different surety. In this instance, when performance and payment bonds are written on behalf of the joint venture. As with the co-surety program, the sureties executing those bonds are jointly and severally liable to the obligee and claimants, without regard for the apportionment between them.

Please do not hesitate to contact me should you have any questions or need additional information.

Sincerely,

Jennifer B. Gullett

Jennifer B. Gullett
Assistant Vice President

Willis of North Carolina, Inc.
301 S. Tryon Street
Two Wells Fargo Center, Suite 2600
P. O. Box 31817 (Zip 28231-1817)
Charlotte, NC 28282

W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

King County **KING COUNTY SUBSTITUTE W-9**	**Request for Taxpayer Identification number and Certification**	**Give form to King County. Do not send to IRS.**

Name (as shown on Invoice)

Business Type

☐ Association ☐ Corporation*- Enter Tax Classification C (C corporation), S (S corporation) ___ ☐ Disregarded Entity

☐ Division ☐ Government ☐ Individual ☐ Limited Liability Company

☐ Non Profit ☐ Partnership ☐ Sole Proprietor ☐ Trust/Estate

Business Registration Information

Enter where you are registered to do business and the corresponding State Registration Number

Physical Address

City, State, and Zip

Remit Address (if different than above)

City, State, and Zip

Tax Reporting Name and Tax Identification Number or Social Security Number

Enter your Tax reporting Name and address. The Tax Identification number provided must match the name given on the "Tax Reporting Name" line. For individuals, this is your social security number (SSN).

Tax Reporting Name

Tax Reporting Address

Tax Reporting City, State, and Zip

Tax Identification Number, Employer Identification Number or Social Security Number:

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct tax reporting name and identification number.
2. I am a U.S. citizen, U.S. person or U.S. Business Entity.
3. I am not subject to backup withholding due to failure to report interest and dividend income.
4. I am exempt from FATCA reporting.

Certification instructions. If you are not a U.S. citizen, U.S. person or U.S. Business Entity, you must cross out item 2 above. You will need to provide a completed King County W9 form as well as a copy of your W-8.

Sign Here ▸ _____

Print Name of Signer ▸ **Date Signed ▸**

FINANCIAL CAPACITY VERIFICATION

17972 Attachment A

701 Dexter Avenue N, Suite 301, Seattle, WA 98109
206.285.4300 : main 206.285.4371 : fax
www.oacservicesinc.com

MEMO

Date October 14, 2014

To Jim Burt
Facilities Management Division
King County Administration Building
ADM-ES-800/ 500 4th Ave. Suite 800
Seattle, WA 98104-2371

From Jason Porter
Principal
206.674.6115
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Copy 2013090 Contract File

Job Name King County Justice Center

Job Number 2013090

RE Balfour Beatty Financial Capacity

VIA Email

Jim,

The purpose of this memo is to provide a response to your request for a Financial Capacity review of Balfour Beatty as required by section four of the Request for Proposal. The review was limited to the Consolidated Financial Statements and Independent Auditors' Report as of and for the Years Ended December 31, 2011, 2012, and 2013.

Upon review of the financial statements and corresponding auditors' report, Balfour Beatty appears to have sufficient financial resources to complete the work for the Children and Family Justice Center within the budgeted GMP of $154,000,000 excluding Washington State sales tax.

Please let me know if you have any questions.

Kind Regards,

Jason Porter

CONFIRMATION MEMORANDUM OF UNDERSTANDING

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During October 2014, King County ("County") and Balfour Beatty Construction, LLC dba Howard S. Wright ("Design Builder") held meetings to discuss the clarification and incorporation of various Items, identified below, from the Balfour Beatty Proposal and Best and Final Offer. At the conclusion of these meetings, the Parties agreed to execute a Confirmation Memorandum of Understanding. As a result of further discussions between the Parties in January and February 2015, the Parties agreed to modify the Confirmation Memorandum of Understanding. These modifications are set out in this document by shading.

The Parties further agreed that this Confirmation Memorandum of Understanding, dated February 9, 2015, be incorporated, as an Attachment, into the Design Build Agreement.

Item	Resolution / Understanding
BAFO:	
Confirm net square feet (NSF) included in GMP • Difference between total NSF and what is provided • Variance between the cells within the test fit document	Design-Builder acknowledges and agrees that the NSF identified in forms R and S, updated 10/15/2014, of the BAFO are included within the GMP. Forms R & S include Alternates 1 and 2 with the assumption that the County will accept those Alternates by Change Order after contract execution. (HSW/BBC – confirmed acceptable on both the updated forms and Alternates #1 and 2)
Compliance with SEPA	Design-Builder acknowledges and accepts the requirements of Addendum 12 item 12.1 (HSW/BBC – confirmed, Integrus reviewed and we don't think our proposal will require SEPA modifications.)
Phase 1 and 2 parking garage height	Design-Builder agrees that parking garage height requirements for Phase 1 and Phase 2 height limits will be in compliance with the underlying zone at the time of the Master Use Permit submission.

	(HSW/BBC - Agreed – team reviewed and modified design during BAFO process to comply)
Critical Adjacencies	Design-Builder acknowledges and agrees to incorporate into the design and construction of the detention facility all Critical Adjacency requirements set forth in Addendum 13. Design-Builder shall work collaboratively with the County during design and construction to achieve this element, as needed to satisfy the County Detention stakeholders. (HSW/BBC – Agreed)
Very Important and Important Adjacencies	Design-Builder acknowledges and agrees to incorporate into the design and construction of the detention facility, to the greatest extent possible, as determined by King County, all Very Important and Important Adjacency requirements for the project as set forth in Addendum 13. Design-Builder shall work collaboratively with the County during design and construction to achieve this element to the greatest extent possible. (HSW/BBC – Agreed)
FACILITY PERFORMANCE STANDARDS:	
Security wall system	Parties agree that the housing unit security walls will be masonry or concrete in compliance with the Facility Performance Standards. (HSW/BBC – agreed, incorporated in our BAFO pricing)
Part B Section 8 p. 197: submit separate report meeting the requirements of Ordinance 17304 at the end of the Design Verification Period.	Design-Builder agrees to the submittal of this report at the end of the Design Verification Period

	(HSWBBC – Agreed)
DIVISION 1:	
Design Verification (120 days) / Reconciliation (100% SD)	The parties acknowledge and agree that the Design Verification Period shall commence on the date that the project's Notice to Proceed is provided and will be completed after 120 days (Article 3.3.5 of the Design-Build Agreement), culminating with Design-Builder's submission of 100% schematic design documentation as cited in: Division 1, Section 01 11 20; and RFP Section 3.3.3 Design. (HSWBBC – agreed – acceptable.)
Correction to section numbering in Division 1, Section 01 32 26	Provisions in Division 1, Section 01 32 26 are misnumbered. Parties agree that by change order a revised Division 1, Section 01 32 26, correcting the numbering will replace the version included in Volume 7 (Request for Proposal Addenda 1-11). (HSW/BBC – Agreed)
Project Kick-off Partnering Session	Parties agree that the kick-off partnering session will be held within 7 days of the project's NTP. (HSW/BBC – Agreed)
Design Conference	The parties agree that the Design Conference will be held within 14 days of the project's NTP. (HSW/BBC – Agreed)
Project Notice to Proceed	The parties agree that NTP will be issued within 14 days following contract execution. (HSW/BBC – Agreed)

ALLOWANCES:	
Soil allowance	Design-Builder takes no exception to the contract requirements. (HSW/BBC – Agreed)
Contractor's contingency allowance	Design-Builder takes no exception to the contract requirements. (HSW/BBC – Agreed)
Utility allowance	Design-Builder takes no exception to the contract requirements. (HSW/BBC – Agreed)
FF&E allowance	After Contract Execution, the County has the option to add, by Change Order, two Allowance items that total $5 million for the Design Builder to assist the County in the purchase and installation of furniture, fixtures, and equipment (FFE). The County may exercise the option during the design phase of the Project. (HSW/BBC – Agreed)
Alternates: BAFO form D	Parties agree that the Owner may accept Alternates 1, 2 and 4 within 120 days of project NTP. The Design-Builder agrees that the Owner may accept Alternate 3 in separate design and construction stages: 1. Owner may accept Alternate 3 for the purposes of design only within 120 days of the project NTP. If the Owner's acceptance does not explicitly state that it is accepting Alternate 3 for construction also, then the Parties agree that the Owner is reserving the right to accept Alternate 3 for the purposes of construction until the earlier of either December

	31, 2015 or the issuance of the Master Use Permit by the City of Seattle. 2. If Owner accepts Alternate 3 for design only, Design-Builder agrees that of the total price of $5,708,000 for Alternate 3, the not to exceed amount of the design portion is $181,000. 3. Design-Builder agrees that if Owner avails itself of this staged acceptance of Alternate 3, then Design-Builder agrees to honor its price of $5,708,000 to complete Alternate 3, including but not limited to design and construction. 4. In the event Owner accepts Alternate 3 and subsequently cancels Alternate 3, or accepts Alternate 3 for design but not for construction, in favor of the base scope of work, then Design-Builder may seek recovery for any redesign, permit, delay or other costs associated with modifying the design to the extent allowed under the Design-Build Agreement. .
Security	Design-Builder acknowledges and agrees to create security plan that responds to heightened site security concerns. Accordingly, Owner acknowledges that Design-Builder has provided for site barricades, fencing, signage and lighting around the perimeter of the site to keep non-construction personnel from entering the site. Costs

	for security guard services and/or electronic security systems have not been included in the GMP. (HSW/BBC – Agreed)
Commissioning : Owner will hire 3rd party to verify	The County confirms that they will hire a 3rd party commissioning agent. (HSWBBC – agreed)
DESIGN BUILD AGREEMENT FORM FOUND IN VOLUME 1:	
Clarification to Section 2.13 of Agreement	Parties agree that the reference to paragraph 1.5.6A found at Section 2.13 of the Design Build Agreement, actually refers to the amended language added to the Request for Proposal Section 1.5.6.A. That amendatory language can be found at reference 12.1 in Addendum No. 12, which is fully set forth in Volume 4 (Best and Final Offer) of the Contract Documents. (HSW/BBC – Agreed)
Cost of permitting, assessment, licenses, etc. (anything BB/HSW not responsible for)	Design-Builder is responsible for obtaining and paying for all necessary permits, assessments and licenses as described in section 3.11.2 in the Design Build Agreement. (HSW/BBC – Agreed)
Land Use requirements on 12th Ave as required by the City of Seattle.	Design-Builder agrees to comply with requirements set by the City of Seattle for the 12th avenue pedestrian overlay and stay within the GMP. (HSW/ BBC – Agreed)
Other Land Use requirements	Design-Builder agrees to comply with all Land Use requirements set by the City of Seattle and stay within the GMP. (HSW/BBC – Agreed)

Stakeholders List	Parties acknowledge that Owner's advisory stakeholders may include but are not limited to the following: Seattle Design Commission, neighborhood groups, open houses, Targeted workshops. (HSW/BBC – Agreed)
PROJECT LABOR AGREEMENT REQUIREMENTS:	
	Design-Builder takes no exceptions to use of PLA on project. Design-Builder takes no exceptions to agreement being executed between Design-Builder and labor unions. Design-Builder acknowledges that King County at its option will function as an observer, mediator, or arbitrator based upon the issue. (HSW/BBC – Agreed)
	Design-Builder acknowledges the County has provided a PLA Template to assist the Design-Builder in the development of the final PLA. Design-Builder will submit any changes to the template for Owner review. The PLA shall be negotiated and submitted for review as part of the submittal procedures in Division 01 prior to the County issuing the NTP for construction work. (HSW/BBC – Agreed)
Apprenticeship requirements	Design-Builder takes no exceptions to the 15% requirement. (HSW/BBC – Agreed)
SCS Requirements : Design-Builder obligation is 20%	Design-Builder takes no exceptions to their 20% obligation (HSW/BBC – Agreed)

Commercial Terms:	
Proposal Appendix A: Forms A-S	Parties accept current requirements (HSW/BBC – Agreed)
Insurance Forms and requirements	Parties accept current requirements (HSW/BBC – Agreed)
Bonding Forms and requirements	Parties accept current requirements. Travelers Casualty and Surety Company of America will assume lead Surety responsibilities. (HSW/BBC – Agreed)
GMP Exhibit Documents – GMP of $154,000,000 Article 5.8.1 (Form C)	Parties accept current requirements. Design-Builder takes no exceptions (HSW/BBC – Agreed)
Design-Build Agreement - issued in addendum 13 on August 14, 2014	Design-Builder takes no exceptions (HSW/BBC – Agreed)
County Exceptions to Key Personnel : Lead Detention Architect – Jerry Winkler	Design-Builder has provided two choices for a new detention Lead Architect based on King County requirements King County select an architect to substitute before contract execution. . (HSW/BBC – Agreed)
Design-Builder and Howard S Wright relationship Financial Condition	Submitted information. Under King County review. (HSW/BBC – no action)
Labor Rates (Form C)	Acceptable to both parties (HSW-Agreed – agreed)
Use of local hire	Design-Builder will take all reasonable efforts to locate and employ local individuals and involve youth for the project. (HSW/BBC – Agreed)

Signatures on the next page

KING COUNTY	**Balfour Beatty Construction, LLC dba Howard S. Wright**
By: _____	By: _____
Caroline Whalen County Administrative Officer Department of Executive Services *For Dow Constantine, King County Executive*	Title: _____