

ATTACHMENT G:

**VOLUME 7 –
REQUEST FOR PROPOSAL (ADDENDA 1 – 11)**

CHILDREN AND FAMILY JUSTICE CENTER

Contract 00863C13

Volume 8 of 14

Request For Proposal

Addenda 1 - 11

December 2014



King County

Department of Executive Services
Facilities Management Division

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**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 1



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 1

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART A – REQUEST FOR PROPOSAL
1.1	58	<p>3.3.3.1. DELETE C and REPLACE with: “C. No Cost Test Fit (200)</p> <ol style="list-style-type: none"> 1. The purpose of the space plan test-fit is to demonstrate that the approved space program can be accommodated within the proposed final design concept, and to identify special tenant requirements affecting the design of the core/shell. The space plan test-fit plan shall be considered part of the offer and will not incur additional expense to the County. 2. Based upon the square footages, agency adjacencies, intended usages (i.e., public, private, and secured circulations), ingress/egress for each user type, parking requirements, etc., the Design-Build team will be required to provide a test-fit plan for evaluation. The test-fit plan shall include the following elements: <ol style="list-style-type: none"> (a) A plan for each floor, including the basement and parking areas, reflecting all the necessary elements shall be included in an 18” x 24” and scaled formats. Fully dimension the space plan room by room so that the inside dimensions of each room, work area and work stations can be easily determined. Include any special criteria such as unique floor loading requirements that shall have an impact on further development of the design concept. (b) Program Area Comparison: Schedule in a spreadsheet matrix format of the building floor plan areas provided in the Proposal, compared to the RFP’s space programming documents room by room and note any variances.”
		PART B – FACILITY PERFORMANCE STANDARDS
1.2	26	<p>Fenestration, ADD new paragraphs: "Designing courtrooms with windows (either interior or exterior) requires careful consideration of the benefits, potential problems, and costs. If a courtroom is designed with windows, precautions will be necessary to maintain security and environmental controls. A courtroom may have windows (regular or clerestory) or skylights to obtain the benefits of daylight.</p> <p>Windows and skylights must control heat gain/loss, brightness, glare, noise, and dust infiltration. A means of darkening the room must also be provided that requires easy operation and low maintenance. To prevent distraction and increase security, higher windowsills or clerestory windows or skylights are more desirable. Exterior windows for all courtrooms must be ballistic resistant."</p>

Ref.	Page or Drawing	Location and Description of Change
1.3	42	Loading Dock, ADD new paragraph: "The loading dock and the path to the loading dock shall accommodate delivery trucks 40' long by 13'-6" height. A minimum 20 foot vertical clearance is needed in the vicinity of the Trash/Compactor area and Recycling Sorter/Containers area (Facility Program spaces 1.713 and 1.714) to allow for the removal/delivery of roll off type truck/dumpster."
1.4	42	Security Glazing, second paragraph DELETE "... (Type G6 in..." and REPLACE with: "... (Type GL7 in..."
1.5	64	Bullet and Break Resistant Glazing and Shielding, fourth bullet DELETE : "... (Type G3)... ", and REPLACE with: "... (Type GL4)..."
1.6	121	Section 6 - Mechanical Engineering Systems, a. Introduction and General Objectives of the Mechanical Standard, Introduction, ADD new sentence: "For the purposes of this document the words "Building Control systems (BCS)" and "Building Management systems (BMS)" are synonyms."
1.7	121	Section 6 - Mechanical Engineering Systems, a. Introduction and General Objectives of the Mechanical Standard, Maintenance and Reliability, ADD new second paragraph: "King County, Building Services Section will operate the facility post-construction. County will require from the Design-Build team to allow for four (4) hours per month for meetings to discuss system and building performance during the Measurement & Verification period. Any system anomalies discovered by the Design-Build Team during the M&V shall be brought up to the County project team immediately, and a resolution."
1.8	129	Section 6 - Mechanical Engineering Systems, a. Introduction and General Objectives of the Mechanical Standard, Plumbing Systems, Storm Drains, third bullet, DELETE "...BMS..." and REPLACE with "...BCS..."
1.9	130	Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Plumbing Fixtures-Detention, ADD to the second bullet: "Provide Blowout Jet, 2.4 gallons per flush (gpf) water closets. All Administration areas that is part of the detention areas shall follow the non-detention plumbing fixtures for low flow fixtures requirements"
1.10	131	Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Plumbing Fixtures-Non-Detention, DELETE seventh bullet "Provide with hard-wired, hands free flushometer with 1.28 gallon per flush." And REPLACE with "Provide water closet with hard-wired, hands free flushometer with 1.28 gallon per flush."

Ref.	Page or Drawing	Location and Description of Change
1.11	131	Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Plumbing Fixtures-Non-Detention, ninth bullet DELETE "... 0.125 gallons per flush" and REPLACE with: "... 0.5 gallons per flush"
1.12	136	Section 6 - Mechanical Engineering Systems, c. Heating, Ventilating, and Air Conditioning (HVAC) Systems Design Criteria, Ventilation Design Criteria, second paragraph, DELETE "Toilets and janitor closets shall be exhausted at a minimum rate of 75 cfm per water closet or urinal" and REPLACE with: "Toilets and janitor closets shall be exhausted at a minimum rate of 1.5 cfm per square feet."
1.13	197	Energy Life Cycle Analysis (ELCCA), DELETE bulleted items: "Energy Plus" "(IESVE) Integrated Environmental Solutions Virtual Environment"
1.14	222	AV Systems-Courtooms, General, ADD new third paragraph: "Provide infrastructure to facilitate the incorporation of video recordings into the official Court Recording System: infrastructure will include but not be limited to conduit, back boxes, and any specialty hardware that is needed to be incorporated into the walls, ceiling, and floors."
		PART C – FACILITY PROGRAM
1.15	2-20	1.100 Entry Security Screening, Component Description, ADD new second paragraph: "Superior Court's current policy requires judicial officers entering County courthouses to be screened with the public. This policy may change in the future. The CFJC courthouse design shall include both a pathway from judges' parking to the main public security screening station and the flexibility to bypass the main public security screening by having a direct access pathway from judges' parking to judicial circulation if the current policy is changed."
1.16	3-10	Detention Lobby, third paragraph DELETE "Since screening staff will not be available between 2300-2700, once allowed into the Public Lobby, the staff or visitor will proceed to doors that are remotely operated by Detention Central Control that lead into the Detention Lobby." And REPLACE with "Since screening staff will not be available between 2300-2700, the Detention Lobby must be physically separated from the public lobby to prevent persons passing between the two lobbies between the hours of 2300-0700. During other hours the physical separation will be 'opened' to allow persons access between the two lobbies."
1.17	3-13	Detention Administration, ADD new paragraph : "A vertical circulation pathway (elevator and stair) shall be provided between the Director's Area, (1.300 Detention Administration) and 2.000 Operations, in as close proximity as possible to 2.1000 Detention Administration inside the secure perimeter. Doors and elevator will be controlled by Detention Security Electronics System."

Ref.	Page or Drawing	Location and Description of Change
1.18	4-3	<p>Building and Site Organization, 9. ADD to the end of the paragraph:</p> <p>"The fourth and fifth levels of the court facility shall include seven family law courts, the PAO's Family Support Unit and DV Advocates and all spaces identified as "New Space" in Appendix A, Court Phase II Space Detail. All courtrooms in the facility should be designed with maximum flexibility to have the capability to be used for different functions in the future."</p>
1.19	4-5	<p>Site Circulation Concepts, ADD to end of 5th bulleted paragraph:</p> <p>"Access from the parking garage to screening area by a skybridge or elevated walkway is not desirable."</p>
1.20	4-5	<p>Site Circulation Concepts, ADD a new sixth and seventh bullets:</p> <p>"The Design Build entity's design shall include an emergency evacuation area that allows for a standard King County metro bus (31'-6") to drive onto the site, load the incarcerated youth, and leave the site. All components of the egress path to the bus shall be compliant with all building codes. The evacuation area may be located within the vehicle sally port, or it may be located elsewhere as long as provisions for safe egress, together with physical barriers such as fencing to prevent escape are included. A three point turn around for the bus to leave the site is acceptable, as is a drive through arrangement compliant with City of Seattle SDOT for site access to and from public right of ways.</p> <p>Figure 4.4 shows a separate Vehicle sally port for Detention (youth), and a separate Adult Sally Port. These may be combined into one Vehicle Sally Port as long as access to Admissions and Release is direct, access to Adult Holding is direct, and conformance with Part C: Facility Program, Chapter 2 Court Program, Security, 13.300 Central Adult Holding (pgs. 2-98 and 2-99) and Part C: Facility Program, Chapter 3 Detention Program, Space Program, 2.0 Operations (pgs. 3-19 through 3-26). The vehicle sally port must be sized to allow for 4 parking stalls 9'-0" wide by 18' long with adequate space for vehicles to easily maneuver in and out of the vehicle sally."</p>
1.21	4-8	<p>Facility Program, Public Open Areas ADD new paragraph:</p> <p>"Based on community input, it is desirable to have a landscape link between the Open Area in the NE corner and the Alder Connection within the building setback along 14th Ave."</p>
1.22	4-15	<p>DELETE Figure 4-6 and REPLACE with Revised Figure 4-6. See attached.</p>
1.23	Appendix C C-1	<p>Adjacency, DELETE "Alder School should be easily accessible from Juvenile Detention Administration and ASD/CSO offices." and REPLACE with:</p> <p>"The Alder School has no specific adjacency requirement to any particular court or detention program element, however, the Alder School should not be located adjacent to any courtroom, probation, child care, or cafe. The Alder School should be located to allow easy access for the students to move from the screening area to the school. The Alder School shall also be located so that noise or activity generated by the classroom operations will not disrupt other courthouse or detention operations located near it."</p>

Ref.	Page or Drawing	Location and Description of Change
		<p>QUESTIONS AND RESPONSES</p> <p>King County provides the following questions and responses as clarifications of the referenced Request For Proposal provisions.</p>
1.24		<p>Q: Is a re-zone possible for the center portion of the site north of Alder, from LR-3 to NC3P-65?</p> <p>R: No, See Part A, RFP, paragraph 1.5.6. The proposed draft texts amendments maintain the existing boundaries of the LR-3 and NC3P-65 zoning boundaries on the site.</p>
1.25		<p>Q: The survey shows a number of bump-ins along the 14th Avenue lot line. Could the County consider swapping these city-owned areas for the park in the northeast corner of the block?</p> <p>R: A: No, See Part A, RFP, paragraph 1.5.6. The proposed draft texts amendments would allow the DPD director to waive or modify the setback requirements to accommodate unique programming or structural needs as long as the urban design objectives of 23.51A.004 C are met.</p>
1.26		<p>Q: Is 2030 compliance a goal or just something to keep in mind?</p> <p>R: It is a goal per Part B, Section 8 - Energy and Sustainability Life Cycle Analysis, Report on Alternatives for Heating and Cooling CFJC, pg 198, "the Design Team Entity shall submit a separate report meeting the requirements of 2012 King county Ordinance 17304 with the first design submittal (100% Schematic Design)."</p>
1.27		<p>Q: According to the facility program, judges would be screened for security with the public. Confirm this is the intent.</p> <p>R: See Ref. 1.15 above.</p>
1.28		<p>Q: Phase 2 court program does not specify adjacency requirements; for instance, which family courtroom, if any, would need to be located on the ground floor?</p> <p>R: See Ref 1.18 above.</p>
1.29		<p>Q: Who is controlling the electronics for the court holding area?</p> <p>R: See Part B Facility Performance Standards, pages 239 & 240, and Part C Facility Program, p. 3-19. DAJD will be controlling the security electronics for the court holding area, either from a security electronics station located in the court holding area or from Central Control.</p>
1.30		<p>Q: Is superior court interest in future possibility of video expansion?</p> <p>R: King County requires the infrastructure to support video recording for the official court record be included in the project. See Ref. 1.14 above.</p>
1.31		<p>Q: Is daylighting in the courtrooms allowed?</p> <p>R: See Ref 1.2 above.</p>
1.32		<p>Q: Alder School location, access and adjacencies?</p> <p>R: See Ref. 1.23 above.</p>

Ref.	Page or Drawing	Location and Description of Change
1.33		<p>Q: Can the PAO's Family Support Unit be located apart from Phase 1 PAO?</p> <p>R: Yes. See Ref 1.18 above.</p>
1.34		<p>Q: Are escalators acceptable?</p> <p>R: No</p>
1.35		<p>Q: Can there be overlap between the court and detention programs on the lower level?</p> <p>R: Yes, the court facility may be constructed over the Detention facility. This is graphically indicated in Part C Facility Program, figure 4-1 (p. 4-10) and figure 4-2, (page 4-11) that shows a portion of the Dept of Judicial Admin on the 2nd floor over a portion of detentions Admissions Release on the first floor.</p>
1.36		<p>Q: Is a detached conference facility allowed?</p> <p>R: No. All occupants of the conference center must have passed through the main public security screening area.</p>
1.37		<p>Q: Is the food service to be inside the secured area or outside perimeter?</p> <p>R: The kitchen is within the detention secured perimeter. The perimeter door between the kitchen and the loading dock will be controlled by Central Control.</p>
1.38		<p>Q: Is the vehicle sally port elevator adjacent to admissions release?</p> <p>R: The adjacency is required: see Part C: Facility Program, pages 3-25 and 3-26.</p>
1.39		<p>Q: Does emergency bus access need to be in the sally-port?</p> <p>R: See Ref. 1.20 above.</p>
1.40		<p>Q: Where is the optimal location for the elevator from Detention Administration to secure detention?</p> <p>R: See Ref. 1.17 above</p>
1.41		<p>Q: Is the after-hours access to detention clear in the documents?</p> <p>R: See Ref. 1.16 above.</p>
1.42		<p>Q: Would the County entertain an alternate below grade parking layout that has columns between stalls on one side of the isle with open parking on the other side?</p> <p>R: No. Refer to Part B, Facility Performance Standards, page 246: "Stand-alone parking structures shall utilize long span structural systems which do not have columns between parking stalls."</p>
1.43		<p>Q: Are 3 separate parking lots (judges, staff, public) acceptable?</p> <p>R: Refer to Part C, Facility Program, page 4-6. There are two primary parking components-public parking and staff parking. A separately secured area shall be developed to accommodate 20 judicial officer parking stalls either within the staff garage or adjacent to or under the court building.</p>
1.44		<p>Q: Who will operate the building post-construction?</p> <p>R: See Ref. 1.7 above.</p>

Ref.	Page or Drawing	Location and Description of Change
1.45		<p>Q: Please provide server load assumptions</p> <p>R: See Part B, Section 7 - Electrical Engineering Systems, sub-section d., tables B7.1 and 7.2".</p>
1.46		<p>Q: Is the SEPA document available as reference document?</p> <p>R: All SEPA documents are available as reference documents (including the transportation study) at the following website: http://www.kingcounty.gov/operations/FacilitiesManagement/currentProjects/CFJCPproposal/SEPA.aspx</p>
1.47		<p>Q: Tunnel vs sky bridge vs enclosed surface walkway?</p> <p>R: See Ref. 1.19 above.</p>
1.48		<p>Q: Clarify open space connection to Alder, per community input. NAC meeting minutes.</p> <p>R: See Ref 1.21 above.</p>
1.49		<p>Q: What are the minimum dimensions of the open space?</p> <p>R: See attached revised Figure 4-6.</p>
1.50		<p>Q: Character of the open space? (see landscaping section of performance standards).</p> <p>R: The character of the NE open space is described in Part B, Facility Performance Standards, page 105, and Part C, Facility Program, page 4-8.</p>
1.51		<p>Q: Can Proposers have a tour of the Emergency Dispatch Center?</p> <p>R: The connectivity currently employed in the EDC equipment room will be replaced between now and the completion of construction of the CFJC. Because of this the County does not believe touring the existing equipment room will provide relevant information to the Proposers.</p>
1.52		<p>Q: Define FF&E allowance.</p> <p>R: FFE included in Allowances 1 and 2 is to include the following type of furniture or equipment; Courthouse: workstations (systems furniture), tables, desk, and chairs for private offices, conference rooms, courtrooms, white boards (including electronic), security screening equipment (parcel scanner, magnetometers, x-ray), lockers, bookcases, evidence storage units in the courtroom, building trash compactor, projectors, information kiosk, and exercise equipment. Detention: mattresses, office desk and chairs, bookcases, whiteboards (including electronic), classroom tables and chairs, televisions, visitation tables and chairs, gymnasium equipment (basketball backboards, volleyball), medical clinic equipment and furniture, lockers, dayroom tables/chairs and equipment.</p>
1.53		<p>Q: What does "no cost test fit" mean, and what is the difference between this and the other required floor plans and program reconciliation?</p> <p>R: See Ref.1.1 above.</p>

Ref.	Page or Drawing	Location and Description of Change
1.54		<p>Q: Part B - Facility Performance Standards, Section 1 - Architecture, Security Glazing (Page 42). "Exterior Ballistic Glass: High- Security ballistic-rated glazing (Type G6 Table B1.1-Interior and Exterior Glazing Types) shall be used at exterior windows in courtrooms and judicial chambers. Coordinate with Room Data Sheets" Per table B1.1 (Page 43). Confirm if GL-7 is the correct reference. GL-6 is not ballistic rated.</p> <p>R: See Ref. 1.4 above.</p>
1.55		<p>Q: Part B - Facility Performance Standards, Section 1 - Architecture, Bullet and Break Resistant Glazing and Shielding (Page 64). "Attack-resistant glazing (Type G3) is required at the public counter in the Prosecuting Attorney's Office (PAO)"</p> <p>Should this be glass type GL-7 per table B1.1 (page 43)? GL-3 is frosted glass.</p> <p>R: See Ref. 1.5 above.</p>
1.56		<p>Q: What is the size of the service trucks, vans, and buses that we should plan for?</p> <p>Service Vans: height for County service vans in the parking garage is noted on p. 4-6 of Part C,</p> <p>R: See Ref. 1.3 above.</p>
1.57		<p>Q: Can the buses and services (garbage trucks) vehicles not be located under detention or adjacent? (Can the loading dock be located so that the busses and service (garbage trucks) do not need to drive under the facility?)</p> <p>R: The buses and service vehicles do not have to be located under the facility. However the adjacencies in the following sections must be met: Part C Facility Program pages 2-34, through 2-37, and Part B Facility Performance Standard p. 111.</p>
1.58		<p>Q: How relate to sally ports?</p> <p>R: There is no direct relationship between the sally port, garbage trucks and service vehicles. Also See Ref. 1.20 above regarding the bus and its relationship to the sally port.</p>
1.59		<p>Q: Can the energy model and performance guaranteed EUI be updated for climatic or internal load discrepancies?</p> <p>R: The energy model and performance guaranteed EUI and usage data may be normalized per climatic or internal load discrepancies during the M&V period and after the review and approval of county project team. The new updated performance guaranteed EUI shall still meet or exceed the guaranteed performance requirements and shall be verified in the M&V process.</p>

Attached To This Addendum:

- Revised Figure 4-6.
- Part B - Performance Standards Appendix F: Anticipated Facility Occupancy Schedule.
- Tree Inventory & Assessment (Arborist Report).
- Facility Tour Report, dated March 4-6, 2013.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: January 29, 2014

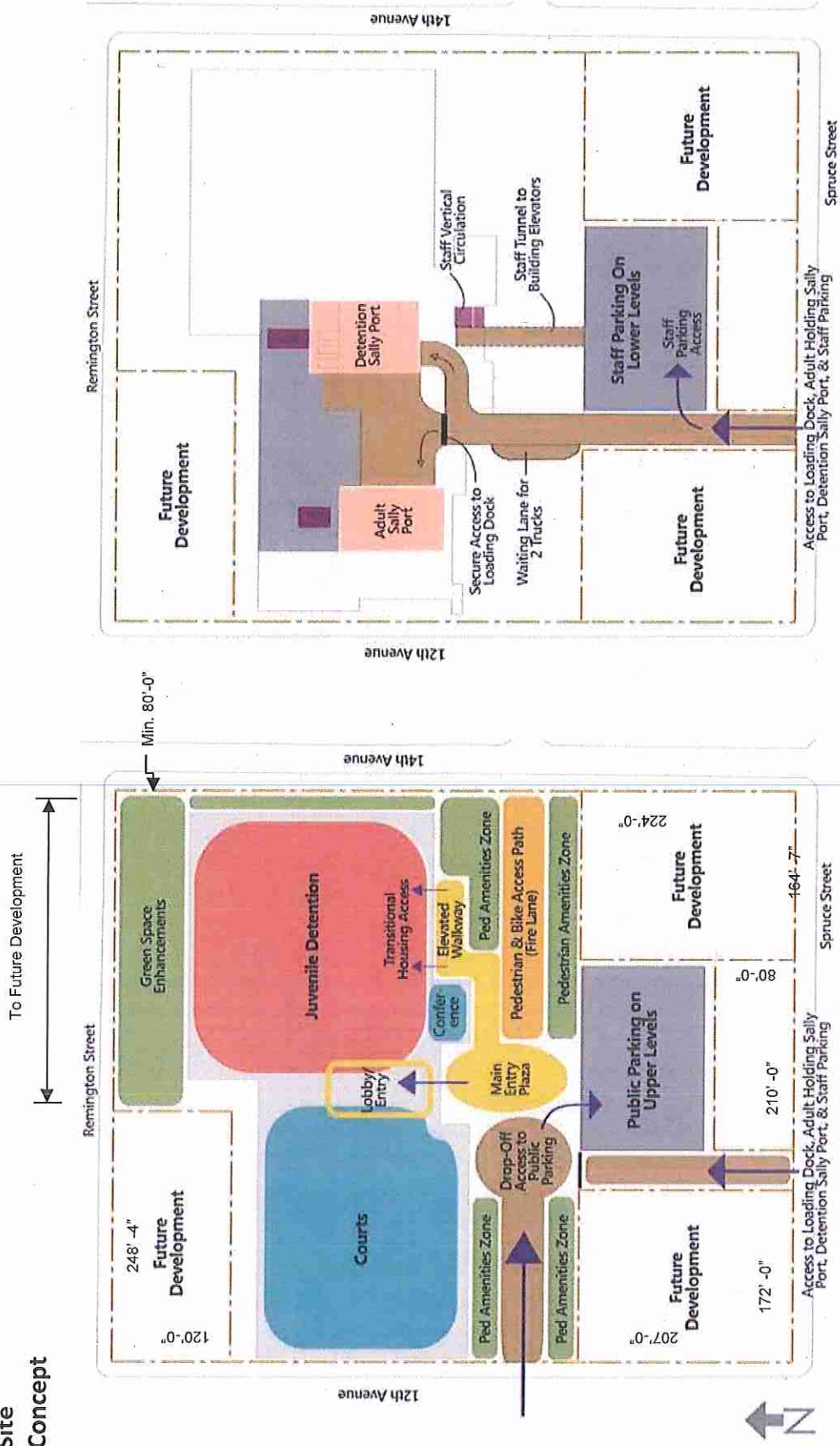
Darren R. Chernick

Darren R. Chernick
Contract Specialist

King County

Figure 4-6

Site
Concept



Note The minimum overall dimensions of "Future Development" parcels are indicated as shown above.

Children and Family Justice Center Project
 Part B - Performance Standards
 Appendix F: Anticipated Facility Occupancy Schedule

		Court Program		
ID	Component	Hours	Days	Comments
1.000	Building Support			
1.100	Entry Security Screening	0500-1200	M-S	
1.200	Public Lobby	0830-1630	M-F	These are open office hours
1.300	Public Child Care	0830-1630	M-F	These are open office hours
1.400	Shared Meeting Spaces	083-2100	M-S	This may vary depending on room and day
1.500	Staff Support	0800-1700	M-F	These are staff work times.
1.600	Information Technology/MIS	24hrs	7 Days	This may vary depending on room and day
1.700	Facilities & Building Support	24hrs	7 Days	This may vary depending on room and day
1.900	Mechanical & Electrical	24hrs	7 Days	
2.000	Resource Center	0830-1630	M-F	These are open office hours
2.100	Resource Center	0800-1700	M-F	These are staff work times.
3.000	Juvenile Court	0830-1630	M-F	These are open office hours, which could vary at times.
3.100	Chief Juvenile & Offender Courts	0830-1630	M-F	These are open office hours
3.200	Dependency Courts	0830-1630	M-F	These are open office hours
3.300	Becca and Treatment Courts	0830-1630	M-F	These are open office hours
3.400	Judicial Offices	0800-1700	M-F	These are staff work times.
4.000	Juvenile Court Administration	0830-1630	M-F	These are open office hours
4.100	Administration	0800-1700	M-F	These are staff work times.
4.200	Reform Initiatives, Analysts, Evaluators	0800-1700	M-F	These are staff work times.
4.300	Shared Space	0800-1700	M-F	These are staff work times.
5.000	Juvenile Probation Services	0830-1630	M-F	These are open office hours
5.100	Consolidated Intake Unit	0800-1700	M-F	These are staff work times.
5.200	City Unit/Supervision	0800-1700	M-F	These are staff work times.
5.300	Community Program/Restitution Monitor	0800-1700	M-F	These are staff work times.
5.400	Records Unit	0800-1700	M-F	These are staff work times.
5.500	Evidence Based Programs & Student Intern Unit	0800-1700	M-F	These are staff work times.
5.600	Warrants	0800-1700	M-F	These are staff work times.
5.700	Shared Space	0800-1700	M-F	These are staff work times.
6.000	Treatment Services	0830-1630	M-F	These are open office hours
6.100	Juvenile Drug Court	0830-1630	M-F	These are open office hours
6.200	Family Treatment Court	0830-1630	M-F	These are open office hours

Children and Family Justice Center Project
 Part B - Performance Standards
 Appendix F: Anticipated Facility Occupancy Schedule

ID	Component	Hours	Days	Comments
6.300	Juvenile Justice Assessment Team (JJAT)	0800-1700	M-F	These are staff work times.
7.000	Juvenile Services Division	0830-1630	M-F	These are open office hours
7.100	Partnership for Youth Justice	0830-1630	M-F	These are open office hours.
7.200	At-Risk Youth (Becca) Program	0830-1630	M-F	These are open office hours
7.300	Court Operations	0830-1630	M-F	These are open office hours
8.000	Dependency CASA	0830-1630	M-F	These are open office hours
8.100	Dependency CASA	0800-1700	M-F	These are staff work times.
9.000	Judicial Administration/Clerk	0900-1630	M-F	These are open office hours
9.100	Management	0700-1800	M-F	These are staff work times.
9.200	Cashiering	0900-1630	M-F	These are open office hours
9.300	Case Processing	0900-1630	M-F	These are open office hours
9.400	Records Services	0900-1630	M-F	These are open office hours
9.500	Court Services	0900-1630	M-F	These are open office hours
9.600	Step-Up Program	0900-1630	M-F	These are open office hours, has after hours conferencing needs.
9.700	Shared Spaces	0700-1800	M-F	These are staff work times.
10.000	Prosecuting Attorney	0830-1630	M-F	These are open office hours
10.100	Juvenile Offender Unit	0800-1700	M-F	These are staff work times.
11.000	Public Defense	0800-1700	M-F	These are staff work times.
11.100	Juvenile Offender Unit	0800-1700	M-F	These are staff work times.
12.000	Children's Administration & Attorney General	0830-1630	M-F	These are open office hours
12.100	Juvenile Court Office	0800-1700	M-F	These are staff work times.
13.000	Security			
13.100	Security Operations	0500-1200	M-S	
13.200	Central Juvenile Holding	0830-1630	M-F	
13.300	Central Adult Holding	0830-1630	M-F	
Detention Program				
ID	Component	Hours	Days	Comments
1.000	Administration			
1.100	Public Entry	0600-2100	365/yr	
1.200	Visitation	0600-2100	365/yr	
1.300	Detention Administration (outside of detention)	0600-1800	365/yr	

Children and Family Justice Center Project
 Part B - Performance Standards
 Appendix F: Anticipated Facility Occupancy Schedule

ID	Component	Hours	Days	Comments
2.000	Operations			
2.100	Detention Administration (inside detention)	24/day	365/yr	
2.200	Central Control	24/day	365/yr	
2.300	Admissions Release	24/day	365/yr	
2.400	Staff Support	24/day	365/yr	
3.000	Support Services			
3.100	Food Service	0500-1900	365/yr	
3.200	Medical Services	24/day	365/yr	
3.300	General Services	0700-1700	M-F	
3.400	Detention IT services	0700-1700	M-F	
4.000	Programs			
4.100	Education	0700-2200	365/yr	
4.200	Recreation	0700-2200	365/yr	
4.300	Library Spiritual Center	0700-2200	365/yr	
5.000	Housing			
5.200	Pod "A" Orientation/General Housing	24/day	365/yr	
5.100	Pod "B" General Housing	24/day	365/yr	
5.400	Pod "C" Transitional Housing	24/day	365/yr	

TO: Gay Boyce, King County Facilities Management Division
JOB SITE: Children & Family Justice Center - 300 12th Ave, Seattle, WA 98122
SUBJECT: Tree Inventory & Assessment
DATE: January 2, 2014
PREPARED BY: Haley Galbraith, ISA Certified Arborist PN-7512A & Qualified Tree Risk Assessor

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Summary

Currently, 116 significant trees exist on site. There are no Exceptional trees on site. Existing site trees are predominantly in fair to good health and structural condition.

Proposed site work activities may result in disturbance, or require removal of some significant trees. At this time, site plans outlining proposed grading and construction are not available; once this information has become available, potential tree impacts can be evaluated.

Assignment & Scope of Report

This report outlines the site inspection by Haley Galbraith and Shannon Lockhart of Tree Solutions Inc. on December 19, 2013. Included are observations and data collected at the site located at 300 12th Ave.

We were asked to inventory all significant trees on site, and tag them for easy identification. We were asked to perform visual assessment and collect baseline measurements for all trees. We were asked to deliver information collected in the form of an Arborist Report with Table of Trees. King County Facilities Management Division requested these services to acquire information for project planning in accordance with requirements set by city of Seattle Municipal Code.

Limits of Assignment

Unless stated otherwise: 1) information contained in this report covers only those trees that were examined and reflects the condition of those trees at the time of inspection; and 2) the inspection is limited to visual examination of the subject trees without dissection, excavation, probing, climbing, or coring unless explicitly specified. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the subject trees may not arise in the future.

Tree Solutions did not review any reports or perform any tests related to the soil located on the subject property unless outlined in the scope of services. Tree Solutions staff are not and do not claim to be soils experts. An independent inventory and evaluation of the soils on site should be obtained by a qualified professional as deemed necessary by the property manager if an additional understanding of site characteristics is needed to make an informed decision.

Additional Assumptions and Limiting Conditions can be found in [Appendix A](#).

Methods

We evaluated tree health and structure utilizing visual tree assessment (VTA) methods. The basis behind VTA is the identification of symptoms, which trees produce in reaction to weak spots or areas of mechanical stress. Trees react to mechanical and physiological stresses by growing more vigorously to reinforce weak areas, while depriving less stressed parts. (Mattheck & Breloer 1994) An understanding of uniform stress allows us to make informed judgments about the condition of a tree.

The diameter of each tree was measured at standard height (DSH), typically 54-inches above grade. The species, size, health and structural condition, and additional notes for each tree can be found in the attached [Table of Trees](#).

Each tree was tagged with a numbered aluminum tree tag for easy identification with reference to this report.

An aerial photograph of the site can be found in [Appendix B](#), photographs taken during our visit to the site can be found in [Appendix C](#).

Observations & Discussion

The Site

The site is situated over an entire City block in the Yesler Terrace neighborhood of Seattle, across I-5 from downtown. Currently, the site is bisected by buildings on the southern half and a large parking area with adjacent open grassy area on the northern half. (See [Figure 1](#))

The existing structures on site make up the Children and Family Justice Center. The area within these structures is secured, therefore, we only assessed trees outside of the structures.

The Trees

Located in the northwest corner of the site, there is a small stand of Douglas-fir (*Pseudotsuga menziesii*) trees with invasive species (See [Photo 1](#)). The primary invasive species present is English ivy (*Hedera helix*), which has been cleared around several of the tree bases in the past, but new stems are now girdling some trees.

In this area, there is a non-significant Douglas-fir dead, and leaning on a neighboring significant Douglas-fir towards the walkway on E Remington Ct that should be removed. Due to the trees in this area growing in close proximity to one another, some are slightly suppressed.

In the northeast corner of the site, the majority of significant trees are multi-stemmed Portugal laurel (*Prunus lusitanica*). This species does not typically obtain tree form without management; in this case, all of the Portugal laurels have had pruning performed to raise the crowns over multiple past pruning events – likely to maintain sight lines and/or sidewalk clearance. (See [Photos 2 & 3](#))

For these, and all multi-stemmed trees on site, the single-stem equivalent diameter was calculated using the Guide to Trunk Area.

The primary tree species represented in the southern half of the site is London plane (*Platanus x acerifolia*). It is common for this species to shed small parts throughout the year. We observed exposed roots from most of the London plane trees located along the eastern border of the site.

We observed the use of bark mulch at the base of several trees; this is noted in the attached table. We generally advise against the use of bark mulch for trees – instead, we encourage the use of woodchip mulch. Woodchip mulch is more nutrient rich and decomposes more quickly than bark, providing those nutrients to the soil in which the trees grow. Woodchips also regulate soil moisture and retain water, versus bark, which is typically somewhat hydrophobic and may prevent water from moving down through the soil to the tree root system.

If possible, it is advisable to replace existing bark mulch on site with woodchips. Any trees that do not currently have a mulch ring could likely benefit from the installation of mulch within the drip line. This may also help minimize stress resulting from nearby construction activities by promoting increased fine root production.

We tagged 116 significant trees and have confirmed that no Exceptional trees exist on site. Right-of-Way trees were not included in this inventory or assessed in any way. Both native and non-native tree species are present on site. Due to restricted access, we were unable to measure and evaluate three trees that grow within the secured area on site.

Most significant site trees are viable candidates for retention, however, site plans outlining proposed grading and construction will be required in order to provide specific retention and protection recommendations.

Recommendations

- Remove non-significant, dead Douglas-fir leaning on tree #507 in northwest corner of site
- Remove English ivy to approximately 4 foot radius around each tree in the northwest corner
- Cut away girdling roots that have not been enveloped by trunk, as needed
- Apply approximately 4 inch layer of arborist woodchip mulch instead of bark mulch within drip line of all trees, as needed

Glossary

co-dominant stems: stems or branches of nearly equal diameter, often weakly attached (Matheny *et al.* 1998)

crown: the aboveground portions of a tree (Lilly 2001)

DBH or DSH: diameter at breast or standard height; the diameter of the trunk measured 54 inches (4.5 feet) above grade (Matheny *et al.* 1998)

deciduous: tree or other plant that loses its leaves sometime during the year and stays leafless generally during the cold season (Lilly 2001)

evergreen: tree or plant that keeps its needles or leaves year round; this means for more than one growing season (Lilly 2001)

ISA: International Society of Arboriculture

included bark: bark that becomes embedded in a crotch between branch and trunk or between codominant stems and causes a weak structure (Lilly 2001)

landscape function: the environmental, aesthetic, or architectural functions that a plant can have (Lilly 2001)

mitigation: process of reducing damages or risk (Lilly 2001)

monitoring: keeping a close watch; performing regular checks or inspections (Lilly 2001)

significant size: a tree measuring 6" DSH or greater

structural defects: flaws, decay, or other faults in the trunk, branches, or root collar of a tree, which may lead to failure (Lilly 2001)

References

ANSI A300 (Part 1) – 2008 American National Standards Institute. American National Standard for Tree Care Operations: Tree, Shrub, and Other Woody Plant Maintenance: Standard Practices (Pruning). New York: Tree Care Industry Association, 2008.

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Matheny, Nelda and James R. Clark. Trees and Development: A Technical Guide to Preservation of Trees During Land Development. Champaign, IL: International Society of Arboriculture, 1998.

Mattheck, Claus and Helge Breloer, The Body Language of Trees.: A Handbook for Failure Analysis. London: HMSO, 1994.

Urban, James. Up by Roots. Healthy Soils and Trees in the Built Environment. Champaign, IL: International Society of Arboriculture, 2008.

Appendix A - Assumptions & Limiting Conditions

1. Consultant assumes that any legal description provided to Consultant is correct and that title to property is good and marketable. Consultant assumes no responsibility for legal matters. Consultant assumes all property appraised or evaluated is free and clear, and is under responsible ownership and competent management.
2. Consultant assumes that the property and its use do not violate applicable codes, ordinances, statutes or regulations.
3. Although Consultant has taken care to obtain all information from reliable sources and to verify the data insofar as possible, Consultant does not guarantee and is not responsible for the accuracy of information provided by others.
4. Client may not require Consultant to testify or attend court by reason of any report unless mutually satisfactory contractual arrangements are made, including payment of an additional fee for such Services as described in the Consulting Arborist Agreement.
5. Unless otherwise required by law, possession of this report does not imply right of publication or use for any purpose by any person other than the person to whom it is addressed, without the prior express written consent of the Consultant.
6. Unless otherwise required by law, no part of this report shall be conveyed by any person, including the Client, the public through advertising, public relations, news, sales or other media without the Consultant's prior express written consent.
7. This report and any values expressed herein represent the opinion of the Consultant, and the Consultant's fee is in no way contingent upon the reporting of a specific value, a stipulated result, the occurrence of a subsequent event or upon any finding to be reported.
8. Sketches, drawings and photographs in this report, being intended as visual aids, are not necessarily to scale and should not be construed as engineering or architectural reports or surveys. The reproduction of any information generated by architects, engineers or other consultants and any sketches, drawings or photographs is for the express purpose of coordination and ease of reference only. Inclusion of such information on any drawings or other documents does not constitute a representation by Consultant as to the sufficiency or accuracy of the information.
9. Unless otherwise agreed, (1) information contained in this report covers only the items examined and reflects the condition of the those items at the time of inspection; and (2) the inspection is limited to visual examination of accessible items without dissection, excavation, probing, climbing, or coring. Consultant makes no warranty or guarantee, express or implied, that the problems or deficiencies of the plans or property in question may not arise in the future.
10. Loss or alteration of any part of this Agreement invalidates the entire report.

Appendix B – Aerial View of Site

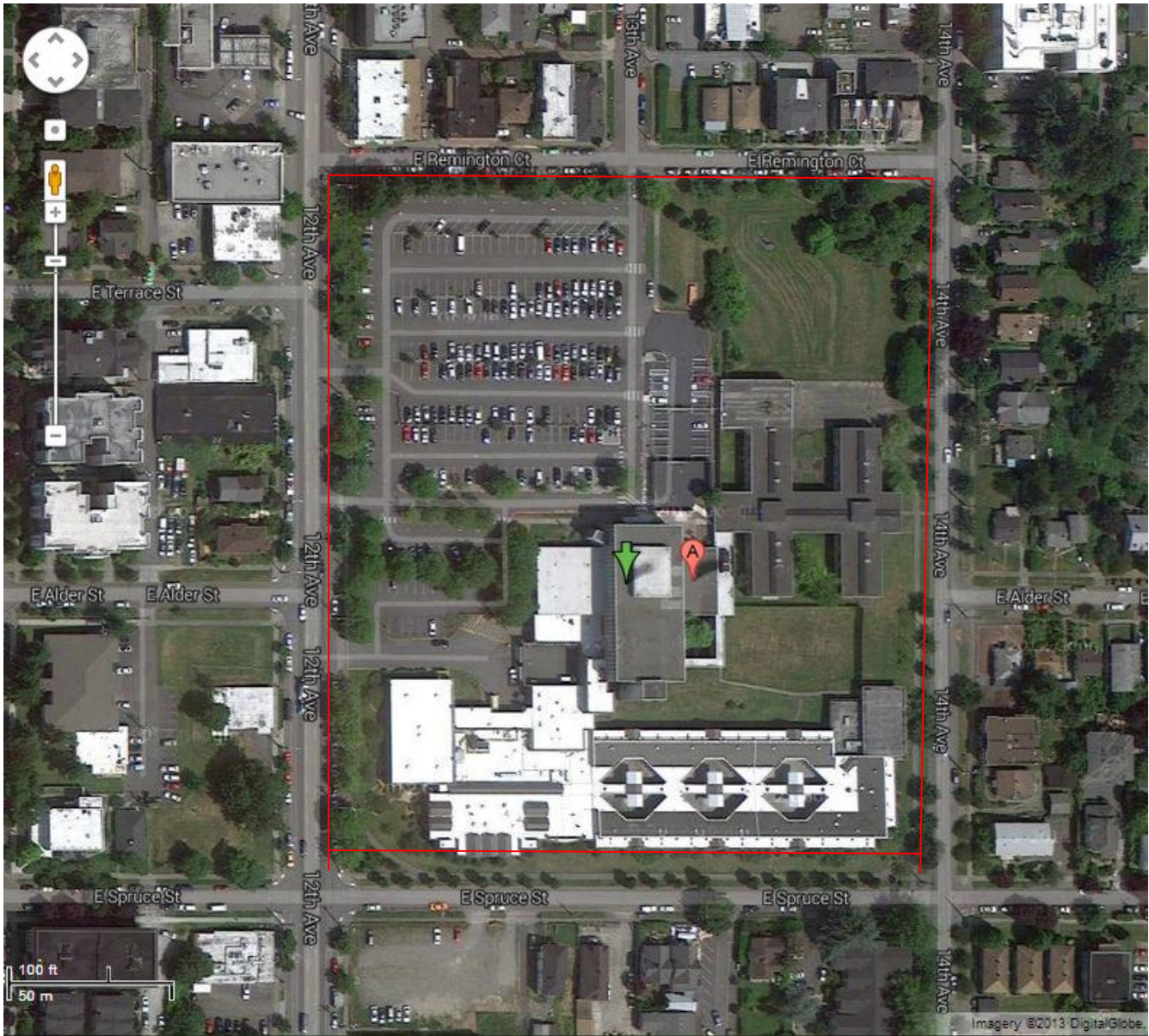


Figure 1: Aerial view of the site (outlined in red) from Google maps

Appendix C – Photographs



Photo 1: Northwest corner of site Douglas-fir stand with English ivy – some of the tree bases have been cleared in the past



Photo 2: Example of centrally located Portugal laurels with raised crowns for sight line - note bark mulch



ROW trees
not assessed

Photo 3: Example of Portugal laurels along eastern property border with raised crowns for sidewalk clearance



Photo 4: Looking into northeast corner of site from open grassy area, largest significant trees located here

Attachments: Table of Trees

Table of Trees

300 12th Ave
Seattle, WA 98122

Date of Inventory: 12.19.2013

Table Prepared: 12.20.2013

Tree #	Scientific Name	Common Name	DSH (inches)	Multi Stem DSH	Health Condition	Structural Condition	Dripline				Notes
							N	E	W	S	
501	Pseudotsuga menziesii	Douglas-fir	16.6		Good	Good				20	Small stand in NW corner of site, basal area cleared of ivy
502	Pseudotsuga menziesii	Douglas-fir	14.6		Good	Good			11		Small stand in NW corner of site, basal area cleared of ivy, lower canopy shaded out
503	Pseudotsuga menziesii	Douglas-fir	10.6		Good	Good	16				Small stand in NW corner of site, basal area cleared of ivy, lower canopy shaded out
504	Pseudotsuga menziesii	Douglas-fir	13.5		Good	Good		16			Small stand in NW corner of site, basal area cleared of ivy, lower canopy shaded out
505	Pseudotsuga menziesii	Douglas-fir	14.0		Good	Good				18	Small stand in NW corner of site, basal area cleared of ivy
506	Pseudotsuga menziesii	Douglas-fir	7.7		Good	Good				12	Small stand in NW corner of site, basal area cleared of ivy, slightly suppressed, some ivy stems starting to girdle on west side
507	Pseudotsuga menziesii	Douglas-fir	6.3		Fair	Good	8				Small stand in NW corner of site, basal area cleared of ivy, some ivy stems girdling on west side, dead non-significant Douglas-fir leaning on tree #507 should be removed, 20% live crown with lower branches shaded out, slightly suppressed
508	Pseudotsuga menziesii	Douglas-fir	6.1		Good	Good	10				Small stand in NW corner of site, basal area cleared of ivy
509	Pseudotsuga menziesii	Douglas-fir	11.1		Good	Good				16	Small stand in NW corner of site, basal area cleared of ivy
510	Pseudotsuga menziesii	Douglas-fir	12.2		Good	Good	18				Small stand in NW corner of site, basal area cleared of ivy
511	Pseudotsuga menziesii	Douglas-fir	9.2		Good	Good				14	Small stand in NW corner of site, basal area cleared of ivy, canopy asymmetrical to west, small dead branches east canopy
512	Pseudotsuga menziesii	Douglas-fir	10.5		Good	Good		10			Small stand in NW corner of site, basal area cleared of ivy, asymmetrical canopy to the east
513	Pseudotsuga menziesii	Douglas-fir	14.0		Good	Good				16	Row along Remington street inside fencing, dead branches
514	Pseudotsuga menziesii	Douglas-fir	8.2		Fair +	Good				12	Row along Remington street inside fencing, small dead branches, canopy is slightly sparse, foliage has yellow tint
515	Pseudotsuga menziesii	Douglas-fir	8.3		Fair +	Good				16	Row along Remington street inside fencing, small dead branches, canopy is slightly sparse, foliage has yellow tint

Table of Trees

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Tree #	Scientific Name	Common Name	DSH (inches)	Multi Stem DSH	Health Condition	Structural Condition	Dripline				Notes
							N	E	W	S	
516	<i>Pseudotsuga menziesii</i>	Douglas-fir	12.9		Good	Good		13			Row along Remington street inside fencing
517	<i>Pseudotsuga menziesii</i>	Douglas-fir	6.6		Good	Good				11	Row along Remington street inside fencing, slightly suppressed
518	<i>Pseudotsuga menziesii</i>	Douglas-fir	11.8		Good	Good				13	Row along Remington street inside fencing
519	<i>Pseudotsuga menziesii</i>	Douglas-fir	7.0		Good	Good				9	Row along Remington street inside fencing, small foliage, minor trunk bow
520	<i>Pseudotsuga menziesii</i>	Douglas-fir	14.0		Good	Good				16	Row along Remington street inside fencing, growing on mound
521	<i>Pseudotsuga menziesii</i>	Douglas-fir	14.2		Good	Good				13	Row along Remington street inside fencing, growing on mound, reaction wood at base
522	<i>Pseudotsuga menziesii</i>	Douglas-fir	15.4		Good	Good				13	Row along Remington street inside fencing, growing on mound
523	<i>Acer platanoides</i>	Norway maple	8.4		Good	Good	7				Ivy at base, growing into canopy of tree #522, roots exposed with minor damage to S, past pruning wound on trunk on east side
524	<i>Acer platanoides</i>	Norway maple	6.7		Good	Good	8				Ivy at base, co-dominant at approx 6 feet , good union
525	<i>Acer platanoides</i>	Norway maple	7.0		Good	Good	7				small girdling roots exposed (might be ivy roots) - with minor damage, previously topped
526	<i>Acer platanoides</i>	Norway maple	10.2		Good	Good	9				Co-dominant at approx 6 feet, slight trunk lean to the east - corrected
527	<i>Acer platanoides</i>	Norway maple	7.3		Fair	Fair				9	basal trunk cavity on east side with fungi fruiting bodies - affects approx 60 percent of circumference, co-dominant at approx 6 feet, previously topped
528	<i>Acer platanoides</i>	Norway maple	7.4		Good	Good				8	Mound of soil around base
529	<i>Acer platanoides</i>	Norway maple	13.7*	10.1 N, 9.2 S	Good	Good		13			Co-dominant at approx 3 feet, good union
530	<i>Sequoiadendron giganteum</i>	Giant sequoia	15.5		Good	Good	7				Coarse bark chip mulch around base approx 4 feet radius, on slight mound

Table of Trees

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Tree #	Scientific Name	Common Name	DSH (inches)	Multi Stem DSH	Health Condition	Structural Condition	Dripline				Notes
							N	E	W	S	
531	<i>Acer platanoides</i>	Norway maple	13.1		Good	Good	14				Coarse bark chip mulch around base, trunk wound on west side
532	<i>Prunus lusitanica</i>	Portugal laurel	6.0*	4.4, 4.1	Good	Good			8		Coarse bark chip mulch around base
533	<i>Prunus lusitanica</i>	Portugal laurel	7.1*	3.4, 4.4, 4.5	Good	Fair			8		Coarse bark chip mulch around base
534	<i>Prunus lusitanica</i>	Portugal laurel	8.2*	4.4, 4.4, 5.4	Good	Fair			8		Coarse bark chip mulch around base
535	<i>Prunus lusitanica</i>	Portugal laurel	8.4*	6.3, 5.6	Good	Good			8		Coarse bark chip mulch around base
536	<i>Prunus lusitanica</i>	Portugal laurel	9.7*	5.7, 3.8, 5.2, 4.5	Good	Good			8		Coarse bark chip mulch around base
537	<i>Prunus lusitanica</i>	Portugal laurel	8.7*	5.3, 5.4, 4.4	Good	Good			8		Coarse bark chip mulch around base, several crossing and rubbing branches
538	<i>Prunus lusitanica</i>	Portugal laurel	8.2*	3.6, 2.4, 3.0, 3.6, 3.3, 4.0	Good	Fair			8		Coarse bark chip mulch around base
539	<i>Acer platanoides</i>	Norway maple	11.3		Good	Good		12			Coarse bark chip mulch around base, some roots exposed with minor damage, co-dominant at approx 6 feet with good union
540	<i>Sequoiadendron giganteum</i>	Giant sequoia	12.3		Good	Good	7				Coarse bark chip mulch around base
541	<i>Sequoiadendron giganteum</i>	Giant sequoia	18.8		Good	Good		8			Coarse bark chip mulch around base
542	<i>Acer platanoides</i>	Norway maple	15.3		Good	Good		17			Coarse bark chip mulch around base, pruned for stop sign clearance, good unions
543	<i>Acer platanoides</i>	Norway maple	9.1		Good	Good				12	No mulch
544	<i>Acer platanoides</i>	Norway maple	10.6		Good	Good				14	Coarse bark chip mulch around base, DSH taken at narrowest point below union, good unions
545	<i>Juglans regia</i>	English walnut	11.2*	7.1, 6.2, 6.2	Good	Fair		11			
546	<i>Acer platanoides</i>	Norway maple	6.6*	4.7, 4.7	Good	Fair		9			Leads removed from base in past

Table of Trees

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							N	E	W	S	
547	<i>Acer platanoides</i>	Norway maple	9.0		Good	Good		11			Crown raised
548	<i>Prunus emarginata</i>	Bitter cherry	6.3*	4.0, 3.6, 3.4	Good	Fair		10			Co-dominant (3) from base - poorly attached
549	<i>Prunus lusitanica</i>	Portugal laurel	7.1*	4.6, 3.6, 2.4, 3.3	Good	Good				6	Coarse bark chip mulch around base
550	<i>Prunus lusitanica</i>	Portugal laurel	6.6*	5.2, 4.1	Good	Good				6	Coarse bark chip mulch around base, minor damage to basal trunk
551	<i>Prunus lusitanica</i>	Portugal laurel	6.0*	3.4, 5.0	Good	Good				7	Coarse bark chip mulch around base
552	<i>Prunus lusitanica</i>	Portugal laurel	9.5*	4.6, 4.9, 5.4, 4.0	Good	Good		10			Coarse bark chip mulch around base
553	<i>Prunus lusitanica</i>	Portugal laurel	9.0*	6.2, 4.1, 5.2	Good	Good				7	Coarse bark chip mulch around base
554	<i>Acer platanoides</i>	Norway maple	8.9		Good	Good			12		Coarse bark chip mulch around base, nest, slight trunk bow - corrected
555	<i>Prunus lusitanica</i>	Portugal laurel	7.7*	4.6, 4.2, 4.0, 2.4	Good	Good	10				Coarse bark chip mulch around base
556	<i>Prunus lusitanica</i>	Portugal laurel	6.0*	4.1, 4.4	Good	Good	10				Coarse bark chip mulch around base
557	<i>Prunus lusitanica</i>	Portugal laurel	11.7*	6.2, 6.6, 3.6, 6.6	Good	Good	10				Coarse bark chip mulch around base
558	<i>Acer platanoides</i>	Norway maple	7.2		Good	Good			16		Co-dominant at approx 8 feet, good union, coarse back chip mulch
559	<i>Catalpa speciosa</i>	Northern catalpa	16.3		Good	Good				22	Trunk wound on north side, basal trunk wound NE side, roots exposed with minor damage-add mulch
560	<i>Platanus × acerifolia</i>	London plane	18.2		Good	Good				27	Structural roots exposed
561	<i>Betula pendula</i>	European birch	12.2*	4.2 S, 11.5 N	Good	Good		16			Coarse bark chip mulch
562	<i>Prunus lusitanica</i>	Portugal laurel	8.6*	4.7, 5.4, 3.4, 3.4	Good	Good		12			Coarse bark chip mulch

Table of Trees

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Tree #	Scientific Name	Common Name	DSH (inches)	Multi Stem DSH	Health Condition	Structural Condition	Dripline				Notes
							N	E	W	S	
563	<i>Prunus lusitanica</i>	Portugal laurel	18.8*	9.3, 5.6, 6.0, 9.2, 10.8	Good	Good		18			Coarse bark chip mulch, sprouts cut from base
564	<i>Prunus lusitanica</i>	Portugal laurel	16.2*	8.5, 9.0, 10.5	Good	Good			16		Coarse bark chip mulch, stems fused at base, pruned for clearance of sidewalk
565	<i>Platanus × acerifolia</i>	London plane	20.2		Good	Good			17		Coarse bark chip mulch, roots exposed with minor damage, trunk lean to the east
566	<i>Platanus × acerifolia</i>	London plane	22.1		Good	Good			29		
567	<i>Acer platanoides</i>	Norway maple	14.0		Good	Fair -				13	Large basal wound on the south side with good reaction wood, co-dominant from approx 6 feet, one of three leads dead and reduced to 2 foot stub - hollow, trunk buried
568	<i>Prunus lusitanica</i>	Portugal laurel	9.0*	5.8, 4.7, 5.0	Good	Good			12		Coarse bark chip mulch, pruned for clearance of sidewalk
569	<i>Prunus lusitanica</i>	Portugal laurel	9.1*	7.0, 3.5, 4.8	Good	Good			12		Pruned for clearance of sidewalk, sprouts cut from base, coarse bark chip mulch
570	<i>Prunus lusitanica</i>	Portugal laurel	8.9*	4.3, 4.2, 4.4, 4.8	Good	Good			12		Pruned for clearance of sidewalk, coarse bark chip mulch, dead 5th stem - not included in DSH
571	<i>Prunus lusitanica</i>	Portugal laurel	11.6*	8.5, 7.9	Good	Good			12		Pruned for clearance of sidewalk
572	<i>Prunus lusitanica</i>	Portugal laurel	9.8*	5.2, 5.2, 6.5	Good	Fair			10		Pruned for clearance of sidewalk, dead 4th stem - previously removed, multiple branch wounds and dead branches with fungus, re-sprouting from base
573	<i>Prunus lusitanica</i>	Portugal laurel	9.1*	6.1 W, 6.8 E	Good	Good			7		Pruned for clearance of sidewalk, west stem has a 2 foot strip of hollow, re-sprouting from base
574	<i>Prunus lusitanica</i>	Portugal laurel	8.5		Good	Good			7		Pruned for clearance of sidewalk, 3 foot hollow strip on west side, sprouts cut back from base, re-sprouting from base
575	<i>Prunus lusitanica</i>	Portugal laurel	12.2*	8.5, 8.8	Good	Good			12		Pruned for clearance of sidewalk, co-dominant from ground level, upright stems
576	<i>Prunus lusitanica</i>	Portugal laurel	18.0*	4.0, 4.8, 3.9, 3.9,	Good	Good			12		Pruned for clearance of sidewalk

Table of Trees

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							N	E	W	S	
577	<i>Prunus lusitanica</i>	Portugal laurel	16.9*	9.8, 6.7, 7.4, 5.1, 7.9	Good	Good			12		Pruned for clearance of sidewalk, 5 stems, co-dominant from ground level, sprouting vigorously from ground
578	<i>Prunus lusitanica</i>	Portugal laurel	15.6*	8.3, 8.8, 8.1, 5.6	Good	Good			16		Pruned for clearance of sidewalk, sprouting vigorously from ground
579	<i>Prunus lusitanica</i>	Portugal laurel	15.1*	8.5, 12.5	Good	Good			14		Pruned for clearance of sidewalk, sprouting vigorously from ground, central lead removed in past
580	<i>Acer campestre</i>	Hedge maple	10.0		Good	Good	20				Minor wounds to base at ground level
581	<i>Acer campestre</i>	Hedge maple	9.0		Good	Fair		18			Square concrete barrier around base - in contact with structural roots on south & west side, root & base wound, trunk kink just above standard height
582	<i>Acer campestre</i>	Hedge maple	9.4		Good	Good		12			Minor root & basal wound
583	<i>Prunus cerasoides</i>	Flowering cherry	7.4		Fair	Fair -	8				Possibly in Right-of-way?, Gummosis & frass observed, old basal wound on NW side
584	<i>Prunus cerasoides</i>	Flowering cherry	6.2		Fair	Fair -	8				Possibly in Right-of-Way ?, Gummosis & frass observed, large basal wound on north side, roots exposed - north side damage
585	<i>Prunus spp</i>	Cherry species	6.1*	2.3, 2.4, 2.8, 2.6, 3.4	Good	Poor				6	Roots exposed
586	<i>Prunus cerasoides</i>	Flowering cherry	9.8						9		Gummosis & frass observed, basal trunk wound, multiple leads at one attachment point
587	<i>Prunus cerasoides</i>	Flowering cherry	7.1				10				Roots exposed with minor damage
588	<i>Prunus cerasoides</i>	Flowering cherry	9.6		Good	Good			10		Gummosis & frass observed, trunk buried, lots of Gummosis coming out of branch unions
589	<i>Prunus cerasoides</i>	Flowering cherry	8.0		Good	Fair	14				Roots exposed with wounding, trunk lean to the north from base
590	<i>Platanus x acerifolia</i>	London plane	11.8		Good	Good		19			Near power pole
591	<i>Platanus x acerifolia</i>	London plane	7.1		Good	Good		12			Roots exposed with minor damage

Table of Trees

300 12th Ave
Seattle, WA 98122

Date of Inventory: 12.19.2013

Table Prepared: 12.20.2013

Tree #	Scientific Name	Common Name	DSH (inches)	Multi Stem DSH	Health Condition	Structural Condition	Dripline				Notes
							N	E	W	S	
592	<i>Platanus × acerifolia</i>	London plane	9.6		Good	Good		14			Roots exposed with minor damage
593	<i>Platanus × acerifolia</i>	London plane	10.8		Good	Good				14	
594	<i>Platanus × acerifolia</i>	London plane	12.5		Good	Good		16			
595	<i>Platanus × acerifolia</i>	London plane	11.8		Good	Good			17		
596	<i>Platanus × acerifolia</i>	London plane	16.1		Good	Good				23	Large structural roots exposed on south side
597	<i>Acer platanoides</i>	Norway maple	18.0		Good	Good				21	Large stem girdle root, good unions, canopy over hanging KCJC sign
598	<i>Platanus × acerifolia</i>	London plane	14.7		Good	Good				18	
599	<i>Platanus × acerifolia</i>	London plane	15.9		Good	Good			26		
600	<i>Platanus × acerifolia</i>	London plane	10.3		Good	Good				20	Roots exposed on all sides with damage, trunk wounds from past pruning
601	<i>Platanus × acerifolia</i>	London plane	6.6		Good	Good		12			Basal trunk wounding on all sides
602	<i>Platanus × acerifolia</i>	London plane	10.8		Good	Good	18				
603	<i>Platanus × acerifolia</i>	London plane	8.2		Fair +	Fair +				12	
604	<i>Platanus × acerifolia</i>	London plane	8.0		Good	Good				12	
605	<i>Platanus × acerifolia</i>	London plane	16.9		Good	Good			16		Good trunk taper
606	<i>Platanus × acerifolia</i>	London plane	10.8*	8 S, 7.2 N	Good	Good	14				Co-dominant from 1 foot, basal wound on north side
607	<i>Platanus × acerifolia</i>	London plane	11.6		Good	Good				20	Structural roots exposed - small planting box

Table of Trees

300 12th Ave
Seattle, WA 98122

Date of Inventory: 12.19.2013

Table Prepared: 12.20.2013

Tree #	Scientific Name	Common Name	DSH (inches)	Multi Stem DSH	Health Condition	Structural Condition	Dripline				Notes	
							N	E	W	S		
608	<i>Platanus × acerifolia</i>	London plane	6.6		Good	Good		7				
609	<i>Platanus × acerifolia</i>	London plane	6.6		Good	Good		7				Adventitious roots exposed, trunk wound from past pruning
610	<i>Platanus × acerifolia</i>	London plane	14.1		Good	Good	15					Large roots exposed, wide base, lifting sidewalk to west
611	<i>Platanus × acerifolia</i>	London plane	6.0		Fair	Fair				8		Trunk lean to the north
612	<i>Platanus × acerifolia</i>	London plane	11.1		Good	Good	18					Roots exposed
613	<i>Acer spp</i>	Maple species	6.1*	4.4, 4.2	Good	Good				8		Light vertical stripes on bark
614	<i>Acer spp</i>	Maple species	7.5*	5.4, 5.2	Good	Good		9				Light vertical stripes on bark, east stem 2.5 foot wound with good reaction
615	<i>Platanus × acerifolia</i>	London plane	12.9		Good	Good		18				
616	<i>Platanus × acerifolia</i>	London plane	7.8		Dead	Dead				14		Appears dead, ivy on basal trunk, basal wounds

*Single stem equivalent diameter, calculated using Guide to Trunk Area

Children and Family Justice Center

Facility Tour Report

March 4-6, 2013

Participants

Fred Jarrett	Deputy Executive	Judge Michael Trickey	Superior Court
Pam Jones	Juvenile Detention	Linda Ridge	Superior Court
Jameelah Cage	Juvenile Detention	Michelle Garvey	Superior Court
Mike Wait	Juvenile Detention	Jorene Reiber	Superior Court
Harry Williams	Juvenile Detention	Steve Gustavson	Superior Court
Russell Hairston	Juvenile Detention	Sarina Aiello	Judicial Administration
Michael Gedeon	Performance, Strategy, Budget	Gay Boyce	Facilities Management Division
Jim Burt	Facilities Management Division	Art Green	Facilities Management Division

Observations

A. Ventura County Juvenile Justice Center, Oxnard, CA

Monday, March 4th

1. Courthouse

a. Entry/Lobby

- Security screening was located at the main entry (single lane). Very small and constricted area with not much room between the entry door and the screening station
- 2 story entry vestibule with open stairs leading to the upper floors where the offender/delinquency courts are located. Overall area felt small and constricted.
- Childcare was located away from the main entry, off of the courtroom corridor.

b. Courtroom Waiting Area

- Waiting for courtrooms on the lower floor was accomplished by a wide corridor (16 ft) on the lower level, and the same wide corridor on the upper level plus an additional waiting room off of the corridor. We understood that the upper level waiting room was not very private for individuals waiting for the court appearances. Overall the wide corridors felt comfortable
- Public restrooms were locked for security reasons. Guards had to open them if public wanted to use them. This was more related to the type of visitors to the facility rather than the building layout.

c. Courtrooms

- There were two types of courtrooms provided in the facility: offender/delinquency and dependency. Both were similar in size, approximately 1600 sf.
- The design of the bench in both courtroom types was flawed creating line of sight issues for the judges.

- Dependency courts were arranged differently from the offender court. Tables for the attorneys, youth, and probation staff were configured in a U-shape. Staff like this configuration.
 - The area lacked sufficient data and power outlets
 - Youth holding was located between two courts (typical arrangement). Attorney client meetings are held within this area. Attorneys enter from the public corridor
 - Accessible ramp to the judge's bench was located in the courtroom behind the judge's seating area.
 - Windows were located on the west wall of one of courtrooms. Shades had to be installed due to the glare.
- d. Private Judicial Areas
- Chambers were located directly behind the courtrooms off of a private secure corridor
 - Access to the private corridor was secured by key card access. Space is shared with other staff with key card access to the area.
- e. In-Custody Holding
- In-custody holding is located in the basement. Youth are brought up to the courtrooms via an elevator to another holding area adjacent to the court. (this area was staffed by the Sheriff and is separate from the detention staff).
 - The elevator provided separation between staff and youth for safety reasons. Stairs were not provided to bring youth up to the courtrooms.
- f. Clerks & General Office Areas
- The clerk's area is located on the 1st floor. Open office space was provided to the staff. The front counter was constructed of the same workstation system as the staff workstations. This did not seem to provide adequate security to staff working at the counter.
 - Lighting and the general configuration of the space was not very pleasant

2. Detention

- a. Entry/Security Checkpoint
- Detention has a separate entry for Courts
 - Visiting had a separate entrance
 - Visiting: Sundays & Wednesday only
 - Visiting consisted of: 9 private visiting rooms (3 no contact), 4 large group visiting rooms, and also one room with video conferencing
- b. Intake/Transfer/Release Area
- Seven (7) holding rooms
 - Report room for officers bringing in youth was not utilized often
 - Adults on juvenile matters utilize the same sally port, but have separate holding
 - There was a separate area with five (5) interview rooms for electronic monitoring
 - A file room is highly recommended
 - Property was stored in bins for 420 detainees

- Locker/storage area is recommended for staff in this area
- c. Security System
- No cameras are in elevators from court holding to court, but are recommended
 - No touch screen panels
- d. Housing
- 240 detention beds
 - 180 commitment beds
 - Two (2) year max stay for youth
 - Classroom located in units, however wall blocks line of sight from staff station
 - Single level housing;
 - Some of the units were designed to share a staff station. The two housing units are currently walled off because of conflicts with youth in the different units
- e. Vertical Transportation (elevators)
- Caged elevators are utilized when youth are in elevators
- f. Central Services
- Laundry and food services are done on site
- g. Site
- The site was welcoming and did not appear as too institutional upon arrival
 - Outdoor recreation was on a large field that consisted of: football, soccer, and basketball
 - The inside consisted of an unattractive long outdoor corridor to each unit

3. Common Areas

- a. Parking/Site Access
- The complex sits on a large rural site. All parking was surface, with separate areas for the court and detention visitors.
 - There were two separate entries for the detention and court. This was due mostly to the fact that the detention center was constructed first
- b.

B. Alameda County Juvenile Justice Center, San Leandro, CA

Tuesday, March 5th

1. Courthouse

- a. Entry/Lobby
- Security screening was located at the main entry (two lanes). Large queuing area in front of the screening stations.
 - 2 story lobby felt very comfortable and appropriately sized for the facility.

- Separate staff entry into the lobby required key card access. Staff were not screened.
 - Public art in the lobby enhanced the space
 - Childcare center was located directly off of the lobby and was adjacent to the coffee cart. Center was privately run.
 - Access to the detention center visitation area was on the 2nd level and was not easily seen.
 - Judges enter the building through a separate entry located near secure judicial parking. Judges are not screened before entering the building.
- b. Courtroom Waiting Area
- Waiting for courtrooms was accomplished by a wide corridor (12 ft) plus an additional waiting room off of the corridor. The waiting room was closed off by a door and is not used very often because of the potential interaction among the different parties (no security). Overall the wide corridors felt comfortable, but were very long.
- c. Courtrooms
- All courts were the same size, approximately 1400 sf. Courtrooms felt warm with the selection of the lighter wood color.
 - Youth holding was located between two courts (typical arrangement). Attorney client meetings are held within this area. Attorneys enter from the courtroom.
 - Youth are interviewed in a wet holding cell. Attorneys can view the toilet directly from the window
 - There is also a group holding cell in the same location
 - Accessible ramp to the judge's bench was located in the corridor behind the courtroom in an alcove off of the secure private corridor. This cut down on the ramp size in the courtroom.
 - The courtrooms did not have any windows located on an exterior wall.
- d. Private Judicial Areas
- Chambers were located directly behind the courtrooms off of a private secure corridor.
 - Access to the private corridor was secured by key card access. Space is shared with other staff with key card access to the area.
- e. In-Custody Holding
- In-custody holding is above the main court level. Youth are taken down to the courtrooms via an elevator or stairs to another holding area adjacent to the court. (This area was staffed by the Sheriff and is separate from the detention staff).
- f. Clerks & General Office Areas
- The clerks area is located on the 2nd floor in a very small office space. The transaction counter was located behind a secure window. The entire area did not seem very friendly to the public.

2. Detention

- a. Entry/Security Point

- Bright, open, and family oriented
 - Lobby includes: security screening, café, and childcare
 - There was a Transition Center located off of the lobby which was where releases and transfers to Electronic Monitoring took place. Youth were also provided numerous resources from this center prior to re-entering the community (i.e. school enrollment, clothes, etc.)
- b. Intake/Transfer/Release Area
- Four (4) intake stations
 - One (1) large flat screen/monitor that details number of youth, and location in facility
 - Narcotic detection body scanner
 - Five (5) holding cells that can hold up to ten (10) youth, Two (2) interview rooms, One (1) medical screening room
 - A lot of wasted space within the ITR area. Could have been more efficiently designed
- c. Security System
- Over 200 cameras throughout the facility
 - All control panels are touch screen
 - Central Control is staffed with seven (7) officers
- d. Housing
- Thirty (30) single bed dorms: 2 levels
 - Twenty-two (22) dorms in female units, but can go to thirty (30) if double bunked
 - No contact visitation is available off unit, but only utilized in high security areas
 - Classroom located in unit
 - Three staff per unit
 - Each unit has a medical room
 - Each unit is connected by a staff station
- e. Vertical Transportation (Elevators)
- One elevator was utilized to transport to 2 courts, for each pair of courtrooms
- f. Central Services
- Laundry on site
 - Meals are delivered and reheated by staff in units
- g. Site
- Built in 2007; capacity 330

- There was beautiful art displayed inside and outside of the facility, which was very welcoming.
- Aside from the classrooms in the unit, there was also central schooling with six (6) classrooms
- There was a large loading dock located off of the kitchen
- Very large sally port in Intake
- Several training/conference areas
- Health Clinic was large and included and funded by Alameda County public health (unlike SF): Nurse, Nurse Practitioner's, Dentist, Chiropractor, Optometrist, x-ray machine, Tela-Medical, and mental health services
- Intake flows into visitation (up to 30 visits at a time)
- Officer station was located in visitation
- Central Control is positioned to see directly into visiting, the entrance to the health clinic, and down both detention corridors

3. Common Areas

- a. Parking & Site Access
 - Site was located in a rural location on a hillside. All parking was surface and had restricted parking areas. Public was required to pay for parking.
 - Judges had a separate parking location secured by a gate.
 -
- b. Shared Entry
 - Entry to the facility was very inviting to the public.
 - Separate entries for detention and court staff were provided.

C. San Mateo County Youth Services Center, San Mateo, CA

Tuesday, March 5th

1. Courthouse

- a. Entry/Lobby
 - Security screening was located at the main entry (single lane). Limited queuing area in front of the screening stations made the area feel congested.
 - Two story lobby felt very small for the facility. Stair used up a lot of the area. The second floor walkway over the lobby also seemed to make the space feel smaller.
 - Separate staff entry into the lobby required key card access. Staff was not screened.
 - Access to the detention center visitation area was not located from the lobby. Visitors have to walk through the lobby and into another building to go to visitation.
 - Judges enter the building through a separate entry located near secure judicial parking. Judges are not screened before entering the building.
- b. Courtroom Waiting Area

- The courtrooms were located on the 2nd floor (only 2 for the facility) Waiting for courtrooms was accomplished in wide hallways (approximately 14 feet) with some alcove waiting.
- c. Courtrooms (I did not visit the courtroom, need input from staff that did)
 - The courtrooms were spacious (approximately 1,600 square feet) and welcoming, with light colored woodwork. One courtroom was used for juvenile offender matters and one for dependency cases.
- d. Private Judicial Areas
 - Chambers were located directly behind the courtrooms off of a private secure corridor.
 - Access to the private corridor was secured by key card access. Space is shared with other staff with key card access to the area.
- e. In-Custody Holding
 - Youth are walked from the housing unit to the court building by a paved, exterior uncovered, pathway and then transported up to the courtrooms (unsure how this is accomplished.)
- f. Clerks & General Office Areas (need additional input)
 - The clerks area is located on the 2nd floor. Staff are in open workstations. The area is not easily accessible and lacks natural light.

2. Detention

- a. Entry/Security Checkpoint
 - Entrance is very open and bright
 - Security screening is at entrance
 - Officers have a separate entrance, and are not required to go through screening
- b. Intake/Transfer/Release Area
 - There is an Assessment Unit that reviews all youth prior to entering the facility
 - Large vehicle sally port with “Jurassic Park” gate (16ft high)
 - Report room for officers bringing in youth
 - Officers work station was very open with multiple areas to interview youth
 - Transportation staging had a cuffing area for youth prior to transporting
 - One padded cell is in intake, but not used
- c. Security System
 - There are no cameras in intake
 - Touch screen panels are used in intake
- d. Housing
 - 30 dorms in each unit
 - 3 staff per unit

- Very neat ceiling in each unit
- e. Vertical Transportation (elevators)
- There is one (1) elevator to Court Holding
- f. Central Services
- Laundry is done on site
 - Food is prepared on site
- g. Site
- Built in 2006; capacity 170
 - To access each unit staff must travel outside, which is extremely labor intensive
 - Outside recreation included a track and soccer field
 - There were multipurpose rooms utilized for school in each unit due to central school being located across the campus; when it rains class is in the unit
 - Court holding included a few dorms as well as open seating
 - There are a number of blind spot throughout this facility without cameras
 - Large visiting area with staff station
 - Chapel located in visiting area
 - Natural light in gym on both ends
 - Medical Unit included: 3 exam rooms, nurses and a part-time dentist

3. Common Areas

- a. Parking & Site Access
- Site was located in a rural location on a hillside. All parking was surface and located quite a distance up a hill from the main entry. Parking was free.
 - Judge's had a separate parking location secured by a gate.
- b. Shared Entry
- The Entry to the facility was very inviting to the public and had a pleasant feeling
 - Separate entries for staff was located adjacent to the front entry by key card access.

D. San Francisco Juvenile Hall (detention only)

Wednesday, March 6th

1. Courthouse

(Located at another site, did not visit)

2. Detention

- a. Entry/Security Checkpoint
- Security screening at entry

- Staff utilize the same entrance as the public. All concrete and hard surfaces, not very pleasant feeling
- b. Intake/Transfer/Release Area
- Rounded staff station (shared with nurses' station)
 - Three (3) holding cells
 - Two (2) showers
 - A lot of wasted space by the entry was designed. Supposedly design as staff area, but was never used.
- c. Security System
- There are no keys utilized in detention; ID card readers are used
 - Not enough cameras/serious security issues
 - Old control panel in central control. Out of date before the system was even installed. Limited spare parts availability.
 - Central Control is responsible for 85-doors
- d. Housing
- 20-bed living units; split level
 - Consist of: 1 girls unit, 1 maximum secure unit and 1 younger boys unit
 - Three (3) staff per unit
 - Visits are done in the unit's open space
 - Very nice and centrally located staff stations
 - Classrooms located in units with a clear view from staff station
 - A variety of window patterns was utilized in each of the dorms/cells. This de-institutionalized the building façade from the exterior.
- e. Vertical Transportation (elevators)
- Elevators are not used (no cameras)
 - Stairs are used to transport youth from bottom to top, and handcuffs are used when going to court
- f. Central Services
- Laundry is done on site
 - Food is prepared on site
- g. Site
- Bad line of sight for central control down main detention corridor (curved corridor)
 - The Health Clinic services are provided by Public Health. The infirmary was designed as a full service unit, but has never been used that way because of funding.

- Dentist on site 10 hours a week (all youth are provided an oral screening upon admission)
- Nurses are available 24-hours a day
- School is located in an Education Center
- The Gym is located in the Education Center, and has a lot of natural light
- There is a very large multi-purpose room that is used for attorney/counseling visits (interview rooms), and other facility needs
- Outdoor recreation was not planned thoroughly, and is not currently used. The public was able to have a clear view of youth while outdoors from the top of a hill

3. Common Areas

a. Parking/Site access

- This is an urban site. Parking in the neighborhood was very limited with hourly restrictions. Staff and visitor parking was extremely limited.
- Entry to the detention building was very circuitous and not very inviting.

Design Considerations for New Children and Family Justice Center

1. Each of the different sites detention facilities was overbuilt. A review of the forecast should be undertaken to confirm the number of dorms to be constructed.
2. Each of these facilities has a long and circuitous route to move youth from the housing units to the courtroom. Long corridors with several corners limit visibility. Careful consideration of moving youth needs to be thoroughly reviewed to develop the most efficient operation.
3. Providing separate entries for judges and staff using a key card access system should be reviewed and weighed against the current court order to screen every person entering the building. This could alleviate potential long waits going through security and provide more security for the judges.
4. Shared entry for the facility should be used similar to Alameda County. Court and detention visitors should use the same entry and screening station.
5. Infirmary staff and healthcare providers should be fully engaged in the design process.
6. The new facility should consider a “transition/resource” center to insure that court-involved youth and families are provided the necessary resources before leaving the facility.
7. The “public entry” should be easy to find for a new visitor to the site and buildings
8. Detention visitation should be located off of the main building lobby and not in a separate location.
9. The importance of art to the overall feeling of the facilities cannot be overstated.
10. Full scale mock-ups of courtroom benches must be created to minimize the risk of design flaws.

Attachment 1

Memorandum on California Juvenile Facilities Tour March, 2013

To: Interested Parties

From: Judge Michael J. Trickey

Date: March 7, 2013

King County Superior Court, DJA, FMD, DAJD, King County Executive office personnel, and programming representatives from KMD/CGL toured three (3) recently constructed juvenile court facilities in Ventura County, Alameda County, and San Mateo County in California. The facilities included courthouses and detention facilities. The court did not participate in a fourth tour at the San Francisco City/County detention facility. The other folks from King County went on the San Francisco visit.

These are my reflections on the tour. They are not the opinion of anyone else (including superior court as a whole). These comments are also in no particular order or priority.

California classifies juvenile criminal cases as “delinquency” matters. This was the terminology used in Washington State prior to the adoption of the Juvenile Justice Act of 1977. My impression is that California judges and probation officers have much more discretion in sentencing (which is called “disposition” in both of our states) than here in Washington.

California law requires that all delinquency and dependency court files are sealed and that all court proceedings in those two types of cases are closed to the public. This strong policy commitment drove the courthouse and courtroom designs we saw on our tour. For example, there were only one or two rows for spectator seating in the courtrooms.¹ There were small waiting areas outside the courtrooms. Each court’s bailiff² had to come outside the courtroom and verbally call the case.

Such restricted access is completely different than in Washington. All juvenile offender and dependency proceedings are open to the public. Our new facility has to be built accordingly.

Building a courtroom and courthouse that meets American with Disabilities Act standards dramatically changes courtroom design. Much more space is needed in each courtroom to meet those requirements. For example, the ramp for each judge to use to get to his/her bench requires a fair amount of square footage. I am sure this will affect the public’s access to the building and each courtroom as well.

The California facilities we saw opened in 2003-2007. The continuing California state budget crisis and the Great Recession have hurt these courts. Each California court we saw has had to reduce its staff by 25-30% over the last 4-5 years with more layoffs coming. Many good features of their designs, such as informational booths and day care facilities are closed because of staff and budget cuts.

¹ Except for the one or two courtrooms designed with a jury box and therefore open to the public.

² All sworn Sheriff’s deputies, in uniform and armed.

The detention facilities at each of these courts was conceived, designed and built to hold many more youth than they currently house. Each detention facility has alternatives to detention in place. Alameda county has more youth on 24 hour GPS monitoring than they have in custody.

The division of authority in the California court system is much different than ours.

There is an ongoing power struggle between local courts, county commissioners, and the state in California.

The detention facilities are run by each county's probation department. It seemed to me the probation officers had arrest authority in the community. Many of them wore uniforms. Each county's sheriff department we saw provided a "bailiff" for each judge. They were also in uniform and armed.³

There seemed to be some institutional tension about the "hand-off" from probation/detention to the bailiff of an in custody youth as they were being taken to and from court.

The California courts we saw were still using paper court files.⁴ The flow of paper dictated the courtroom design. There seemed to be no electronic filing by judges or court staff. The clerk's offices had no computer terminals for public access.⁵ The court rooms had two places for clerks in the courtroom.⁶ Each court had a court reporter. I did not see any electronic recording devices for the record. It was not clear to me that an order was signed in court after each hearing.

Ventura County designed its dependency courts differently than its delinquency courts. The "counsel table" for dependency hearings was large enough to accommodate a large number of parties/advocates sitting in the courtroom.

The Prosecuting Attorney and the Public Defenders had offices for their staff inside each facility.

There was general dissatisfaction with the interview rooms for in custody youth adjacent to each courtroom. We will need to think this through carefully. For example, will there be a place for defense counsel to meet with youth before and after the hearing that is adjacent to the courtroom? All three courthouses had a way to bring in custody youth into the courtroom similar to the MRJC.

Ventura County spent a lot of time thinking about courtroom design. Their staff and the contractor built courtroom "mock ups" out of wood in a warehouse. I think Jim Burt said FMD did something similar to that in designing the new District Court rooms at the MRCJ. We should look at the MRJC process and those designs.

³ I think I heard the Ventura County administrator who hosted our tour say that the main Ventura county courthouse has 63 sheriff deputies present to provide security and to act as bailiff for the judicial officers there. Someone also mentioned to me that LA County had moved to some civilian bailiffs perhaps as part of the budget cut process.

⁴ I think Alameda has begun imaging documents.

⁵ No need if the court files are sealed.

⁶ No elected clerks; the clerks were court employees. Mike Planet is the Court Administrator and the Clerk of Ventura County. Only one clerk was actually in court during hearings.

Alameda County touted its “design build” method. They gave us some hand-outs about their contracting process which we should study. I am not sure how similar California “design build” is to Washington “design build.”

I was most impressed with the Alameda County facility. It was welcoming to the public. Both the Ventura County and the San Mateo courthouse had what I would call a “split-level” entrance which did not seem to help the flow of people into and out of the building.

The Alameda courthouse has incredible public art. They used a focus group to select the art, which I think included some youth. The art also extended into the detention area.

I was struck by the differences in the “feel” of the Alameda detention facility versus the other two. For example, the Ventura staff had two vertical levels of “cells” in some units and had several kids threaten to jump or otherwise climb onto the railing. Alameda also had such cells, but, in contrast, said they had no such experiences. Their detention programming was extensive and included excellent educational opportunities.

All three of these projects took years of planning. Alameda had sited and designed its new juvenile facility for Dublin⁷ but had to relocate and redesign after 2 ½ years because of community opposition. The new detention facility is now built on a major earthquake fault line. There was also active picketing over the projected size of the detention facility.

There was a courtroom with a jury box in Ventura and Alameda. They wanted to maximize their flexibility over case assignment. Ventura moved its probate court into the juvenile facility when they had to basically shut down one of the courthouses due to budget cuts.

Alameda had a “Transition Center” that brought various service providers into the facility that seemed like an approach worth exploring for the CFJC.

Space is at a premium at all three facilities even though newly built. We do not want to have our facility full the day we open.

I am sure there is more but that is enough for now.
MJT

⁷ Next to the existing Alameda County Jail.

**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 2



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 2

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART B – FACILITY PERFORMANCE STANDARDS
2.1	101	Section 2, Green Stormwater Infrastructure, ADD new bulleted item: "The design and implementation of any of the stormwater flow control facilities shall prevent surface ponding of water."
2.2	122	Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Sustainability ADD "High efficiency energy star clothe washer/dryer and dishwasher may be used to achieve Leadership in Energy and Environmental Design (LEED) with the prior approval of King County project team."
2.3	142	Part B, Section 6, HVAC System Selection, General, ADD "See Appendix F for anticipated Facility Occupancy Schedules". Attached to Addendum 1.
2.4	160	Part B, Section 6 - Mechanical Engineering Systems, c. Heating, Ventilating, and Air Conditioning (HVAC) Systems Design Criteria, Mechanical Equipment Locations and Maintenance Access, Service Access, ADD new paragraph " Access to Buildings: Provide means of connecting Central Plant with all buildings thru utility tunnel or breezeway, with a minimum height of 7' and 42" clear width, for County staff utilization during extreme weather conditions."
2.5	163	Part B, Section 6 - Mechanical Engineering Systems, d. Building Control Systems (BCS), Minimum General System Requirements, Temperature Controls, DELETE fourth bullet and REPLACE with "Provide adjustable dead band in compliance with local code and AHJ which must be used between independent heating and cooling operations within the same zone."
2.6	194	Part B, Section 7 - Electrical Engineering Systems, d. Fire Alarm System, Design Conditions, Objectives, DELETE bullet "Duct Smoke Detectors" and REPLACE with "Duct Smoke Detectors provided with independent reliable power supply that is on a separate circuit than the HVAC equipment power circuit that is serving."
2.7	197	Part B, Section 8 - Energy and Sustainability Life Cycle Analysis, Energy Life Cycle Analysis (ELCCA), DELETE "The County is requiring the ELCCA be performed based on ASHRAE 90.1 utilizing one of the following energy modeling tools:" and REPLACE with "The county is requiring the ELCCA be performed based on the latest edition ASHRAE 90.1 utilizing one of the following energy modeling tools:"
2.8	249	DELETE Section 12 and REPLACE with Section 12, Revised Addendum. See attached.

Ref.	Page or Drawing	Location and Description of Change
		PART C – FACILITY PROGRAM
2.9	4-4	Part C, Facility Program, Circulation Patterns/Linkages/Access/Egress, 1. Site Circulation Concepts first bullet: DELETE “In the Site Concept diagram staff parking may be accessed off of the “Alder connection” with entry from 14th Avenue or from Spruce Street.”
2.10	4-5	Part C, Facility Program, Circulation Patterns/Linkages/Access/Egress, 1. Site Circulation Concepts DELETE the third bullet and REPLACE with: "As indicated in the Site Concept diagram, the access to the judicial and staff parking located in the parking garage is from 12th Avenue via the tunnel off of Spruce Street."
2.11	4-7	Part C, Facility program DELETE 2nd paragraph and bulleted items and REPLACE with: "Staff and judicial access to the parking garage shall be from 12th Avenue via Spruce Street. The design teams must consider the following in determining the optimal location for the staff and judicial access to the parking garage: <ul style="list-style-type: none"> • Construction Cost • Parking Garage Security • Impact on Alder Connection Design • Staff and Judicial Building Access/Site Circulation • Site Construction Phasing • Impact on Phase 2 Parking Construction Separate access to Judicial parking could be located adjacent on the north side of the courthouse with access from Remington Street if acceptable by the City of Seattle DOT. If a Remington St. access is proposed it may require an updated SEPA review as it was not considered in the SEPA Threshold Determination dated 12/6/13."
2.12	4-9	Part C, Facility Program, Site Phasing Logic ADD new paragraph: "Subject to King County approval, the construction of portions of Phase 1A may be delayed or constructed with Phase 1B so long as there will be little to no impact to the relocation of the court and detention operations from the existing building to the new Phase 1A and will allow for the operation of the new courthouse and detention facilities when occupied during the construction Phase 1B."
		Part H
2.13	01 50 00 – 7	ADD new paragraph "1.17 TEMPORARY PARKING 1.17.1 The Owner will require a minimum of 120 stalls, with an optimum of 150 stalls, during the entire construction period on site. Approximately 2/3

Ref.	Page or Drawing	Location and Description of Change
		should be allocated for public use.”
		<p>QUESTIONS AND RESPONSES</p> <p>King County provides the following questions and responses as clarifications of the referenced Request For Proposal provisions.</p>
2.14		<p>Q: Are there defined inputs for the design team to use with energy modeling? If energy modeling inputs are not standardized for the various design competition teams, the energy modeling results will not be accurately comparable.</p> <p>R: See Part B, Section 6 - Mechanical Engineering Systems, c. Heating, Ventilating, and Air Conditioning (HVAC) Systems Design Criteria, pg 134 to pg 162, for defined input for the design team to use with energy modeling. All other type of inputs not included in the performance standards or not clear and deemed necessary to the design build team for reasonable accurate energy modeling, can come from the design team through detailed research and good engineering practices for the appropriate input assumptions to be used for the energy model. All new assumptions shall be provided to the county project team for review, discussion and approval prior to energy modeling.</p>
2.15		<p>Q: Is greenhouse gas prediction part of the initial proposal or is this just during design?</p> <p>R: The greenhouse gas prediction shall be part of the first design submittal per Part B, Section 8 - Energy and Sustainability Life Cycle Analysis, Report on Alternatives for Heating and Cooling CFJC, pg 198, "the Design Team Entity shall submit a separate energy report meeting the requirements of 2012 King County Ordinance 17304 with the first design submittal (100% Schematic Design).</p>
2.16		<p>Q: Can Central Juvenile Holding be located on B-1, or must it be on the ground floor?</p> <p>R: Central Juvenile Holding must be on the same level as detention housing and the two high volume courts. See Part C Facility Program p4-2, paragraph 6, and Part C, Facility Program, p 4-5, paragraph 2, third bullet.</p>
2.17		<p>Q: Can put garage under detention? a. Staffing for security issues? b. Progressive collapse design requirements?</p> <p>R: No.</p>
2.18		<p>Q: Could the parking lot location be moved? ?</p> <p>R: Parking Structure can be moved; however such structure shall not be located on Future Development Lots or under the Detention Facility. See Ref 2.9, 2.10, and 2.11 above.</p>

Ref.	Page or Drawing	Location and Description of Change
2.19		<p>Q: Owner temporary parking needs (minimal and optimal) during construction?</p> <p>R: The Owner will require a minimum of 120 stalls, with an optimum of 150 stalls, during the construction period. See Ref 2.13 above.</p>
2.20		<p>Q: Are low flow fixtures acceptable? RFP requires 30% over EPACT. Are even lower flow fixtures acceptable? High efficiency clothes/dishwashers?</p> <p>R: See Part B, Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Plumbing Fixtures - Non-Detention, pg 131 for low flow fixtures requirements. See</p>
2.21		<p>Q: Ground source heat-pump acceptable?</p> <p>R: See Part B, Section 6 - Mechanical Engineering Systems, c. Heating, Ventilating, and Air Conditioning (HVAC) Systems Design Criteria, Alternative Cooling and Heating Sources, pg 155.</p>
2.22		<p>Q: How do we connect central facility to the building?</p> <p>R: See Ref. 2.4 above.</p>
2.23		<p>Q: How do they leave the future development lots?</p> <p>R: See Section 12, Revised Addendum 2. See attached.</p>
2.24		<p>Q: What Flexibility is there in Phasing 1A & 1B</p> <p>R: See Ref. 2.12 above.</p>
2.25		<p>Q: Stormwater system development to accommodate future developments</p> <p>R: See Section 12, Revised Addendum 2. See attached.</p>
2.26		<p>Q: To what extent can Stormwater /Rain Gardens be used?</p> <p>R: See Ref 2.1 above.</p>
2.27		<p>Q: Can Water features be integrated into the design.</p> <p>R: Water features as a landscape element will not be allowed.</p>
2.28		<p>Q: Are all of the Stormwater retention options available for consideration?</p> <p>R: Yes, all of the stormwater retention options noted in Part B Facility Performance Standards, pages 100 and 101 are acceptable. See Ref 2.1 above.</p>
2.29		<p>Q: Access from 14th? Alder Connection? Access from Remington? How does it relate to public vs staff access?</p> <p>R: See Ref 2.9, 2.10, and 2.11 above.</p>

Attached To This Addendum:

- Section 12, Revised Addendum.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: February 12, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

Section 12 – Removal of Existing Structures

a. General

Any construction activities during phase 1A including removal of existing buildings, shall preserve and protect the existing buildings ability to be occupied and fully functional. See c. Potential Phase1A Building Removal at the end of this section for a graphic of buildings that may be removed as part of Phase 1A.

Demolish, haul, and dispose of all existing buildings and structures on the site. Historic items, relics, antiques, artwork and similar objects including, but not limited to, cornerstones and their contents, commemorative plaques and tablets, and other items of interest or value to the County that may be uncovered during demolition remain the property of the County. Demolition waste becomes property of Contractor. Proceed with demolition of structural framing members systematically, from higher to lower level. Complete building demolition operations above each floor or tier before disturbing supporting members on the next lower level. Remove below-grade construction, including basements, foundation walls, and footings, completely and in their entirety. Demolish existing utilities and below-grade utility structures that are within 10 feet outside footprint of new construction, abandon utilities outside this area by cutting utilities flush with grade where acceptable by utility company and King County. Remove, haul and dispose of all hardscape, asphalt and concrete surface structures in their entirety within the site property boundary. Care shall be taken to note disturb any buildings or utilities outside the site property boundary.

After the removal of all asphalt and concrete surface structures, the future development parcels shall be prepared by grading to allow for stormwater drainage, scarification of subsoil, and tilling in compost amendment in the top horizon according to the post-construction soil quality and depth standards in the Seattle Stormwater Requirements Manual,

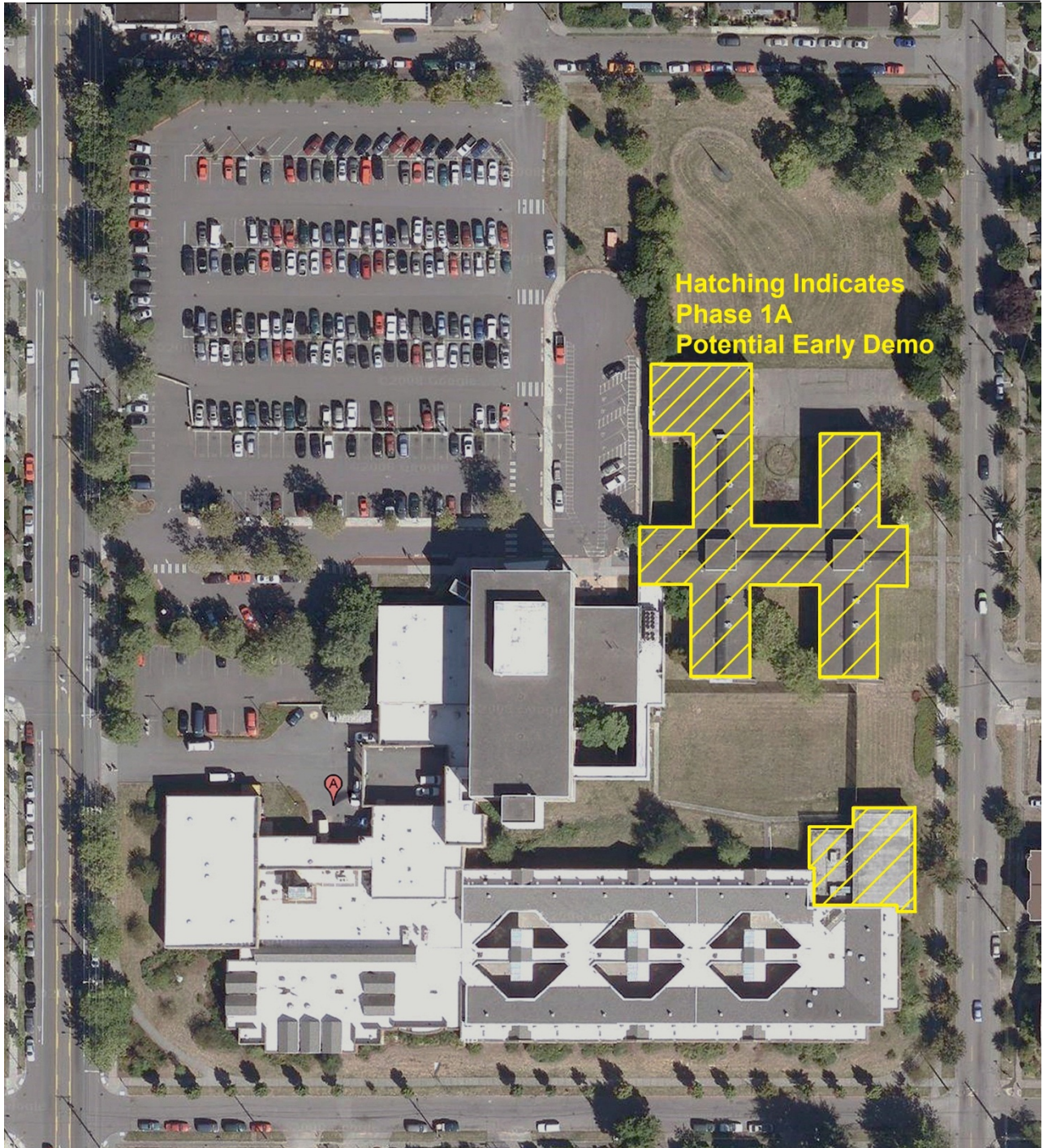
15 days prior to the start of the removal of existing structures in Phase 1A and/or Phase 1B, the Design Builder shall initiate a rat baiting program planned and executed under a qualified pest control agent. The program shall be consistent with the Seattle-King County Health Department guidelines and recommendations for rat baiting. The use of pesticides shall fully comply with WAC 162-28-1380. The duration of the baiting program shall be fifteen days, however the program may be reinstated upon discovery of additional rat activity.

b. Hazardous Materials

Multiple assessments of hazardous building materials and subsurface environmental conditions have been performed at the YSC site. Hazardous materials identified in site buildings have included but are not limited to asbestos, lead, mercury, and polychlorinated biphenyls (PCBs). Tetrachloroethylene and related substances have been identified in groundwater beneath the site, and petroleum hydrocarbons and other contaminants are present in soil at certain locations. Findings and observations were documented in various reports herein referred to as “Reference Documents”, copies of which are included in Part E of this RFP.

Special mention is made herein to the report “Removal Action Completion Report” (Herrera, 2012), which documents removal of PCB containing caulk from window frames at the Alder Tower in 2011 and 2012, and the associated abatement of effected building materials. While the County removed PCB containing caulk from the tower’s approximately 300 windows to the extent practicable, PCBs were detected and remain in the concrete adjacent to the window frames to an unknown depth. Test results from destructive concrete samples collected at five window jamb locations indicated PCBs at levels ranging from 700 parts per million (ppm) to 22,000 ppm in the concrete dust collected from 1/8” holes, and from 740 to 12,000 ppm in the concrete dust collected from 1/4 “ depth holes. PCB-containing concrete surrounding the Alder tower windows will need to be removed and disposed on in accordance with applicable sections of Title 40, Code of Federal Regulations, Parts 761 and 762.

c. Potential Phase 1A Building Removal



**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 3



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 3

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
PART A – REQUEST FOR PROPOSAL		
3.1	38	2.23 Insurance Requirements, D. Minimum Scope and Limits of Insurance, 1 (g) DELETE "...\$20,000,000..." and REPLACE with: "...\$15,000,000..."
3.2	81	Form D "Summary Description of Owner Requested Betterments", ADD : "General: All areas identified herein with the exception of 1.C. shall be completely finished, so that they may be used for their intended purpose, inclusive of all finishes and building systems." .
PART B – FACILITY PERFORMANCE STANDARDS		
3.3	42	Section 1 Architecture, b. Exterior Construction, Facility Performance Standards, Security Glazing, second paragraph, ADD : "Ballistic-resistant glazing as defined in Table B 1.1, must be provided at the main facility entry sufficient in extent to protect those queuing for security screening."
3.4	96	Section 2, b. On-Site Civil Engineering Requirements, Hazardous Materials During Construction, ADD new fourth and fifth paragraphs: "Soil containing detectable levels of perchloroethylene (and/or other listed hazardous wastes) is expected to be managed through a "Contained-In" determination issued by the Department of Ecology. The Design-Build entity shall be responsible for preparing and submitting a Contained-In Determination Request and obtaining such determination. It is further anticipated the soils to be handled through the Contained-In Determination will need to be pre-characterized in-situ prior to excavation so that effected soil may be directly placed into covered containers, as opposed to stockpiling for later testing. The Design-Build entity shall be responsible for all additional testing and characterization necessary for pre-characterization and to obtain the Contained-In Determination. Non-hazardous soils containing petroleum hydrocarbons may be treated or disposed at an appropriately permitted facility or managed in accordance with Department of Ecology's Guidance for Remediation of Petroleum Contaminated Sites, Chapter 12.0 Re-use of Petroleum Contaminated Soil (Ecology Publication Number 10-09-057)."

Ref.	Page or Drawing	Location and Description of Change
3.5	96	<p>Section 2, b. On-Site Civil Engineering Requirements, following Design/Installation of the Vapor Barrier paragraph, ADD new paragraph:</p> <p>“Foundation Drainage Plan</p> <p>Where structures extend below the water table, foundation drainage systems shall be incorporated in to the design to insure that the overall direction of ground water flow through the site is not changed from existing, and that groundwater contaminants are not transported laterally. Passive drainage systems are preferred where practicable. Foundation drainage plans shall be prepared and certified by a Professional Engineer Licensed in the State of Washington.”</p>
3.6	165	<p>Section 6 - Mechanical Engineering Systems, d. Building Control Systems (BCS), BCS Performance Criteria, Minimum General System Requirements, Energy Metering Data Collection and Energy Management, ADD new bullet:</p> <p>"Provide an independent water and energy consumption metering system for the Transitional Housing units, which can be found in the Facility Performance Standards, Chapter 4, Building and site Organization, Figure 4-1, Ground Level, pg 4-10".</p>
3.7	178	<p>Section 7 - Electrical Engineering Systems, b. Electrical Power Performance Criteria, Emergency and Standby Power, Minimum Service, C. Optional Standby, ADD new bullets:</p> <ul style="list-style-type: none"> • Ventilation systems and all other functions and systems required by local code and AHJ for such facility. • DAJD Juvenile Division Director office "Detention Facility Program Space 1.301" in the detention facility program. • Conference Rooms/Crisis Center "Detention Facility Program Space 1.302" in the detention facility program.”
3.8	179	<p>Section 7 - Electrical Engineering Systems, b. Electrical Power Performance Criteria, Emergency and Standby Power, Generator Set, ADD new second paragraph:</p> <p>"The generator set and life safety system design shall comply with the latest edition of NFPA and shall be reviewed, approved and certified by FM Global that such system will perform as expected and support property loss prevention."</p>
3.9	202	<p>Section 9 Information Technology, b Cable Infrastructure Specifications and Guidelines, Distribution Frames and Spaces DELETE the last paragraph and REPLACE with:</p> <p>"These spaces shall be dedicated only to those systems which they serve. Electrical panels may be located within these rooms provided all circuits are dedicated to the IDF/MDF they are located in. HVAC ductwork, and or other systems shall not be located within these rooms unless they are dedicated to the room."</p>

Ref.	Page or Drawing	Location and Description of Change
3.10	206	Section 9 Information Technology, b Cable Infrastructure Specifications and Guidelines, Intermediate Distribution Frame (IDF) DELETE "There shall be no electrical distribution equipment located in any IDF." and REPLACE with: "Electrical distribution equipment located in any IDF shall serve only the equipment in the IDF that it is located in."
3.11	249 Addendum 2, Ref. 2.8	Section 12, Removal of Existing Structures, a. General, first paragraph ADD new third sentence: "If the existing adult vehicle sally is removed early in Phase 1A, the County will combine the functions of the adult vehicle sally with the existing juvenile vehicle sally operations."
3.12	249 Addendum 2, Ref. 2.8	Section 12, Removal of Existing Structures, a. General, DELETE the third paragraph and REPLACE with: "After the removal of all asphalt and concrete surface structures, the future development parcels shall be prepared by grading to allow for storm water drainage, scarification of subsoil, and tilling in compost amendment in the top horizon according to the post-construction soil quality and depth standards in the Seattle Storm water Requirements Manual, 4.4.1. Those areas shall then be hydro-seeded."
3.13	251 Addendum 2 Ref. 2.8	Section 12, Removal of Existing Structures, DELETE c. Potential Phase 1A Building Removal and REPLACE with revised Potential Phase 1A Building Removal, page 251. See attached.
		PART C – FACILITY PROGRAM
3.14	2-47	3.200 Dependency Court, third paragraph, ADD new third sentence: "The Dependency Coordinators' public check-in counter and workspace should have a direct connection to the secure judicial corridor."
3.15	2-47	3.200 Dependency Court , third paragraph, ADD new final sentence: "The Family Court Director and Operations Manager workspace should be located off of the secure judicial corridor with no public access."
3.16	2-95	13.200 Central Juvenile Holding, second paragraph, first sentence, DELETE "...with access to an exterior vehicle sally port:..." and REPLACE with: "...to the courts waiting area; ..."
3.17	2-96	13.200 Central Juvenile Holding, Adjacency, DELETE the first sentence on this page and REPLACE with: "Central Juvenile Holding must be located on the same level as secure detention floor, the Chief Juvenile Court and the Becca/Juvenile Drug Courtroom."

Ref.	Page or Drawing	Location and Description of Change
3.18	3-16	Space Program, Section 1.000 Facility Administration, Adjacency, top of Page 3-16, above Figure 3-1, ADD new paragraph: "In addition to the detention lobby and visitation adjacencies, admission/release shall be located so that admission/release staff can provide supervision of visitation, and staff the window to the detention lobby"
3.19	3-49	Detention Program, Table 3-7 Continued ADD the following footnote: "If located on an upper tier, the toilet is optional for space 5.207 Shower/Dressing /Toilet."
3.20	3-50	Detention Program, Table 3-7 Continued ADD the following footnote: "If located on an upper tier, the toilet is optional for space 5.307 Shower/Dressing /Toilet."
3.21	4-2	Building Organizational Concepts, Item 7 ADD new fourth bullet: "Juvenile Probation should be co-located with the Partnership for Youth Justice, Juvenile Justice Assessment Team and DJA's Step-Up program. If the adjacency requirements cannot be met, the following elements, listed in order of priority, may be moved to the second floor with the County's approval: <ol style="list-style-type: none">1. Partnership for Youth Justice2. Probation, Records3. Probation, Community Programs If any, or all, of the program elements are moved to the second floor they must be accessed by a shared reception space on the second floor. Direct access for staff between the two Probation spaces is desirable."
3.22	4-5 Addendum 1 Ref 1.20	Site Circulation Concepts, 7th bullet, DELETE the last sentence and REPLACE with: "If a separate Juvenile Vehicle Sally Port and separate Adult Vehicle Sally port are provided, the Juvenile Sally port must be sized to allow for 4 parking stalls 9'-0" wide by 18' long, and the Adult Vehicle Sally port must be sized for 2 parking stalls 9'-0" wide by 18' long. If the two sally ports are combined into one sally port then it must be sized to provide parking for 6 vehicles stalls 9'-0" wide by 18' long. Any configuration of the vehicle sallies shall include adequate space for vehicles to easily maneuver in and out of the vehicle sally."
		Part H - Division 1 General Requirements
3.23	01 45 00 - 4	Section 01 45 00, paragraph 1.4.2: DELETE "...a minimum of ten (10) years experience..." and REPLACE with: "...a minimum of three (3) years experience..."

Ref.	Page or Drawing	Location and Description of Change
3.24	01 50 00 - 4	<p>1.10.3 ADD the following sentence:</p> <p>“Groundwater in areas of the site has been found to contain perchloroethylene. See Part H Section 01 88 25 and Part B Section 2 for further information.”</p>
3.25	01 74 19 - 1	<p>1.1.1 ADD the following sentence:</p> <p>“See Section 01 88 25 for hazardous materials and wastes.”</p>
3.26	01 88 25 - 2	<p>ADD new paragraphs:</p> <p>“1.1.5 <u>Soil and Groundwater Contamination.</u></p> <p>The project site has underlying contamination of shallow groundwater by Perchloroethylene (PCE) at concentrations that exceed Department of Ecology (“Ecology”) cleanup levels and forms a plume in groundwater that traverses the project site. The CFJC project will be built atop and possible penetrate into the plume. The source of the PCE contamination to groundwater is thought to be one or more a former dry cleaners located north of the project site. Cleanup of the source of contamination will not be undertaken by King County as that is the responsibility of others. The currently uncontrolled contaminant conditions will pose a risk of vapor intrusion into the planned CFJC structure. In addition to groundwater contamination from PCE, site soils within the general footprint of the planned CFJC contain low level detections of certain contaminants, including lead, heavy oil range hydrocarbons, and PCE. Testing to date has shown that none of these soil contaminants are at levels that exceed Ecology cleanup levels but which may render the soil unsuitable for disposal as clean backfill in certain cases.</p> <p>A full description of site contaminant conditions is described in the Phase 2 report by Herrera Environmental Consultants (see Part E). General groundwater and soil conditions are described in the report by Icicle Creek Engineers. (see Part E).</p> <p>1.1.6 <u>Hazardous Materials During Construction</u></p> <p>Groundwater that is temporarily pumped from the excavation or otherwise handled to facilitate construction shall be carbon-filtered or otherwise treated to remove contamination. Treated groundwater shall meet the limits specified in a sanitary sewer temporary discharge authorization.</p> <p>Site workers reasonably expected to encounter and manage contaminated materials will need to be appropriately trained for working with hazardous materials. A hazardous materials health and safety plan shall be developed by the design-build contractor and/or applicable subcontractors.</p> <p>The Design Build entity shall profile for disposal all soil to be exported. Per Division 1 Specification 01 88 25, King County shall review the proposed disposal location and/or facility for all exported soil. A Soil Management Plan shall be prepared identifying the expected volumes of soil to be exported and the testing regime of that soil, and disposal approval authorizations.</p> <p>Soil containing detectable levels of perchloroethylene (and/or other listed</p>

Ref.	Page or Drawing	Location and Description of Change
		<p>hazardous wastes) is expected to be managed through a "Contained-In" determination issued by the Department of Ecology. The Design-Build entity shall be responsible for preparing and submitting a Contained-In Determination Request and obtaining such determination. It is further anticipated the soils to be handled through the Contained-In Determination will need to be pre-characterized in-situ prior to excavation so that effected soil may be directly placed into covered containers, as opposed to stockpiling for later testing. The Design-Build entity shall be responsible for all additional testing and characterization necessary for pre-characterization and to obtain the Contained-In Determination.</p> <p>Non-hazardous soils containing petroleum hydrocarbons may be treated or disposed at an appropriately permitted facility or managed in accordance with Department of Ecology's Guidance for Remediation of Petroleum Contaminated Sites, Chapter 12.0 Re-use of Petroleum Contaminated Soil (Ecology Publication Number 10-09-057).</p>
3.27	01 88 25 - 3	<p>1.3.1.2 ADD the following sentence:</p> <p>"Included within the Hazardous Materials Work Plan or as a separate submittal, the Design-Builder shall submit a Soils Management Plan that identifies the expected volumes and categories of soil to be exported, the testing regime for characterizing soils, and disposal approval authorizations."</p>
		<p>QUESTIONS AND RESPONSES</p> <p>King County provides the following questions and responses as clarifications of the referenced Request For Proposal provisions.</p>
3.28		<p>Q: Is bullet resistant glazing required at the main facility entry?</p> <p>R: See Ref 3.3 above.</p>
3.29		<p>Q: What is the location of check in for dependency and director work space?</p> <p>R: See Ref 3.14 and 3.15 above.</p>
3.30		<p>Q: How to leave phase 2 spaces, finished or not?</p> <p>R: See Ref 3.2 above.</p>
3.31		<p>Q: What are the toilet/shower locations in detention living halls?</p> <p>R: See Ref 3.19 above.</p>
3.32		<p>Q: What is the adjacency for visitation and admissions release?</p> <p>R: See Ref 3.18 above.</p>

Ref.	Page or Drawing	Location and Description of Change
3.33		<p>Q: How do ASD clients access the building after hours, weekends, and holidays?</p> <p>R: DAJD's Alternatives to Secure Detention (ASD) operates on weekends and holidays and as late as 6:00 PM on weekdays.</p> <p>The operation on weekends and holidays consists of:</p> <ul style="list-style-type: none"> • Day Reporting Programs (classroom setting) for 10 to 20 youth; • Work Crews, for 10 to 20 youth; and • ASD staff person meeting with individual youth and parents. <p>Accommodation of the operation in the new CFJC will be much the same as it is now, and requires continuation of weekend / holiday screening at the entrance lobby.</p> <p>Day reporting youth will enter the entrance lobby, be screened, and wait for ASD staff in the lobby. At the designated time ASD staff will come to the lobby and escort the youth to either: the Small Conference room (space 1.324 in the Facility Program) or the Conference /Training room (space 1.324 in the Facility Program) for the Program session. Both of the above named spaces are within or immediately adjacent to the ASD suite of offices. At the end of the Program session the ASD Staff will escort the youth back to the lobby.</p> <p>Access to and from the lobby will always be by ASD staff escort.</p> <p>Work Crew youth will also enter the entrance lobby, be screened, and wait for ASD staff. At the designated time ASD staff come to the lobby and direct the Work Crew youth outside to vans for transport to offsite work areas.</p> <p>During inclement weather when outside work is deemed un-tenable, ASD staff will come to the lobby and escort the youth to either the Small Conference room (space 1.324 in the Facility Program) or the Conference /Training room (space 1.324 in the Facility Program) where the youth will be engaged in 'office' type work. At the end of the work session ASD Staff will escort the youth back to the lobby.</p> <p>Youth and or parents coming to the facility to meet with ASD staff will enter the entrance lobby, be screened, and proceed to the detention lobby. Once in the Detention lobby they will notify Detention staff within the Detention lobby of their appointment with ASD staff. The Detention staff will call the ASD staff who will then go to the Detention lobby and escort the youth and or parents to the ASD office suite for their meeting. At the end of the meeting ASD staff will escort the individuals back to the lobby.</p>
3.34		<p>Q: Location of Adult sally port during construction?</p> <p>R: The youth vehicle sally port may be utilized for adult transportations during construction. See Ref 3.11 above.</p>
3.35		<p>Q: Can control of the access gate going under the courthouse be shared for service deliveries and the sally-port (shared control by FMD/DAJD)?</p> <p>R: No. See Facility Performance Standards p. 42 and Facility Program p. 4-5.</p>

Ref.	Page or Drawing	Location and Description of Change
3.36		<p>Q: How many parking spaces are required if the proposal includes a shared juvenile/adult sally-port?</p> <p>R: See Ref 3.21 above.</p>
3.37		<p>Q: Identify which Probation elements, if any, may be moved to the second floor.</p> <p>R: See Ref 3.20 above.</p>
3.38		<p>Q: Who should control the access doors into court holding areas?</p> <p>R: The doors into the court holding area shall be controlled by the detention security electronics system, and include cameras and intercoms to request entry and exit.</p>
3.39		<p>Q: Clarify the attorney visitation to central holding. Access from the lobby? Or through a secure corridor?</p> <p>R: Access from the court waiting area/lobby. See Ref 3.16 above.</p>
3.40		<p>Q: Is it acceptable to have central holding on the main floor and all other detention functions on the lower level?</p> <p>R: No. See Ref 3.17 above.</p>
3.41		<p>Q: In the typical hall: one shower up, one shower down? Or both showers down?</p> <p>R: Either configuration is acceptable.</p>
3.42		<p>Q: Is locating the sally-port, service access areas on the north side of the facility acceptable?</p> <p>R: It is acceptable as long as the adjacencies noted in the Facility Program are maintained and future development lots and the open area space are not impacted.</p>
3.43		<p>Q: Can the service and judicial entry be located on 12th Ave?</p> <p>R: See Addendum 2, and please review Seattle Land Use codes regarding driveways in pedestrians overlay zones.</p>
3.44		<p>Q: Can the Northwest property, designated for future development, be reduced in size at this time without creating major delays?</p> <p>R: No</p>
3.45		<p>Q: Is future detention expansion to the North an acceptable option?</p> <p>R: Yes</p>

Ref.	Page or Drawing	Location and Description of Change
3.46		<p>Q: Have amendments to Title 23 been approved yet?</p> <p>R: The draft Text Amendment has been completed by the City of Seattle's Dept. of Planning and Development. Transmittal of the legislation is pending.</p>
3.47		<p>Q: Does the County really want to spend GMP budget to provide \$20 million worth of Professional Liability Insurance? Seems unwarranted and excessive.</p> <p>R: See Ref 3.1 above.</p>
3.48		<p>Q: Has the SEPA Notice of Action, anticipated in January, happened yet?</p> <p>R: The SEPA Notice of Action was issued on Jan 8th. The appeal period ended on Feb 5th. No appeals were filed. The SEPA process has been completed.</p>
3.49		<p>Q: In Section 9 part B there is a requirement that no electrical distribution equipment is located with-in any IDF. Does this include panel boards that only serve IDF rack loads? Ideally there would be an electrical panel in each IDF to serve only the IDF loads.</p> <p>R: It is acceptable to have an electrical panel within an IDF or MDF, however it will serve only the IDF or MDF in which it is located. See Ref 3.9 and 3.10 above.</p>
3.50		<p>Q: What environmental actions (site investigation, communications, legal advice) have occurred since Herrera produced their Nov 25, 2013 Phase II ESA report?</p> <p>R: None.</p>
3.51		<p>Q: Has the County entered into any conversations with Washington State Department of Ecology? If so, what has been the context of those conversations? And does the County have an identified project manager at Ecology? If so, who is that?</p> <p>R: Yes. The County has reported releases at the site to the Department of Ecology ("Ecology") over the years as they have occurred. These have included but are not limited to PCBs from window caulk, a leak of elevator hydraulic fluid, and most recently the discovery of tetrachloroethylene in groundwater from an offsite source to the north. With respect to the elevator hydraulic leak, Ecology has concurred with the County's plan to remove affected soil at the time the Alder tower is demolished. Concerning tetrachloroethylene in groundwater, Ecology has reviewed the Herrera report and concurred with the County's approach not to conduct a site cleanup since it is not responsible for the release. Ecology has also concurred with the County's intent to proceed with the CFJC project by 1) lawfully handling affected media (soil, groundwater) as needed to accommodate construction, 2) insure workers are protected during construction, and 3) incorporate protective systems into the design of new structures to prevent migration of subsurface vapors into interior building spaces. Ecology has also stated that this may be a situation where they may need to investigate and identify the source of the PCE. Donna Musa has been the County's contact at Ecology.</p>

Ref.	Page or Drawing	Location and Description of Change
3.52		<p>Q: Has the County entered the site into Ecology's Voluntary Cleanup Program or considered establishing a more formal agreement with Ecology (such as an Agreed Order)? Or is the County taking an Independent Action route where the County will present site investigation reports and interim cleanup action reports to Ecology after the site is redeveloped?</p> <p>R: No - see above. Since the County is not undertaking a site cleanup, there appears to be no reason to enter a cleanup program or agreement with Ecology. Ecology has concurred with this conclusion.</p>
3.53		<p>Q: Related to the source of the upgradient, off-property source(s) of contamination, has the County considered legal action or sought cost recovery against the source property owners, or their insurers? Would the County be open to this approach as a strategy developed by the design-build team?</p> <p>R: The County is aware it could pursue legal action and/or recover costs from one or more Potentially Liable Parties if they were identified, and reserves the right to do so. However, the County does not have funding to identify the liable party(s) at this time. The County would be interested in hearing the design-build team's thoughts on this matter.</p>
3.54		<p>Q: Has the County considered how they will manage long term environmental liability related to the groundwater plume that will continue to migrate onto their property from off-property sources? What is the current environmental strategy?</p> <p>R: As stated above, the County does not consider itself liable for the groundwater plume as it originated from an upgradient offsite source. The current goal and strategy is to develop the CFJC project in a manner that 1) complies with applicable laws and rules concerning waste handling and worker safety, and 2) protects building occupants from subsurface vapors.</p>
3.55		<p>Q: Our analysis indicates that LEEDv4 Gold is likely equivalent to LEED Platinum under the 2009 version. Given the pending requirement for LEED Platinum in the revised Green Building Ordinance, is there interest or preference for LEED 2009 Platinum vs. LEEDv4 Gold?</p> <p>R: .No, See Part A, Section 3 - Sustainable Design, c. LEED Certification, pg 6, for defined input to the design team for LEED design and certification requirements.</p>
3.56		<p>Q: temporary load bank vs permanent?</p> <p>R: See Part B, Section 7 - Electrical Engineering Systems, b. Electrical Power Performance Criteria, Generator Set, pg 179, for defined input for the design team to options for temporary versus permanent load bank requirements. The County will consider the most cost effective approach for such criteria.</p>

Ref.	Page or Drawing	Location and Description of Change
3.57		<p>Q: What is the extent of sub metering?</p> <p>R: It is the County understanding from the latest edition of the Seattle Current drafted local code mandates that buildings with a gross conditioned floor area over 20,000 sq.ft shall be equipped with meters to measure, monitor, record and display energy consumption data for each energy source. If tenant spaces within buildings has its own sub-metering to measure, monitor, record and display energy consumption data for each energy source, then metering at main building may not be required. However, the above information will still need to be verified by the DB team with the local code and AHJ. The County also encourages the DB team to entertain other type of metering devices that measures building/tenant load demand (flow meters, BTU meters, thermal mass meters, etc.) that can give flexibility for measuring energy consumption. Such devices can be found at Onicon Inc. or approved equal.</p>
3.58		<p>Q: Ceiling radiant panels approach inquiry?</p> <p>R: The County does not favor the use of ceiling radiant panels for the following reasons and concerns:</p> <ol style="list-style-type: none"> 1. The radiant operate on a line-of-sight basis, therefore, tenants may be most comfortable if they're close to the panel. 2. Tenants may be uncomfortable as ceiling radiant panels may heat the top of their heads and shoulders more effectively than the rest of their bodies. 3. Leakage is a big concern especially when tubing is embedded to hard-lid ceiling. 4. Space humidity control using this system. 5. Flexibility for potential tenant improvement projects in areas using the ceiling radiant panel system. 6. Condensation and how is it captured and drained using the ceiling radiant panel system. 7. Service and replacement parts. <p>However, the County may consider perimeter only radiant heating system.</p>
3.59		<p>Q: The 24/7 chiller, has a 50 ton load. Can this be part of the central utility plant?</p> <p>R: The County encourages the DB team to consider a realistic load profile to all spaces at maximum/minimum design capacity, and provide a system with flexibility to control the space(s) comfort level without compromising the central utility plant system performance and efficiency when minimum design capacity demand is required. If the 24/7 chiller becomes part of the central utility plant, the central utility plant will need to accommodate effectively and efficiently the part load and minimum design capacity for low population demands.</p>
3.60		<p>Q: Clarify what functions must be supported by the detention generator beyond heat and hot water?</p> <p>R: See Part B, Section 7 - Electrical Engineering Systems, b. Electrical Power Performance Criteria, Emergency and Standby Power, Minimum Service, C. Optional Standby, pg 178, for defined input to the design team for functions that must be supported by the detention generator beyond heat and hot water.</p>

Ref.	Page or Drawing	Location and Description of Change
3.61		<p>Q: Clarity on what is needed if power or fuel is unavailable, ventilation and heating? Should dual fuel backup be from diesel tank?</p> <p>R: See Part B, Section 7 - Electrical Engineering Systems, b. Electrical Power Performance Criteria, Emergency and Standby Power, pg 177, for defined input to the design team for electrical loads requiring power in the event of power and fuel are unavailable. And</p> <p>See Part B, Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Fuel Piping and Fuel Storage, pg 132, AND Part B, Section 7 - Electrical Engineering Systems, b. Electrical Power Performance Criteria, Generator Set, pg 179 for defined input to the design team for fuel tank requirements.</p>
3.62		<p>Q: What is the Redundancy required related to "heating" and "hot water"?</p> <p>R: See Part B, Section 6 - Mechanical Engineering Systems, a. Introduction and General Objectives of the Mechanical Standard, Redundancy and Standby Capacity, pg 122, for defined input to the design team for redundancy required related to "heating" and "hot water".</p>
3.63		<p>Q: Toilet - pressure? Rain water flushers?</p> <p>R: See Part B, Section 6 - Mechanical Engineering Systems, b. Plumbing Systems Plumbing Fixtures Non-Detention, pg 131, for defined input to the design team for water closet minimum pressure for flush valve fixtures.</p> <p>A: See Part B, Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Rainwater Drainage, Collection, and Treatment, pg 128, for defined input to the design team for rain water flushers.</p>

Attached To This Addendum:

- Section 12, revised page 251.

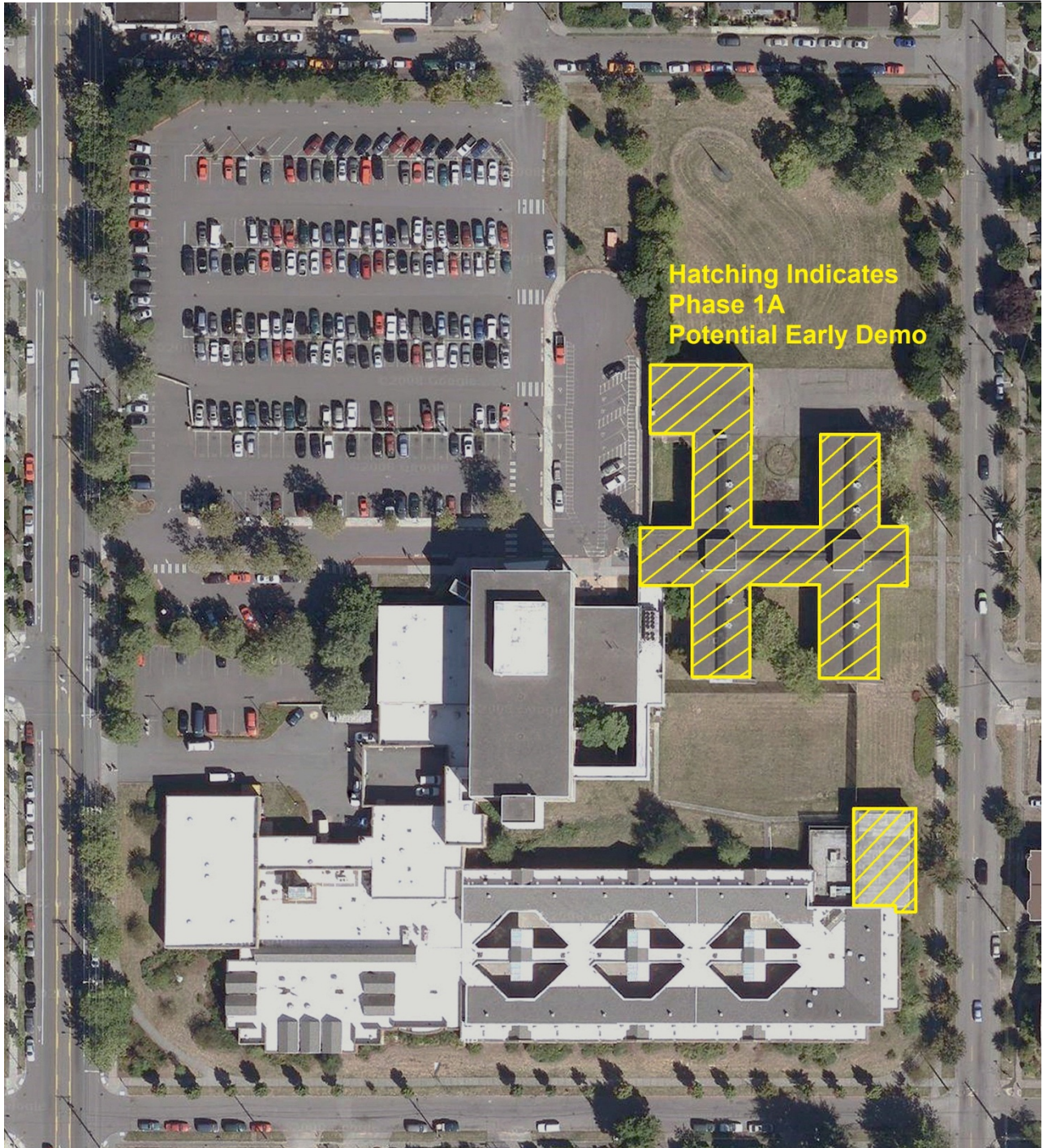
This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: February 27, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

c. Potential Phase 1A Building Removal



**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 4



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 4

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART B – FACILITY PERFORMANCE STANDARDS
4.1	98	Section 2, Civil and Environmental Engineering, Fire Apparatus Access and Fire Hydrant Coverage, DELETE the second paragraph and REPLACE with: "Where fire apparatus access roads are not comingled with other vehicular paving, permeable grass pavements systems shall be implemented if acceptable to the City of Seattle Fire Department and other AHJ; such pavements shall have the capability to support the design vehicle."
4.2	107	Section 3 Landscape Architecture, c. Landscape and Hardscape Requirements, fifth paragraph DELETE "Landscaping shall not provide places for people to hide contraband (weapons, drugs, etc.)." and REPLACE with: "Landscaping shall inhibit and deter the ability of person's utilizing the site to hide contraband (weapons, drugs, etc.)."
4.3	166	Section 7 Electrical Engineering System, a. Introduction and General Objectives of the Electrical Standard first paragraph, DELETE the second sentence and REPLACE with: "The project shall provide sub metering of the electrical services into the Detention Facility, into the Courthouse, and into the Parking Garage."
4.4	166	Section 7 Electrical Engineering System, a. Introduction and General Objectives of the Electrical Standard, Sustainability, ADD new paragraph at end: "The Design Build entity shall include vehicle charging stations for 2% of the 440 parking stalls being constructed in Phase 1A and Phase 1B. Charging stations shall be 208V/240V, dual port type with credit card charging capability. Location of the charging stations shall be determined in the Design Development phase."
4.5	175	Section 7 Electrical Engineering System, b. Electrical Power Performance Criteria, seventh bullet, DELETE first sub bullet, and REPLACE with: "It is anticipated that the one utility transformer location shall serve all three portions of the project: the Courthouse, the Detention Facility, and the Parking Garage. Each shall have its' own electrical distribution system, being served from the common electrical utility service with a sub metering system that allows the County to obtain the utility costs for each of the three components noted above. Sub metering shall include programming of automatically generated reports to the Building Management System documenting electrical usage of the 3 components."

Ref.	Page or Drawing	Location and Description of Change
4.6	177	<p>Section 7 Electrical Engineering System, b. Electrical Power Performance Criteria, Grounding, ADD a new second bullet:</p> <p>"Provide an insulated equipment grounding conductor in all feeders and branch circuit wiring raceways and cables."</p>
4.7	196	<p>Section 8 – Energy and Sustainability Life Cycle Analysis, Minimum Energy Reduction Target, DELETE the existing paragraph and REPLACE with:</p> <p>"King County Statutes require that the project be designed to achieve energy savings of twenty (20%) over Seattle Energy Codes in effect at the time of building permits are submitted to AHJs. The County believes this requirement will be exceeded when LEED EAc2, Improve energy for new building by 26% under LEED v4. If this is not the case the Design Builder's design shall conform to the statute that requires energy savings of twenty (20%) over Seattle Energy Codes in effect at the time of project permitting, while also achieving the cited LEED credit."</p>
4.8	203	<p>Section 9 Information Technology/Unified Communications Systems, b. Cable Infrastructure Specifications and Guidelines, Building Entrance Facility (BEF), DELETE the third sentence, and REPLACE with the following sentence:</p> <p>"The three ground level BEFs may be located within the MDF to enable efficiencies in space, energy, security and other building services, or they may be located in a separate room(s)."</p>
4.9	206	<p>Section 9 Information Technology/Unified Communications Systems, b. Cable Infrastructure Specifications and Guidelines, Physical Space Considerations, ADD the following to the end of the first paragraph:</p> <p>"If BEFs are located in the MDF, additional square feet as necessary to accommodate the 3 racks, for each of the BEFs located in the MDF, shall be added to the square footage noted above. The additional square footage shall include clearance space required for BEF racks."</p>
4.10	213	<p>Section 9 Information Technology/Unified Communications Systems, b. Cable Infrastructure Specifications and Guidelines, Power and Uninterruptable Power Supply (UPS) Systems, heading, DELETE the second bullet, and REPLACE with:</p> <p>"All circuits located for racks and equipment shall be dedicated."</p>
4.11	222	<p>Section 9 Information Technology/Unified Communication Systems, b. Cable Infrastructure Specifications and Guidelines, AV Systems – Courtrooms, General last paragraph DELETE the first sentence and REPLACE with:</p> <p>"A networked digital recorder shall capture the audio and future video from the microphone and camera system and digitally archive the recording."</p>

Ref.	Page or Drawing	Location and Description of Change
4.12	223	<p>Section 9 Information Technology/Unified Communication Systems, b. Cable Infrastructure Specifications and Guidelines, AV Systems - Sound Reinforcement Systems, ADD a new second paragraph:</p> <p>"Assisted Listening System Assisted Listening Systems are provided to allow visitors and staff with limited hearing to be able to hear proceedings and announcements more clearly throughout the rooms specified in Table B9.2. Systems provided may be either wireless systems or concealed loop systems within the rooms. Systems shall interact with personal hearing aid devices by visitors and staff. Additional provisions for visitors without hearing aids shall be included as options for the Owner."</p>
4.13	229	<p>Section 10 - Electronics Safety and Security Systems, b. Electronic Court Control System (non Detention), DELETE the eighth bullet "Managed Switches/Routers; Dell Power Connect." and REPLACE with:</p> <p>"Managed Switches/Routers; AVAYA".</p>
4.14	232	<p>Section 10 - Electronics Safety and Security Systems, b. Electronic Court Control System (non Detention), Non Detention Closed Circuit Television Surveillance Systems (CCTV), General, first paragraph ADD the following sentence:</p> <p>"All video, inclusive of video cameras, shall be Internet Protocol (IP) [1080p] except as noted elsewhere or as required to achieve the necessary resolution."</p>
		<p>PART C – FACILITY PROGRAM</p>
4.15	3-27	<p>Chapter 3, 2.00 Operations, Adjacencies, first paragraph, DELETE the second sentence, and REPLACE with:</p> <p>"Figure 3-7 illustrates the relationships of the Staff Support spaces, and that these areas are to be accessed from a Secure Detention Corridor."</p>
4.16	3-27	<p>Figure 3-7, DELETE the words, "CIRCULATION CORRIDOR", and REPLACE with:</p> <p>"SECURE DETENTION CORRIDOR"</p>
4.17	3-51	<p>Chapter 3, Table 3-7 Continued, ADD new a footnote</p> <p>"Depending on the layout of transitional units, a pod station similar to 5.316 may be required".</p>
4.18	4-3	<p>Building Organizational Concepts, Item 10, DELETE the last sentence and REPLACE with:</p> <p>"Staff support areas for courts staff (lockers and workout rooms) may be located on the mezzanine level for use by staff, however they must go through the building entry screening prior to gaining access to these areas. Staff support areas for Detention staff (lockers and workout rooms) must be located within the secure detention perimeter."</p>

Ref.	Page or Drawing	Location and Description of Change
4.19	4-6	<p>Building and Site Organization, Parking, DELETE "The site/parking garages will also need to be designed to add an additional 195 stalls (the ratio of staff to public parking shall remain the same) in the future to accommodate the Phase 2 program." and REPLACE with:</p> <p>"The site/parking garages will also need to be designed to add an additional 160 stalls (the ratio of staff to public parking shall remain the same) in the future to accommodate the Phase 2 program."</p>
		Part H - Division 1 General Requirements
4.20	01 18 12 first page	<p>Section 01 81 12, ENERGY PERFORMANCE MODELING AND VERIFICATION REQUIREMENTS, 1.2 General Modeling Guidelines, 1.3.1.3 ADD the following new sub section:</p> <p>"a. The Design Build entity shall be able to illustrate both 1.3.1.2 and 1.3.1.3 can be achieved. This should include the methodology of calculating energy performance that clearly explains to King County how each requirement is met. It is the responsibility of the Design Build Team to conduct the necessary work that is required to achieve the targets above the Seattle Energy Code (SEC) and LEED certification documentation."</p>
4.21	01 81 13 - 3	<p>Section 01 81 13, 1.5 SUSTAINABLE DESIGN - LEED-NC BUILDING RATING REQUIREMENTS, 1.5.2 Required Credits, DELETE line 1.5.2.4, and REPLACE with:</p> <p>"1.5.2.4 Material and Resources Credit 5, option1, path 2, Construction and Demolition Waste Management - divert 85% and four material streams.</p>
		<p>QUESTIONS AND RESPONSES</p> <p>King County provides the following questions and responses as clarifications of the referenced Request For Proposal provisions.</p>
4.22		<p>Q: Can the Parking stall count be reduced in Phase 2 so that total parking stalls for phase 1 and phase 2 is reduced to 600?</p> <p>R: A: yes. See Ref 4.19 above.</p>
4.23		<p>Q: Is the staff locker room located before the screening stations?</p> <p>R: The County requires the Wellness / Exercise Room(s) and associated locker rooms to be located after screening. Furthermore DAJD requires that their Wellness / Exercise Room and associated locker rooms be located within the detention secure perimeter, though they do not have to be on the main detention floor. See Refs 4.15, 4.16 & 4.18 above.</p>
4.24		<p>Q: Is a hallway slope of 4% from West to East, is this acceptable?</p> <p>R: No. The detention areas, and or corridors (hallways) within detention areas, shall have no slope, except as required for floor drains.</p>

Ref.	Page or Drawing	Location and Description of Change
4.25		<p>Q: What is the number of staff stations for 'neighborhoods' 3 shown now? Space 5.216.</p> <p>R: See Ref 4.17 above.</p>
4.26		<p>Q: What Community Outreach has been done to date and how has the community reacted to it?</p> <p>R: There has been extensive public outreach please see the website for more information. http://kingcounty.gov/operations/FacilitiesManagement/currentProjects/CFJCPproposal.aspx</p>
4.27		<p>Q: The RFP talks about 3 separate services (1 for the court house, 1 for the detention facility and 1 for the garage). Is it acceptable to serve the garage off the court house service?</p> <p>R: The intent of the RFP is to have all three occupancies separately metered so the County can assign ongoing utility costs to the occupancies. This may be achieved by one common electrical utility service serving the three occupancies, each occupancy having its own electrical distribution system, with a sub metering system to allow the County to obtain the utility costs noted above. Note that if this is the Proposers approach it should include programming that will automatically generate necessary reports to the Building Management System. See Ref 4.3 & 4.5 above.</p>
4.28		<p>Q: Our current design separates the Justice space electrical distribution from the Detention space electrical distribution which we feel will help with the different requirements of the two programs. In separating the systems we are proposing two separate generators, as the Justice space only needs to operate long enough for people to evacuate where the Detention space needs to be up 24-7 and for similar reasons we are planning on two separate UPS's as well. Alternatively we could provide one generator to serve both the Justice space and Detention space and do the same for the UPS system. Is there a preference whether to keep the Justice and Detention generator and UPS systems separate or merge them into one?</p> <p>R: The County prefers one generator to service the Courts, Detention and Parking Garage.</p>
4.29		<p>Q: The RFP request three ground level Building Entrance Facilities, we understand each of these to consist of a vault at the property line, (12) 4" conduits to an equipment space in the building and a three racks in a room to support vendor equipment. We also see that one of these rooms can be located in the MDF. Please confirm that each of the three diverse entrances require a separate set of racks and room</p> <p>R: The 3 diverse ground level entrances do not require a separate room; they do require a separate set of racks. All 3 of the diverse ground level entrances may terminate in the MDF. See Ref 4.8 & 4.9 above.</p>

Ref.	Page or Drawing	Location and Description of Change
4.30		<p>Q: (12)4" conduits from each vault at the property line to the associated Building Entrance Facility may be more than necessary to accommodate the current and future infrastructure requirements. If it is found to be feasible to provide a fewer number of conduits from each vault, while still accounting for future expansion, to the associated Building Entrance Facility would it be acceptable?</p> <p>R: At this time the (12) 4" conduits from each of the 3 property line vaults is the requirement. Any discussions to reduce this amount would occur after contract award.</p>
4.31		<p>Q: The RFP indicates for IT planning that the 90-meter (295-feet) + 10-meter (33-feet) rule may not apply. To account for the referenced patch-cord length, rise-and-fall of the cables from rack to jack, as well as the anticipated use of floor-boxes we are using a planning metric of 240-horizontal-feet for locating IDF Rooms. Please comment if this is too conservative a metric.</p> <p>R: The 90-Meter rule should be adequate in most (perhaps all) cases. The County is concerned that a shorter metric will result in an increase in the number of IDF's thereby increasing the project cost/complexity.</p>
4.32		<p>Q: The RFP requires all circuits located at the IT racks and equipment to be served from an isolated ground type system. Trends have been to use dedicated equipment grounds in lieu of isolated grounds for electronic equipment. Is it preferred to derive an isolated ground system (all boxes and raceways are still required by code to be part of the electrical grounding system) or to provide dedicated grounds in the conduits in addition to the grounded pathway</p> <p>R: The County prefers dedicated grounds in the conduits in addition to the grounded pathway. See Ref 4.6 & 4.10 above.</p>
4.33		<p>Q: Has the County appointed their independent Commissioning Authority (CxA) yet?</p> <p>R: No</p>
4.34		<p>Q: Has the owner produced the Owner's Project Criteria (OPCC) yet? Div 1, 019100-1.6.2.1 states Owner will develop this OPC document.</p> <p>R: No</p>
4.35		<p>Q: Div 1, 01 91 00 - 3.4.1 states Cx activities complete is a prerequisite for substantial completion. What level is the County expecting?</p> <p>R: As stated in paragraph 3.4.1, the main commissioning activities must be completed (system readiness checks, functional testing, training and delivery of the O&M manuals)</p>

Ref.	Page or Drawing	Location and Description of Change
4.36		<p>Q: Can the existing detention pipe located near E. Spruce Street remain in place to provide future flow control for the development of the surplus parcels? The RFP states that no improvements will be abandoned in place.</p> <p>R: No, at this time the requirements of Part B: Facility Performance Standards - page 97 first paragraph are in effect.</p>
4.37		<p>Q: The RFP (Facility Performance Standards, page 98) states that vehicular Portland cement concrete (PCC) paving “shall be 8-inches thick, reinforced with #4 bars 16-inches on center”. The pavement recommendations in the geotech reports do not address this. Can vehicular PCC be designed otherwise? Pervious concrete, in particular, should not contain steel and needs to be designed for the specific conditions.</p> <p>R: Correct, pervious pavement cannot have rebar. The vehicular PCC shall be per the Facility Performance Standards Section 2, page 98.</p>
4.38		<p>Q: The RFP (Facility Performance Standards, page 98) states “where fire apparatus access roads are not comingled with other vehicular paving, permeable grass pavements systems shall be implemented”. Does the County have an agreement with the Seattle Fire Department to allow grass pavement? We have not always found that they are receptive to the use of grass pavements.</p> <p>R: A: The County does not have an agreement with the Seattle Fire Department. See Ref 4.1 above.</p>
4.39		<p>Q: The RFP (Facility Performance Standards, page 99) allows LCPE pipe and PVC pipe, only. Will other pipe materials be allowed? PVC is discouraged because of LEED materials requirements and is not suitable in shallow cover situations.</p> <p>R: Pipe materials per City of Seattle Standards or as identified in RFP are the minimum standard. It is acceptable to recommend substitutions; however they must meet the minimum standard, and have the approval of the AHJ.</p>
4.40		<p>Q: The RFP (Facility Performance Standards page 9) specifies catch basins and manholes conforming to City of Seattle standards. These standards will be met for work in the right-of-way. Will catch basins and manholes conforming to WSDOT standards be acceptable on-site?</p> <p>R: This is a combined sewer outfall area and therefore all sewer appurtenances shall be per City of Seattle standards.</p>

Ref.	Page or Drawing	Location and Description of Change
4.41		<p>Q: What is the intent of the zero concealment requirements? Are there areas on the site where it is more or less important? How do trees fall into this requirement? What level of maintenance is acceptable?</p> <p>R: The intent is to minimize the use of the landscaping to hide contraband; however the County does not want to "...mark the site as a 'fortress'." See Part B Facility Performance Standards page 104.</p> <p>All areas of the site are equally important.</p> <p>Trees should be consistent with the concealment requirements listed in the RFP.</p> <p>The level of maintenance should be minimal (see page 108, first bullet).</p> <p>See Ref 4.2 above.</p>
4.42		<p>Q: Related to parking, what are the drivers behind the numbers of parking requested in relation to the published FTE numbers (~ 170 FTE vs. 440 spaces?) Would the County consider strategies to reduce parking to 300 – 320 spots to meet LEED requirements? In any case, is the County supportive of about 20 spaces set aside for low emitting vehicles, 8-10 of which have charging stations?</p> <p>R: The parking requirements for the project were established by traffic counts and surveys of building users for both staff and visitors. No reduction in parking of Phase 1B parking counts are contemplated at this point. The County is supportive of meeting the LEED requirements for low emitting vehicles/charging stations, however the numbers would be based on the phase 1B parking count. See Ref 4.4 above.</p>
4.43		<p>Q: Are there any programs or conservation/land trust activities within the County, or financial resources equivalent to at least \$0.40 per square foot for the total site area to earn the "protect and restore habitat credit"?</p> <p>R: The project team should not assume the credit is achievable through this scenario unless officially approved by the USGBC/GBCI. The County has inquired of the USGBC/GBCI if this is possible in light of King County's extensive land conversation program. Until then, if the project team seeks to claim this credit they should consider Option 1 – onsite restoration instead.</p>
4.44		<p>Q: Please confirm that the County is committed to hiring building and envelope commissioning authorities to meet the requirements of the Enhanced Commissioning credit. Also confirm that the County is interested and committed to the measurement and verification requirements of this credit if provided in the design.</p> <p>R: The County will hire an independent commissioning agent to support the enhanced commissioning requirements of LEED. See paragraph 3.14 in the draft Design Build contract and Section 8 of the Facility Performance Standards for measurement and verification requirements for this project.</p>

Ref.	Page or Drawing	Location and Description of Change
4.45		<p>Q: There is a LEED credit for designing and planning for Demand Response. Although Seattle City Light doesn't have a current Demand Response program, does the County want to plan for demand response so it can enroll if it becomes available?</p> <p>R: No, not at this time. This may be explored once more information is available.</p>
4.46		<p>Q: Given the priority for staff wellbeing, we would recommend testing air quality after the building is complete but before occupancy. Is this something the County wants to do?</p> <p>R: This would be acceptable to the County but is not a requirement</p>
4.47		<p>Q: The County already has a facility with rainwater collection for flushing toilets and has requested water reuse be considered for this project. If our D/B team finds an approach that stands the LCCA test, will the County accept the maintenance requirements of such a system?</p> <p>R: This would be acceptable to the County but must meet the requirements of the facility performance standards.</p>
4.48		<p>Q: In trying to address the request to avoid materials with certain ingredients listed in the RFP (such as PVC), we may suggest alternatives to materials specified elsewhere in the performance requirements. Is this acceptable to the County and should it be called out?</p> <p>R: Yes, it is acceptable to recommend substitutions. They shall be called out to the owner to confirm acceptance. Limiting use of materials such as PVC is encouraged and recommended where possible. See Part B Facility Performance Standards, Part A Section 3 - Sustainable Design, page 5 last sentence of the last paragraph.</p>
4.49		<p>Q: Assistive listening systems are required for ADA. Mentioned in AV matrix, but nowhere else. Required?</p> <p>R: Yes assistive listening systems are a requirement of the project. Minimum requirements are for an integrated concealed loop system within the courtrooms, but alternate systems such as headsets may be recommended to owner for acceptance. See Ref 4.12above.</p>

Ref.	Page or Drawing	Location and Description of Change
4.50		<p>Q: Does Addendum 1, Item 1.14, take precedence over Audio Visual systems in Part B, 9c? Part B still has cameras for videoconferencing, video recorders, and the other elements of the video court recording system. Do the sound systems remain, but video does not? Video conference and control? Need further clarification.</p> <p>R: The intent of Part B Facility Performance Standards, Part B Section 9 is to have video conferencing available in the courtrooms when the facility opens, however the video from the video conferencing system shall not be 'recorded' on the Official Court Recording system. Sound, from the video conferencing system may be recorded on the Official Court Recording system, or it may not depending on the subject of the video conference. For example a remote witness in a court proceeding who is 'video conferencing in' would have the audio portion recorded on the Official Court Recording System, but not the video.</p> <p>A video conference that is not a court proceeding would not have the audio or the video recorded on the Official Court Recording System.</p> <p>Note Part B Facility Performance Standards, Section 9 Page 217, 5th bullet that reads,</p> <p>"• Court Proceeding recording systems, currently audio potentially video in the future. Networked media distribution & digital signage systems."</p> <p>See Ref 4.11 above.</p>
4.51		<p>Q: Performance and Payment Bonds</p> <p>Currently the RFP contemplates one contract to cover both Phase 1A and 1B with the contract period from date of execution of the Agreement until Final Completion. Correspondingly, the bond costs will be tied to the length of the contract performance period. Bond costs are based not only on project cost but also duration of a project. Any project over 24 months will be charged a premium per month thereafter until complete. This bond length requirement leads to a significant amount of money not used for program needs. If the contract could be split into two parts, one for Phase 1A and another for Phase 1B, the bond cost savings could be in the range of \$600K-\$700K.</p> <p>The County may want to consider this issue to save money for the project</p> <p>R: No, single contract.</p>
4.52		<p>Q: Part B - Minimum Energy Reduction Target indicates to notify the County if the 20% savings over Seattle Energy Code (SEC) will not be met by a system 26% better than LEED v4 (ASHRAE 90.1-2010). Please confirm meeting the 26% better than LEED v4 is considered responsive as 20% over SEC may be closer to 28-31% better than LEED v4. Also, there is unquantifiable risk for potential changes between when proposal system decisions are made and time of permitting</p> <p>R: A: Meeting the required LEED credit (26% better than LEED v4) will not be considered responsive if the statute that requires new buildings exceed the SEC by 20% is not met. The County must adhere to all ordinances / statutes. See Ref 4.7 & 4.20 above.</p>

Ref.	Page or Drawing	Location and Description of Change
4.53		<p>Q: Dedicated Courts air-handler unit:</p> <p>The HCCO team proposes that each courtroom be provided with two thermostatic zones as required by the standard but that the requirement for a dedicated air handler is eliminated.</p> <ul style="list-style-type: none"> • The addition of between 10 and 12 dedicated air handlers will significantly increase first cost and ongoing maintenance costs. • The provision of temperature control zones as requested by the Performance Standards is reasonable and provides sufficient segregation of maintenance such that service to any court's zones will not affect the total system operation and need not require the shutdown of larger air handlers or other courts/hearing rooms. <p>R: The County does not wish to change the requirements of the Facility Performance Standards at this time.</p>
4.54		<p>Q: Does the County need these facility's BAS or other systems to interface directly, or grant access with or from, other King County buildings?</p> <p>R: Yes see Performance Standards Part B, Section 6, d. Building Control System (BCS), Integration, page 162</p>

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: March 6, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 5



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 5

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
PART A – REQUEST FOR PROPOSAL		
5.1	4	Appendix ADD “Q – Project Labor Agreement Template”
5.2	15	1.5.8 DELETE A, and REPLACE with: “A. King County will require a Project Labor Agreement for this Project. The PLA will be executed between the Design-Builder and various labor unions. The County at its option will function as an observer, mediator or arbitrator based upon the issue. The County has provided the PLA Template (See Appendix Q). 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.”
5.3	44	3.1.2 Contents of the Proposal, Table 3.1.2 – Contents of the Proposal, Section 8 DELETE “To Be Determined”
5.4	53	3.3.2 Management, DELETE part “4. FINANCIAL CAPACITY (Section 4) (Pass/Fail)” and REPLACE with: “4. FINANCIAL CAPACITY (Section 4) (Pass/Fail) 1. Within the Executive Summary, the Proposer shall certify the following: a. The Proposer has sufficient financial resources to complete the Work and fulfill all contractual obligations for the Children and Family Justice Center C00863C13, within the Budgeted GMP of \$149,000,000 excluding Washington State Sales Tax. b. The top ranked Proposer will submit or make available for review, to the County, audited or reviewed financial statements prepared in accordance with the standards of the American Institute of Certified Public Accountants. This shall include balance sheets, unused lines of credit, statement of retained earnings, disclosure of the nature and status of pending claims or lawsuits and/or other matters as the County deems necessary to determine that this top ranked team has the financial resources to perform the Work. 2. The scope of financial information to be reviewed by the County will be made at the Clarification and Reconciliation meetings prior to Contract Execution held between the County and the top ranked team. 3. Information Use & Confidentiality a. The financial information requested will only be used by the County for the evaluation of the top ranked proposer and its

Ref.	Page or Drawing	Location and Description of Change
		<p>team’s financial capability and resources to perform and complete the Project. At the end of the selection process, all financial materials provided to the County shall either be destroyed by the County or returned to the top ranked team if requested. If a public disclosure request for such financial information is received by the County, the parties will follow the procedures set forth within the RFP Process, to determine if the financial information is disclosed.”</p>
5.5	60	<p>3.3.5, DELETE “1 Project Labor Agreement (PLA) (TBD points), “1. To Be Determined” and REPLACE with:</p> <p>“1. Project Labor Agreement (PLA) (Section 8) (500 points)</p> <p>A. Provide a detailed narrative demonstrating the Design Builder’s knowledge and experience with PLA’s for projects of similar scope and complexity as CFJC.</p> <p>1. Provide a list of projects with PLA’s which the Design Builder and/or their key Sub-contractors have worked on.</p> <p>B. Submit a detailed narrative which demonstrates the Proposer’s approach to developing and negotiating the PLA between the Design-Builder and the Unions using the PLA template. (see Appendix Q)</p> <p>C. Provide a detailed narrative demonstrating the Design Builder’s approach to administration of PLA requirements for the management of Sub-contractors and labor to ensure the timeliness, safety and quality of the work.”</p>
5.6	64	D. ADMINISTRATIVE REQUIREMENTS, ADD to the points column “1500”
5.7	64	<p>D. ADMINISTRATIVE REQUIREMENTS, Section 8 – Project Labor Agreement, DELETE “To Be Determined” and REPLACE with:</p> <p>“A) Project Labor Agreement (PLA)</p> <p>1. Knowledge and Experience</p> <p>2. Developing and negotiating PLAs</p> <p>3. Administration of PLA.”</p>
5.8	64	<p>D. ADMINISTRATIVE REQUIREMENTS, Section 8 – Project Labor Agreement, points column DELETE “TBD points” and REPLACE with:</p> <p>“500 points”</p>
5.9	Appendix	ADD “Appendix Q – Project Labor Agreement Template” See attached.

Attached To This Addendum:

- Appendix Q - Project Labor Agreement Template.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: March 11, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

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) _____

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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

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;

Exhibit 1: King County Drug & Alcohol Policy

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 successful 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	Roads Division*
Operations	Traffic Engineering*
Power and Facilities	Fleet Administration*
Safety	Airport Division*
Vehicle Maintenance	

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	King County Prohibited Drug Use and Alcohol Misuse Education and Testing Program	Document Code No.	PER 15-2-1 (AEP)
Department/Issuing Agency	Drug and Alcohol Program	Effective Date	October 25, 1995
Approved	<i>Gary Locke</i>		

- 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

Exhibit 1: King County Drug & Alcohol Policy

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:

Exhibit 1: King County Drug & Alcohol Policy

- 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

Exhibit 1: King County Drug & Alcohol Policy

- 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.

Exhibit 1: King County Drug & Alcohol Policy

- 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.

Exhibit 1: King County Drug & Alcohol Policy

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.

Exhibit 1: King County Drug & Alcohol Policy

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.

Exhibit 1: King County Drug & Alcohol Policy

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 present 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

Exhibit 1: King County Drug & Alcohol Policy

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.

Exhibit 1: King County Drug & Alcohol Policy

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.

Exhibit 1: King County Drug & Alcohol Policy

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 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.

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.

Exhibit 1: King County Drug & Alcohol Policy

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.

**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 6



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 6

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART A – REQUEST FOR PROPOSAL
6.1	Title Page	DELETE “Julia Patterson” and REPLACE with: “Dave Upthegrove”
6.2	6	1.0 G. Anticipated Schedule, Selection Process DELETE items 16 through 20, and REPLACE with: “16. Proposer Comments on Revised Design Build Contract due March 28, 2014 17. Submittal of Proposals April 18, 2014 18. Final Presentation & Interviews of Proposer’s Conceptual Designs Week of April 28, 2014 19. Conforming Contract June 2014 20. Contract Execution July 2014 21. Notice Proceed (NTP-1) July 2014”
		PART B – FACILITY PERFORMANCE STANDARDS
6.3	43	Section 1 Architecture, Table B1.1 – Interior and Exterior Glazing Types, ADD footnote: “If there are discrepancies between glazing assembly thickness and physical attack performance durations, the durations shall be followed.”
6.4	133	Section 6 Mechanical Engineering Systems, Fuel Oil, DELETE the third bullet, and REPLACE with: “• The Fuel Storage tank may be above or below-grade, with proper filling, monitoring and containment systems. Above ground tanks shall meet be double walled steel construction meeting UL 2085 fire resistive requirements. Above ground tanks shall be screened from view and secured from vandalism. Below ground tanks shall be fiberglass wrapped steel tank comparable to an ACE Permatank, with epoxy interior lining. Piping for below ground tanks shall be suction type (no check valve at the intake). Tanks must be sized for actual storage volume (eighty percent [80%] of rated capacity) with sufficient capacity to provide a minimum of 72 hours of system operation under emergency conditions at one-hundred percent

Ref.	Page or Drawing	Location and Description of Change
		<p>(100%) load. A monitored and alarmed liquid and vapor leak detection system must be provided in interstitial space of underground tanks, aboveground tanks, and piping. The installation must comply with local, State, and Federal requirements, as well as with EPA regulations.</p> <ul style="list-style-type: none"> • Fuel Oil tanks serving boilers shall be provided with a Fuel Management System that will include day tanks with level controls, duplex fuel-oil transfer (positive displacement) pumps, filters and control system with panel to control pumps and indicate status. Day tanks and panel shall be located inside the Mechanical Room. Interface controls with Building Management System. Emergency power shall be provided to operate the fuel oil system.”
6.5	179	<p>Section 7 Electrical Engineering Systems, Generator Set, DELETE the first bullet, and REPLACE with:</p> <ul style="list-style-type: none"> • The fuel storage tank may be above or below-grade, with proper filling, monitoring and containment systems. See page 133 of these Performance Standards for additional fuel tank requirements.”
6.6	232	<p>Section 10 Electronics Safety and Security Systems, b. Electronic Court Control System Non Detention Closed Circuit Television Surveillance Systems (CCTV) General, 4th paragraph ADD the following:</p> <p>"Recording system shall be capable of archiving 30 days of 24/7 video at 3 fps, 1080p."</p>
6.7	242	<p>Section 10 Electronics Safety and Security Systems, c. Detention Security Electronic System, Detention Closed Circuit Television Surveillance Systems (CDTV), DELETE the 3rd bullet, and REPLACE with:</p> <ul style="list-style-type: none"> • The CCTV system shall be laid out utilizing the existing NVRs located offsite at the County's Data Center. Work will include an analysis of the existing NVR recording capacity in light of the removal of the existing 180 YSC cameras from the system, notification to the County if the existing NVRs cannot maintain the required 60 day video retention with the new CFJC cameras, programming and addressing as necessary. If additional NVRs are necessary the County will furnish and the Design Builder shall integrate into the existing NVRs system."
6.8	243	<p>Section 10 Electronics Safety and Security Systems, c. Detention Security Electronic System, Personal Duress Alarm Systems, 4th bullet ADD:</p> <p>"140 body worn alarm transmitters are to be provided by the Design Builder."</p>

Ref.	Page or Drawing	Location and Description of Change
		Part H - Division 1 General Requirements
6.9	01 29 00 - 2	<p>Section 01 29 00 DELETE 1.5.1.1 and REPLACE with:</p> <p>“1.5.1.1 Within the time frame set in Article 6 (Payment Terms) of the General Conditions, Design Builder shall submit a detailed breakdown of the Contract Price by scheduled Work items and/or activities, including design, construction, coordination responsibilities and project record document responsibilities. The Project Schedule (see Section 01 32 26 (Schedules and Reports)) shall serve as the basis for developing the Schedule of Values, which will be used as a basis for reviewing the Design-Builder’s Applications for Payment. Each Application for Payment will be reviewed for actual costs and also for consistency based on percentage completion of the Schedule of Values. Design Builder shall furnish such breakdown of the total Contract Price by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Price. The format and detail of the breakdown shall correspond directly with the Project Schedule and as directed by County to facilitate and clarify future progress payments to Design Builder for direct Work under the Contract Documents.”</p>
6.10	01 29 00 - 3	<p>Section 01 29 00 DELETE 1.5.1.2 and REPLACE with:</p> <p>“1.5.1.2 Not Used.”</p>
6.11	01 32 26	<p>DELETE Section 01 32 26, and REPLACE with:</p> <p>REVISED, Section 01 32 36 Schedules and Reports. See Attached.</p>
6.12	01 35 50 - 5	<p>Section 01 25 50, paragraph 1.10.2 DELETE “...Article 1.13...” and REPLACE with:</p> <p>“...Section 01 35 50 (Project Security)...”</p>
		<p>QUESTIONS AND RESPONSES</p> <p>King County provides the following questions and responses as clarifications of the referenced Request For Proposal provisions.</p>
6.13		<p>Q: Addendum #3 clarified the extent of existing building demolition that may occur as part of the Phase 1A construction. Please confirm that the existing recreation yard located adjacent 14th Street immediately north of the existing detention facility can be utilized for temporary parking during Phase 1A.</p> <p>R: This area is used as a staging area for emergency egress of the existing detention facility; any use for parking must maintain the min. area required for the emergency egress staging consistent with the Seattle Building Code, based on the facility being full, or a reduced number of occupants based on current Average Daily Population negotiated by the Design Build entity with the AHJ.</p>

Ref.	Page or Drawing	Location and Description of Change
6.14		<p>Q: Addendum No. 1 states that “The design and implementation of any of the stormwater flow control facilities shall prevent surface ponding of water.” However, bioretention cell ponding depth must be between 2” and 12”per the following City of Seattle code:</p> <ol style="list-style-type: none"> 1. City of Seattle Director’s Rule 15-2012, “Requirements for Green Stormwater Infrastructure to the Maximum Extent Feasible for Single-Family Residential and Parcel-Based Projects”, page D-3 2. City of Seattle Stormwater Manual, Volume 3, page 4-67: <p>Does the County intend to preclude the use of bioretention cells to meet the Green Stormwater Infrastructure requirement?</p> <p>R: It is not the County's intent to preclude the use of bio retention cells. It is the County's understanding that bio retention cells can be utilized without creating standing water if the permeability rate is high enough, the overflow is at a strategic height, and a large grain substrate is providing the detention storage.</p>
6.15		<p>Q: Section 9c A/V - The program requests that each courtroom suite have a 50sf room per court for A/V equipment. This equipment needs access to IT infrastructure, power, and cooling (note: video court recording requires approximately one-half rack per courtroom, one rack per pair of courtrooms). Can this floor space be consolidated and added to the IDF rooms on each floor.</p> <p>R: No: The disciplines involved are quite different in that the services an IDF provide cross departmental boundaries (much like Security monitoring and access control do), whereas Court specific facilities are only departmental in function. In our experience mixing departmental and infrastructure disciplines within the same physical space is difficult since departmental staff often do not have an “infrastructure” type of experience which can lead to operational and maintenance problems.</p>
6.16		<p>Q: Section 10 Electronic Security - CCTV Recording – Non-Detention: Recording parameters not given by RFP, other than 30 days’ retention. Question 1: At what frame rate and resolution? Example: 210 cameras @ 1080p 10 fps for 12 hours per day for 30 days. This will allow calculation of storage capacity.</p> <p>R: 1080p, 3fps, 24/7, 30 days. See Ref 6.6 above.</p>
6.17		<p>Q: CCTV Clients – Non-Detention: Question 1: What is the Proposer’s role in the Emergency Dispatch Center (EDC) CCTV switching and general surveillance clients (CPUs, monitors, etc), including their programming and commissioning with the non-detention CCTV system?</p> <p>R: All programming will be by the Owner. Owner will review the commissioning plan as a submittal, as described in Division 1, and provide staff during commissioning to witness typical systems testing in conjunction with the installer.</p>

Ref.	Page or Drawing	Location and Description of Change
6.18		<p>Q: Access Control Badging/Enrollment: Could you address the intent for badging and enrollment of the two access control systems (non-detention and detention) in the RFP? In particular, no badging or enrollment stations are specified. Does the Proposer not provide a badging/enrollment station within the Courthouse Building? And one within Detention? If so, where? Otherwise, is badging/enrollment off-site?</p> <p>R: The Design Builder does not need to provide badging stations. The County will be continuing the current practice of badging enrollment off site using County equipment / software.</p>
6.19		<p>Q: Access Control Cards: What quantity of cards do Proposers provide for each access control system (non-detention and detention)?</p> <p>R: The Design Builder does not need to provide access control cards; King County issues employee identification cards that also serve as access control cards.</p>
6.20		<p>Q: Is it permissible to revise the shape of the development parcels south of Alder St. if we keep the total area for parcels the same as shown in the RFP and keep the parcels adjacent to 12th and 14th and Spruce streets?</p> <p>R: No, the parcels must stay as noted in Part C: Facility Program, Figure 4-6</p>
6.21		<p>Q: CCTV Recording – Detention: The RFP indicates that “recordings will be conducted at an off-site location via a Virtual Local Area Network (VLAN) at a rate of not less than 15 frames/sec at 1080p and will be retained for 60 calendar days.” Also “the system shall be laid out to facilitate not more than one NVR server for every forty (40) cameras.” For 200 cameras, this means five servers minimum. Question 1: Please verify this means that Proposers include five (5) off-site Pivot3 virtual servers in the RAID-6e array with added storage necessary to achieve the specified recording parameters?</p> <p>R: The intent of Part B Facility Performance Standards, Part B Section 9 is have the Design Build entity connect (provide programming, addressing etc.) the new cameras onto the existing NVRs located offsite at the County's data center.</p> <p>See Ref 6.7 above.</p>
6.22		<p>Q: CCTV Clients – Detention: The RFP provides for CFJC clients at the various control points (Central Control, etc.). Again, while we recognize the client application can be installed on other County workstations meeting a minimum performance; are there no other CCTV clients in offices, or no other client work for the Proposer to perform?</p> <p>R: See Part B Facility Performance Standards page 242 under the "Detention Closed Circuit television Surveillance System (CCTV):" heading, 2nd bullet.</p>
6.23		<p>Q: Detention Personal Alarm System: How many body-worn alarm transmitters should Proposers include in the proposals?</p> <p>R: 140 body worn alarm transmitters are required. See Ref 6.8 above.</p>

Ref.	Page or Drawing	Location and Description of Change
6.24		<p>Q: Access Control Cards: What quantity of cards do Proposers provide for each access control system (non-detention and detention)?</p> <p>R: The Design Builder does not need to provide access control cards; King County issues employee identification cards that also serve as access control cards.</p>
6.25		<p>Q: Room Data Sheets: Is there a difference from the Proposer's standpoint between "DT1 Cable TV" and "DT2 Offender Cable TV"</p> <p>R: DT 1 Cable TV is standard cable that would be provided in areas such as the judge's chambers. DT 2 Offender Cable TV would be limited to approved stations and or videos 'broadcast' on the system by DAJD staff.</p>
6.26		<p>Q: Security glazing types - Reference Part B - Performance Standards, Section 1 - Architecture, Page 43 Table B1.1.</p> <p>Glass Type GL4 calls for 9/16 Security glazing to meet 20-minute physical attack per ASTM F1915. Typical 9/16" thick glass clad polycarbonate security glass meets 10-minute physical attack per ASTM F1915 Security Grade IV. *Note 20-minute attack resistant glass would require 11/16" thick GCP.</p> <p>Glass Type GL5 calls for 11/16 Security glazing to meet 40-minute physical attack per ASTM F1915. Typical 11/16" thick glass clad polycarbonate security glass meets 20-minute physical attack per ASTM F1915 Security Grade III. *Note 40-minute attack resistant glass would require 3/4" thick GCP. Please confirm if glass thickness or physical attack performance is correct.</p> <p>R: The glass physical attack performance is correct.</p> <p>See Ref 6.3 above.</p>
6.27		<p>Q: Please clarify if reclaimed water (rainwater or gray water) is acceptable for use in the detention facility non-potable services, including toilet flushing in the dorms. If so, is there a standard of treatment that is required beyond local code?</p> <p>R: Reclaimed water (rainwater or gray water) is not acceptable for use in the detention facility non-potable services.</p>
6.28		<p>Q: The RFP notes that the interviews will be April 15-17. Can King County identify which team presents on which day and how long the interviews will be? Since this week is Spring Break for Seattle City Schools, knowing the date of the interview will help some team members.</p> <p>R: Final presentations are being re-scheduled to approximately 2 weeks later than the dates published in the RFP. See revised Procurement Schedule.</p>

Ref.	Page or Drawing	Location and Description of Change
6.29		<p>Q: The RFP does not address physical models. Since the proposal due on April 4 does not include a physical model, please confirm that physical models will not be allowed to be presented at the interview</p> <p>R: Models are not a requirement of the RFP and under 4.5: Proposer Final Presentations & Interviews” Item E.</p> <p>“Proposers shall make visual presentations of their “as-submitted” proposals. No new information or materials shall be introduced.”</p>
6.30		<p>Q: When the existing YTS is inactivated, approximately 160 cameras are being removed from recording at 4CIF @ 3 fps at 24 hours per day for 60 days. Do Proposers assume they can include this disused equipment to help achieve the specified recording parameters?</p> <p>R: With the exception of the NVRs located at the County's Data Center no equipment shall be re-used. See Ref 6.7 above.</p>
6.31		<p>Q: Would it be correct to assume that the County will require heating capability for all temperature controls zones?</p> <p>R: The DB Team shall consider all necessary heating/cooling capabilities to control zone temperatures at the indoor design temperatures stated in the RFP.</p>
6.32		<p>Q: Is it acceptable for Main switchboard to say 15% based on 100% breaker capacity (85% of breaker + 15% spare = 100%)?</p> <p>R: No, Table B 7.3 is required as it is written.</p>
6.33		<p>Q: If available, please provide annual energy data from the existing facility. This could be an annual EUI or utility bills over a 12 month period. This information would be extremely helpful as a benchmarking point in the energy analysis</p> <p>R: The County will not provide the information at this time. The existing building is not the benchmark, and the building configuration and systems are not applicable to the new building.</p> <p>After Contract Award County will provide past utility bills.</p>
6.34		<p>Q: The RFP requires an outline specification be provided in CSI Master Format. Please clarify the purpose and extent of this requirement. Is King County expecting just “Part 2 – Products” for each specification section?</p> <p>R: Outline Specifications are required for all products with prescriptive specifications the DB may have introduced utilizing the CSI Master Format. Additionally, all plumbing fixtures throughout the project must have product brand and model information provided.</p>

Ref.	Page or Drawing	Location and Description of Change
6.35		<p>Q: The RFP notes a general requirement to provide Interior and Exterior Lighting plans. It also requires RCP's for only certain areas of the building. Is a conceptual lighting plan required for every space within the building or just those areas that will have RCP's?</p> <p>R: Interior lighting plans must be provided for all typical room layouts in detention, typical detention living/recreation rooms and all courtrooms, chambers, and conference rooms. Additionally, all rooms indicated to have reflected ceiling plans must have lighting plans.</p>
6.36		<p>Q: In part B, section 6, page 130, first bullet, the RFP specifies a "combi" unit for individual and group cells. Is this required for the juvenile room (cell) or is a separate lav and water closet desired?</p> <p>R: The Combi unit is preferred by the County as it appears to be more space efficient, and minimizes the plumbing piping.</p>
6.37		<p>Q: Fuel Storage – please confirm if the fuel oil storage is acceptable below-grade. Part B page 133 – references to buried pipe and interstitial space of underground tanks, but the 3rd bullet of the Fuel Oil section starts with “Above ground tanks shall be used” and page 179 1st bullet under “Generator Set” indicates below-grade is acceptable.</p> <p>R: Either above ground or below ground are acceptable. See Refs 6.4 & 6.5 above.</p>

Attached To This Addendum:

- REVISED, Section 01 32 36 Schedules and Reports.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: March 21, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

REVISED
SECTION 01 32 26

SCHEDULES AND REPORTS

PART 1 - GENERAL

1.1 RELATED SECTIONS

- 1.1.1 Division 1 Section 01 29 00 (Payment Procedures) for submitting the Schedule of Values.
- 1.1.2 Division 1 Section 01 31 00 (Project Management and Coordination) for submitting and distributing meeting and conference minutes.
- 1.1.3 Division 1 Section 01 33 00 (Submittal Procedures) for submitting schedules and reports.
- 1.1.4 Division 1 Section 01 45 00 (Quality Control) for submitting a schedule of tests and inspections

1.2 SUMMARY

- 1.2.1 Design Builder shall perform scheduling of Work under these Contract Documents in accordance with requirements of this Section 01 32 26 and Section 01 33 00 (Submittal Procedures).
 - 1.2.1.1 Development of schedule, cost loading of the Project Schedule, monthly payment requests and project status reporting requirements including Earned Value (EVM) Management requirements of the Contract Documents shall employ scheduling as required in this Section 01 32 26.
 - 1.2.1.2 Project Master Schedule, Design Schedule and Construction Schedules shall be time-scaled and cost-loaded. Monthly Schedule Updates shall be time-scaled and cost loaded. Cost loading shall be the basis of the Schedule of Values as specified in Section 01 29 00 (Payment Procedures).
 - 1.2.1.3 Computer Software: All Schedules shall be in Primavera® (latest edition), Microsoft Project for windows, or other software as approved by the County's Project Representative. All computer software format must be compatible with County's existing computer software format know as Primavera "Unifier".
 - 1.2.1.4 All Schedules shall be submitted prior to the dates identified in Section 01 33 00 (Submittal Procedures).
- 1.2.2 Design Builder's obligations under paragraph 1.1.1 of this Section 01 32 26 are hereby deemed material obligations. Nothing in this paragraph 1.1.2 or the lack of an express statement that any other Contract Document provision is or

is not material shall be considered in determining whether any such other provision is material.

1.2.3 Scheduling Consultant Qualifications: The Design Builder's team shall include a specialist in CPM scheduling and reporting acceptable to the County with experience performing scheduling required herein on at least two prior, similar projects, and with the capability of producing CPM reports and diagrams within 48 hours of County's request.

1.2.4 Transmit each item under form approved by County or following Section 01 33 00 (Submittal Procedures).

1.2.4.1 Identify Project with the County Contract number, and name of Design Builder.

1.2.4.2 Provide space for Design Builder's approval stamp and County's review stamps.

1.2.4.3 Submittals received from sources other than Design Builder will be returned to Design Builder without County's review.

1.3 GENERAL SCHEDULE REQUIREMENTS

1.3.1 Schedules: The Design Builder shall submit an operating electronic version of an original, plus hardcopy versions, of the following schedules to the County:

1.1.2.1 Proposed Schedule as included in the Design Builder's Proposal Package for the Request for Proposals as outlined in the Request for Proposals. The Proposed Schedule shall be in accordance with the requirements outlined in paragraph 1.3 below. The accepted Proposed Schedule shall serve as the basis for preparing the Project Master Schedule.

1.1.2.2 Project Master Schedule as required in paragraph 1.4 below.

1.1.2.3 Design Schedule as required in paragraph 1.5 below.

1.1.2.4 Construction Schedule as required in paragraph 1.6 below.

1.1.2.5 Look Ahead Schedule as required in paragraph 1.6 below.

1.2.2 Acceptance Procedures for Baseline Schedules:

1.2.2.1 Submittal of the Project Master Schedule, Design Schedule, and Construction Schedules shall adhere to the schedule submittal process outlined in Document 01 33 00 (Submittal Procedures), paragraph 1.5.

1.2.2.2 Original Master Project Schedule and Design Schedule shall be reviewed at the Design Conference. Within seven (7) Days after the

Design Conference, the County will review and either accept the Schedules or reject and provide comments, suggested changes, and revisions that must be addressed by the Design Builder to the satisfaction of the County. Design Builder shall correct and resubmit the Schedule within seven (7) Days.

1.2.2.3 Within seven (7) Days of receipt of revised Project Master Schedule and Design Schedule, the County will either accept the Schedules or reject and request further information and justification. Design Builder shall, within three (3) Days, provide County with a complete written narrative response to the County's request discussing how the baseline resubmittal addresses each of the contract conformance deficiencies noted in the original submittals.

1.2.2.4 Detailed Construction Schedules shall be reviewed at Pre-Construction Conferences for each major phase of work outlined in Section 01 31 19 (Project Meetings). Within seven (7) Days after the Pre-Construction Conference, the County will review and either accept the Schedule or reject and provide comments, suggested changes, and revisions that must be addressed by the Design Builder to the satisfaction of the County. Design Builder shall correct and resubmit the Schedule within seven (7) Days.

1.2.2.5 Within seven (7) Days of receipt of revised Detailed Construction Schedule, the County will either accept the Schedule or reject and request further information and justification. Design Builder shall, within three (3) Days, provide County with a complete written narrative response to the County's request discussing how the baseline resubmittal addresses each of the contract conformance deficiencies noted in the original submittals.

1.2.3 Time of Completion: Overall time of completion and time of completion for each Milestone shown on Project Master Schedule shall adhere to times in the Contract. Design Builder may otherwise choose to work to an earlier (advanced) schedule, but should it choose to do so:

1.2.3.1 It must first notify the County of its intention to work to an earlier (advanced) schedule and provide a written explanation of how it intends to improve on the Contract Times. County is not required to accept such an earlier (advanced) schedule, i.e., one that shows early completion dates for the Contract Times.

1.2.3.2 Design Builder shall not be entitled to extra compensation in the event Design Builder completes its Work, for whatever reason, beyond completion dates shown in such an earlier (advanced) schedule but within the Contract Times.

1.2.3.3 A schedule showing the work completed in less than the Contract Times shall be considered to have Project Float. The Project Float is

the time between the scheduled completion of the Work and the Contract Time for completion of the Work. Project Float is a resource available to both County and Design Builder.

- 1.2.4 Float Ownership: Neither County nor Design Builder owns float. The Project owns the float. As such, liability for delay to the Work rests with the party whose unexcused delay, last in time, actually causes delay to the Project.
 - 1.2.4.1 For example, if Party A incurs unexcused delay and uses some, but not all of the float and Party B later incurs unexcused delay and uses the remainder of the float as well as additional time beyond the float, Party B shall be liable for the delay that represents a delay to the Work.
 - 1.2.4.2 Party A would not be responsible for the delay since it did not consume all the float and additional float remained; therefore, completion was unaffected by Party A.
- 1.2.5 The Design and Construction Progress Schedules and Earned Value Management (EVM) reporting shall be the basis for evaluating job progress, payment requests, and time extension requests. Responsibility for developing Contract schedules and monitoring actual progress as compared to Progress Schedule rests with Design Builder.
- 1.2.6 Failure of the Progress Schedule to include any element of the Work or any inaccuracy in Progress Schedule will not relieve Design Builder from responsibility for accomplishing the Work in accordance with the Contract Documents. The County's acceptance of the Design and Construction Progress Schedules shall be for its use in monitoring and evaluating job progress, payment requests, and time extension requests, and shall not, in any manner, impose a duty of care upon County, or act to relieve Design Builder of its responsibility for means and methods of design and construction.
- 1.2.7 County Review Requirements: The Design Builder shall consider the County review requirements as specified in Section 01 11 20 (Design Services and Deliverables). The Design Builder shall have the responsibility to package and submit complete and coordinated submittal documents to County.

1.3 PROPOSED SCHEDULE

- 1.3.1 The Design Builder shall submit a Proposed Schedule as part of the response to the requirements specified in Request for Proposals. The Proposed Schedule shall fit within and coordinate with the Contract Times, including any and all design interfaces.
- 1.3.2 Preparation: Indicate each significant Contract activity separately. Activities to be included in the Proposed Schedule will be as follows:

- 1.3.2.1 Detailed activities for Design of all phases of the Work including but not limited to all design deliverables as required by Section 01 11 20 (Design Services and Deliverables), design coordination meetings, other Agency reviews, other third party reviews, and incorporation of comments, through Permit and acceptance of the Construction Documents. All activities described in this paragraph, shall be incorporated into the Proposed Schedule.
- 1.3.2.2 Detailed Submittal, review, and procurement activities for all critical and near-critical submittals for the Work.
- 1.3.2.3 Detailed plan for mobilization, execution of contracts, design as described in Section 01 11 20 (Design Services and Deliverables), submittals, procurement, and all work that must be performed prior to the start of construction of the Project.
- 1.3.2.4 Summarize activities related to construction for the remainder of the Work. The remainder of the Work will include, but shall not be limited to, the following activities in reasonable detail, and indicating the probable critical path:
 - 1.3.1.1.1 Critical lead times
 - 1.3.1.1.2 Building foundation and structure activities
 - 1.3.1.1.3 Building exterior skin and interior finishing activities
 - 1.3.1.1.4 Finish site work
 - 1.3.1.1.5 Building commissioning and move-in activities
 - 1.3.1.1.6 Hazardous materials abatement, demolition, and relocation of utilities associated with construction of the Project.
 - 1.3.1.1.7 Final site work activities

1.4 PROJECT MASTER SCHEDULE

- 1.4.1 The Design Builder shall prepare the Project Master Schedule, which shall adhere to times stated in the Contract (Agreement) and in the accepted Proposed Schedule. The Project Master Schedule will outline all dates and time periods for the delivery of all Design Builder's services and requirements for information from the County necessary for the performance of the Services. Failure to include any work item required for performance of this Contract on the Schedule shall not excuse Design Builder from completing all work within applicable completion dates, regardless of County's approval of the schedule. The Project Master Schedule will include the following items, but not limited to:

- 1.4.1.1 Schedule for completing the project design documents (through release for construction), each required submittal and the times for submitting, reviewing and processing such submittal, as specified in Section 01 11 20 (Design Services and Deliverables).
- 1.4.1.2 Preparation and processing of Construction submittals.
- 1.4.1.3 Critical lead times.
- 1.4.1.4 Significant construction milestones (e.g., groundbreaking, start and completion of hazardous materials abatement, demolition, completion of site utilities, completion of foundation, completion of structural frame, completion of exterior shell, substantial completion, testing & commissioning, move-in, substantial completion project completion dates, etc.).
- 1.4.1.5 Date for decision from County on items affecting the Design Builder's schedule.
- 1.4.1.6 Utility interruptions, relocation, and connections affecting Project operations.
- 1.4.1.7 The Project Master Schedule shall be updated on a monthly basis and submitted along with all Earned Value Management reporting as part of each Progress Payment Application.

1.5 DESIGN SCHEDULE

- 1.5.1 The Design Schedule shall adhere to Contract Times in the Contract (Agreement) and specified in the accepted Proposed Schedule. The Design Schedule shall include all activity detail for completing the design of all phases of the Work. Failure to include any work item required for performance of this Contract on the Schedule shall not excuse Design Builder from completing all work within applicable completion dates, regardless of County's approval of the schedule. The Design Schedule shall include, but not be limited to the following:
 - 1.5.1.1 Preparation and review of Design submittals and other critical design completion dates. Include all design deliverables as required by Document 01 11 20 (Design Services and Deliverables).
 - 1.5.1.2 Design coordination meetings
 - 1.5.1.3 Conference(s) with County and review times.
 - 1.5.1.4 Dates for decision from County on designated items or orders affecting schedule.
 - 1.5.1.5 Dates for reviews by Other Agencies Having Jurisdiction, Utility Companies and third parties.
 - 1.5.1.6 Time for incorporation of comments.

1.5.1.7 Dates for submitting and obtaining Permits (building and land use)

1.5.1.8 Acceptance of the Construction Documents for the Project

1.5.2 Design Builder shall resubmit Original Schedule to address County comments if requested by County. Resubmittal will be delivered no more than 5 Days after receipt of County comments or request.

1.6 CONSTRUCTION SCHEDULE

1.6.1 The Construction Schedule shall adhere to times in the Contract Document (Agreement) and specified in the accepted Proposed Schedule. The Construction Schedule (Original and updates) shall indicate all separate fabrication, procurement and field construction activities required for completion of the Work. Failure to include any work item required for performance of this Contract on the Schedule shall not excuse Design Builder from completing all Work within the Contract Times, regardless of County's approval of the schedule.

1.6.2 Activities: All Design Builder, Subcontractor, and assigned Design Builder work (including engineering and other professional services) shall be shown in a logical sequence that demonstrates a coordinated plan of work. The intent is to provide a common basis of acceptance, understanding, and communication, as well as interface among all parties involved in the Project, including but not limited to Subcontractors. Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Show dependencies and logic between activities so that the effect of progress (or lack of progress) on related activities and the overall schedule can be monitored. The list of activities shall include, but not be limited to, the following:

1.6.2.1 Submittal Preparation and Review: Include review and resubmittal times indicated in Section 01 33 00 (Submittal Procedures), in schedule. Coordinate submittal review times in Design Builder's Contract Schedule with Submittals Schedule. Phase the submittal process to ensure that items are submitted in order of their importance to the construction process. Implement a system that staggers submittals by "start no earlier than" date, complexity and number.

1.6.2.2 Include procurement process activities for long lead items and major items requiring a cycle of more than sixty (60) Days as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery. Delivery dates indicated stipulate the earliest possible delivery date.

1.6.2.3 Significant construction milestones including but not limited to:

1.6.2.3.1 Mobilization.

1.6.2.3.2 Earthwork and underground utility site work completion.

1.6.2.3.3 Foundation completion.

- 1.6.2.3.4 Structural frame completion.
- 1.6.2.3.5 Shell completion.
- 1.6.2.3.6 Plumbing installation.
- 1.6.2.3.7 Fire protection installation.
- 1.6.2.3.8 HVAC installation.
- 1.6.2.3.9 Electrical installation.
- 1.6.2.3.10 Security installation and completion
- 1.6.2.3.11 Substantial Completion
- 1.6.2.3.12 Owner testing and commissioning (shakedown)
- 1.6.2.3.13 Beneficial Occupancy
- 1.6.2.3.14 Final Project Completion & Acceptance
- 1.6.2.3.15 Demobilization.
- 1.6.2.4 Date of request of designated working spaces, storage areas, access, and other facilities to be furnished by the County.
- 1.6.2.5 Dates for decision from County on designated items or orders affecting schedule.
- 1.6.2.6 Mock-up construction.
- 1.6.2.7 Activities related to the delivery of Design Builder and County-furnished equipment to be Design Builder-installed per Contract shall be shown. Equipment requirements including, but not limited to, architecturally significant equipment, communications equipment, and security equipment. Design Builder shall include the latest date that County-furnished products are required to allow completion of the Work on schedule.
 - 1.6.2.7.1 The latest date that installation details must be provided to the Design Builder to avoid schedule delays.
 - 1.6.2.7.2 The latest delivery dates that will allow the project to be completed according to schedule.
- 1.6.2.8 Activities related to the delivery and installation of County or Design Builder furnished and installed furniture to be coordinated by the Design Builder. Furniture requirements include, but are not limited to, electrical and data connections. Design Builder shall include the latest date that County-furnished products are required to allow completion of the Work on schedule.
 - 1.6.2.8.1 The latest date that installation details must be provided to the Design Builder to avoid schedule delays.
 - 1.6.2.8.2 The latest delivery dates that will allow the Work to

be completed according to schedule.

- 1.6.2.9 Utility interruptions, relocation, and connections.
- 1.6.2.10 Show the effect of the following factors on the construction schedule:
 - 1.6.2.10.1 Use of premises restrictions.
 - 1.6.2.10.2 Environmental control.
- 1.6.2.11 Punch list preparation.
- 1.6.2.12 Work by County and/or by other contractors that may affect or be affected by Design Builder's activities. Include a separate activity for each contract, which may include, but are not limited to, utility companies, communications systems providers, equipment providers, and others.
- 1.6.2.13 Testing and commissioning. Include sufficient time to comply with the requirements of the Section 01 91 00 (General Commissioning Requirements); and any regulatory requirements; and assure completion of the Work within the Contract Time.
- 1.6.2.14 Licensing: allow time for administrative procedures necessary for certification of the Project.
- 1.6.2.15 All regulatory agency approvals
- 1.6.2.16 Move-in.
- 1.6.3 All activities shall be identified through codes or other identification to indicate the portion of the Work (i.e. Courthouse Building, Detention Building, Parking Structure, Site Work) and Design Builder/Subcontractor responsibility to which they pertain.
- 1.6.4 Break up the Work schedule into activities of durations of approximately fourteen (14) Days or less each, except for non-field design and activities as otherwise deemed acceptable by County.
- 1.6.5 Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates. Show the critical path in red. For each activity, show early start, late start, early finish, late finish, durations measured in Days, total and available float, resources, predecessor and successor activities, planned workday/week for the activity and scheduled/actual progress payments. "Critical path" shall mean all activities with zero float. A path with three (3) work days or less of float shall be considered a "near critical path" and shown in a lighter shade of red. No more than twenty percent (20%) of the schedule activities are to be considered critical or near critical.

- 1.6.6 Seasonal weather conditions (which do not constitute a delay as defined herein) shall be considered in the planning and scheduling of all work. The Design Builder shall adhere to procedures as specified in the Contract Documents for giving notice of delays resulting from adverse weather.
- 1.6.7 Adverse Weather: Weather delays for normal weather conditions will not be considered. Non-compensable delays for adverse weather may be considered if it can be shown that the weather was unusually severe, and the activities affected were on the critical path of the current updated Construction Schedule.
- 1.6.8 Claims for additional time due to adverse weather will be based on Western Regional Climate Center (WRCC) 30-year weather data collected at the Seattle Tacoma Airport, Washington (457473). Weather conditions that could reasonably have been anticipated from the Western Regional Climate Center historical records shall not be construed as adverse.
- 1.6.9 The following table documents normal precipitation and cold temperatures as defined by the 30 year weather data collected at the WRCC, Seattle Tacoma Airport (457473). The number of rainy days exceeding those listed or the number of cold days exceeding those listed in any month are considered abnormally adverse and may impact the contractor's ability to complete the work within the contract time requirements.

Month	Precipitation		Temperature
	# of Rainy Days during the month with over .10"	# of Rainy Days during the month with over 1.0"	# of Cold Days during the month not exceeding 32°F. (High Temp)
January	13	1	1
February	10	0	1
March	11	0	0
April	7	0	0
May	5	0	0
June	4	0	0
July	2	0	0
August	7	0	0
September	3	0	0
October	8	0	0
November	13	1	1
December	13	1	1

- 1.6.10 In addition to weather conditions listed in the above table the following conditions shall be considered severe enough to warrant time extensions if so requested by the contractor.

- A. Daily minimum temperature equal to, or less than, 15 degrees Fahrenheit.
 - B. Daily maximum wind velocity equal to, or greater than, 50 mph at any time.
 - C. Ice, snow and other weather conditions may be considered as abnormal in the sole discretion of the County upon written request by the Contractor.
- 1.6.11 Written requests for time extensions due to adverse weather shall describe in detail the weather condition and identify specific impacts resulting from the weather condition as relates to the critical path of the Construction Schedule. In addition, substantial completion milestone dates that appear to be affected by the weather delay shall be noted in the notice of weather delay. The written notice of weather delay shall be submitted to King County within five days of the onset of the weather condition.
- 1.6.12 Temporary weather protection of the work for normally expected weather conditions is the responsibility of the Contractor as necessary to proceed in accordance with the Contractor's approved Project Schedule and environmental conditions as defined in the Specifications. Weather protection shall include but not be limited to protection of soils, subgrade preparation, exterior concrete, sealants, gypsum sheathing, roofing, and interior finishes. Delays and costs resulting from the contractor's failure to protect the work from damage due to weather are the sole responsibility of the contractor.
- 1.6.13 The Design Builder shall meet with the County to review and discuss each Schedule (i.e., Original Construction Schedule and each monthly update) within seven (7) Days after each Schedule has been submitted to County.
- 1.6.13.1 County's review and comment on any Schedule shall be limited to Contract conformance (with sequencing, coordination, and milestone
 - 1.6.13.2 Design Builder shall make corrections to Schedule necessary to comply with Contract requirements and shall adjust Schedule to incorporate any missing information requested by County. Design Builder shall resubmit Initial Original Schedule and Monthly Schedules if requested by County.
- 1.6.14 If Design Builder is of the opinion that any of the Work included on its Schedule has been impacted such that there will be a delay in achieving any Milestone, it shall submit to County a written Time Impact Evaluation ("TIE") in accordance with paragraph 1.10 below. The TIE shall be based on the most current update of the Schedule. A six (6) week "Look Ahead Schedule," detailed daily bar chart schedule shall be updated and issued weekly.
- 1.6.14.1 Look Ahead Schedule shall cover a forty-nine (49) Day period, beginning with the week preceding the 6-week detailed look ahead.

- 1.6.14.2 Use the Contract Schedule as the basis for generating the 6-week detailed schedule.
- 1.6.14.3 Format:
 - 1.6.14.3.1 Provide bar chart using same logic as Contract Schedule, with maximum fourteen (14 Day) construction activity duration. Provide activity identification used on the accepted Contract Schedule.
 - 1.6.14.3.2 Provide daily resource allocation for each trade.
 - 1.6.14.3.3 Provide exact activity location for scheduled Work.
- 1.6.14.4 Provide information for each significant activity, with special care taken to describe scheduling and coordination with other contracts, and Work by the County, including but not limited to utility shutdowns, road closures, etc.
- 1.6.14.5 Show the status of all outstanding and pending submittals including scheduled and actual submittal dates, the durations and expiration of submittal review periods, etc.

1.7 MONTHLY SCHEDULE UPDATE SUBMITTALS

- 1.7.1 Following acceptance of Design Builder's Project Master Schedule, Design Schedule and Construction Schedule, Design Builder shall monitor progress of Work and update Schedules each month to reflect actual progress on each activity and any anticipated changes to planned activities.
- 1.7.2 Updated schedules and all reporting shall be submitted through Unifier
- 1.7.3 Monthly Schedule Updates shall include the following:
 - 1.7.3.1 Design Builder's estimated percentage complete for each activity in progress.
 - 1.7.3.2 Actual start/finish dates for all activities shown on initial Contract Schedule with all subsequent approved additions.
 - 1.7.3.3 List of materials and/or equipment delivered for which Design Builder is requesting payment and original invoice verifying cost.
 - 1.7.3.4 Identification of processing errors, if any, on the previous update reports.
 - 1.7.3.5 Resolution of any conflicts between actual progress and planned progress when out-of-sequence activities arise. Design Builder shall submit revisions to schedule logic to conform to current job status and directions, without changing original activity identification.

- 1.7.3.6 Each update shall include a written narrative report (as specified in Paragraph 1.12.1 below) with the updated progress analysis.
- 1.7.3.7 CPM Reports: Concurrent with CPM schedule updates, submit one (1) electronic and five (5) hardcopies of each of the following computer- generated reports. Format for each activity in reports shall contain activity number, activity description, cost loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, percent complete and total float.
 - 1.7.3.7.1 A Predecessor / Successor Report: List of all activities showing associated predecessor / successor activities, their logical relationships, free float, total float, early start/early finish date.
 - 1.7.3.7.2 Total Float Report: List of all activities sorted in ascending order of total float, and then early start/early finish date.
 - 1.7.3.7.3 Earned Value Reports: Compilation of Design Builder's earnings from Notice to Proceed until the most recent Application for Payment. Show all activities sorted and grouped by project phase and location. For each activity show the Activity ID, description, budgeted cost, percent completed as of the last update, percent completed to-date, cost as of the previous period, cost this period, and cost-to-date.
 - 1.7.3.7.4 The Design Builder shall submit any other type of report as deemed necessary by the County.
 - 1.7.3.7.5 The Design Builder shall input all necessary reports and data into the County's Unifier project management system as directed by the County.
- 1.7.3.8 The updated Contract Schedule shall accurately represent the as-built condition of all completed Work and the percentage remaining of all in- progress Work activities as of the date of the updated Contract Schedule.
- 1.7.3.9 The updated Contract Schedule shall incorporate all changes mutually agreed upon by Design Builder and County during preceding periodic reviews, all changes resulting from Change Orders and Field Orders, and all remaining days of the inclement weather and regulatory review durations.
- 1.7.3.10 Design Builder shall perform the Work in accordance with the updated Contract Schedule. Design Builder may change the Contract Schedule to modify the order or sequence of accomplishing the Work only with the County's prior agreement.

- 1.7.3.11 Within the first (1st) week of each month, the County will administer a monthly schedule update meeting. At or before the monthly schedule update meeting, Design Builder shall submit a monthly updated schedule indicating activity status through the end of the previous month. Design Builder shall include in the monthly updated schedule any proposed schedule revisions as outlined in paragraph 1.8 below.
- 1.7.3.12 Procedures for review and acceptance of the monthly updated schedule are outlined in paragraph 1.8 below.
- 1.7.3.13 No Application for Payment will be processed, nor shall any progress payments become due, until updated Contract Schedules and Earned Value Management Reports (EVM) are uploaded into Unifier and accepted by the County's Representative.
- 1.7.3.14 The accepted, updated Contract Schedule shall be the Contract Schedule of record and EVM reports for the period they are current and shall be the basis for payment during that period.
- 1.7.3.15 The Design Builder shall upload into Unifier complete Primavera Project Planner data for the Contract Schedule update and computer-generated schedule and reports as determined by the County with each Application for Payment in Unifier. A CD ROM containing the complete Primavera Project Planner data for the Contract Schedule update and hard copies of computer-generated schedule and reports as determined by the County will be furnished to the County's Representative if requested. The Design Builder shall provide full access to electronic Primavera schedule files for the County.

1.8 SCHEDULE REVISIONS

- 1.8.1 The Design Builder will administer a monthly schedule update meeting to review and discuss each monthly updated schedule submittal.
 - 1.8.1.1 Included with each monthly updated schedule submittal, the Design Builder shall submit any proposed schedule revisions to the County's Representative, including, but not limited to, the following:
 - 1.8.1.1.1 Actual and anticipated duration changes including revisions due to inclement weather or regulatory agency review delays;
 - 1.8.1.1.2 TIEs for Change Orders and Time Extension Request;

- 1.8.1.1.3 Schedule diagrams showing resolution of conflicts between actual Work progress and schedule logic when out-of-sequence activities develop because of actual construction progress. Design Builder shall submit revisions to schedule logic to conform to current job status and directions, without changing original activity identification;
- 1.8.1.1.4 Actual and anticipated Design Builder delays;
- 1.8.1.1.5 A narrative report with the updated progress analysis, which shall include, but shall not be limited to, a description of problem areas, current and anticipated delaying factors and their impacts, and explanations of corrective action taken and any proposed revisions for a Recovery Plan as defined below.
- 1.8.1.2 These meetings are considered a critical component of overall monthly schedule update submittal; accordingly, Design Builder shall ensure that appropriate personnel from its organization attend. At a minimum, Design Builder's Senior Project Manager, General Superintendent and Lead Scheduler shall attend these meetings in person at the County's offices or as determined by the County..
- 1.8.1.3 Monthly Schedule update meetings will be scheduled for no less than four hours duration.
- 1.8.2 Within seven (7) Days after the monthly schedule update meeting, the County will either accept the Schedule or reject the Schedule and provide comments, suggested changes, and revisions that must be addressed by the Design Builder to the satisfaction of the County. Design Builder shall correct and resubmit the Schedule within seven (7) Days.
- 1.8.3 Neither the updating, changing, or revising of any report, curve, schedule or narrative submitted to County by Design Builder under this Contract, nor County's review or acceptance of any such report, curve, schedule, or narrative, shall have the effect of amending or modifying, in any way, Contract Time or milestone dates or of modifying or limiting, in any way, Design Builder's obligations under this Contract.
- 1.8.4 For rejected schedule update resubmittals, the County may request further information and justification and Design Builder shall, within three (3) Days, provide County with a complete written narrative response to the County's request discussing how the resubmittal addresses each of the remaining deficiencies noted in the schedule update resubmittal.
- 1.8.5 If the County does not accept Design Builder's schedule update resubmittal, and Design Builder disagrees with County's position, Design Builder has seven (7) Days from receipt of County's letter rejecting the revision to provide a written narrative providing full justification and explanation for the revision.

Design Builder's failure to respond in writing within seven (7) Days of County's written rejection of a schedule revision shall constitute Design Builder's acceptance of County's position, and Design Builder thereby waives its rights to subsequently dispute or file a claim regarding the County's position. If Design Builder files a timely response as provided in this paragraph, and the parties are still unable to agree, Design Builder's sole right shall be to file a

Claim as provided in Article 11 (Claims and Dispute Resolution) of the Design-Build Agreement

1.9 RECOVERY SCHEDULE

- 1.9.1 If the Schedule Update or Look Ahead Schedule shows Milestone completion more than fourteen (14) Days beyond the Contract Time, or any individual milestone completion dates, Design Builder shall within seven (7) Days, submit to County a Recovery Plan to recover the lost time. As part of this submittal, Design Builder shall provide a written narrative and a Recovery Schedule to recapture the lost time. The Recovery Plan shall propose revisions to the Contract Schedule for the next 60-day period to show how the Design Builder intends to bring the Work back on schedule. If the Recovery Schedule includes sequence changes, Design Builder shall provide a schedule diagram comparing the original Design Builder sequence to the revised sequence of the Work. The Recovery Schedule shall show the intended critical path; Design Builder shall secure and document appropriate Subcontractor and supplier consent to the Recovery Schedule; the narrative shall explain trade flow and construction flow changes, duration changes, added/deleted activities, critical path changes and identify all near critical paths and resource loading assumptions for major Subcontractors. The Recovery Plan shall also describe how the measures that the Design Builder intends to take to regain schedule compliance will be accomplished without additional cost to the County.
- 1.9.2 The Recovery Schedule shall not be incorporated into any Schedule update until County has reviewed the Recovery Schedule.
- 1.9.3 If County does not accept Design Builder's Recovery Schedule, County and Design Builder shall follow the procedures in paragraphs 1.8.4 and 1.8.5 above.
- 1.9.4 At County's discretion, Design Builder can be required to provide Subcontractor certifications for any Recovery Schedule affecting said Subcontractors.
- 1.9.5 Design Builder shall provide supervision, labor, equipment and materials, as necessary, to recover the lost time.
- 1.9.6 If Design Builder believes that any portion of the delay addressed in the Recovery Schedule is due to circumstances entitling Design Builder to additional time or money, it may seek a modification of the Contract Documents under Article 8 (Changes) of the Design-Build Agreement, or

make a Claim for the same pursuant to Article 11 (Claims and Dispute Resolution) of the Design-Build Agreement and other applicable provisions of the Contract Documents.

1.10 TIME IMPACT EVALUATION FOR CHANGE ORDERS, AND OTHER DELAYS

1.10.1 Any request for an adjustment of the Contract Time(s) submitted by Design Builder for changes or alleged delays shall be accompanied by a complete Time Impact Evaluation ("TIE") which includes both a written narrative and a hard and fully operational electronic copy of a schedule diagram depicting how the changed work affects other schedule activities. The schedule diagram shall show how Design Builder proposes to incorporate the changed work in the schedule, and how it impacts the critical path on the current schedule update. Design Builder is responsible for requesting time extensions based on the TIE's impact on the critical path. The diagram must be tied to the main sequence of schedule activities to enable County to evaluate the impact of changed work to the scheduled critical path.

1.10.2 Design Builder shall comply with the requirements of Paragraph 1.10.1 for all types of delays such as, but not limited to, Design Builder/Subcontractor delays, claimed County or third party caused delays, adverse weather delays, strikes, procurement delays, fabrication delays, etc.

1.10.3 Design Builder shall be responsible for all costs associated with the preparation of TIEs, and the process of incorporating them into the current schedule update. Design Builder shall provide County with an operational electronic copy and five (5) hardcopies of each TIE. Design Builder's TIEs must be based on the as-built critical path as of the date of the alleged delay. The TIE shall also show the as-planned critical path at that time.

1.10.4 Once agreement has been reached on a TIE, the Contract Time will be adjusted accordingly. If agreement is not reached on a TIE, the Contract Time may be extended in an amount County allows, and Design Builder may submit a Claim for additional time claimed by Design Builder as provided in the Design-Build Agreement

1.11 TIME EXTENSIONS

1.11.1 Design Builder is responsible for requesting Contract Time extensions for events that, in the opinion of Design Builder, affect the critical path as shown on the then-current schedule update. Notice of time impacts shall be given in accord with the Design-Build Agreement.

1.11.2 Where an event for which either Design Builder or County is responsible affects the projected Contract Time, Design Builder shall provide a written mitigation plan, including a schedule diagram, which explains how (e.g., increase crew size, overtime, etc.) the impact will be mitigated. Design Builder shall also include a detailed cost breakdown of the labor, equipment and material Design Builder would expend to mitigate the delay. Design Builder shall submit its mitigation plan to County within seven (7) Days from the date of discovery of the impact. Design Builder is responsible for the cost

to prepare the mitigation plan.

- 1.11.3 Design Builder's failure to give notice of a delay, request time, provide TIE, or provide the required mitigation plan will result in Design Builder waiving its right to a time extension and recovery of cost to mitigate the delay.
- 1.11.4 Design Builder shall be responsible to provide timely and proper notice to the County of all events that could result in Contract Time extensions and shall comply with requirements as specified within the Design-Build Agreement.
- 1.11.5 No time will be granted under the Contract Documents for cumulative effect of impacts or changes.
- 1.11.6 County will not be obligated to consider any time extension request unless all requirements of Contract Documents are complied with.
- 1.11.7 Failure of Design Builder to perform in accordance with the current schedule update shall not be excused by submittal of time extension requests.

1.12 PROJECT STATUS REPORTING

- 1.12.1 Monthly. In addition to submittal requirements for scheduling identified in this Section 01 32 26, provide a monthly project status report (i.e., written narrative report) to be submitted in conjunction with each Schedule as specified herein in electronic and hard copy. Written status reports shall include:
 - 1.12.1.1 Status of major Project components (percent complete, amount of time ahead or behind schedule) and an explanation of how Project will be brought back on schedule if delays have occurred.
 - 1.12.1.2 Progress made on critical activities indicated on each Schedule, including inspections.
 - 1.12.1.3 Explanations for any lack of work on critical path activities planned to be performed during last month.
 - 1.12.1.4 Explanations for any schedule changes, including changes to logic or to activity durations.
 - 1.12.1.5 List of critical activities scheduled to be performed during the next month.
 - 1.12.1.6 Status of major material and equipment procurement.
 - 1.12.1.7 Description of problem areas, current and anticipated delaying factors and their impacts, and an explanation of corrective action taken.

- 1.12.1.8 Any proposed revisions for a recovery plan.
 - 1.12.1.9 Design Builder may include any other information pertinent to status of Project.
 - 1.12.1.10 Design Builder shall produce additional status reports as requested by County at no additional cost.
 - 1.12.1.11 Status reports, and the information contained therein, shall not be construed as claims, notice of claims, notice of delay, or requests for changes or compensation.
- 1.12.2 Daily Construction Reports: At the close of each workday provide County with report (on Design Builder's County-approved form) of a description of work activities by location for the previous work-day including the following:
- 1.12.2.1 Daily photograph
 - 1.12.2.2 List of subcontractors at Project site.
 - 1.12.2.3 List of separate contractors at Project site.
 - 1.12.2.4 Count of personnel at Project site.
 - 1.12.2.5 Equipment at Project site.
 - 1.12.2.6 Material deliveries.
 - 1.12.2.7 High and low temperatures and general weather conditions.
 - 1.12.2.8 Rainfall, if any
 - 1.12.2.9 Total number of inclement weather days to date
 - 1.12.2.10 Accidents.
 - 1.12.2.11 Meetings and significant decisions.
 - 1.12.2.12 Unusual events (refer to special reports).
 - 1.12.2.13 Stoppages, delays, shortages, and losses.
 - 1.12.2.14 Meter readings and similar recordings.
 - 1.12.2.15 Inspections
 - 1.12.2.16 Emergency procedures.
 - 1.12.2.17 Orders, visits and requests of authorities having jurisdiction.
 - 1.12.2.18 Change Orders received and implemented.
 - 1.12.2.19 Services connected and disconnected.
 - 1.12.2.20 Equipment or system tests and startups.
 - 1.12.2.21 Partial Completions and occupancies.
 - 1.12.2.22 Substantial Completions authorized.
 - 1.12.2.23 Results of construction monitoring activities including, at a minimum:

1.12.2.24 Noise control

1.12.2.25 Dust control

1.12.3 Material Location Reports: At weekly intervals, prepare and submit a comprehensive list of materials delivered to and stored at Project site. List shall be cumulative, showing materials previously reported plus items recently delivered. Include with list a statement of progress on and delivery dates for materials or items of equipment fabricated or stored away from Project site.

1.12.4 Field Condition Reports: Immediately on discovery of a difference between field conditions and the Contract Documents, prepare and submit a detailed report. Include a detailed description of the differing conditions, together with recommendations for changing or proposed changes to the Construction Documents.

1.12.5 Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, response by Design Builder's personnel, evaluation of results or effects, and similar pertinent information. Advise County in advance when these events are known or predictable.

1.13 EARNED VALUE MANAGEMENT

1.13.1 Earned Value Management (EVM) is a project management technique for measuring project performance and progress in an objective manner. EVM has the ability to combine measurements of scope, schedule, and cost in a single integrated system. Earned Value Management is notable for its ability to provide accurate forecasts of project performance problems.

1.13.2 For Design-Build projects, EV will be utilized from concept to the delivery of design-build packages, during the construction phase (s) and through substantial completion of the entire project.

1.13.3 Create an earned value (EV) and cash flow tool based upon industry best practices (e.g. Project Management Institute) and utilize it for the duration of the project.

1.13.4 Earned Value Analysis: Each month, the Design Builder's Lead Scheduler shall perform an Earned Value Analysis (EVA) using the cost and schedule software (e.g. MS Excel and/or MS Project) and in a format acceptable to the County. The Lead Scheduler shall include the results of the EVA in the Progress Monitoring Report as described later in this section.

1.13.5 The EVA shall be based on the following data in the Project Schedule at the data date.

1. Actual start and finish for each activity as of the data date.
2. The progress of the activities that started, but are not finished on the data

- date.
3. Percent complete of the work for each activity from the start date to the data date.
 4. Actual cost expended for each activity as of the data date.
- 1.13.6 The Lead Scheduler shall provide an “Engineer’s Cost Accounting Standard Disclosure Statement” with the monthly EVM report that includes the procedures used to ensure the actual value of each cost account in the PS Update was properly represented and timely recorded in the general cost accounting system for the design work and construction completed by the DB Contractor, sub-consultants and sub-contractors. If the sub-consultant and/ or sub-contractor actual cost data is not available prior to the submission of the Project Schedule (PS) Update, the Lead Scheduler shall estimate the sub-consultant’s and/or sub-contractor’s actual cost as of the data date for PS Update. The Lead scheduler shall confirm the actual cost from the sub-consultants prior to the submission of the next PS Update.
- 1.13.7 The Lead Scheduler shall use the cost accounts and scheduling data in the Project Schedule Update (SPU) to calculate and show the results of each data item in Table No. 1

Table No. 1 - Data Item for Earned Value Analysis	
Data Item	Definition
Budgeted Cost of Work Scheduled (BCWS)	The budgeted cost of work scheduled for completion at the data date. (BCWS = Budget Cost x Target Percent Complete)
Budgeted Cost of Work Performed (BCWP)	The value of completed work expressed in terms of the budget assigned to that work. BCWP is also known as the “earned value” of the work completed to date. (BCWP = Budget Cost x Percent Complete of the Work)
Actual Cost of Work Performed (ACWP)	The actual cost-to-date for work performed during a specific time period or duration. [The actual cost incurred shall correspond to the cumulative amount shown in payment application for the month.]
Schedule Variance (SV)	The Schedule Variance indicates if the project is ahead or behind schedule. (SV = BCWP - BCWS)
Cost Variance (CV)	The Cost Variance indicates if the project is over or under budget. (CV = BCWP - ACWP)
Estimate To Complete (ETC)	The Engineer’s estimated cost to complete the design work from the data date to the forecast completion date.
Estimate At Completion (EAC)	The Engineer’s projected final cost of the design work at the data date. (EAC = ACWPCumulative + ETC)

- 1.13.8 The Lead Scheduler shall determine and record the progress of work based on the results of the Schedule Performance Index and Cost Performance Index shown in Table No. 2

Table No. 2 – Earn Value Indexes		
Description	Formula	Results of EVA Analysis
Schedule Performance Index (SPI)	BCWP/BCWS	A SPI greater than 1.0 indicates no delays to the PDS
		A SPI less than 1.0 indicates that there are delays to the PDS
Cost Performance Index (CPI)	BCWP/ACWP	A CPI greater than 1.0 indicates the project design is within design budget.
		A CPI less than 1.0 indicates that the project design budget is over budget.
Variance At Completion (VAC)	BAC-EAC	Projected final cost over/under the total budgeted cost based on the difference between the value of the Budget at Completion (BAC) and the Estimate at Completion (EAC).

1.13.9 The Lead Scheduler shall use Microsoft Excel or equivalent software to provide and summarize the total values for earned valued data shown in Tables No. 1 and Table No. 2 for all activities in the Project Schedule Update.

1.13.10 The Lead Scheduler shall provide a cost curve graphic based on the cumulative total values of the BCWS, BCWP, ACWP, BAC, EAC and VAC for each PS Update. The Lead Scheduler shall also show the planned BCWS from each update period to the forecast completion date. The Lead Scheduler shall submit a cost curve graphic format example to the County for prior approval as to format and information to be displayed.

1.13.11 The Lead Scheduler shall prepare a project analysis report along with a summary of each update period that compares the earned value data on the data date to the cumulative total values for the EVA categories. The Lead Scheduler shall submit an example to the County for prior approval as to format and information to be displayed.

1.13.12 Progress Monitoring Report: The Lead Scheduler shall submit each month a Progress Monitoring Report (PMR) for the County’s review and approval. The PMR shall contain the following information regarding the progress of work performed by the Lead scheduler along with the earned value data specified in this EVM Section.

- a. Schedule Tabular Reports and Cost Control Reports, which at a minimum shall include the following:
 - i. Predecessor/successor report sorted by Activity ID.
 - ii. Early Start/Total Float sort report.
 - iii. Total Float/Early Start sort report.
 - iv. Critical Path of Work sort report.
 - v. Summary by Cost Account sort report

- b. A description of the design work completed during the reporting period; Work items and paths that are critical to the timely completion of the design phase;
 - c. Anticipated work to start and finish during the next reporting phase;
 - d. Additional design scope items;
 - e. Explanations of schedule delays;
 - f. Anticipated problems and recommended possible solutions;
 - g. Critical action items (listing person/agency/company responsible and date needed);
 - h. Explanation of the SPI and CPI results in the PS Update submitted by The Lead scheduler;
 - i. Explanation of the variances between the previous PDS Update's SPI and CPI results to the current results (See Sample Variance Analysis Report, Figure 8);
 - j. Statement of the adequacy of the remaining design budget and time;
 - k. EVA cost curve graph; summary analysis and
 - l. Project analysis report for WBS Level 4 categories; and
 - m. EVA summary analysis.
- 1.13.13 Revisions to Project Schedules that Impact Earned Value Analysis: The Lead Scheduler shall incorporate the cost of the proposed change(s) into the EVA, which corresponds to the proposed Project Schedule with the fragnet. The EVA with the cost of the proposed changes shall be identified as the revised EVA for the Project Schedule with Proposed Revisions. The Lead Scheduler shall perform the revised EVA in accordance with this EVM Section. The Lead Scheduler shall submit a detailed report to the County for review. The detailed report shall include the results of the EVA, the cost curve graph, and discuss the effects of the proposed change on the Engineer's Estimate-To-Complete (ETC) and Estimate-At-Completion (EAC) along with the earned value indexes. Upon issuance of an amendment for the change, the EVA that includes the cost for approved change(s) shall become the EVA for Revised Progress Schedule of Record. Design changes shall be in accordance with the Change Order described in Division 01. All schedule changes shall be in accordance with this Section for the Project Schedule (Section 01 32 26).
- 1.13.14 The EV system to be used by the DB Contractor must, at a minimum, meet the following 10 criteria:**
- 1.13.15 EVMS Criterion 1 - ANSI/EIA-748-B, 2.1(a) Organization: Define authorized work elements for the program. A work breakdown structure (WBS), tailored for effective internal management control, is commonly used in this process.
- 1.13.16 EVMS Criterion 2 - ANSI/EIA-748-B, 2.1(b) Organization: Identify the program organizational structure, including the major subcontractors responsible for accomplishing the authorized work, and define the organizational elements in which work will be planned and controlled.

- 1.13.17 EVMS Criterion 3 - ANSI/EIA-748-B, 2.1(c) Organization: Provide for integration of the company's planning, scheduling, budgeting, work authorization and cost accumulation processes and, as appropriate, the program WBS and organizational structure.
- 1.13.18 EVMS Criterion 4 - ANSI/EIA-748-B, 2.2(a) Planning, Scheduling and Budgeting: Schedule the authorized work in a manner that describes the sequence of work and identifies the significant task interdependencies required to meet the requirements of the program.
- 1.13.19 EVMS Criterion 5 - ANSI/EIA-748-B, 2.2(b) Planning, Scheduling and Budgeting: Identify physical products, milestones, technical performance goals or other indicators used to measure progress.
- 1.13.20 EVMS Criterion 6 - ANSI/EIA-748-B, 2.2(c) Planning, Scheduling and Budgeting: Establish and maintain a time-phased budget baseline at the control account level against which program performance can be measured. Initial budgets established for performance measurement will be based on either internal management goals or the external customer-negotiated target cost, including estimates for authorized (but incomplete) work. Budget for long-term efforts may be held in higher level accounts until it is appropriate for allocation at the control account level.
- 1.13.21 EVMS Criterion 7 - ANSI/EIA-748-B 2.3(a) Accounting Considerations: Record direct costs consistently with the budgets in a formal system controlled by the general books of account.
- 1.13.22 EVMS Criterion 8 - ANSI/EIA-748-B, 2.4(a) Analysis and Management Reports: At least monthly, generate the following information at the control account and other levels as necessary for management control using actual cost data from, or reconcilable with, the accounting system:
1. Comparison of the amount of planned budget and the budget earned for work accomplished. This comparison provides the schedule variance.
 2. Comparison of the amount of the budget earned and the actual (applied where appropriate) direct costs for the same work. This comparison provides the cost variance.
- 1.13.23 EVMS Criterion 9 - ANSI/EIA-748-B, 2.4(f) Analysis and Management Reports: Develop revised cost estimates at completion based on performance to date, commitment values for material and estimates of future conditions. Compare this information with the performance measurement baseline to identify variances at completion important to company management and any applicable customer reporting requirements, including statements of funding requirements.

- 1.13.24 EVMS Criterion 10 - ANSI/EIA-748-B, 2.5(a) Revisions and Data Maintenance: Incorporate authorized changes in a timely manner, recording the effects in budgets and schedules. Base changes on the amount estimated and budgeted to the program organizations.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

Not used.

END OF SECTION

**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 7



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 7

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART A – REQUEST FOR PROPOSAL
7.1	2	DELETE “PART G - Draft Contract and General Conditions” and REPLACE with “ PART G – DESIGN-BUILD AGREEMENT ”
		PART G – DESIGN BUILD CONTRACT
7.2	Part G	DELETE “PART G – DRAFT DESIGN BUILD CONTRACT” and REPLACE with: DESIGN-BUILD AGREEMENT, dated March 20, 2014. See attached.
		Part H - Division 1 General Requirements
7.3	01 11 00 - 3	Section 01 11 00, paragraph 1.7.1 DELETE “...Article 6.6...” and REPLACE with “...Article 1...”
7.4	01 11 00 - 4	Section 01 11 00, paragraph 1.8.1 DELETE “Article 6.6” and REPLACE with “Article 7”
7.5	01 11 00 - 4	Section 01 11 00, paragraph 1.10.1 DELETE “...Article 5...” and REPLACE with “...Article 7.5...”
7.6	01 11 00 - 4	Section 01 11 00, paragraph 1.10.2 DELETE “...Article 5 of the Contract per day as fixed, agreed, liquidated damages...” and REPLACE with: “...Article 7.5.3 of the Contract for actual damages...”
7.7	01 31 00 - 2	Section 01 31 00, paragraph 1.3.1 DELETE “...Article 2...” and REPLACE with: “...Article 3.2...”

Attached To This Addendum:

- DESIGN-BUILD AGREEMENT, dated March 20, 2014.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: March 21, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

**CHILDREN AND FAMILY JUSTICE CENTER
Design Build Contract**

Contract C00863C13

Part G

Design-Build Agreement
Addendum 7

March 2014



King County

Department of Executive Services
Facilities Management Division

**DESIGN-BUILD
AGREEMENT**

**By and
Between**

**KING COUNTY
(Owner)**

and

[_____] _____ (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 between King County, WA (the "Owner") and _____, a [corporation, joint venture] organized and existing under the laws of the State of _____ 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 ____, 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 4, 2014, Design-Builder submitted its Proposal in response to the Request for Proposal; and

WHEREAS, after evaluating Design-Builder's Proposal in accordance with the procedures and criteria set forth in the Request for Proposal, 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
- Design-Builder’s Proposal, including exhibits thereto (as may be negotiated with Owner)
- 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 the Request for Proposal Documents
- (4) 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
- (5) Construction Documents prepared and approved in accordance with Section 3.3.6.2 of this Agreement;
- (6) Design-Builder’s Proposal (as may be negotiated with Owner);
- (7) Design-Builder’s Statement of Qualifications dated

- October 17, 2013;
(8) 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 in the Preamble to 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 (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 (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 10.7.

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 _____).

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 7.3.4.

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 governmental office facilities in the United States 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 below 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, 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 ____ (Key Personnel). 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 and Reconciliation 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 Representative 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 shall 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 at the Site, 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; Notice and Plan. Upon encountering any new Hazardous Materials 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 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 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 Contract 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 _____. 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 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; and
- (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.

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 _____ (\$_____). 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), 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:___ _____percent (____%) 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 _____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 ___ 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 _____ 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 Not Used.

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 _____% 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 Field or Site Office and Home Office Overhead 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) Allowance is 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 Sections 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 _____ "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 _____ Dollars (\$_____) 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 reprourement 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 status report required by Section 25.7 of this Agreement 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 home office 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

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 Offse.

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 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 Notice, 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 Contract 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. 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. 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 reliefs, 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 Contract 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 in accordance with 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 the Design-Builder's Fee on Change Order Work as set forth in this Section 9.1. Under no circumstances shall Design-Builder be entitled to receive Fee beyond the Base Work and that Overhead and profit that is included within the 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 9.5 through Section 9.9.

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 10.2(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 10.2(6) and 10.2(7); and

(7) Any other delay not specifically enumerated in Section 10.2.

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 a warranty survey 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 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 15.2, 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, 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 or 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 unabsorbed 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 _____.

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 or 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 agree 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 RCW39.10.470, 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, as approved. Copies of the approved intent statement(s) shall 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.

23.1.4 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.

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:

Phone: _____

Email: _____

Attention:

With a copy to:

If to Owner:

Phone: _____

Email: _____

Attention:

With a copy to:

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 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.

By: _____
Name

Title

By: _____
Name

Title

**List
of
Exhibits**

**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 8



King County

**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 8

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART G – DESIGN BUILD CONTRACT
8.1	Part G	DESIGN-BUILD AGREEMENT (<i>redlined</i>), dated March 20, 2014. See attached.
	NOTE	Attached you will find a redline copy of the new contract that was issued in Addendum 7. This is only being provided for your convenience as part of your review. Please limit comments (due March 28, 2014) to issue which pose substantive legal or commercial risk. No minors will be reviewed by the County.

Attached To This Addendum:

- DESIGN-BUILD AGREEMENT (*redlined*), dated March 20, 2014.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: March 24, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

**DESIGN-BUILD
CONTRACT**

**DESIGN-BUILD
AGREEMENT**

By and
Between

**KING COUNTY
(Owner)**

and

[]
(Design-Builder)

for the

**KING COUNTY CHILDREN AND FAMILY
JUSTICE CENTER**

CONTRACT NO. C00863C13

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DESIGN-BUILD AGREEMENT

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 between King County, WA (the "Owner") and _____, a [corporation, joint venture] organized and existing under the laws of the State of _____ 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~~County Children and Family Justice Center in Seattle, WA ("Project"); and

WHEREAS, on or about November ____, 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 (~~"RFP"~~); and

WHEREAS, on or about December 13, 2013, Owner issued the ~~RFP~~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 4, 2014, Design-Builder submitted its Proposal in response to the ~~RFP~~Request for Proposal; and

WHEREAS, after evaluating Design-Builder's Proposal in accordance with the ~~processes~~procedures and criteria set forth in the ~~RFP~~Request for Proposal, Owner determined that ~~its~~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 ~~Contract~~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
- ~~RFP~~Request for Proposal Documents, Parts A-D, and F-H (except Part E Reference Documents) and Appendix A, and any addenda to the ~~RFP~~Request For Proposal
- Design-Builder's Proposal, including exhibits thereto (as may be negotiated with Owner)
- 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 the ~~RPF~~Request for Proposal Documents
- (4) ~~RFP~~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 ~~Parts~~Part E and G
- (5) Construction Documents prepared and approved in accordance with Section 3.3.~~76.2~~ of this Agreement;
- (6) Design-Builder's Proposal (as may be negotiated with Owner);
- (7) Design-Builder's Statement of Qualifications dated

- October 17, 2013;
(8) 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 ~~Contract~~ 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 in the Preamble to 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 6.54.1 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. ~~An~~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 ~~stating~~representing their full, final, and complete agreement ~~upon all of~~related to the following: (a) the scope of ~~the~~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 ~~Substantial Completion Date(s); Contract Time;~~ and (d) any other amendment to ~~the contract terms. A Change Order may authorize an addition, deletion, or revision in the Work, any change to the Contract Sum, and/or any adjustment to the Substantial Completion Date(s). Change Orders~~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.

~~1.5.11 Cost Proposal.~~ 1.5.20 Cost Proposal. A written proposal submitted by the Design-Builder to the Owner proposing setting forth: (a) ~~Scopes~~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).

~~1.5.12 Claim.~~ Design-Builder's exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Section 8.6 and Article 11.

~~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 for in Section 5.8.1.2 which is available for Design-Builder's exclusive use for unanticipated costs it has incurred.

~~1.5.15 Contract Documents.~~ This Design-Build Contract 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 a designated portion of the Work.

~~1.5.18 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.

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

~~1.5.19~~1.5.22 Design-Builder. Party entering into this Agreement with Owner in which the party agrees to both design and build~~complete~~ the Work as specified in this Agreement.

~~1.5.20~~23 Day(s) or day(s). Unless otherwise specified, shall mean calendar day(s).

1.5.21 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.

~~1.5.22~~ **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.

~~1.5.23~~ **26 Differing Site Conditions.** ~~means~~ **Means:** (1) Subsurface or latent physical conditions at the Site which differ materially from those ~~indicated~~ 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 (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 ~~the Contract~~ this Agreement and not reasonably foreseeable based on the information available to the Design-Builder at the time of Proposal submission (Type II).

~~1.5.24~~ **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.

~~1.5.25~~ **28 Excusable Delay.** Those events defined in Section 10.7.

~~1.5.26~~ **29 Fee.** Design-Builder's Fee, which shall be the amount specified in Section 5.4.

~~1.5.27 Construction Change Directive. 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.~~

~~1.5.28~~ **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.

~~1.5.29~~ **31 Final Completion.** Satisfaction of the conditions set forth in Section 7.4.1.

~~1.5.30 GMP Exhibit.~~ **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 _____).

~~1.5.31~~ **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)

~~1.5.32~~ **35 Governmental Approvals.** Any authorizations, consents, approvals, licenses, leases, rulings, permits, certifications, exemptions, or registrations by or with any Governmental Unit.

~~1.5.33~~ **36 Governmental Rules.** Any and all statutes, laws, regulations, ordinances, codes, ~~regulations,~~ 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.

1.5.3437 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; ~~provided, however, that the term "Governmental Unit" shall not be construed to include Owner.~~

~~1.5.35~~ ~~Substantial Completion Date(s)~~. ~~The dates by which Design-Builder guarantees to achieve Substantial Completion and Final Completion, pursuant to Section 7.2.~~

1.5.3638 Guaranteed Maximum Price (GMP) or Owner's Budgeted GMP. The ~~sum~~Contract Sum specified in Section 5.1, which ~~shall~~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.

1.5.3739 Hazardous Materials. ~~Any materials, wastes, substances~~substance ~~subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW) and chemicals deemed to be implementing regulations, any "hazardous under applicable Governmental Rules, substance" under the Washington Model Toxics Control Act (Ch. 70.105D RCW) and implementing regulations, and any "hazardous substance" or the handling, "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, remediation, or disposal of which are regulated by applicable Governmental Rules, and includes, but is not limited to any 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, toxic or hazardous waste, dangerous substance, or potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, or radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the, 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 and all federal, state, county, or municipal statutes or laws and regulations promulgated thereunder, now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251, et seq.), the Clean Air Act (42 U. S. C. §§ 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601, et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651, et seq., and the Model Toxics Control Act (RCW 70.105), or similar state or other local governmental statute, regulation, ordinance or code), resolution as these laws have been are amended and supplemented from time to time.

1.5.3840 LEED. Leadership in Energy and Environmental Design.

1.5.3941 Liquidated Damages. Delay damages payable to Owner pursuant to Section 7.5.

1.5.4042 Notice. A written notice delivered to the designated representative of the applicable party (e.g., Owner's Representative and Design-Builder's Project Manager).

1.5.4143 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.

1.5.4244 Notice to Proceed Date. - The date that Design-Builder receives the Notice to Proceed.

~~1.5.43 Owner.~~ **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.

1.5.4447 Owner's Design-Build Consultant. The firm engaged by Owner and identified to Design-Builder in accordance with Section 2.45.

1.5.4548 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".

1.5.4649 Owner's Representative (or Project Representative). The individual designated by Owner pursuant to Section 2.423, 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 ~~also~~ be referred to as the Project Representative elsewhere in the other Contract Documents.

1.5.4750 Owner's Separate Contractors. Those contractors identified in Section 2.34.

1.5.4851 Performance Guarantee. — Design-Builder's guarantee for energy, operations, and performance set forth in Section 3.14.

1.5.4952 Performance Guarantee Period. The time period for performance assurance and measurement and verification, which shall be for three (3) ~~year~~years from the date of ~~Substantial Completion~~Notice to Proceed with Construction of Phase ~~4A~~1B.

1.5.5053 Prior Occupancy. Owner's use of all or parts of the Project before Substantial Completion as more fully described in Section 7.3.4.

1.5.5154 Project. The King County Children and Family Justice Center, located in Seattle, WA.

1.5.52–55 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.

1.5.5356 Project Schedule. The specified Critical Path Method (CPM) schedule identified in Section 25.1 and Division One, updated pursuant to the Contract Documents.

1.5.5457 Proposal. Design-Builder's response to the RFP.

1.5.5558 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.

1.5.5659 Request for Proposal (RFP). The Design-Build Request for Proposal for the King County Children and Family Justice Center, No. C00863C13.

1.5.5760 Retainage. Funds withheld by Owner pursuant to RCW 60.28.011 and Section 6.43.3.

1.5.5861 Savings. The ~~difference between~~amount by which the sum of the Design-Builder's Cost of the Work and Fee ~~(and, if applicable, any prices established under Section 5) and~~is less than the GMP, as such GMP may have been adjusted over the course of the Project.

1.5.5962 Schedule of Values. A written breakdown allocating the total Contract Sum to each principal category of work.

~~1.5.60 Scope Validation Period.~~ **1.5.63 Not Used.**

~~1.5.64 The time period set forth in Section 3.3.5.1.~~

1.5.64 Site. The location of the Project ~~for construction and any adjacent occupation of property to be constructed~~ by the Design-Builder pursuant to this Agreement.

1.5.6265 Subcontractor. Any person or entity, including any vendor or Design Consultant, with whom Design-Builder has entered into any ~~subcontract~~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.

1.5.6366 Substantial Completion. The stage in the progress of the Work ~~(of Phase 1A or portion thereof Phase 1B, as applicable, or designated and approved by portion of the Work where: (a) Owner) when the construction is sufficiently complete, in accordance with 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, so Owner fully can occupy the Work (or the designated portion thereof) for the use for; (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 ~~it is intended~~Design-Builder guarantees to achieve Substantial Completion, pursuant to Section 7.2.

1.5.64-68 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.

1.5.6569 Work. All administrative, design, procurement, supply, installation, construction, supervision, management, testing, labor, equipment and materials and other duties and services set forth in ~~this Agreement~~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 governmental office facilities in the United States 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 below and ~~site~~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, 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, ~~to Design-Builder~~ information, ~~within Owner's possession or control,~~ 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's Representative~~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 ~~County~~Owner to changes in the Work, Contract Sum, and Contract Time. In the event the ~~Project~~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 ~~County~~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 (~~GIN~~) 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~~Work, rejecting noncompliant ~~work~~Work, and recommending acceptance of the ~~work~~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 ~~contractually~~ shall require its separate contractors to cooperate with, and coordinate their activities with Design-Builder so as not to interfere with, Design-~~Builder in order~~Builder's ability to ~~enable Design-Builder~~ 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 ~~construction~~

~~manager~~Owner's Design-Build Consultant will assist the Owner's Representative to represent Owner ~~within the limits of the construction manager's delegated, but has no~~ authority. ~~The Owner's Representative cannot grant the construction manager greater authority than the authority of the Owner's Representative. Prior to issuance of Notice~~bind Owner to Proceed, the ~~Project Representative shall set forth an adjustment in writing the authority of the construction manager under the Contract and for this Project.~~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 ____ (Key Personnel). Design-Builder acknowledges that the experience and skill of the Key Personnel was an important factor in determining the responsibility of the ~~Contractor~~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 ~~ninety (90)~~ [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 ~~shall~~ 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 ~~request for Change Order~~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. ~~The~~Except for those changes made pursuant to Section 3.3.5.1.2, the Parties acknowledge that the purpose of the Design Verification and Reconciliation Period is to enable Design-Builder to identify those Scope Issues, if any, that could not reasonably be identified prior to the Agreement Date. ~~Notwithstanding anything to the contrary in the Contract Documents, the Scope Validation Period has not been established for the purpose of enabling Design-Builder to offer Value Engineering Change Proposals, and the term "Scope Issue" is not to intended to include Value Engineering Change Proposals. Value Engineering Change Proposals are be offered and administered in accordance with Article 26.~~ 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.~~6-15.1~~ 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 ~~the~~ 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 ~~County~~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 ~~the approved~~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 County 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 ~~the Contract~~this Agreement and during the Design Verification Period of the Project, ~~which the Design-Builder acknowledges to be sufficient for this purpose,~~ 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~~Differing Site Condition. If the Design-Builder believes that a material or obstacle discovered during excavation, demolition and/or construction ~~exceeds existing contingency and~~ was not known or reasonably ascertainable and a ~~differing site condition~~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. ~~Conditions shall not be disturbed prior to such notice. If such conditions differ materially and cause a change in Design-Builder's cost of, or time required for, performance of any part of the Work, Design-Builder may request an equitable adjustment in the Substantial Completion Date(s) or Contract Sum, or both,~~

~~provided it makes such request therefor as provided in Section 8.6.~~ 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 Representative 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 ~~Owner's~~ 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 ~~date of~~ 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. ~~Design-Builder shall provide~~ 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, ~~Design-Builder shall~~ notify Owner's Representative and shall 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.

3.5.910 Protection of Existing Structures, Equipment, Vegetation. ~~Design-Builder shall protect~~ 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.

3.5.4011 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.

3.5.4112 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.

3.5.4213 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 ~~safety~~ 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 ~~project~~ siteSite safety.

3.6.3 Safety Program. Prior to ~~inducting~~conducting any work at the siteSite, and in accordance with ~~Section 01 14 00 of~~ Division One and any other requirements of the Contract Documents, the Design-Builder shall prepare and provide to the CountyOwner a written siteSite 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 siteSite 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 ~~make its own arrangements~~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 15.1.76.

3.7 Hazardous Materials.

3.7.1 Design-Builder's Responsibilities. Design-Builder is responsible for any Hazardous Materials encountered at the Site, 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; Notice and Plan. Upon encountering any new Hazardous Materials 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 Countythe 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 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.

~~3.7.2 — Remediation Handling.~~ Upon ~~providing Notice~~receipt of the presence of suspected Hazardous Materials~~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 ~~are remediated or rendered harmless. Such necessary measures shall include retention by Design-Builder of qualified independent experts to (i) ascertain whether Hazardous Materials have actually been encountered; and, if they have been encountered, (ii) prescribe the remedial measures that Design-Builder must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.~~

~~3.7.3 Resumption of~~ as part of the Work. ~~Design-Builder shall be obligated to resume Work at the affected area of the Project only after Design-Builder provides County~~ are handled in accordance with ~~written certification that (i) the Hazardous Materials have been removed or rendered harmless,~~the Owner-approved plan and ~~(ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.~~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 PlanPlans.

~~3.8.1 **Work Plan.** The Design-Builder shall prepare and submit to the Project Representative a plan by which the Design-Builder and its Subcontractors shall ensure all environmental requirements associated with the Work shall be complied with during performance of the Work under this Contract. The plan shall specifically address each such requirement. Failure to submit a complete environmental mitigation plan may result in suspension of work. Delays, if any, resulting from such suspension of work shall be considered caused by the acts of the Design-Builder, and any time delays or additional costs resulting therefrom shall be borne by the Design-Builder.~~ **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 **Labor Relations Generally.** Design-Builder shall use reasonable efforts in the selection and continuing employment of labor and Subcontractors (whether directly or indirectly employed) so as to cause no conflict or interference with or between the various trades, or delay in performance of Design-Builder's obligations. Design-Builder shall be responsible for all labor relations matters relating to the Work and shall at all times use reasonable efforts to maintain harmony among unions and other personnel employed in connection therewith. Design-Builder shall coordinate all Work and the trades of all labor. Design-Builder shall at all times use its best efforts and judgment as an experienced Design-Builder to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. Design-Builder shall be solely responsible for any work stoppages, slowdowns, disputes and/or strikes at the Site and such shall not be deemed an Excusable Delay or entitle Design-Builder to a Change Order or an extension of the Substantial Completion Date(s), except as specifically provided in Section 10.1(12).~~

~~3.9.2~~ **3.9.1 Hours of Labor.** Design-Builder shall comply with all applicable provisions of RCW Chapter 49.28.

~~3.9.3~~ **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 ~~in accordance with the Contract Documents~~ of the Work, Design-Builder immediately shall

give notice, including all relevant information, to Owner.

~~[TO BE DETERMINED]~~

3.9.43 Project Labor Agreement (PLA). This Contract is subject to the terms and conditions contained in the Project Labor Agreement for the ~~Brightwater Conveyance System~~ King County Children and Family Justice Center Project. The PLA is attached hereto and incorporated into the Contract ~~as Exhibit~~ _____. 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. ~~By written agreement,~~ Design-Builder shall require each Subcontractor, ~~so far as to comply with all Contract Document requirements applicable to the Work to be performed by the Subcontractor, to be bound to Design-Builder by terms~~ Subcontractor's scope of the Contract Documents. ~~Each subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights~~ 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~~ 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 ~~attributable to any failure of arising from violations of such Governmental Rules by~~ Design-Builder or any Subcontractors, employees, agents or representatives, ~~to comply with such Governmental Rules~~ 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. ~~Provide to Owner~~ Design-Builder shall provide information reasonably requested by Owner to enable ~~it~~ 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 ~~meeting~~ meet all LEED Energy & Sustainability Performance Requirements contained in Division One and ~~Owner's~~ the Project Criteria. Design-Builder shall maintain ~~the~~ 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 ~~USGBC~~ 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 Performance Validation. ~~Performance assurance (PA) and measurement and verification (M&V) shall be measured annually for three (3) years from the date of Substantial Completion of Phase 1A.~~

3.14.2 Scope. Design-Builder's Performance Guarantee Builder shall ~~cover~~ guarantee the ~~operations, maintenance, and~~ performance of all ~~building~~ systems ~~that are related to the~~ environmental controls of the building. ~~The building's environmental controls shall consist of the mechanical, electrical, telecommunications, security, and~~ building controls, ~~and specialty systems.~~

~~3.14.3 Energy and Sustainability Performance Requirement Measurements. Design-Builder, in mutual agreement with Owner, shall devise a method of performance assurance and measurement & verification, which shall assure 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 ~~is achieved~~ 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. ~~The plan also shall outline the overall compensation, review period payment releases, and non-performance compensation. The compensation held during the later years of the performance period will be higher creating a tiered release schedule as the building ages and operational requirements become more critical.~~

Performance validation shall be measured annually by evaluating whether the building meets the designated performance criteria ~~developed by Design-Builder in consultation with Owner~~ 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; ;
- ~~(3) operational and maintenance costs at or near the end of the one-year period.~~

~~3.14.4 Financial Guarantee. Owner shall withhold a pre-determined amount from the Contract Sum, during the Performance Guarantee Period. Release of payment for this withheld amount shall be contingent upon the final confirmation that the operations, maintenance and energy use index (EUI) performance standards for the facility (i.e. actual EUI = BTU/GSF-Year) have been achieved as verified by the M&V conducted over the three year (1,075 days) period. The start date of the Performance Guarantee Period is the date, post Substantial Completion, when the building is at a minimum of 80% occupancy. The withheld amount shall be \$500,000 which is equivalent to the approximate value of the estimated operations, maintenance and energy operating costs for the first year.~~

~~If the actual operations, maintenance, and EUI as presented in the M&V findings and recommendations is equal to or better than the guaranteed performance requirements, a percentage of withheld amount will be released annually as noted in the approved plan indicated above.~~

~~If the actual operations, maintenance, and EUI as presented in the M&V findings and recommendations fails to meet the guaranteed performance requirements, the Design-Builder shall make a proportionate performance compensation payment to the Owner at~~

~~the end of the performance period to account for the performance differences from the approved plan.~~

~~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 ~~ie~~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~~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;~~and.~~

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 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 ~~to ingress and egress to the Site~~that required ~~by~~ security measures ~~at~~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; and
- (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 ~~Substantial Completion Date(s)~~Contract Time.

By representing ~~warranting~~ that it has ~~so~~ evaluated the above-referenced conditions, Design-Builder confirms that it will complete the Work within the Contract Sum and ~~its agreement to complete~~ on or before the ~~Substantial Completion Date(s)~~ assume Contract Time. Design-Builder assumes the risk of any and all such conditions set forth above, and agrees that it shall not ~~makesubmit~~ a ~~request for a Change Order or equitable adjustment~~ Contractor Initiated Notice for such conditions, subject to Design-Builder's rights under Section 3.3.~~65~~ 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 Forty Nine Million dollars (\$149,000,000), which shall be paid to~~ (\$ _____). ~~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), 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: _____ percent (____%) of the Cost of the Work, ~~as adjusted in accordance with Section .~~ Design-Builder agrees that this Fee is a reasonable payment for profit.

~~5.4.2 below.~~

~~5.4.2—Design Change Order. Design-Builder's Fee will be adjusted pursuant to only be included in a Change Order for an adjustment in the Contract Sum or Contract Time as provided in Article 9 for any changes in the Work.~~

~~5.5.4.3 Owner-Requested Betterment Fee. Design-Builder shall earn an additional two percent (2%) fee on the Cost of Work for each County-Requested Betterment, as identified in Form D of the RFP, ("Owner-Requested Betterment Fee") that Design-Builder is able to incorporate into the Project in an amount up to but not exceeding the GMP stated in Section 6.6.~~

~~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; provided, however, that the costs for those employees of Design-Builder performing design and engineering services shall be negotiated and set forth in an exhibit to the Agreement.~~

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 ~~Project-site~~Site. The cost of each member of the supervisory and administrative personnel at the ~~Project-site~~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 ~~Project Representative~~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 _____ 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 ~~for Design-Builder's personnel~~, 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 County~~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 ~~Project Owner's~~ Representative. This will be accomplished by providing Notice to the ~~Project Owner's~~ Representative stating the destination, purpose of the trip, who is traveling, and the expected duration of the trip. The ~~County~~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 ~~insurance~~Design Consultants and ~~bond premiums are to their corresponding rates (including associated Overhead and profit) shall~~ be ~~identified~~listed in Exhibit _____ ~~in order to be considered a Cost of the Work.~~ to this Agreement.

~~5.5.7 Not used.~~

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, ~~including the cost of facsimile transmissions, long distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses~~ 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 _____ in order to be considered a Cost of the Work.
~~Work.~~

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

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

~~5.5.16~~ ~~Not used~~ Used.

~~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 % 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 Field or Site Office and Home Office Overhead 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) Allowance items is included within the GMP. All other Allowance Items are not included within the initial GMP, but and it is intended that they will be ~~incorporated into~~ 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~~ Items and Allowance ~~values~~ 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 Sections 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 ~~the negligence~~ 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 ~~damaged, defective or nonconforming~~ replacement of the Work ~~and, including~~ insurance deductibles paid on account ~~of damages caused by Design-Builder's negligent acts or omissions~~ 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 Owner's Budgeted GMP.

5.8.1.1 Design-Builder represents, warrants, and guarantees that it shall not exceed the ~~Guaranteed Maximum Price (GMP).~~ Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement (Exhibit _____ "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 _____ Dollars (\$_____) which is available for Design-Builder's exclusive use for unanticipated costs it ~~has incurred that are the Design-Builder's responsibility under the Contract Documents.~~ 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) ~~escalation of materials;~~ (d) correction of negligent, defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) ~~Subcontractor defaults;~~ (f) terminations and reprocurement of services; (g) 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, ~~or (g) schedule recovery costs;~~ (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 status report required by Section 25.7 of ~~the Contract~~this Agreement 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.

5.8.32 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 home office 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 ~~date of Contract execution~~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 ~~The County~~Owner Review. Owner will timely review and approve the ~~schedule of values so as not to delay the submission of the~~Schedule of Values or provide Design-Builder's first application for payment.Builder with a written explanation of why the Schedule of Values was not approved. Unless otherwise specified in the Contract Documents, ~~County~~Owner shall use reasonable efforts to review the Schedule of Values within thirty (30) Days of ~~the County's~~Owner's receipt of the Design-Builder's submittal of its Schedule of Values. ~~The County~~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 ~~The County's~~ 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~~ **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.

6.3-2 Applications for Payment.

6.32.1 ~~_____~~ 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 ~~with each Application for Payment~~ 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; ~~and~~
- (d) The contract purchase agreement number, CPA # _____ (which shall be used for placed on each Application for Payment submitted by the ~~Contractor to the County.~~ Design-Builder); and
- ~~6.~~ (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. ~~The Contractor~~ Design-Builder is not entitled to payment for any Work unless the Application ~~For~~ for Payment includes all required documentation. ~~The County Owner~~ reserves the right to withhold payment pursuant to Section 6.65 if it is subsequently determined that ~~all required documentation was not provided by the Contractor.~~ Design-Builder

6.2.3-3 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 ~~Contractor~~ 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 ~~the County's~~ Owner's consent, up to 75% of the invoiced cost of major materials or equipment suitably stored off the Site if the ~~County's~~ Owner's interest in those major materials or equipment is protected through

insurance and the ~~Contractor~~Design-Builder provides documentation of such insurance.

6.43 Progress Payments.

6.43.1— 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.

6.43.2— Prompt payment of Subcontractors. Design-Builder shall ensure that Subcontractors are promptly paid as required by RCW 39.04.250.

6.43.3 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 ProjectOwner’s Representative at the address given for notices in this Contract, for filing with the Project documents. The ProjectOwner’s Representative will maintain a copy of all claims “liens” against the retainage in the Project document ~~files..~~

6.3.4.4 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.

6.43.5— Payment for Punchlist. Design-Builder’s right to be paid for the Punchlist is set forth in Section 7.3.~~21.4.~~

6.43.6 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.

6.54 Final Payment.

6.54.1— Application for Final Payment. ~~Once Owner has issued~~Upon submitting a Certificate notice of Final Acceptance 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) ~~Affidavit of Wages Paid for Contractor~~Submittal by Design-Builder and all Subcontractors of Affidavits of Wages Paid in accordance with state law;

- (2) ~~Contractor's~~Design-Builder's release of claims against ~~the County~~Owner, except for Claims specifically described in the release document and submitted in accordance with Article 11;
- (3) ~~Contractor~~Design-Builder certification that all Subcontractors ~~and Suppliers~~ 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.

6.54.2— Payment. Within ~~sixty (60)~~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 ~~(less any money withheld as required for the Performance Guarantee Period per Article 6.8)~~, 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.

6.54.3— Effect of Final Acceptance and Final Payment.

- (1) Neither Final Acceptance nor Final Payment shall release ~~Contractor~~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 ~~the County~~Owner arising from or related to ~~Contractor's~~Design-Builder's performance or failure to perform the Work and to meet all ~~Contractual~~contractual obligations ~~in accordance with the Contract~~, including but not limited to:
 - a. Unsettled liens, security interests or encumbrances;
 - b. Damaged, non-conforming, or defective Work discovered by ~~the County~~Owner;
 - c. Terms of any warranties or guarantees required by the Contract; and,
 - d. Payments made in error.

6.54.4— Waiver and Release. ~~Acceptance~~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'~~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.

6.65 Owner's Right to Withhold Payment and Offset

6.65.1— 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 ~~Contractor~~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 ~~Contractor~~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 ~~Contractor's~~Design-Builder's or Subcontractor's acts, omissions, fault, or negligence;
6. Deduction in Contract Work;
7. Failure of ~~Contractor~~Design-Builder to repair damaged materials, equipment, property, or Work;
8. Failure of the ~~Contractor~~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 ~~Contractor~~Design-Builder to disclose all material facts or accurate information upon which the Owner relied when ~~issuing a Unilateral~~agreeing to 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.

6.65.2 —Payment Disputes. If Design-Builder disputes Owner's determination of payments due hereunder, or disputes any offsets or withholding by Owner, Design-Builder shall ~~have the right to~~ submit ~~the dispute for resolution~~ Contractor Initiated Notice, in accordance with ~~Article 11, Section 8.6.~~ Pending resolution of any such dispute, Design-Builder shall continue its performance of the Work in accordance with the Contract Documents. ~~Amounts determined by such resolution process to have been properly due shall be payable by Owner within thirty (30) days after (a) the effective date of the Parties' negotiated settlement or (b) absent such settlement, any judgment award issued pursuant to Section 11.2.~~

~~6.7—6~~ **Interest.** Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in Chapter 39.76 RCW.

~~6.8 Record Keeping and Finance Controls.~~ **6.7 Cost Records.** Design-Builder acknowledges that this Agreement is to be administered on an “open book” arrangement. Design-Builder and Subcontractors shall ~~be subject to audit~~ maintain Project cost records by cost codes and shall contemporaneously segregate and separately record at any the time incurred all costs: (1) directly associated with ~~respect~~ 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 ~~Contract.~~ 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 ~~Contract~~ requirements and ~~to~~ of this Agreement; allow Owner to verify all costs or damages; or ~~failure to~~ 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 ~~Contract~~ Agreement.

6.8.1- Design-Builder to Provide Facilities ~~for Audit~~ and Shall Cooperate. The ~~Inspection, audit, and/or copying~~ of all documents described herein, may be performed by ~~employees of the~~ Owner or ~~a representative~~ 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 ~~Owner.~~ 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. ~~All records shall be maintained for a period of six (6) years after final payment under this Agreement.~~

6.8.2-~~Cost Records.~~ Documents. At a minimum, the following documents, including ~~the~~ 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, ~~requests for equitable adjustment~~[Contractor Initiated Notice](#), Claims and any other request for damages or additional money or;
- (22) Financial statements for all years during the Contract ~~time~~[Time](#). In addition, the ~~County~~[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~~Time in each ~~request for equitable adjustment~~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 Contract 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. 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 commissioning 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— Conditions of Substantial Completion.** Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or Punchlist work shall be completed as of Substantial Completion, and Substantial Completion shall not have been achieved if: (a) any systems and parts are not functioning as required by the Contract Documents; (b) utilities are not connected and operating normally; (c) all required occupancy permits have not been issued; or (d) the Work is not accessible by normal vehicular and pedestrian traffic routes.~~

~~7.3.2 Punchlist.~~

7.3.1 Punchlist.

7.3.1-1 Design-Builder’s Creation of Punchlist. Design-Builder shall prepare ~~a Punchlist~~ separate Punchlists for Phase 1A and Phase 1B and provide

~~it~~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: ~~(a) Owner shall have no obligation to accept such Punchlist if the aggregate value of the Work to be performed as described in the Punchlist (including labor and equipment) exceeds one half of one percent (0.5%) of the Contract Sum; and (b)~~ acceptance or rejection thereof shall not relieve Design-Builder of its liability to complete or correct the Punchlist items. If the ~~parties~~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) ~~either Party may refer the matter to dispute resolution in accordance with the provisions of Article 11;~~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.

7.3.3-~~2~~ Substantial Completion Certificate.

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

7.3.3.2-~~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.

7.3.4-3 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) (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; ~~and~~

(2) (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 ~~Design-Builder~~ Owner believes that ~~Final Completion has~~ all conditions in Section 7.4.1 have occurred and all other requirements for Final Acceptance contained in Division One have been met, ~~Design-Builder, Owner~~ Owner shall issue a ~~proposed~~ Final Acceptance Certificate ~~for approval by Owner. The process for Owner's review, acceptance and/or rejection of this certificate shall be in accordance with Section 7.3.3.2.~~

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 ~~4A1B~~ 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) ~~(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) ~~(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 ~~equitable~~ 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 ~~Substantial Completion Date(s)~~, 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, ~~or a request for equitable adjustment in the Contract Sum or Substantial Completion Date(s), or both~~, as provided in Articles 9 and 10, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Design-Builder. Pending agreement on the terms of the Change Order, Owner may direct Design-Builder to proceed immediately with the ~~Change Order~~ 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— 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 Substantial Completion Date(s), such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.~~

~~**8.2.3— Failure to agree upon terms of Change Order; Final offer and Claims:**~~ **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 ~~Substantial Completion Date(s)~~, Design-Builder may ~~at any time in writing, request a final offer from Owner. Owner shall provide Design-Builder with its written response within thirty (30) Days of Design-Builder's request. Owner may also provide Design-Builder with a final offer at any time. If Design-Builder rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Design-Builder only remedy shall be to file a Claim as provided in Article 11~~ 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 ~~Order~~) 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: ~~(1) The~~ (a) the scope of work; ~~(2) An~~ (b) an agreed upon maximum not-to-exceed amount; ~~(3) Any~~ (c) any estimated ~~change to the Substantial Completion Date(s);~~ (4) The adjustment in Contract Time; ~~(d) the~~ (d) the method of final cost determination in accordance with the requirements of Article 9.; ~~(5) The; 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 not make payment to pay~~ the Design-Builder for Construction Change Directive work ~~until that~~ only upon satisfactory completion of performed work has been incorporated into an executed 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.— Not Used~~

~~8.6— Design-Builder's Requests for Equitable Adjustments.~~ 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 ~~causes a material, 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 ~~that (b)~~ under the terms of the Contract Documents such act, event or condition entitles Design-Builder to an adjustment to the Contract Sum or ~~the Substantial Completion Date(s), Contract Time or other reliefs,~~ then Design-Builder shall comply with the following processes.

8.6.1— Request for Equitable Adjustment-Contractor Initiated Notice. Design-Builder shall provide Owner with written ~~notice~~ Notice, in accordance with Section 8.6.2, of any act, event, or condition that Design-Builder believes entitles it to an ~~equitable~~ adjustment in the Contract Sum and/or ~~Substantial Completion Date(s) Contract Time~~ within fourteen (14) days ~~of 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 Notice-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 ~~notice~~ CIN to Owner. ~~The written notice~~

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 equitable adjustment in the Contract Sum; (b) the nature of the impacts to Design-Builder; and (c) 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 ~~Contract Sum~~ the Contract Time requested.

Failure ~~properly to give such written notice~~ comply with the requirements of this section shall constitute a waiver of Design-Builder's right to an ~~equitable adjustment~~ in the Contract Sum or Contract Time.

8.6.3— Contents of the Supplemental Notice; Failure to Comply. Within thirty (30) days ~~of~~ after the ~~occurrence of the event giving rise to~~ initial CIN is submitted to the request ~~Owner,~~ unless Owner agrees in writing to allow an additional period of time ~~to ascertain more accurate data,~~ Design-Builder shall supplement the written notice provided in accordance with Section 8.6.2 ~~above~~ 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, ~~at a minimum~~ 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 ~~equitable adjustment to Design-Builder for such act, event, or condition;~~ 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 Substantial Completion Date(s),~~ Contract Time Design-Builder shall also be obligated to comply with all of the requirements of Article 10. ~~Failure to provide such additional information and documentation within the time allowed or within the format required shall constitute a waiver of Design-Builder's right to an equitable adjustment.~~

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 equitable adjustment in the Contract Sum and in the Substantial Completion Date(s) 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. ~~Design-Builder shall have no right to seek an equitable adjustment to~~ No change in the Contract Sum or Contract Time, including Substantial Completion Date(s) ~~if~~, shall be allowed when the basis for the ~~adjustment~~change arises out of or relates to acts, events or conditions to the extent caused ~~in whole or in part~~ by the fault or negligence of Design-Builder, or anyone for whose acts Design-Builder is responsible.

8.7.8 Computation of Adjustments.

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

8.7.8.2— ~~Substantial Completion Date(s)~~ Contract Time. The computation of any adjustments to the ~~Substantial Completion Date(s) Contract Time~~ as the result of any Change Order, or of any Design-Builder ~~request for equitable adjustment~~ Contractor Initiated Notice under Section 8.6, or any other event or reason, shall be as set forth in Article 10.

~~8.8— Duty to Proceed~~ **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 ~~equitable~~ 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 ~~Substantial Completion Date(s)~~ 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.

~~**9.1.2 Owner Fault or Negligence as Basis for Change in Contract Sum.** If the cost of Design-Builder's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Design-Builder shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Design-Builder's changed cost of performance is due to the fault or negligence of Design-Builder, or anyone for whose acts Design-Builder is responsible; or the change is concurrently caused by Design-Builder and Owner.~~

~~a. **Notice and Record Keeping for Equitable Adjustment.** A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within seven (7) Days of the occurrence of the event 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 event 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.~~

~~b. **Content of Notice for Equitable Adjustment: Failure to Comply.** Design-Builder shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than seven (7) Days before Design-Builder's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Design-Builder and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design-Builder's right to an equitable adjustment.~~

~~c. **Design-Builder to Provide Supplemental Information.** Within thirty (30) Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Design-Builder shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; 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 equitable adjustment to Design-Builder for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Design-Builder shall demonstrate the impact on the critical path, in accordance with Section 10.5. Failure to provide such additional information and documentation within the time allowed or within the format required shall constitute a waiver of Design-Builder's right to an equitable adjustment.~~

- ~~d. **Design-Builder to Proceed with Work as Directed.** Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Design-Builder shall proceed diligently with performance of the Work.~~
- ~~e. **Design-Builder to Combine Requests for Same Event Together.** Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Substantial Completion Date(s) that arise out of the same event(s) shall be submitted together.~~

Contractor Initiated Notice

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

9.1.3-2 Methods for Calculating Change Order Amount. ~~The value of any Work covered by a Change Order, or of any request for an equitable 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.

~~**9.1.4 Time** 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 **Materials Method Is Default:** the Design-Builder's Fee on Change Order Work as set forth in this Section 9.1. Under no circumstances shall Design-Builder be entitled to receive Fee beyond the Base Work and that Overhead and profit that is included within the Change Order Work.~~

9.1.3 Owner May Direct Otherwise Method. When Owner has requested Design-Builder to submit a Cost Proposal, Owner may direct Design-Builder as to which method in Section 9.1.3~~2~~ to use when submitting its proposal. ~~Otherwise, Design-Builder shall determine the value of the Work, or if a request for an equitable adjustment, on the basis of the fixed-price method.~~

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 of the costs required to complete the changed~~ Work, including any additional design or engineering costs as required to complete the Work, including Overhead and Design-Builder's Feeprofit.

9.2.3 Design-Builder shall ~~only~~ 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 ~~Project~~Owner's Representative.

9.3.3 Any adjustments to the Contract Sum using the Firm Fixed Price Method shall include, ~~when appropriate,~~ all reasonable ~~Costs~~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~~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 ~~Fixed-Price payment~~agreed price for performing such ~~work, which~~changed Work. The GMP shall be ~~added to~~adjusted consistent with the ~~GMP~~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 ~~Material~~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 Project 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 ~~by the Design-Builder 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 ~~following categories~~ direct and indirect costs of the Work as ~~provided herein defined in Section 9.5 through Section 9.9.~~

9.4.5 Labor. For all labor, ~~including foreman supervision but excluding superintendents,~~ the Design-Builder shall be reimbursed for its labor costs ~~provided herein. The labor cost of an event or condition shall be calculated as the sum of the following:~~

~~**9.5.1 Labor Rate.** The Labor Rate is the actual reasonable wage paid to the individual plus the actual reasonable costs incurred by the Design-Builder to cover costs associated in accordance with Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUCA), industrial insurance, fringe benefits, and benefits paid on behalf of labor by the Design-Builder. The the applicable Labor Rates shall be multiplied by the number of hours reasonably expended in each labor classification because of the event or condition to arrive at a total cost of labor. provisions of Section 5.5.~~

~~**9.6.2 Travel Allowance and/or Subsistence.** The labor calculation shall include the actual costs of travel and/or subsistence paid to the Design-Builder's employees engaged upon the Work when said payments are required by a labor agreement.~~

~~**9.6.3 Design and Engineering Costs.** The Design-Builder labor costs shall also include the additional design or engineering costs as required to complete the work in the~~

~~manner set forth below. For any technical and/or professional services the Labor Rate, including overhead and profit, shall be established by the Cost Rate Sheet completed by the Design-Builder and attached to this Agreement as Exhibit ____.~~

9.7

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.

9.84.7 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. ~~9.8.1 — Equipment Rates.~~ 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. ~~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 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.

9.84.7.2 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.

9.84.7.3 Standby. The Design-Builder shall ~~only~~ 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. ~~The~~ 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 ~~herein~~ in Section 9.4.5 through Section 9.4.7 for Design-Builder. Design-Builder shall provide detailed breakdown of Subcontractor invoices.

9.404.9 Overhead and Profit Markup.

9.404.9.1 On a change to the Contract Sum ~~or any other claim for money~~ by the Design-Builder, the Owner will ~~pay Design-Builder's only pay Overhead, including home office~~ overhead ~~but only if allowed as a Cost of Work pursuant to Section 5.5. Design-Builder will not be entitled to any profit beyond application of the Design-Builder's Fee. Owner will pay Subcontractor, site or field office~~ overhead, and ~~profit pursuant to the~~ unabsorbed home office overhead, and profit ~~markups 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.~~

9.404.9.2 ~~Subcontractor overhead~~ Overhead and profit markups shall not be ~~applied to~~ paid on freight, delivery charges, express charges, ~~and~~ or sales tax.

~~9.10.3 The allowed Subcontractor overhead~~ **9.4.9.3 Overhead** and profit markup shall be paid by a markup on direct costs and shall not exceed the following:

- a. ~~18% for~~ 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.

- a. ~~If a Subcontractor is performing work: Subcontractor is limited to 18% combined overhead and profit markup for~~ the Subcontractor's direct ~~cost for performing the work.~~
- b. ~~If the value of material and equipment is greater than fifty percent (50%) of the total value of the Change Order Work, the costs and Design-Builder is limited to 7% combined~~ overhead and profit markup ~~shall only be ten percent (10%) for material and equipment 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 ~~eighteen~~twenty-five percent (~~18~~25%) of the direct cost to perform the Change Order Work.

9.10.4 ~~“5~~ Direct Costs.

Direct costs shall include labor (as defined in Section 9.4.5), materials (as defined in Section 9.74.6), equipment, (as defined in Section 9.8,~~4.7~~) and ~~Subcontractor~~Subcontract costs (as defined in Section 9.4.8~~).~~)

9.116 Deductive Changes to the Contract Sum.

9.116.1 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 ~~6, Time and Price Adjustments~~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.

9.116.2 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

9.127 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), ~~and the amount of such compensation,~~ are set forth in Section 10.~~6~~3.

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

ARTICLE 10

**ADJUSTMENTS TO THE SUBSTANTIAL COMPLETION
DATE(S) 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 Change Order;~~

a. Cost Proposal.

~~**10.2—Time Extension Permitted if Not Contractor's Fault.** If the time of Design-Builder's performance is changed due to an Excusable Delay, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Design-Builder shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Design-Builder's changed time of performance is due to the fault or negligence of Design-Builder, or anyone for whose acts Design-Builder is responsible~~

~~**10.2.1 Critical Path Must be Delayed.** Additionally, Design-Builder is not entitled to an adjustment in the Contract Time unless the progress of the Work on the Critical Path is delayed, and that such delay could not have been avoided by resequencing the Work..~~

~~**10.3—Adjustment of Substantial Completion Date(s).** The Substantial Completion Date(s) 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 ~~as hereinafter~~within the time periods provided in Section 8.6; (b) the delay impacts the critical path Critical Path (as reflected on the most recent monthly Project Schedule update) ~~and~~, 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 10.74; 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.

~~**10.4—Notice and Supporting Documentation.** Design-Builder shall not be entitled to an adjustment in the Substantial Completion Date(s) for any events that occurred more than fourteen (14) days before Design-Builder's written notice to Owner. The written notice shall set forth, at a minimum, a description of: (a) the event giving rise to the request for an equitable adjustment in the Substantial Completion Date(s); (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 Substantial Completion Date(s) requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design-Builder's right to an equitable adjustment.~~

~~**10.5—Supplementation.** Within thirty (30) days of the occurrence of the event giving rise to the request for an extension to the Substantial Completion Date(s), unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Design-Builder shall supplement the written notice provided in accordance with Section 10.4 with additional~~

~~supporting data. Such additional data shall include, at a minimum: (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 equitable adjustment in the Substantial Completion Date(s) for such act, event, or condition; and (c) supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Design-Builder is further required to submit to Owner, as part of these supplemental materials, an acceleration schedule on a fragment basis to demonstrate how such delay can be eliminated. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design-Builder's right to an equitable adjustment.~~

~~10.6~~ ~~Not used.~~

~~10.7~~ **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 10.32 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 ~~the acts or omissions of~~ 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 ~~Section 013262, subsection 1.6~~ 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. ~~35~~.
- (14) Supplier delay of sole source products, provided the delay is completely outside the control of the Design-Builder.

~~10.8-5~~ **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. ~~72~~(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. ~~72~~(6) and 10. ~~72~~(7); and
- (7) Any other delay not specifically enumerated in Section 10. ~~72~~.

~~10.9~~ 6 **Design-Builder To Proceed With Work As Directed.** Pending final resolution of any request in accordance with this ~~paragraph~~article, unless otherwise agreed in writing, Design-Builder shall proceed diligently with performance of the Work.

~~10.10~~ 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 ~~Substantial Completion Date(s)~~Contract Time and its entitlement to relief under this Article 10.

~~ARTICLE 11~~ **CLAIMS AND DISPUTE RESOLUTION**

~~11.1~~ **Final Offer.** ~~If the Parties fail to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Substantial Completion Date(s), Design-Builder, at any time, may request in writing a final offer from Owner. Owner shall provide its written response within thirty (30) days of Design-Builder's request. Owner also may provide Design-Builder with a final offer at any time. If Design-Builder rejects Owner's final offer, or the Parties are unable to reach agreement, Design-Builder's only remedy shall be to file a Claim in accordance with this Article 11.~~

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 ~~Contractor~~Design-Builder.** Design-Builder shall file its Claim within ~~the earlier of forty-five (45) days from Owner's final offer in accordance with denial or deemed denial of a Contractor Initiated Notice under Section 11.1 (if such an offer has been made) or the date of Final Completion~~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 ~~Substantial Completion Date(s)~~Contract Time is sought, then: (a) the specific number of days sought; (b) the specific reasons Design-Builder believes an extension in the ~~Substantial Completion Date(s)~~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 ~~(a) all records supporting the Claim and (b) all relevant records meeting the requirements of~~cost categories in Section 6.87; 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 ~~Substantial Completion Date(s)~~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)~~ (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 ~~County~~Owner.

11.2.45 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.

11.2.56 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 ~~certification~~ Certificate of Substantial Completion of the Work;

11.3.1.3 Request initiation of an Alternate Dispute Resolution (ADR) process agreeable to both ~~parties~~ 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 ~~disputes~~ 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~~ 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. ~~Failure of Design-Builder, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Design-Builder, or Subcontractors of~~

~~any tier, shall constitute a waiver of the Claim and shall bar any recovery.~~

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). ~~Such inspections and tests include, but are not limited to, those identified in Section 2.1.5 above.~~ 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 ~~Contractor~~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, ~~at its own expense,~~ 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 ~~AND~~; 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)~~ (4) 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 13.2 ~~above, within a period of twelve (12)~~

~~months from the date of Substantial Completion of the Work, or within such longer period to the extent required by the Contract Documents~~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 ~~time~~warranty period ~~of twelve (12) months as described~~ in Section 13.3.4~~2~~ relates only to ~~the~~Design-Builder's specific obligation ~~of Design-Builder~~ 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 ~~may be sought to be enforced~~, including the time within which such enforcement proceedings may be commenced.

13.6- Warranty Survey. Owner shall schedule a warranty survey 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 ~~the~~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 **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 ~~the~~this Agreement, but that incorporate preexisting materials not produced under ~~the contract~~this Agreement, Design-Builder hereby grants to Owner a nonexclusive, royalty-free, irrevocable license (with rights to sublicense 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 15.2, 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 ~~concluded~~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, 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 ~~the such~~ termination ~~of this Agreement~~ (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 ~~the preceding sentence~~ 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 ~~either-cause~~ or convenience, Design-Builder promptly shall:

- (1) ~~(1)~~—Stop performing Work on the date and as specified in the notice of termination;
- (2) ~~(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) ~~(3)~~—Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
- (4) ~~(4)~~—Assign to Owner all of the right, title, and interest of Design-Builder in all orders and subcontracts;
- (5) ~~(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) ~~(6)~~—Continue performance only to the extent not terminated.

16.3—~~Equitable~~ Adjustment for Termination for Convenience. If Owner terminates the Work for convenience, Design-Builder shall be entitled to be paid ~~the prorated portion of the Contract Sum~~ for all ~~work~~ 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 unabsorbed ~~overhead~~ 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 ~~Substantial Completion Date(s)~~, Contract Time Design-Builder shall be entitled to submit a ~~request for adjustment~~ Contractor Initiated Notice in accordance with

~~Articles Article 8, 9 and/or 10, as applicable.~~ 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 ~~equitable~~ adjustment in the Contract Sum or ~~Substantial Completion Date(s)~~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 _____.

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~~Parties relating to liability for infringement of violation of any patent or copyright.

19.2 Payment Claim Indemnification

~~19.2.1~~ ~~Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work,~~ 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 Contract 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,

~~19.4.2.1.—The duty to promptly accept tender of defense and provide defense to the Owner at the Design-Builder's own expense.~~

~~19.4.2.2.—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 agree upon by them.

~~19.4.2.3.—To the maximum extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Owner from and be liable for all damages and injury which shall be caused to Owner's property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, when such injury or damage is caused by~~

~~the negligent act or omission or willful misconduct of the Design-Builder, its officers, employees, agents, partners, respective members, parent corporations, subsidiaries or affiliates, and/or Subcontractors of all tiers, or caused by the inherent nature of the work specified.~~

~~19.4.3.~~**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.

~~19.3.4.4.~~ 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.

~~19.43.5.~~ 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.

~~19.43.6.~~ The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

~~19.43.7.~~ 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.~~ 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 will respond to~~receives any public records request for identified confidential records ~~by notifying,~~ 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~~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, as approved. Copies of the approved intent statement(s) shall 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.

23.1.4-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.

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:

If to Owner:

Phone: _____

Email: _____

Attention:

With a copy to:

Phone: _____

Email: _____

Attention:

With a copy to:

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~~ Date(s) and indicate a date for Final ~~Acceptance~~ Completion. The Design-Builder shall update the Project Schedule monthly with each Application for Payment to show actual progress of the Work and extensions in ~~Substantial Completion~~ 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 ~~Substantial Completion date(s)~~ Contract Time; or (b) from its sole responsibility for the accuracy of the Project Schedule, and its compliance with all Contract requirements.

25.5—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) ~~(4)~~—A statement that the submission is a VECP, and a narrative description of the proposed change;

- (2) ~~(2)~~—A description of the existing requirements under the Contract Documents that are involved in the proposed change;
- (3) ~~(3)~~—A discussion of the differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
- (4) ~~(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) ~~(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) ~~(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 ~~Substantial Completion Date~~(s~~Contract Time~~);
- (7) ~~(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) ~~(8)~~—Costs of development and implementation of the VECP by Design-Builder; and
- (9) ~~(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, ~~provided, however, that~~ However, if Owner determines that a VECP requires excessive time or costs for review, evaluation or investigations, or ~~are~~ 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 ~~issued~~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~~Parties, the ~~parties~~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. ~~Except with respect to indemnification obligations contained herein in favor of third parties, the~~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; ~~provided, that Design-Builder's Subcontractors shall be entitled to the benefit of, and enforce, the provisions of this Agreement providing for waiver of rights or claims against, and release or limitation of liability of, such Subcontractors.~~

~~**27.7—Non-Discrimination.** Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, Chapter 49.60 RCW, and Gubernatorial Executive Order 85-09. These laws and regulations~~

~~establish minimum requirements for affirmative action and fair employment practices which Design-Builder must meet. Design-Builder shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in Chapter 49.60 RCW.~~

27.7 Not Used.

~~27.9—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.

~~27.10 Records Retention. The wage, payroll, and cost records of Design-Builder, and its Subcontractors, and all records subject to audit in accordance with Section 11.6.1 above, shall be retained for a period of not less than six (6) years after the date of Final Acceptance.~~

~~27.11—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.

~~27.12—11~~ **Time is of the Essence.** Time is of the essence for each and every provision of this Agreement.

~~27.13—12~~ **No Agency.** The ~~parties~~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.

~~27.14—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.

~~27.15—14~~ **Integrated Agreement: Modification.** This Agreement in combination with the other Contract Documents constitutes the entire agreement and understanding of the ~~parties~~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.

27.16–15 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.

27.17–16 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.

27.18–17 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.

27.19–18 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~~Parties shall not affect the validity thereof so long as all the ~~parties~~Parties hereto execute a counterpart of this Agreement.

Executed and effective as of the date first above written.

KING COUNTY

~~{Insert Name of
Company} DESIGN-
BUILDER~~

By: _____
Name

By: _____
Name

Title

| _Title

**List
of
Exhibits**

**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 9



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 9

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART A – REQUEST FOR PROPOSAL
9.1	RFP Documents	Budgeted GMP, DELETE "\$149 Million" or "\$149,000,000", and REPLACE with: "\$154,000,000"
9.2	RFP Documents	Budgeted GMP, DELETE "One hundred Forty Nine Million and NO/100 Dollars" and REPLACE with: "One hundred Fifty Four Million Dollars"
9.3	2 TOC	DELETE "Part F – Financial Capability, and REPLACE with: "Part F – Not Used"
9.4	4 TOC	DELETE "FORM D-OWNER REQUESTED BETTERMENTS" and REPLACE with: "FORM D-ALTERNATES"
9.5	4 TOC	DELETE "FORM P INFORMATION SHEET FOR SHELL AND CORE NEW PHASE 2 AREA" and REPLACE with: "FORM P NOT USED"
9.6	7	1.2 DEFINITIONS A. DELETE 6, and REPLACE with: "6. NOT USED"
9.7	15	1.5.6 PERMITS ADD new paragraph: "F. The maximum building height increase required for Phase 2 construction in the NC3P-65 zone is not included in the Proposed Draft Text Amendments. The maximum building height increase required for Phase 2 construction in NC3P-65 zone will be changed to 85 feet as an amendment to the City of Seattle’s Comprehensive Plan in the 2014-2015 annual comprehensive plan amendment process. It is anticipated that the 2014-2015 comprehensive plan amendments would be adopted in the Fall of 2015."
9.8	16	1.5.9 APPRENTICESHIP ADD new paragraph: "C. See Paragraph 2.22 Apprenticeship Program Requirements, and the PLA agreement."

Ref.	Page or Drawing	Location and Description of Change
9.9	42	3.1.1 ANTICIPATED DUE DATE, TIME AND LOCATION DELETE A, and REPLACE with: "A. Sealed Proposals are to be submitted to the County at the address below no later than 2 P.M. on April 18, 2014. "
9.10	42	3.1.1 ANTICIPATED DUE DATE, TIME AND LOCATION ADD new paragraph: "F. In a separately sealed and marked envelope from Proposer's technical proposal, the Proposers shall place completed Forms B, C, and D and submit 1 copy in at the same time as its technical proposals."
9.11	42	3.1.2 CONTENTS OF THE PROPOSAL DELETE Table 3.1.2 Contents of the Proposal, and REPLACE with: Revised Table 3.1.2 Contents of the Proposal. See Attached.
9.12	45	3.1.3, DELETE F, and REPLACE with: "F. The Proposer shall submit one (1) original unbound set of documents in a box marked "Originals". The original and copies of the RFP Submittals shall be indexed with tabs for each section as specified within Section 3.1.2 "Contents of the Proposal". Provide twenty five (25) copies (excluding Form B, Form C, and Form D) of the proposal in spiral bound format (unless otherwise noted). In addition, provide one unbound copy of the Proposal, and provide one (1) electronic set of the Proposal." a. The Proposer shall submit in a separate sealed envelope one hard copy of Form B, Form C, and Form D and one electronic copy of Form B, Form C, and Form D."
9.13	55	3.3.3, 1 DESIGN CONCEPT (SECTION 5) (4000 Points), A, 2,(c) Phase 2 Concept DELETE (ii) and REPLACE with: (ii) Proposers are required to clearly identify on all submittals, including drawings, any Alternates listed on Form D. On the drawings this shall be accomplished by "graying out" or crosshatching the Alternate area. For all other submittals, Proposers shall indicate the Alternate areas by written words highlighted in yellow."
9.14	57 Addendum 1 Ref 1.1	3.3.3, 1 DESIGN CONCEPT (SECTION 5) (4000 Points), C NO-Cost Test Fit (200 Points), 2 DELETE (a), and REPLACE with: "(a) A plan for each floor, including the basement and parking areas, reflecting all the necessary elements shall be included in an 18" x 24" scaled plan. Plans shall show workstations and the overall dimensions of the building and grid system used, and have a scale indicator to allow for measurement of spaces. Include any special criteria such as unique floor loading requirements that shall have an impact on further development of the design concept".

Ref.	Page or Drawing	Location and Description of Change
9.15	59	<p>3.3.4, 1. GUARANTEED MAXIMUM PRICE (SECTION 6) (2000 Points), DELETE F, and REPLACE with:</p> <p>“F. <u>Design-Builders Overhead</u>: Each Proposer shall declare their proposed Overhead Rate on the Proposal form, Form C, of Appendix A provided within this RFP based upon the Budgeted GMP amount of \$154 million.”</p>
9.16	60	<p>3.3.4, DELETE 2 OWNER REQUESTED BETTERMENTS (SECTION 7) (1000 points).</p>
9.17	65	<p>4.3.1 INITIAL RESPONSIVENESS EVALUATION, DELETE A, and REPLACE with:</p> <p>“A. County will conduct an initial review of the Proposals for responsiveness to the requirements set forth in the RFP, including the submission of all pass/fail criteria set forth in Section 4.2 of this RFP. Any Proposal not responsive to the RFP may be excluded from further consideration and the Proposer that submitted such Proposal will be so advised. County may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation.”</p>
9.18	66	<p>4.3.2, BUDGETED GMP AMOUNT (UPSET AMOUNT), DELETE A, B & C, and REPLACE with:</p> <p>“A. Upon receipt of a Proposal, the County will review Form B (reference Appendix A) to determine if the respective Proposal does not equal the Budgeted GMP (Upset Amount). The Budgeted GMP amount is defined as One hundred and Fifty Four Million and No/100 Dollars (\$154,000,000.00).</p> <p>Any amount Higher or Lower than the Budgeted GMP is considered an Upset Amount and will result in no further evaluation of the Proposal as part of the RFP.</p> <p>Any qualifying statements or conditions indicated on Form B will result in no further evaluation of the Proposal as part of the RFP.</p> <p>B. Even if a Proposal meets the Budgeted GMP the County will not award a contract if the evaluated Proposal is deemed unacceptable because it contains major error(s) and omission(s) or deficiency(ies) that demonstrate (i) a lack of understanding of the Owner’s Project Criteria, (ii) has a very high risk of not meeting the requirements and objectives of the RFP, and (iii) of these conditions cannot be corrected without major revisions of the proposal.</p> <p>C. The County will request BAFOs or cancel the RFP if:</p> <ol style="list-style-type: none"> 1. No Proposal has a Proposal Price equal to the Budgeted GMP, and/or 2. No evaluated Proposal was deemed acceptable because they did not meet the Owner’s Project Criteria, as noted in B above.”

Ref.	Page or Drawing	Location and Description of Change
9.19	66	4.3.2, BUDGETED GMP AMOUNT (UPSET AMOUNT), DELETE G, and REPLACE with: "G. If a Proposal is deemed responsive except the price magnitude being Higher or Lower than the Budgeted GMP Amount, the Proposal will still be eligible for the honorarium provided all other criteria relative to the honorarium are met.
9.20	66	4.3.3 PASS/FAIL CRITERIA EVALUATION, A, DELETE 3, and REPLACE with: "3. Form D, Appendix A"
9.21	Appendix 75	DELETE FORM B, GMP & UPSET AMOUNT DETERMINATION, and REPLACE with: REVISED FORM B, GMP & UPSET AMOUNT DETERMINATION. See attached.
9.22	Appendix 76	DELETE Form C, PRICE PROPOSAL FORM, and REPLACE with: REVISED Form C, PRICE PROPOSAL FORM. See attached.
9.23	Appendix 79	DELETE Form D, Owner REQUESTED BETTERMENTS, and REPLACE with: Form D, ALTERNATES. See attached.
9.24	Appendix 87	DELETE Form E, COMMITMENT TO MEET SCS UTILIZATION REQUIREMENT, and REPLACE with: REVISED Form E, COMMITMENT TO MEET SCS UTILIZATION REQUIREMENT. See attached.
		PART B – FACILITY PERFORMANCE STANDARDS
9.25	42	Loading Dock: DELETE "Law enforcement vehicles shall enter the Detention facility sallyport prior to the loading dock security" and REPLACE with: "Ideally law enforcement vehicles shall enter the Detention facility sallyport prior to the loading dock security, however this is not a requirement."
9.26	115	Section 5 Fire Protection Systems, b. Fire Protection Performance Criteria, DELETE Table B5.1 -Automatic Sprinkler Systems Minimum Design Criteria, and REPLACE with: Revised, Table B5.1 -Automatic Sprinkler Systems Minimum Design Criteria. See attached

Ref.	Page or Drawing	Location and Description of Change
9.27	130 Addendum 1 Ref 1.9	<p>Section 6 - Mechanical Engineering Systems, b. Plumbing Systems, Plumbing Fixtures-Detention, DELETE the second bullet, and REPLACE with:</p> <p>"All detainee sleeping rooms and holding cells shall have a combi lavatory water closet.</p> <p>All other toilet rooms within the Detention Perimeter shall have separate water closets and lavatories.</p> <p>All water closets including combi units within the Detention Perimeter shall be floor-mounted rear outlet of similar construction and controls as the combi units. All water closets including the combi water closets shall have 60 psi minimum at all flush vales, Blowout Jet, 2.4 gallons per flush (gpf).</p> <p>The following staff toilets within the Detention Perimeter (Space Allocation tables in Part C: Facility Program, Chapter 3 Detention Program:) are exceptions to the requirements above, and shall follow the non detention plumbing fixture requirements for material and low flow fixtures:</p> <ul style="list-style-type: none"> • space 2.110 staff toilet Detention Admin (inside security) • Space 2.321 Staff toilet Admissions and Release • Space 2.405 and 2.406 staff locker rooms • Space 3.113 Staff toilet Food Service • Space 3.227 Staff Toilet Medical Clinic • Space 4.103 staff toilet Education • Space 4.207 Staff Toilet Gym <p>The following staff toilets within the Central Juvenile Holding and Central Adult Holding (Space Allocation tables in Part C: Facility Program, Chapter 2 Court Program:) are exceptions to the requirements above, and shall follow the non detention plumbing fixture requirements for material and low flow fixtures:</p> <ul style="list-style-type: none"> • Space 13.211 Staff Toilet • Space 13.308 Staff Toilet"
		PART C – FACILITY PROGRAM
9.28	3-8	<p>DELETE Table 3-1 Table 3-1 Summary of the Detention Space Allocation, and REPLACE with:</p> <p>Revised, Table 3-1 Table 3-1 Summary of the Detention Space Allocation, See attached.</p>
9.29	3-10	<p>Chapter 3 Detention Program, Detention Lobby ADD a new fourth paragraph "Detention Lobby" heading, "The detention lobby shall have close proximity and 24/7 access to male and female restrooms outside of the Detention secure perimeter, without breaching the security of the Courts building".</p>

Ref.	Page or Drawing	Location and Description of Change
9.30	3-14 3-15	Chapter 3 Detention Program, 1.000 Facility Administration, Space list, DELETE Table 3-3 & Table 3-3 Continued, and REPLACE with Revised Table 3-3 Space Allocation for Detention Administration & Revised 3-3 Continued Space Allocation for Detention Administration. See Attached.
9.31	3-24	Chapter 3 Detention Program, 2.000 Operations, Space List, DELETE Table 3-4, and REPLACE with: Revised Table 3-4, Space Allocation for Operations. See Attached
9.32	3-39	Chapter 3 Detention Program, 4.000 Programs, Space List, DELETE Table 3-6 Continued, Space Allocation for Programs, and REPLACE with: Revised, Table 3-6 Continued, Space Allocation for Programs. See attached.
9.33	3-48	Chapter 3 Detention Program, 5.000 Housing, Space List, DELETE Table 3-7, Space Allocation for Housing, and REPLACE with: Revised, Table 3-7, Space Allocation for Housing. See attached.
9.34	4-5	First bulleted item on page, DELETE the last sentence, and REPLACE with: "Segregation of the circulation for these functions as indicated in the site diagrams is preferred to shared circulation access to the sally port and loading dock."
9.35	Appendix B Divider	Appendix B, divider page, DELETE "Owner Requested Betterments" and REPLACE with: "Alternates"
9.36	Appendix B	Header DELETE "Phase I & II Betterment Space Detail" and REPLACE with: "Phase I & II Alternate Space Details"
Part H - Division 1 General Requirements		
9.37	TOC 01 00 00-1	DIVISION 1, PRICE AND PAYMENT PROCEDURES, ADD "01 23 00, ALTERNATES"
9.38	01 21 00	DELETE Section 01 21 00 ALLOWANCES, and REPLACE with: REVISED Section 01 21 00 ALLOWANCES. See attached.
9.39	01 23 00	ADD new SECTION 01 23 00, ALTERNATES. See attached.
<p>QUESTIONS AND RESPONSES</p> <p>King County provides the following questions and responses as clarifications of the referenced Request For Proposal provisions.</p>		

Ref.	Page or Drawing	Location and Description of Change
9.40		<p>Q: Retention on Design Fees - On most projects there is no retention on design fees. We request the documents be modified to reflect that there is no retainage on design fees.</p> <p>R: See the revised contract, issued in addendum 7.</p>
9.41		<p>Q: CCTV Clients – Non-Detention Question 2: The RFP provides for no on-site clients at the CFJC (either live monitoring clients or playback/review station clients). It only has rough-in for a future monitor point at the security screening station (B, Page 63). While we recognize the client application will probably be installed on other County workstations meeting a minimum performance, are there no dedicated CCTV clients (at reception locations, security offices, etc.), or no other client work for the Proposer to perform?</p> <p>R: There are no video clients required at the CFJC site. At this time all monitoring will occur at the King County EDC located in the King County Courthouse, and video production at the Security Unit Offices.</p>
9.42		<p>Q: Utility connection fees. Per RFP Part A.1.5.2 utility connection fees are the responsibility of the design builder. Seattle City Light will work with the successful party to review and engineer a system, but is unable to provide estimates to proposers. We recommend either the utility connection fees be removed from the D/B responsibility or set an allowance for each team to use.</p> <p>R: See Revised Section 01 21 00.</p>
9.43		<p>Q: Security and Fire Alarm - Concerning the existing King County Enterprise Electronic Security Control System, this is found in section 10 Electronic Safety and Security Systems page #227 and in the part d. Fire alarm system page #194-195. What is the existing system and what does it consist of? The performance specifications for the new security electronics systems and fire alarm will have to integrate with this enterprise system.</p> <p>R: The enterprise County wide system is a combination of the Software house CCure 9000 system, Pelco Endura Video System and the security network infrastructure that connects them together.</p> <p>There are other subsystems such as the duress and the intercom systems that connect to the primary systems.</p>
9.44		<p>Q: Site - Is it the intent of the RFP to require replacement of sidewalks adjacent to future development parcels (future development will need to remove and replace sidewalks)?</p> <p>R: Sidewalk replacement is limited to the minimum amount required by the AHJ.</p>

Ref.	Page or Drawing	Location and Description of Change
9.45		<p>Q: In part B, section 6, page 130, the RFP (with addendums) references two areas within the detention area which are not "cell areas"; 1. secure and transition 2. administration. For the purpose of selecting plumbing fixtures, should we assume these 2 areas could be grouped into one classification labeled "detention - non-cell" or are there really 2 different types of plumbing fixtures required for these two non-cell areas?</p> <p>R: See Ref 9.27 above.</p>
9.46		<p>Q: In part B, section 6, page 130, second bullet, the RFP addendum #1 indicates, "All administration areas that is part of the detention areas shall follow the non-detention plumbing fixtures for low flow fixture requirements." Please confirm these fixtures should only follow the flow requirements of the non-detention fixtures and not the construction material classification type, e.g. these fixtures should still be institutional (14 gauge stainless steel) and not commercial (vitreous china).</p> <p>R: See Ref 9.27 above.</p>
9.47		<p>Q: Fire Protection – Part B, Facility Performance Standards. Table B5.1, Min. Design Criteria (Part B, pg. 115), shows sprinkler Design Density in GPM/sf over a minimum Design Area of 3,000 SF. This requirement is more than double the hydraulic design area from what NFPA 13 (Sect. 11.2.3.1.1) and local codes require. This will lead to a larger pipe, pumps, and larger water flow requirement in an area that already is already challenged for adequate fire flow. Is it acceptable to follow the requirements of NFPA 13 and the City of Seattle for sprinkler system design criteria, in lieu of Table B5.1 minimums?"</p> <p>R: See Ref 9.26 above.</p>
9.48		<p>Q: The Orientation / Non Offender Housing Unit does not have a Staff Toilet shown on Table 3-7, page 3-48 of Part C Facility Program Chapter 3 Detention Program; is this in error?</p> <p>R: See Ref 9.33 above.</p>
9.49		<p>Q: RFP Section 3.1.3, Format RFP Phase – Submittals Documentation, items F & H, reference 25 copies with all signatures being original. For those Forms previously submitted (i.e. Forms A, F and N) is it necessary that these be re-submitted with original signatures on all 25 copies? In particular, Form N – Authorization for Criminal History Reference Check, was submitted individually by multiple members of our Team, at the time of the voluntary site tour in January, and it would be quite cumbersome to recreate all of those individual forms.</p> <p>R: Form N – Authorization for Criminal History Reference Check is not required with your Proposal. See attached, Revised Table 4.2</p>

Attached To This Addendum:

1. Revised Table 3.1.2 Contents of the Proposal
2. REVISED FORM B, GMP & UPSET AMOUNT DETERMINATION
3. REVISED Form C, PRICE PROPOSAL FORM
4. Form D, ALTERNATES
5. REVISED Form E, COMMITMENT TO MEET SCS UTILIZATION REQUIREMENT
6. Revised, Table B5.1 -Automatic Sprinkler Systems Minimum Design Criteria
7. Revised, Table 3-1 Table 3-1 Summary of the Detention Space Allocation
8. Revised Table 3-3 Space Allocation for Detention Administration & Revised 3-3 Continued Space Allocation for Detention Administration.
9. Revised Table 3-4, Space Allocation for Operations
10. Revised, Table 3-6 Revised, Table 3-6 Continued, Space Allocation for Programs
11. Revised, Table 3-7, Space Allocation for Housing
12. REVISED Section 01 21 00 ALLOWANCES
13. SECTION 01 23 00, ALTERNATES.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: March 31, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

REVISED

Table 3.1.2 - Contents of the Proposal

TECHNICAL PROPOSAL (Sections 1 thru 10 and Appendix A)
A. MANAGEMENT
Section 1 - Executive Summary Letter
A) Executive Narrative
B) Certification of Truth and Correctness of the Proposal
C) Signature(s)
D) Recent and Current Workload discussion
E) Certification of Financial Capacity
Section 2 – Proposer’s Approach to Management of the Project
A) Project Management Approach Narrative
B) Organizational Structure and other key personnel– Org Chart(11x17 inches)
C) Subcontractor Management Approach Narrative
D) Quality Management Approach
1) Quality Policy Statement
2) QA/QC Organization
3) Quality Process for Design
4) Quality Process for Fabricated Items and Construction
E) Risk Management
1) Risk Management Narrative
2) Draft Risk Register
3) Approach to Managing Escalation
F) Apprenticeship Utilization Plan
Section 3– Approach to Construction Management
A) Construction Phasing
B) Schedule Management

Section 4 – Not Used
B. DESIGN
Section 5 – Design
<ul style="list-style-type: none"> A) Design Concept <ul style="list-style-type: none"> 1. Site Concept 2. Building Concept 3. Parking Garage Concept 4. Phase 2 Concept
B) Quality of Materials and Systems
C) No Cost Test Fit (18 x 24 inches)
D) LEED
<ul style="list-style-type: none"> 1) LEED Gold Scorecard
C. COST
Section 6 – Guaranteed Maximum Price
A) GMP & Upset Amount Determination (Form B)
B) Price Proposal (Form C)
Section 7– Not Used
D. ADMINISTRATIVE REQUIREMENTS
Section 8 – Project Labor Agreement
Section 9 – Small Contractor and Suppliers (SCC) Requirements
E. FINAL PRESENTATION
Section 10 – Final Proposal Presentations and Interviews

No submittals allowed.
Appendix A – Proposer Information, Forms and Certifications
Form A - Proposal Stage Memorandum of Understanding
Form B – GMP & Upset Amount Determination
Form C – Price Proposal Form
Form D - Alternates
Form E - Commitment To Meet SCS Utilization Requirement
Form F - Confidentiality Agreement For As-Built Documents
Form G – Not Used
Form H - Commitment Letter From Surety
Form I - Commitment Letters from Insurers
Form J - County approved Proprietary Meeting minutes – Meeting 1.
Form K - County approved Proprietary Meeting minutes – Meeting 2.
Form L - County approved Proprietary Meeting minutes – Meeting 3.
Form M - Contract, Regulatory, And Criminal History Review Of Proposer
Form N - Authorization For Criminal History Reference Check
Form O - Commitment To Meet Apprenticeship Requirements
Form P – Not Used

REVISED
FORM B

GMP & UPSET AMOUNT DETERMINATION

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

King County
Design-Build Request for Proposals – Contract No. C00863C13
Children and Family Justice Center Design-Build Project

Proposer Name: _____

Is the Total Proposal Price equal to the Budgeted Guaranteed Maximum Price Amount of One Hundred and Forty-Nine Million and no/100 (\$154,000,000)?

Check One:

Yes or No

Date: _____

Signature:

Title

**REVISED
FORM C
PRICE PROPOSAL FORM**

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

PROPOSAL:

Having carefully examined the Request for Proposal for Design-Build Services for a New Children and Family Justice Center dated December 13, 2013 (RFP) as prepared by King County's Facilities Management Division (County) and Addenda No's _____ through _____ inclusive, receipt of which is hereby acknowledged, we propose to perform the Work identified in the RFP and Addenda, described in our Proposal, under the terms and conditions contained in the RFP for the Guaranteed Maximum Price of:

\$ _____ (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

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

DESIGN-BUILDER'S OVERHEAD

_____ % (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 otherwise included in Article 5.5.1 through 5.5.22.

ESTIMATED COST OF THE WORK FOR THE PROJECT

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

#	Description	Value
1	Architectural and Engineering Design Cost	\$
2	Pre-Construction Services	\$
3	Construction of Courthouse and Detention Structure	
	01 Foundations	\$
	02 Substructure	\$
	03 Superstructure	\$
	04 Exterior Closure	\$
	05 Roofing	\$
	06 Interior Construction	\$
	07 Conveying systems	\$
	08 Mechanical	\$
	09 Electrical	\$

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.

PROPOSAL GUARANTEE

The undersigned agrees that this Proposal may be accepted by the County anytime within the two hundred (200) calendar days after the Proposal 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.

PROPOSAL FROM:

(Proposer firm name)

(Authorized Proposer representative - Signature)

(Representative's printed name and title)

Date: _____

Address: _____

Phone: _____

Email: _____

State of Washington Contractor's License No: _____

**FORM D
ALTERNATES**

The Proposer is required to complete this form. Proposers shall provide a price for each of the identified Alternates. Failure to complete the form and submit to the County may result in the Proposer being declared non-responsive and disqualified from the RFP process.

ID #	Alternate	Estimated Cost
1	Full Expansion to Phase 1 Areas	\$ _____
2	Expansion of Detention Area	\$ _____
3	Shell and Core Family Law Court Program	\$ _____
4	Alder Academy School	\$ _____

By completing this Form D, the Proposer certifies that none of the Alternate costs (above) have been included within the Proposer's GMP for the design and construction of this project as defined in the RFP. The inclusion of any one or more of these Alternates may occur at the County's option after Contract Execution, by Change Order for performance during Phase 1A of the Project.

PROPOSAL FROM:

Date: _____

(Proposer firm name)

(Authorized Proposer representative)

(Representative's printed name and title)

Summary Description of Owner Requested Alternates

A. Alternate 1: Full Floor Expansion

- This item includes the expansion of areas included in the Phase 1 program as defined in the Facility Program, Appendix B that will require expansion as identified in the Phase 2 Facility Program. These areas total 12,218 sf and are summarized below.

EXPANDED PHASE 1 COURTS AREAS					
ID	Function/Space	No of Units	SF/Unit	Total Dept. SF	Floor Location
1.100	Entry security Screening			475	1-lobby
1.200	Public Lobby			1,321	1-lobby
1.300	Child Care			387	2- child care
1.400	Shared Meeting Spaces			1,235	1-Conf ctr
1.500	Staff Support			780	Bsmt-Wellness
1.600	Information Technology/MIS			187	Bsmt-Facility
1.800	Facilities & Building Services			3,068	Bsmt-Facility
2.000	Resource Center			325	1-lobby
3.103	Judicial Offices			949	2-Judicial
Department Gross Area				8,727	
Building Grossing Factor			40.0%	3,491	
EXPANDED PHASE 1 COURTS AREAS				12,218	

B. Alternate 2 Expansion of Detention Area:

- This item includes the additional expansion of specific detention areas, identified in the Facility Program, Appendix B, These areas total 4,115 sf and are summarized identified below:

EXPANDED DETENTION AREAS					
ID	Function/Space	No of Units	SF/Unit	Total Dept. SF	Floor Location
1.300	Administration			819	2-Detention
2.100	Detention Admin (inside security)			208	1
4.200	Recreation			460	1
5.100	Housing			1,320	1
3.000	Support Services			133	1
Department Gross Area				2,940	
Building Grossing Factor			40.0%	1,176	
EXPANDED DETENTION AREAS				4,115	

C. Alternate 3 Shell and Core Family Law Court Program:

- This item includes the shell and core build out of spaces required for the family law court program as defined in the Facility Program, Appendix B. These areas total 70,061 sf and are summarized below.

NEW COURT AREAS for FAMILY LAW					
ID	Function/Space	No of Units	SF/Unit	Total	Floor Location
1.400	Shared Meeting Spaces			1,248	new
1.500	Staff Support			2,288	new
14.000	Family Law Functions				new
14.100	Family Court Operations			4,675	new
14.200	Family Law Courtrooms			22,627	new
14.300	FLIC - Family Law Information Center (<i>Pro Se</i>)			2,038	new
15.000	Law Library			3,806	new
9.000	Judicial Administration/Clerk			2,467	new (2-existing)
10.000	Prosecuting Attorney-Family Support Unit			9,318	new
11.000	Public Defender			1,576	new
Department Gross Area				50,044	
Building Grossing Factor			40.0%	20,017	
NEW COURT AREAS for FAMILY LAW				70,061	

D. Alternate 4 Alder Academy:

- This item includes the performance criteria are set forth in Owner’s Project Criteria. The estimated square footage for the School is 5,600sq.ft. Proposer’s estimated value to design and build this Alternate:

ID	Function/Space	No of Units	SF/Unit	Total Net SF
1	Classrooms (for 12+ teacher)	3	600	1800
2	Special Ed Classroom	1	300	300
3	Youth Toilets	2	130	260
4	Time Out Room	1	100	100
5	Reception Waiting	1	80	80
6	School Office	1	200	200
7	Staff Toilets	1	45	45
8	Supply Storage/Teacher workroom	1	200	200
Department Net Area				2985
Grossing Factor		30%		896
Department Area				3,881
Grossing Factor		40%		1,553
TOTAL AREA for ALDER ACADEMY				5,444

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FORM E
COMMITMENT TO MEET SCS UTILIZATION REQUIREMENT

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

King County
Design-Build Request for Proposals – Contract No. C00863C13
Children and Family Justice Center Design-Build Project

Proposer Name: _____

The minimum SCS Utilization Requirement for this Project is 17% of the Budgeted GMP dollar amount.

“Proposer’s level of meeting the SCS Utilization Requirement expressed as a percentage of the Budgeted GMP (\$154,000,000) Dollar Amount, as amended by Change Order _____%.”

Date: _____

Signature:

Title

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Table B5.1 - Automatic Sprinkler Systems Minimum Design Criteria				
Occupancy Classification	Design Density (GPM/FT²)	Design Area (FT²)	Hose Stream Allowance (GPM) *	Duration of Supply (Minutes)
Light Hazard	0.10	1,500	100	60
Ordinary Hazard Group 1	0.15	1,500	250	60
Ordinary Hazard Group 2	0.20	1,500	250	90
Extra Hazard Group 1	0.30	2,500	500	120
Extra Hazard Group 2	0.40	2,500	500	120
* Combined inside/outside				
* Fire flow for proposed building shall be increased by 25% to allow for future expansion.				
Minimum Density for Deluge /Pre-Action Sprinkler Design				
Occupancy Classification	GPM	Area		
Ordinary Hazard Group 1	0.15	Over the entire area		
Ordinary Hazard Group 2	0.20	Over the entire area		
Extra Hazard Group 1	0.30	Over the entire area		
Extra Hazard Group 2	0.40	Over the entire area		
*Other Special Occupancy Hazards as determined by AHJ				

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Table 3-1

Summary of the Detention Space Allocation

ID	Component	Net SF	DGSF	BGSF	Total Building SF
PHASE I					
1.000	Administration	6,964	2,437	1,410	10,812
1.100	Public Entry	690	242	140	1,071
1.200	Visitation	1,020	357	207	1,584
1.300	Detention Administration	5,254	1,839	1,064	8,157
2.000	Operations	7,195	2,242	1,416	10,852
2.100	Detention Administration	1,440	504	292	2,236
2.200	Central Control	440	154	89	683
2.300	Admissions and Release	2,550	893	516	3,959
2.400	Staff Support	2,765	691	518	3,975
3.000	Support Services	6,166	1,907	1,211	9,283
3.100	Food Service	2,240	560	420	3,220
3.200	Medical Services	3,502	1,226	709	5,437
3.300	General Services	184	37	33	254
3.400	Detention IT Services	240	84	49	373
4.000	Programs	7,020	1,649	1,300	9,969
4.100	Education	906	317	183	1,407
4.200	Recreation	3,684	553	635	4,872
4.300	Library and Spiritual Center	2,430	779	481	3,691
5.000	Housing	33,945	15,721	7,450	57,115
5.200	Pod "A" Orientation/General Housing	10,645	5,323	2,395	18,363
5.100	Pod "B" General Housing	10,780	5,390	2,426	18,596
5.400	Pod "C" Transitional Housing	12,520	5,008	2,629	20,157
	Grand Total for Phase I	61,290	23,955	12,787	98,032
PHASE II					
6.000	Phase II Housing	11,650	5,199	2,527	19,376
6.100	Pod "D" General Housing	5,390	2,695	1,213	9,298
6.200	Pod "D" Transitional Housing	6,260	2,504	1,315	10,079
	Grand Total for Phase I	72,940	29,154	15,314	117,408

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Table 3-3

Space Allocation for Detention Administration

ID	Function/Space	No. of Rooms	SF/Unit	Total Net SF	Comments
1.100 Detention Lobby (Located adjacent to but separate from the Public Lobby)					
1.101	Security Screening/Metal Detector	1	100	100	Next to Visitor Check-In
1.102	Visitor Lobby and Processing	1	400	400	Waiting area for Detention Visitors and waiting for juvenile release
1.103	Vending Alcove	2	15	30	Two vending machines
1.104	Visitors' Lockers	40	1.5	60	Key operated locker alcove
1.105	Public Toilets (male/female)	2	50.0	100	2 barrier free toilets with 24/7 access from the Detention Lobby: if other toilets rooms can provide 24/7 access to the Detention Lobby without compromising the Court Building security then these toilet rooms are not necessary
Total Department Net Area				690	
Efficiency Factor			35%	242	
Total Public Entry Gross Area				932	
1.200 Visitation					
1.201	Sallyport	1	80	80	Operated from Central Control
1.202	Group Visiting	1	350	350	20 occupants
1.203	Private Attorney Visiting Rooms	5	60	300	2 occupants/room
1.204	Private Visiting Rooms	1	150	150	10 occupants
1.205	Non-Contact Visitation	1	80	80	2 occupants; accessible
1.206	Juvenile Search	1	60	60	Bench seating
Total Department Net Area				1,020	
Efficiency Factor			35%	357	
Total Visitation Gross Area				1,377	
1.300 Detention Administration					
Director's Area					
1.301	DAJD Juvenile Division Director	1	180	180	Private office
1.302	Conference Room/Crisis Center	1	240	240	Attached to Director Office
1.303	Assistant Director	1	100	100	Private office
1.304	Confidential Secretary	1	100	100	Private office
1.305	Facilities Special Projects	1	64	64	Open Office Furniture
1.306	Analyst PPM3	1	64	64	Open Office, Next to Orientation Unit
1.307	Chaplain	2	64	128	Open Office Furniture
1.308	Volunteer Coordinator	1	64	64	Open Office Furniture
1.309	Training Coordinator	1	64	64	Open Office Furniture
1.310	Administration Storage	1	100	100	Alcove space w/lockable file cabinets
Subtotal Director's Area				1,104	

Table 3-3 Continued

Space Allocation for Detention Administration

ASD and CSO Area					
1.311	Reception Counter/Waiting	1	200	200	Seating for 6-8
1.312	CSO Supervisor	1	100	100	Private office
1.313	CSO (Community Supervision) Office	3	64	192	Open Office Furniture
1.314	CSO (Community Supervision)	6	64	384	Open Office Furniture
1.315	CSO File Storage	1	36	36	Alcove space w/lockable file cabinets
1.316	Placement Specialist	4	100	400	Open Office Furniture
1.317	Expediter	1	100	100	Open Office Furniture
1.318	Interview Room	2	120	240	6 Occupants
1.319	Clerical Support	2	64	128	Open Office Furniture
1.320	Permanent ASD File Storage	1	100	100	Lockable room for archives
1.321	Copy/Fax/Supply Workroom	1	80	80	Open area
1.322	Mail Sorting and Boxes	1	60	60	Mail Sorting/Staff Workstation
1.323	Electronic Monitor Storage	1	80	80	Lockable room
1.324	Small Conference Room	1	400	400	20 occupants
1.325	Conference/Training Room	1	1,000	1,000	50 Occupants
1.326	Conference Storage	1	150	150	Chairs, AV equipment, and tables
1.327	Coffee Station	1	20	20	Alcove w/base and overhead cabinets
1.328	Staff Toilet - Male and Female	2	240	480	Accessible for Admin and ASD-CSO staff
Subtotal ASD/CSO Area				4,150	
Total Detention Administrative Area				5,254	
Efficiency Factor			35%	1,839	
Total Detention Administration Gross Area				7,093	
Total Administration Component Gross Area				9,401	
Building Grossing Factor			15%	1,410	
TOTAL AREA for ADMINISTRATION COMPONENT				10,812	

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Table 3-4

Space Allocation for Operations

ID	Function/Space	No. of Rooms	SF/Unit	Total Net SF	Comments
2.100 Detention Administration (Inside Security)					
2.101	Chief of Operations	1	120	120	Private office
2.102	Administrative Staff	1	64	64	Open Office Furniture
2.103	Scheduling Supervisor	1	100	100	Private office
2.104	Supervisor Workstations	4	64	256	Locate in Detention Administration
2.105	Interview Room	1	80	80	Locate in Detention Administration
2.106	Detention Officer Workroom	1	80	80	Locate Near Housing
2.107	On-Duty Supervisor	1	160	160	Locate Near Housing; 2 workstations and seating for 4
2.108	Lockable Storage Room	1	80	80	Enter from On-Duty Supervisor's area
2.109	Staff Training/Briefing Room	1	400	400	Flexible seating for 20-30 staff
2.110	Staff Toilet	2	50	100	Accessible, Locate Inside Security
Total Department Net Area				1,440	
Efficiency Factor			35%	504	
Total Detention Inside Security Gross Area				1,944	
2.200 Central Control					
2.201	Sallyport	1	60	60	Access to Control Room
2.202	Central Control Room	1	150	150	Secure glazing on at least 3 sides
2.203	Electronic Equipment	1	180	180	Locate with Detention IT
2.204	Staff Toilet	1	50	50	Accessible
Total Department Net Area				440	
Efficiency Factor			35%	154	
Total Central Control Gross Area				594	
2.300 Admissions and Release					
2.301	Vehicle Sally Port	1	1,200	1,200	Program requirement, however not included in SF total.
2.302	High Security Holding Cell	2	70	140	Combination toilet/sink; bed
2.303	Metal Detector Screening	1	50	50	Adjacent Law Enforcement Counter
2.304	Intake Counter	1	60	60	Open counter; no barriers
2.305	Holding Cell	2	50	100	Combination toilet/sink; bench
2.306	Group Open Waiting	1	200	200	10 Youth/Television, Juvenile Toilet
2.307	RN Health Screening Alcove	1	50	50	Initial Assessment
2.308	AFIS Station	1	96	96	Fingerprint, Photo
2.309	Screener Supervisor	1	64	64	Superior Court Function
2.310	Screener Workstations	3	48	144	Workstations
2.311	Screener Interview Rooms	2	64	128	Glazing for visibility
2.312	Records	1	80	80	Lockable space
2.313	Commitment Officer	1	64	64	Adjacent to Intake Counter

Table 3-4
Space Allocation for Operations

2.314	Intake Officer Workstations	3	48	144	Adjacent to Intake Counter
2.315	Shower/Changing/Toilet Rooms	2	90	180	One Accessible
2.316	Clothing Issue Storage	1	120	120	Shelving for clothing storage
2.317	Personal Property Storage	1	500	500	Conveyor, Washer/Dryer, Bulk Stor.
2.318	Release Dressing Room	1	60	60	Accessible
2.319	Release Group Open Waiting	1	100	100	6 Youth
2.320	Mattress Cleaning and Storage	1	130	130	Mattress Storage/Cleaning
2.321	Staff Toilet	2	50	100	Accessible
2.322	Janitor's Closet	1	40	40	Utility sink, shelving
Total Department Net Area				2,550	
Efficiency Factor			40%	893	
Total Admissions and Release Gross Area				3,443	
2.400 Staff Support					
2.401	Staff Dining Room	1	400	400	20-25 Occupants
2.402	Kitchen/Pantry	1	125	125	Refrigerator, stove, base/O.H. cabinets
2.403	Staff Break Room	1	250	250	Comfortable seating/computer term.
2.404	Staff Entrance/Sallyport	1	80	80	Potential entrance from staff parking
2.405	Locker Room - Male	1	750	750	2 Showers/Toilets/Sinks
2.406	Locker Room -Female	1	750	750	2 Showers/Toilets/Sinks
2.407	Off Duty Room	2	80	160	For overnight staff rest
2.408	Wellness/Exercise Room	1	250	250	Could combine w/Courts Wellness Ct.
Total Department Net Area				2,765	
Efficiency Factor			25%	691	
Total Central Control Gross Area				3,456	
Total Administration Component Gross Area				9,437	
Building Grossing Factor			15%	1,416	
TOTAL AREA for OPERATIONS COMPONENT				10,852	

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Table 3-6 Continued

Space Allocation for Programs

ID	Function/Space	No. of Rooms	SF/Unit	Total Net SF	Comments
4.200 Recreation					
4.201	Gymnasium	1	3,000	3,000	Partial Size Gymnasium
4.202	Storage - Gymnasium	1	300	300	Capable of storing 200 chairs
4.203	Toilet - Gymnasium	1	50	50	Accessible
4.204	Janitor's Closet - Gymnasium	1	40	40	Utility sink, shelving
4.205	Recreation Office	1	100	100	Private w/glazing in door; storage cab.
4.206	Volunteers Workroom	3	48	144	Workstations
4.207	Staff Toilet - Gymnasium	1	50	50	Accessible
Total Department Net Area				3,684	
Efficiency Factor			15%	553	
Total Recreation Gross Area				4,237	
4.300 Library and Spiritual Center					
Library					
4.301	Library	1	1,230	1,230	Shelving for books; computer carrels
4.302	Librarian Office	1	100	100	Glazing for observation
4.303	Checkout Counter	1	80	80	Low height counter
4.304	Library Work Room	1	100	100	Book Storage/Repair
4.305	Library Computer Carrels	14	20	280	
Total Department Net Area				1,790	
Efficiency Factor			35%	619	
Total Library Gross Area				2,409	
Spiritual Center					
4.306	Multipurpose Spiritual Room	1	400	400	Seating for 20-25
4.307	Storage	2	40	80	Lockable spaces
4.308	Counseling Office	2	80	160	Private room
Total Department Net Area				640	
Efficiency Factor			25%	160	
Total Spiritual Center Gross Area				800	
Total Library and Spiritual Center Gross Area				3,209	
Total Programs Component Gross Area				8,669	
Building Grossing Factor			15%	1,300	
TOTAL AREA for OPERATIONS COMPONENT				9,969	

Revised

Table 3-7

Space Allocation for Housing

ID	Function/Space	No. of Rooms	SF/Unit	Total Net SF	Comments
Living Pod "A" - Orientation and General Housing					
5.100 Orientation/Non-Offender Housing Unit					
5.101	Staff Station	1	50	50	Shared
5.102	Dayroom/Dining	1	50	300	50 sf/juvenile based on 6
5.103	Single Sleeping Rooms	5	70	350	Bed, table, chair, screened toilet/sink
5.104	Accessible Sleeping Room	1	110	110	Capable of 2 side-by-side bunks
5.105	Pantry	1	25	25	Counter
5.106	Shower/Dressing/Toilet	1	90	90	Accessible
5.107	General Storage	1	40	40	Shared
Total Department Net Area				965	
			Efficiency Factor	50%	483
Total 6-Room Orientation/Non-Offender Unit Gross Area				1,448	
Number of 6-Room Units for Orientation/Non-Offender			2	2,895	
Shared Spaces for Orientation/Non-Offender Unit					
5.108	Classroom	1	300	300	Computer terminals; glazing
5.109	Classroom Storage	1	40	40	Lockable space
5.110	Classification Offices	2	100	200	Private offices
5.111	Janitor Closet	1	40	40	Utility sink, shelving
5.112	Attached Outdoor Recreation	1	300	300	Not included in SF total; partially covered
5.113	Staff Toilet	1	50	50	Accessible; lockable space
Total Department Net Area				630	
			Efficiency Factor	50%	315
Total 6-Room Orientation/Non-Offend.Unit Shared Gross Area				945	
Total 12-Room Orientation/Non-Offender Unit Gross Area				3,840	12 Sleeping Rooms

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SECTION 01 21 00
ALLOWANCES

PART 1 - GENERAL

1.1 SUMMARY

1.1.1 This Section includes administrative and procedural requirements governing allowances.

1.1.1.1 Certain items are specified in the Contract Documents by allowances. These allowances have been established to accommodate work for which specific requirements and quantities are unknown. Each allowance is for a lump sum. The allowances are for:

1.1.1.2 Allowances included within the GMP:

1.1.1.2.1 Select items associated with profiling and lawfully handling soil and groundwater contaminated with tetrachloroethylene, petroleum hydrocarbons, and other hazardous substances.

1.1.1.2.2 Seattle City Light Utility connection fees and the relocation of the 15" sanitary sewer pipe to the public right of way.

1.1.1.3 Allowances not included within the GMP, but may be added by Owner through a Change Order :

1.1.1.3.1 Purchase and installation of furniture, fixtures, and equipment for the Courthouse portion of the project.

1.1.1.3.2 Purchase and installation of furniture, fixtures, and equipment for the Detention portion of the project

See paragraph 3.3 below for a complete description of each allowance.

1.1.2 Related Sections include the following:

1.1.2.1 Section 01 26 00 Contract Modification Procedures for procedures for submitting and executing Change Orders for allowances not included within the GMP.

1.1.2.2 Part B: Facility Performance Standards, Section 2-Civil and Environmental Engineering

1.1.2.3 Part H: General Requirements, Section 01 50 00 Temporary Facilities and Controls, Part 1.9 Water Control.

1.1.2.4 Part H: General Requirements, Section 01 88 25 Hazardous Materials Performance Requirements.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

3.1 DESIGN OF ALLOWANCE ITEMS

3.1.1 The cost of all design, engineering, and installation services associated with the allowance items 3 and 4 is to be included in the Allowance amount stated in paragraph 3.3 (Schedule of Allowances).

3.2 PAYMENT FOR ALLOWANCE ITEMS

3.2.1 Payment for Allowance items shall be by the actual quantity of work performed, or material and equipment purchased and installed by the Design Builder. Design Builder shall not include, or be permitted to recover, as part of any Allowance other costs arising out of or connected with the performance of the Allowance Work.

3.2.2 When Design Builder has performed any work covered by an Allowance, Design Builder shall submit a payment request in accordance with Section 01 26 00 (Contract Modification Procedures) as part of an application for payment. When the County has reviewed and approved the payment related to each allowance, the amount to be paid shall be deducted from the amount of the Allowance.

3.2.3 If the cost of requested items approved by the Owner exceeds the total amount covered by the Allowance, the County will prepare a Change Order to increase the Allowance amount. If the cost of the requested items approved by the Owner is less than the total amount of the Allowance, the balance will be credited to the County as a deductive Change Order.

3.3 SCHEDULE OF ALLOWANCES

3.3.1 Allowances included within the GMP:

3.3.1.1 Allowance No. One: Allow \$3,500,000 for lawfully handling contaminated media (soil and groundwater) related to tetrachloroethylene, petroleum hydrocarbons, and other contaminants in soil and groundwater. Items covered are listed in the following table:

Contaminated Media Allowance Items
<u>Soil Disposal - Hazardous</u> . Includes disposal of perchloroethylene contaminated soil under a "Contained-In" designation issued by the Department of Ecology. Allowance is for disposal only as verified by disposal receipts from the approved disposal facility. All costs associated with excavation, loading, and hauling are not included in the Allowance and all such costs may be considered Costs of the Work.
<u>Soil Disposal – Contaminated Non-hazardous</u> . Includes disposal

and/or recycling of petroleum contaminated soil at an approved landfill or other lawfully permitted facility. Allowance is for disposal only as verified by disposal receipts from the approved disposal facility. All excavation, loading, stockpiling, covering, and transportation are not included in the Allowance and all such costs may be considered Costs of the Work.

Soil Characterization. Includes the following work items associated with plans, field labor, analytical testing, reports, and disposal coordination associated with management of hazardous and non-hazardous contaminated soil:

1. Contained-In soil pre-characterization sampling plan.
2. Field labor - In-situ pre-characterization sampling to delineate "Contained-In" soil boundaries.
3. Drilling & sample retrieval for in-situ pre-characterization sampling.
4. Laboratory I analytical testing for soil disposal characterization. Includes hazardous and non-hazardous characterization.
5. Investigation derived waste disposal.
6. Soil characterization report for "Contained In" designation.
7. Soil Management Plan
8. "Contained-In" determination coordination
9. Contaminated non-hazardous soil disposal coordination
10. Field screening, sampling, and excavation oversight during construction.

Dewatered Groundwater Treatment & Disposal. Includes work associated with items 1 through 4 listed below. All other costs associated with dewatering (pumps, piping, hoses, wells, well points, trenches, storage tank rental, other required treatment and filtration systems) are not included in the Allowance and all such costs may be considered Costs of the Work.

1. Discharge permit fee, application & coordination.
2. Activated carbon filter replacement (filters, labor, disposal)
3. Water testing for tetrachloroethylene.
4. Disposal of treated water lawfully discharged to sewer (County reserves right to delete this allowance item if billed directly by Seattle Public Utilities).

3.3.1.1 Allowance No. Two: Allow \$1,500,000 to pay for the cost of the Seattle City Light utility connection fees, and for the relocation of the 15" combined sewer that runs through the site along the vacated 13th Avenue as described in the Part B, Facility Performance Standard, Section 2 (Relocation of Public Utilities).

3.3.2 Allowances to be added by Owner through a Change Order (not included within the GMP at proposal time):

3.3.2.1 Allowance No. Three: Allow \$2,500,000 for the purchase and installation of workstations, courtroom furnishings (not including the bench), conference room equipment, building security freestanding equipment, electronic court information reader boards, and other items as identified by the Owner during the design phase of this contract.

3.3.2.2 Allowance No. Four: Allow \$2,500,000 for the purchase and installation of detention equipment and furnishings as identified by the Owner during the design phase of this contract.

END OF SECTION

SECTION 01 23 00

ALTERNATES

PART 1 - GENERAL

1.01 SUMMARY

- A. This Section includes administrative and procedural requirements governing alternates.

1.02 RELATED REQUIREMENTS

- A. "Request for Proposals" (Part A).
- B. "Facility Performance Standards"(Part B)
- C. "Facility Program" (Part C)
- D. "Room Data Sheets" (Part D)
- E. Design-Build Agreement
- F. Alternates quoted on Proposal Form D "Alternates"

1.02 DEFINITIONS

- A. Base Proposal: Includes all work identified within the Owner's Project Criteria and as specified, with the exception of the work specifically included in Additive or Deductive Alternates listed herein.
- B. Alternate Pricing: Amount proposed by proposer (Contractor) and stated on Form D that will be Added To or Deducted From the Base Proposal amount if the Owner decides to accept a change in either scope of work or in products, materials, equipment, systems, or other installation methods as described in the Contract Documents.
 - 1. The cost or credit for each alternate is the net addition to or deduction from the Contract Sum to incorporate the alternate into the Work. No other adjustments are made to the Contract Sum.

1.03 ACCEPTANCE OF ALTERNATES

- A. Alternates quoted on Proposal Form D will be reviewed and accepted or rejected at Owner's option.
- B. The Owner may accept any Alternate within 120 calendar days of the Notice to Proceed with Phase 1A.
- C. State the amount of Alternates prices to be added to the Base Proposal price on Form D of the RFP. Note: There were no deductive alternates at the time of the DB Proposal submittal date.
- D. Perform all portions of the Work affected by this Section in accordance with the requirements of the Contract Documents.
- E. Comply with the requirements relative to materials and workmanship contained in the

respective specification sections.

- F. Coordinate related work and modify surrounding work to fully integrate the Work of each Alternate.

1.04 PROCEDURES

- A. Coordination: Modify or adjust affected work as necessary to completely integrate work of the alternate into the Project.
 - 1. Include as part of each alternate, miscellaneous devices, accessory objects, and similar items incidental to or required for a complete installation whether or not indicated as part of the Alternate.
- B. Notification: Immediately following execution of the Contract, notify each party involved, in writing, of the status of each alternate. Indicate if alternates have been accepted, rejected, or deferred for later consideration. It is intended that, if selected by Owner, an alternate will be added to the Contract by Change Order, include a complete description or negotiated modifications to alternates.
- C. Execute accepted alternates under the same conditions as other work in the Contract.
- D. Schedule: Schedule of Alternates is included at the end of this section. Contractor is responsible for the design drawings, specifications and construction to achieve the work described under each alternate.

PART 2 – PRODUCTS (NOT USED)

PART 3 - EXECUTION

3.01 SCHEDULE OF ALTERNATES

- A. ADD Alternate No. 1: Full Floor Expansion. This item includes the expansion of Court areas included in the Phase 1 program as defined in the Facility Program, Appendix B.
- B. ADD Alternate No. 2: Expansion of Detention Area. This item includes the addition of specific detention areas, identified in the Facility Program, Appendix B.
- C. ADD Alternate No. 3: Shell and Core Family Law Court Program. This item includes the shell and core build out spaces required for the family law court program defined in the Facility Program, Appendix B.
- D. ADD Alternate No. 4: Alder Academy. This item includes the performance criteria that are set forth in the Owner's Project Criteria defined in the Facility Program, Appendix C.

END OF SECTION

**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 10



CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13

Addendum Number 10

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART A – REQUEST FOR PROPOSAL
10.1	59	3.3.4, DELETE heading “1. GUARANTEED MAXIMUM PRICE (SECTION 6) (1500 Points)” and REPLACE with: “1. GUARANTEED MAXIMUM PRICE (SECTION 6) (2000 Points)”
10.2	60	3.3.4, 1. GUARANTEED MAXIMUM PRICE (SECTION 6) (2000 Points), G Evaluation, DELETE formula, and REPLACE with: $\text{Fee Score} = 1500 - \left(1500 \times \left(\frac{\text{Proposer's DB Fee} - \text{Lowest DB Fee Submitted}}{\text{Lowest Fee DB Submitted}} \right) \right)$
10.3	60	3.3.4, 1. GUARANTEED MAXIMUM PRICE (SECTION 6) (2000 Points), G Evaluation, ADD new paragraph: “H. Evaluation: The Lowest Overhead rate submitted by a responsive Proposer will be awarded the maximum points available for this portion of the proposal. All other Proposer’s score for this section of the proposal shall be awarded on a pro rata basis using the following formula: $\text{OH Score} = 500 - \left(500 \times \left(\frac{\text{Proposer's DB OH Rate} - \text{Lowest DB OH Rate Submitted}}{\text{Lowest DB OH Rate Submitted}} \right) \right)$
10.4	60 Addendum 5 Ref. 5.5	3.3.5, DELETE Heading “1. Project Labor Agreement (Section 8) (500 Points)”, and REPLACE with: “1. Project Labor Agreement (Section 8) (1100 Points)”
10.5	60	3.3.5, DELETE Heading “2. Small Contractors and Suppliers Utilization Requirements (Section 9) (1000 Points)” and REPLACE with: “2. Small Contractors and Suppliers Utilization Requirements (Section 9) (1100 Points)”
10.6	60	3.3.5, 2 Small Contractors and Suppliers Utilization Requirements (Section 9) (1100 Points), A DELETE last sentence, and REPLACE with: “The evaluation points within this section will be distributed as follows: the level of SCS Utilization committed to by Proposer (550 Points Maximum) Subcontracting Plan (275 Points Maximum); Outreach Plan (275 Points Maximum).”

Ref.	Page or Drawing	Location and Description of Change
10.7	60	<p>3.3.5, 2 Small Contractors and Suppliers Utilization Requirements (Section 9) (1100 Points), C, 1 DELETE "The Proposer shall indicate its level of meeting the Small Contractors and Suppliers (SCS) Utilization Requirement by submitting Form E with their Proposal (500 Points Maximum).” And REPLACE with:</p> <p>“The Proposer shall indicate its level of meeting the Small Contractors and Suppliers (SCS) Utilization Requirement by submitting Form E with their Proposal (550 Points Maximum).”</p>
10.8	61	<p>3.3.5, 2 Small Contractors and Suppliers Utilization Requirements (Section 9) (1100 Points), C, 2 DELETE “Proposer shall provide a comprehensive project specific SCS Subcontracting Performance Plan outlining the component parts of the Plan to include, but not be limited to, the following: (250 Points Maximum)” and REPLACE with:</p> <p>“Proposer shall provide a comprehensive project specific SCS Subcontracting Performance Plan outlining the component parts of the Plan to include, but not be limited to, the following: (275 Points Maximum)”</p>
10.9	61	<p>3.3.5, 2 Small Contractors and Suppliers Utilization Requirements (Section 9) (1100 Points), C, 3 DELETE “The Plan shall include, but not be limited to, the following: (250 Points Maximum)” and REPLACE with:</p> <p>“The Plan shall include, but not be limited to, the following: (275 Points Maximum)”</p>
10.10	62	<p>3.3.6 FINAL PRESENTATION DELETE “FINAL PROPOSAL PRESENTATIONS AND INTERVIEW (SECTION 10) (1000 Points)” and REPLACE with:</p> <p>“FINAL PROPOSAL PRESENTATIONS AND INTERVIEW (SECTION 10) (800 Points)”</p>
PART B – FACILITY PERFORMANCE STANDARDS		
10.11	130	<p>Section 6 Mechanical Engineering Systems, Plumbing Fixtures - Detention, 5th bullet, ADD:</p> <p>“Each individual detention shower shall be provided with commercial shower timer/control that cuts the flow after preset time. The timer shall only be accessible to County personnel”.</p>
10.12	131 Addendum 1 Ref 1.11	<p>Section 6, the 9th bullet under the heading "Plumbing Fixtures- Non Detention", DELETE second sentence and REPLACE with:</p> <p>“Flush volume shall be 0.5 gallons per flush.”</p>

Ref.	Page or Drawing	Location and Description of Change
10.13	131	Section 6, the 10th bullet under the heading "Plumbing Fixtures- Non Detention", DELETE second sentence and REPLACE with: "Flush volume shall be 0.25 gallons per cycle."
		PART C – FACILITY PROGRAM
10.14	Appendix B	DELETE Appendix Be and REPLACE with: Revised Appendix B. See Attached.
		PART G – DESIGN BUILD CONTRACT
10.15	Part G Addendum 7 Ref 7.2	DELETE "PART G – DRAFT DESIGN BUILD CONTRACT" and REPLACE with: DESIGN-BUILD AGREEMENT, dated April 2, 2014. See attached.
		QUESTIONS AND RESPONSES King County provides the following questions and responses as clarifications of the referenced Request For Proposal provisions.
10.16		Q: The RFP requires the existing public combined sewer, currently running through the site, to be relocated to the right-of-way. If there is an alternate path through the site for the sewer, can it be relocated partially or fully on-site if approved by the City? An easement would need to be granted by King County. Right-of-way is costly construction as it will require significant street restoration. Preliminary discussions with SPU indicate that an alternate route may be acceptable with an easement on the King County property, similar to the current condition. We are suggesting this as a cost savings idea and potentially a time savings from a permitting standpoint. R: For purposes of the RFP the sewer line is be relocated as stated in the Facility Performance Standards.
10.17		Q: Is Fee formula in section 3.3.4.1.G correct? It seems to result in a negative number. Should it read as follows? R: See Ref 10.2 above.
10.18		Q: Regarding the plumbing fixture flow rates listed in the RFP, are these hard and fast, maximums or minimums for the following bullet points in part B, section 6, pages 130 & 131; Detention bullet #2, Non-detention bullets #7. Non-Detention bullets #9 & #10 are listed as maximums R: The flow rates for the Detention plumbing fixtures are to remain as stated in the Facility Performance Standards and as modified by addenda. See Refs 10.12 & 10.13 above.

Ref.	Page or Drawing	Location and Description of Change
10.19		<p>Q: In part B, section 6, page 130, first bullet, the RFP specifies a "combi" unit for individual and group cells. Is this required for the juvenile room (cell) or is a separate lav and water closet desired?</p> <p>R: The Combi unit is preferred by the County as it appears to be more space efficient, and minimizes the plumbing piping.</p>
10.20		<p>Q: What is the name of King County's patented keyway system?</p> <p>R: Corbin Russwin patented 93 series.</p>

Attached To This Addendum:

1. Revised Table 4.2 – Technical Evaluation Score Sheet.
2. Revised Appendix B.
3. DESIGN-BUILD AGREEMENT, dated April 2, 2014.
4. Copy of Redlined Design Build Agreement attached for your convenience.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: April 2, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

REVISED

Table 4.2 - Technical Evaluation Score Sheet

TECHNICAL PROPOSAL (Sections 1 thru 10 and Appendix A)	MAX SCORE
A. MANAGEMENT	2000 points
Section 1 - Executive Summary	Pass/Fail
Section 2 – Proposer ’s Approach to Management of the Project	1000 points
A) Project Management Approach Narrative	
B) Organizational Structure and other key personnel– Org Chart (11x17 inches)	
C) Subcontractor Management Approach Narrative	
D) Quality Management Approach	
E) Risk Management	
F) Apprenticeship Utilization Plan	
Section 3– Approach to Construction Management	1000 points
A) Phasing	
B) Schedule	
Section 4 – Financial Capacity	Pass/Fail
B. DESIGN	4000 points
Section 5 – Design	
A) Design Concept 1. Site Concept 2. Building Concept 3. Phase 2 Concept 4. Quality of Materials and Systems 5. Voluntary Enhancements 6. 1% for Art Integration	3000 points

B) No Cost Test Fit (18 x 24 inches)	200 points
C) LEED and Energy Optimization 1. LEED Score Card 2. Energy Optimization	800 points
C. COST	2000 points
Section 6 – Guaranteed Maximum Price	
A) GMP & Upset Amount Determination (Form B) (placed in sealed envelope) (Affirmation of the GMP amount)	Pass/Fail
B) Price Proposal (Form C) (placed in sealed envelope) Acknowledgement of receipt of addenda Identification of the GMP amount GMP cost breakdown	Pass/Fail
C) Design Builder Fee Proposal (placed in sealed envelope)	1500 points
D) Design Builder Overhead Proposal (placed in sealed envelope)	500 points
Section 7– Not used	
D. ADMINISTRATIVE REQUIREMENTS	2200 points
Section 8 – Project Labor Agreement	1100 points
A) Project Labor Agreement (PLA) 1. Knowledge and Experience 2. Developing and negotiating PLAs 3. Administration of PLA	
Section 9 – Small Contractor and Suppliers (SCC) Requirements	1100 points
E. FINAL PRESENTATION	800 points
Section 10 – Final Proposal Presentations and Interviews	
Reserved Section. No submittal necessary.	

Appendix A – Proposer Information, Forms and Certifications	
Form A - Proposal Stage Memorandum of Understanding	
Form B – GMP & Upset Amount Determination (placed in sealed envelope)	
Form C – Price Proposal Form (placed in sealed envelope)	
Form D – Alternates (placed in sealed envelope)	
Form E - Commitment To Meet SCS Utilization Requirement	
Form F - Confidentiality Agreement For As-Built Documents	
Form G – Not Used	
Form H - Commitment Letter From Surety	
Form I - Commitment Letters from Insurers	
Form J - County approved Proprietary Meeting minutes – Meeting 1.	
Form K - County approved Proprietary Meeting minutes – Meeting 2.	
Form L - County approved Proprietary Meeting minutes – Meeting 3.	
Form M - Contract, Regulatory, And Criminal History Review Of Proposer	
Form N - Authorization For Criminal History Reference Check	
Form O - Commitment To Meet Apprenticeship Requirements	
Form P – Not Used	



REVISED APPENDIX **B**

ALTERNATES



ALTERNATE 1: Full Floor Expansion

This includes the expansion of areas included in the Phase1 program as defined in the Facility Program, Appendix A that will require expansion as identified in the Phase 2 Facility Program. These areas total 12,218 sq. ft and are summarized below.

ID	EXPANDED COURT AREAS Function/Space	Phase 1			Phase 2	Phase 1 + Phase 2
		No of Units	SF/Unit	Total Area	Additional Area Required	Total SF
1.100	Entry Security Screening					
1.101	Pre-Checkpoint Queue Area	1	400	400	200	600
1.102	Parcel Scanner (Xray)	2	100	200	25	225
1.103	Post-Checkpoint Area	1	280	280	140	420
Department Net Area				880	365	1,245
Grossing Factor			30%	264	110	374
Department Gross Area				1,144	475	1,619
1.200	Public Lobby					
1.201	Lobby (arrival and court)	1	720	720	240	960
1.202	Information Kiosks	3	16	48	16	64
1.203	Food Service - Cafe w/Seating	1	600	600	400	1,000
1.204	Public Toilets (male & female)	6	180	1,080	360	1,440
Department Net Area				2,448	1,016	3,464
Grossing Factor			30%	734	305	1,039
Department Gross Area				3,182	1,321	4,503
1.300	Public Child Care					
1.301	Child Care Check-in Lobby	1	70	70	26	96
1.302	Child Care Kitchenette	1	48	48	16	64
1.303	Child Care Storage	1	48	48	16	64
1.304	Child Care - Play Area	1	400	400	240	640
Department Net Area				566	298	864
Grossing Factor			30%	170	89	259
Department Gross Area				736	387	1,123
1.400	Shared Meeting Spaces					
1.401	Conference/Training Center	1	1,200	1,200	800	2,000
1.402	Conference/Training Storage	1	120	120	120	240
1.403	Conference/Training Kitchenette	1	90	90	30	120
Department Net Area				1,410	950	2,360
Grossing Factor			30%	423	285	708
Department Gross Area				1,833	1,235	3,068
1.500	Staff Support					
1.5.03	Wellness/Exercise Room	1	300	300	200	500
1.504	Staff Lockers & Showers (M&F)	2	200	400	400	800
Department Net Area				700	600	1,300
Grossing Factor			30%	210	180	390
Department Gross Area				910	780	1,690



ID	EXPANDED COURT AREAS Function/Space	Phase 1			Phase 2	Phase 1 + Phase 2
		No of Units	SF/Unit	Total Area	Additional Area Required	Total SF
1.600	Information Technology/MIS					
1.601	Help Desk Staff	2	80	160	64	224
1.602	SCIT Computer Equipment Staging & Storage	1	120	120	80	200
Department Net Area				280	144	424
Grossing Factor			30%	84	43	127
Department Gross Area				364	187	551
1.700	Facilities & Building Support					
1.701	Clean Shop Area	1	200	200	200	400
1.702	Tool and Parts Crib	1	300	300	300	600
1.703	Maintenance Storage	1	250	250	250	500
1.704	General Storage	1	1,000	1,000	1,000	2,000
1.705	Trash/Compactor	1	300	300	200	500
1.706	Recycling Sorter/Containers	1	150	150	100	250
1.707	Maint./Custodial Staff Break Area	1	160	160	40	200
1.708	Maint./Custodial Staff Toilet/Lockers	1	90	90	210	300
1.709	Custodial Closets	3	60	180	60	240
Department Net Area				2,630	2,360	4,990
Grossing Factor			30%	789	708	1,497
Department Gross Area				3,419	3,068	6,487
Total Building Support Gross Area						
Building Grossing Factor						
2.100	Resource Center					
2.101	Information Desk	1	170	170	40	210
2.102	Interpreter Lead Office	1	120	120	60	180
2.103	Interpreter tables and chairs	1	80	80	75	155
2.104	Interpreter lounge seating	1	64	64	75	139
Department Net Area				434	250	684
Grossing Factor			30%	130	75	205
Department Gross Area				564	325	889
3.100	Juvenile Offender Courts Offices					
3.103	Judicial Conference Room	1	400	400	730	1,130
Department Net Area				400	730	1,130
Grossing Factor			30%	120	219	339
Department Gross Area				520	949	1,469
Total Expanded Phase 1 Court Gross Area				12,672	8,727	21,399
Building Grossing Factor			40.00%	5,069	3,491	8,560
TOTAL INCREASE TO PHASE 1 AREAS IN PHASE 2 COURT AREAS				17,741	12,218	29,959



ALTERNATE 2: Expansion of Detention Area

This item includes the additional expansion of specific detention areas totaling 4,115 sq. ft. as summarized below:

ID	Function/Space	Phase 1			Added Area	Phase 1 + Added Area
		No of Units	SF/Unit	Total SF	Added Area	Total SF
1.300	Detention Administration					
1.327	Coffee Station/Lounge	1	20	20	150	170
1.328	Staff Toilet-Male and Female	2	240	480	480	960
Department Net Area				500	630	1,130
Grossing Factor			30%	150	189	339
Department Gross Area				650	819	1,469
2.100	Detention Administration (inside security)					
2.107	On-duty Supervisor	1	160	160	160	320
Department Net Area				160	160	320
Grossing Factor			30%	48	48	96
Department Gross Area				208	208	416
4.200	Recreation					
4.202	Storage-Gymnasium	1	300	300	100	400
4.205	Recreation Office	1	100	100	0	100
4.208	Recreation Storage	0	0	0	300	300
Department Net Area				400	400	800
Grossing Factor			15%	60	60	120
Department Gross Area				460	460	920
5.000	Housing					
5.208	Interview Room	3	80	240	240	480
5.308	Interview Room	4	80	320	320	640
5.407	Interview Room	4	80	320	320	640
Department Net Area				880	880	1,760
Grossing Factor			50%	440	440	880
Department Gross Area				1,320	1,320	2,640
Department Net Area				0	0	0
Grossing Factor			25%	0	0	0
Department Gross Area				0	0	0
3.400	Detention IT Service					
3.401	Staff Toilet	1	50	50	50	100
Department Net Area				50	50	100
Grossing Factor			35%	18	18	35
Department Gross Area				68	68	135
3.300	General Services					
3.302	Staff Toilet	0	0	0	50	50
Department Net Area				0	50	50
Grossing Factor			30%	0	15	15
Department Gross Area				0	65	65
Total Added Area For Detention				2,706	2,940	5,645
Building Grossing Factor			40.00%	1,082	1,176	2,258
TOTAL ADDED AREAS FOR DETENTION IN PHASE 1				3,788	4,115	7,903



ALTERNATE 3: Shell and Core Family Law Court Program

This item includes the shell and core build out of spaces required for the family law court program as defined in the Phase 2 Facility Program, Appendix A, that totals 70,025 sq. ft. These areas are summarized below.

ID	NEW COURT AREAS Function/Space	Phase 1			Phase 2			Phase 1 + Phase 2	
		No. of Units	SF/Unit	Total Net SF	No. of Units	SF/Unit	Total SF	Total SF	
1.000	Building Support								
1.400	Shared Meeting Spaces								
1.404	Medium Shared Conference (8-12)	0	0	0	2	240	480	480	
1.405	Smaller Shared Conference (4-6)	0	0	0	4	120	480	480	
Department Net Area							960	960	
Grossing Factor							30%	288	288
Department Gross Area							0	1,248	1,248
								0	
1.500	Staff Support								
1.501	Staff Breakroom	0	0	0	2	400	800	800	
1.502	Staff Toilet	0	0	0	8	120	960	960	
Department Net Area							1,760	1,760	
Grossing Factor							30%	528	528
Department Gross Area							0	2,288	2,288
								0	



ID	NEW COURT AREAS Function/Space	Phase 1			Phase 2			Phase 1 + Phase 2
		No. of Units	SF/Unit	Total Net SF	No. of Units	SF/Unit	Total SF	Total SF
9.000	Judicial Administration/Clerk							
	Management							0
9.800	Supervisor	0	0	0	1	100	100	100
	Cashiering							0
9.801	Counter Waiting Area (5 people/window)	0	0	0	1	50	50	50
9.802	Public Counter w/Clerk Workstation	0	0	0	2	80	160	160
9.803	Expansion of Forms Storage	0	0	0	1	48	48	48
	Case Processing							0
9.804	Counter Waiting Area (5 people/window)	0	0	0		50	0	0
9.805	Public Counter w/o Clerk Workstation	0	0	0		80	0	0
9.806	Workstations w/o Public Counter	0	0	0	3	48	144	144
9.807	EDP Staff - Imaging Workstation	0	0	0	1	64	64	64
9.808	Expansion of Forms Storage	0	0	0	1	60	60	60
	Records Services							0
9.809	Counter Waiting Area (5 people/window)	0	0	0	6	50	300	300
	Public Counter w/Clerk Workstation	0	0	0	2	80	160	160
	Public Counter w/o Clerk Workstation	0	0	0	1	80	80	80
9.810	Workstations w/o Public Counter	0	0	0	4	48	192	192
9.811	Public terminals	0	0	0	4	48	192	192
9.812	Expansion of Forms Storage	0	0	0	1	24	24	24
	Court Services							0
9.813	Courtroom Clerk Workspace				3	48	144	144
		0	0	0				
9.814	Expansion of Exhibit Storage	0	0	0	1	60	60	60
9.815	Expansion of Secure Storage	0	0	0	1	20	20	20
	Domestic Violence Program							0
9.816	Counter Waiting Area (10 people/window)				1	20	20	20
		0	0	0				
9.817	Public Counter w/Clerk Workstation	0	0	0	1	80	80	80
Department Net Area							1,898	1,898
Grossing Factor							30%	569
Department Gross Area							2,467	2,467



ID	NEW COURT AREAS Function/Space	Phase 1			Phase 2			Phase 1 + Phase 2
		No. of Units	SF/Unit	Total Net SF	No. of Units	SF/Unit	Total SF	Total SF
10.000	Prosecuting Attorney							
	Family Support Unit							
10.301	Chief Deputy	0	0	0	1	120	120	120
10.302	Fiscal Operations Coordinator	0	0	0	1	100	100	100
10.303	Supervisor	0	0	0	3	100	300	300
10.304	Administrative Assistant	0	0	0	1	64	64	64
10.305	Computer Staff	0	0	0	2	80	160	160
10.306	Computer Equipment Storage	0	0	0	1	64	64	64
10.307	Reception/Waiting	0	0	0	8	15	120	120
10.308	Receptionist w/ Counter	0	0	0	2	64	128	128
10.309	Interview Room	0	0	0	2	100	200	200
10.310	Settlement Conference Room (for 4-6)	0	0	0	2	150	300	300
10.311	Genetic Testing Room	0	0	0	1	100	100	100
10.312	Genetic Testing Coordinator	0	0	0	1	64	64	64
10.313	Clerical Support Staff	0	0	0	1	48	48	48
10.314	File Storage (Centralized)	0	0	0	1	500	500	500
10.315	DPA	0	0	0	13	100	1,300	1,300
10.316	Paralegal	0	0	0	15	80	1,200	1,200
10.317	Legal Assistant	0	0	0	14	48	672	672
10.318	Intern	0	0	0	1	48	48	48
10.319	Intake Officer	0	0	0	3	80	240	240
10.320	Copy/Fax/Supplies	0	0	0	1	100	100	100
10.321	Computer/Server Room	0	0	0	1	80	80	80
10.322	Law Library/References	0	0	0	1	100	100	100
10.323	Coffee Counter/Break Room	0	0	0	1	140	140	140
10.201	Domestic Violence Protection Order Advocates	0	0	0	1	1,000	1,000	1,000
Department Net Area							7,148	7,148
Grossing Factor						30%	2,144	2,144
Department Gross Area							9,292	9,292



ID	NEW COURT AREAS Function/Space	Phase 1			Phase 2			Phase 1 + Phase 2
		No. of Units	SF/Unit	Total Net SF	No. of Units	SF/Unit	Total SF	Total SF
11.000	Public Defender							
	Family Support Unit							
11.201	Reception/Waiting	0	0	0	4	15	60	60
11.202	Interview Room	0	0	0	1	120	120	120
11.203	Attorneys	0	0	0	4	100	400	400
11.204	Support Staff	0	0	0	8	64	512	512
11.205	Copy/Supplies	0	0	0	1	100	100	100
11.206	Coffee Counter	0	0	0	1	20	20	20
Department Net Area							1,212	1,212
Grossing Factor						30%	364	364
Department Gross Area							1,576	1,576
14.000	Family Law Functions							
14.100	Family Court Operations							0
	Administration							0
14.101	Director	0	0	0	1	180	180	180
14.102	Manager of Administrative Services	0	0	0	1	120	120	120
14.103	Lead/Floater	0	0	0	1	48	48	48
	Court & Program Support	0	0	0				0
14.104	Public Counter	0	0	0	1	120	120	120
14.105	Admin Supervisor	0	0	0	1	48	48	48
14.106	Court Coordinators (UFC & Depend.)	0	0	0	4	48	192	192
14.107	Customer Spec II (with counter)	0	0	0	1	80	80	80
	Unified Family Court	0	0	0				0
14.108	Early Resolution Case Manager	0	0	0	2	140	280	280
14.109	Civil Case Specialists (inc's Flow Coordinator)	0	0	0	2	48	96	96
	Family Court Services	0	0	0				0
14.110	Manager	0	0	0	1	120	120	120
14.111	Assistant Manager	0	0	0	1	100	100	100
14.112	Mediators (Social Workers)	0	0	0	9	140	1,260	1,260
14.113	Paralegal	0	0	0	1	64	64	64
14.114	Program Coordinators	0	0	0	1	64	64	64
	Family Court Operations - Shared Space							0
14.115	Reception/Waiting (for 6-8)	0	0	0	1	120	120	120
14.116	Copy/Fax/Supplies	0	0	0	1	200	200	200
14.117	Mail Area	0	0	0	1	40	40	40
14.118	File Storage	0	0	0	1	200	200	200
14.119	Observation Room - Client Side	0	0	0	1	180	180	180
14.120	Observation Room - Staff Side	0	0	0	1	64	64	64
14.121	Coffee Counter/Break Area	0	0	0	1	20	20	20
Department Net Area							3,596	3,596
Grossing Factor						30%	1,079	1,079
Department Gross Area							4,675	4,675



ID	NEW COURT AREAS Function/Space	Phase 1			Phase 2			Phase 1 + Phase 2	
		No. of Units	SF/Unit	Total Net SF	No. of Units	SF/Unit	Total SF	Total SF	
14.200 Family Law Courtrooms									
14.201	UFC Judge Courtrooms (Trials)	0	0	0	5	900	4,500	4,500	
14.202	Courtroom (Commissioner Support)	0	0	0	1	1,800	1,800	1,800	
14.203	Courtroom (Commissioner General)	0	0	0	1	1,200	1,200	1,200	
14.204	Sound Lock/Vestibule	0	0	0	7	80	560	560	
14.205	Courtroom Electronic Equipment	0	0	0	7	50	350	350	
14.206	Courtroom Exhibit Storage	0	0	0	7	25	175	175	
14.207	Courtroom Holding/Interview - Standard	0	0	0	4	300	1,200	1,200	
14.208	Courtroom Public Waiting (20)	0	0	0	7	300	2,100	2,100	
14.209	Judges/Commissioners Chambers	0	0	0	7	400	2,800	2,800	
14.210	Judges Support (Clerk/Bailiff)	0	0	0	7	80	560	560	
14.211	Pro Tem/Visiting Judges/Commis. Chambers	0	0	0	1	400	400	400	
14.212	Pro Tem/Visiting Support (Bailiff/Recept.)	0	0	0	1	80	80	80	
14.213	Attorney/Client Meeting Room Larger	0	0	0	7	140	980	980	
14.214	Attorney/Client Meeting Room Smaller	0	0	0	7	100	700	700	
Department Net Area							17,405	17,405	
Grossing Factor							30%	5,222	5,222
Department Gross Area							22,627	22,627	
14.300 FLIC - Family Law Information Center (Pro Se)									
14.301	Queuing Area	0	0	0	8	15	120	120	
14.302	Public counter w/ work sta. (Intake Spec.)	0	0	0	2	80	160	160	
14.303	Forms Storage (Staff)	0	0	0	1	60	60	60	
14.304	Public Work Area	0	0	0	1	400	400	400	
14.305	Computer Terminals/Carrels	0	0	0	3	36	108	108	
14.306	Supervisor	0	0	0	1	140	140	140	
14.307	Volunteer Attorney Office	0	0	0	1	140	140	140	
14.308	Facilitator's Offices	0	0	0	2	140	280	280	
14.309	Forms/Pamphlet Display	0	0	0	1	60	60	60	
14.310	Photocopy/Fax/Printer	0	0	0	1	100	100	100	
Department Net Area							1,568	1,568	
Grossing Factor							30%	470	470
Department Gross Area							2,038	2,038	



ID	NEW COURT AREAS Function/Space	Phase 1			Phase 2			Phase 1 + Phase 2
		No. of Units	SF/Unit	Total Net SF	No. of Units	SF/Unit	Total SF	Total SF
15.100	Law Library							
15.101	Reception/Waiting	0	0	0	1	200	200	200
15.102	Circulation Desk (including public approach)	0	0	0	1	336	336	336
15.103	Public Work Area - Tables	0	0	0	3	48	144	144
15.104	Public Work Area - Carrels	0	0	0	5	36	180	180
15.105	Small Group Study Room	0	0	0	1	128	128	128
15.106	Large Group Study Room	0	0	0	1	240	240	240
15.107	Public Access Computers	0	0	0	3	24	72	72
15.108	Public Access Photocopier	0	0	0	1	48	48	48
15.109	Book Stacks	0	0	0	1	1,200	1,200	1,200
15.110	Staff Work Area	0	0	0	1	96	96	96
15.111	Staff Office	0	0	0	1	120	120	120
15.112	Storage Room	0	0	0	1	144	144	144
15.113	Coffee Counter	0	0	0	1	20	20	20
Department Net Area							2,928	2,928
Grossing Factor						30%	878	878
Department Gross Area							3,806	3,806
Total Security Gross Area							50,018	50,018
Building Grossing Factor						40.00%	20,007	20,007
TOTAL AREA		0	0	0	0		70,025	70,025

ALTERNATE 4: Alder Academy

(see Appendix C)

**DESIGN-BUILD
AGREEMENT**

**By and
Between**

**KING COUNTY
(Owner)**

and

[_____] _____ (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 between King County, WA (the "Owner") and _____, a [corporation, joint venture] organized and existing under the laws of the State of _____ 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 ____, 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 4, 2014, Design-Builder submitted its Proposal in response to the Request for Proposal; and

WHEREAS, after evaluating Design-Builder's Proposal in accordance with the procedures and criteria set forth in the Request for Proposal, 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
- Design-Builder’s Proposal, including exhibits thereto (as may be negotiated with Owner)
- 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 the Request for Proposal Documents
- (4) 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
- (5) Construction Documents prepared and approved in accordance with Section 3.3.6.2 of this Agreement;
- (6) Design-Builder’s Proposal (as may be negotiated with Owner);
- (7) Design-Builder’s Statement of Qualifications dated

- October 17, 2013;
(8) 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 in the Preamble to 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 10.7.

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 _____).

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 7.3.4.

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 governmental office facilities in the United States 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 below 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, 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 ____ (Key Personnel). 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 and Reconciliation 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 Representative 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 shall 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 _____. 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 _____ (\$_____). 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), 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: _____ percent (____%) 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 _____ 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 ____ 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 _____ 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 Not Used.

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 _____% 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 Field or Site Office and Home Office Overhead 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) Allowance is 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 Sections 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 _____ “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 _____ Dollars (\$_____) 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 status report required by Section 25.7 of this Agreement 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 home office 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 Offse.

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 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 Notice, 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. 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. 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 reliefs, 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 Contract 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 in accordance with 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 9.5 through Section 9.9.

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 10.2(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 10.2(6) and 10.2(7); and

(7) Any other delay not specifically enumerated in Section 10.2.

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 a warranty survey 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 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 15.2, 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, 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 or 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 unabsorbed 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 _____.

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 or 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 agree 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 RCW39.10.470, 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, as approved. Copies of the approved intent statement(s) shall 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.

23.1.4 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.

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:

Phone: _____

Email: _____

Attention:

With a copy to:

If to Owner:

Phone: _____

Email: _____

Attention:

With a copy to:

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 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.

By: _____
Name

Title

By: _____
Name

Title

**List
of
Exhibits**

| [REDLINE](#)

**DESIGN-BUILD
AGREEMENT**

**By and
Between**

**KING COUNTY
(Owner)**

and

[_____] _____ (Design-Builder)

for the

**KING COUNTY CHILDREN AND FAMILY
JUSTICE CENTER**

CONTRACT NO. C00863C13

| [April 2](#)~~March 20~~, 2014

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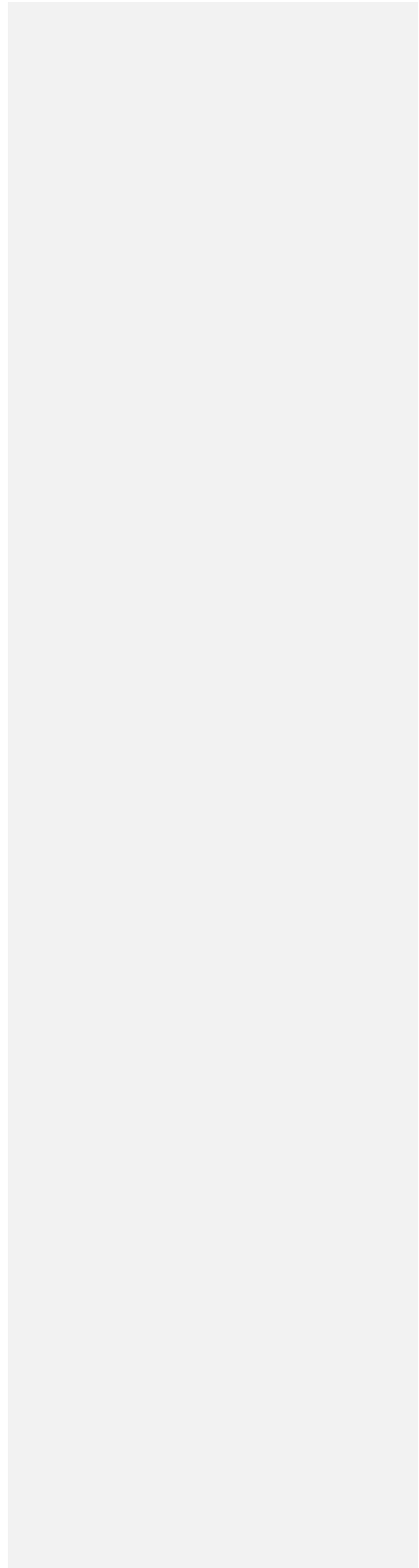
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DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT ("Agreement") for the King County Children and Family Justice Center is made and entered into this ____ day of _____, 2014 between King County, WA (the "Owner") and _____, a [corporation, joint venture] organized and existing under the laws of the State of _____ 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 ____, 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 4, 2014, Design-Builder submitted its Proposal in response to the Request for Proposal; and

WHEREAS, after evaluating Design-Builder's Proposal in accordance with the procedures and criteria set forth in the Request for Proposal, 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
- Design-Builder's Proposal, including exhibits thereto (as may be negotiated with Owner)
- 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 the Request for Proposal Documents
- (4) 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
- (5) Construction Documents prepared and approved in accordance with Section 3.3.6.2 of this Agreement;
- (6) Design-Builder's Proposal (as may be negotiated with Owner);
- (7) Design-Builder's Statement of Qualifications dated

- October 17, 2013;
(8) 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 in the Preamble to 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 10.7.

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 _____).

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 7.3.4.

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 governmental office facilities in the United States 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 below 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, 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 ____ (Key Personnel). 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 and Reconciliation 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 Representative 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 shall 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 at the Site 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 _____. 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 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; ~~and~~
- (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 _____ (\$_____). 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), 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: _____ percent (____%) 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 _____ 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 ___ 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 _____ 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 **Not Used.**

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 _____% 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 Field or Site Office and Home Office Overhead 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) Allowance is

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 Sections 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 _____“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 _____Dollars (\$_____) 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 reprourement 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 status report required by Section 25.7 of this Agreement 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 home office 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 Offse.

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 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 Notice, 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 Contract 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. 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. 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 reliefs, 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 Contract 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 in accordance with 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 ~~the Design-Builder's Fee profit~~ on Change Order Work as set forth in this ~~Section 9.1 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 and that Overhead and profit that is included within the~~ 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 9.5 through Section 9.9.

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 **eO** 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 10.2(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 10.2(6) and 10.2(7); and
- (7) Any other delay not specifically enumerated in Section 10.2.

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 a warranty survey 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 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 15.2, 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, 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 or 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 unabsorbed 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 _____.

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 or 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 agree 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 RCW39.10.470, 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.

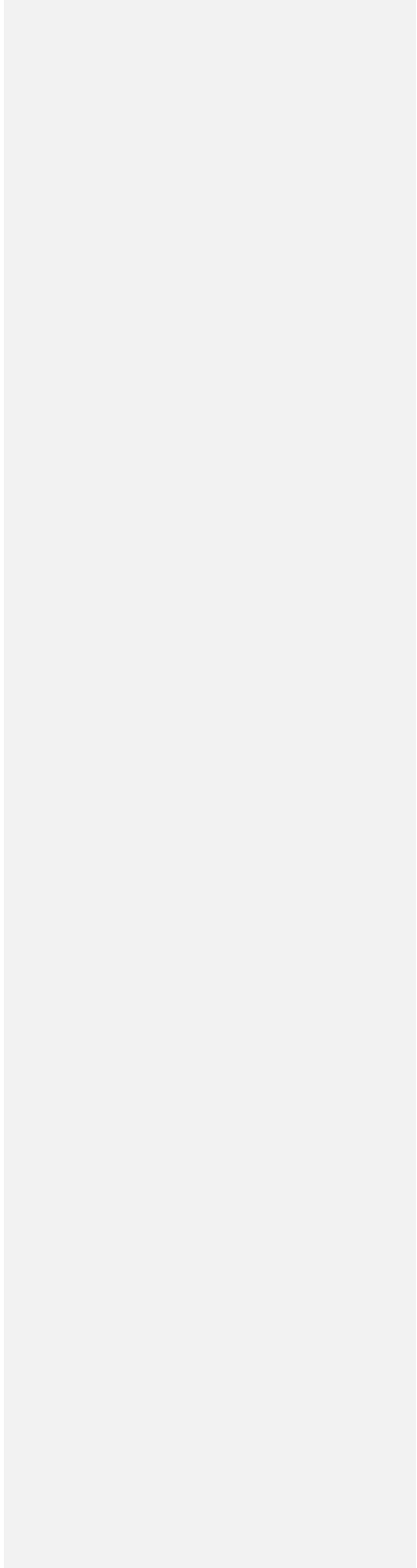
ARTICLE 21 **INDEPENDENT CONTRACTOR**

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, as approved. Copies of the approved intent statement(s) shall 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.

23.1.4 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.

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:

Phone: _____

Email: _____

Attention: _____

With a copy to:

If to Owner:

Phone: _____

Email: _____

Attention: _____

With a copy to:

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 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.

By: _____
Name

Title

By: _____
Name

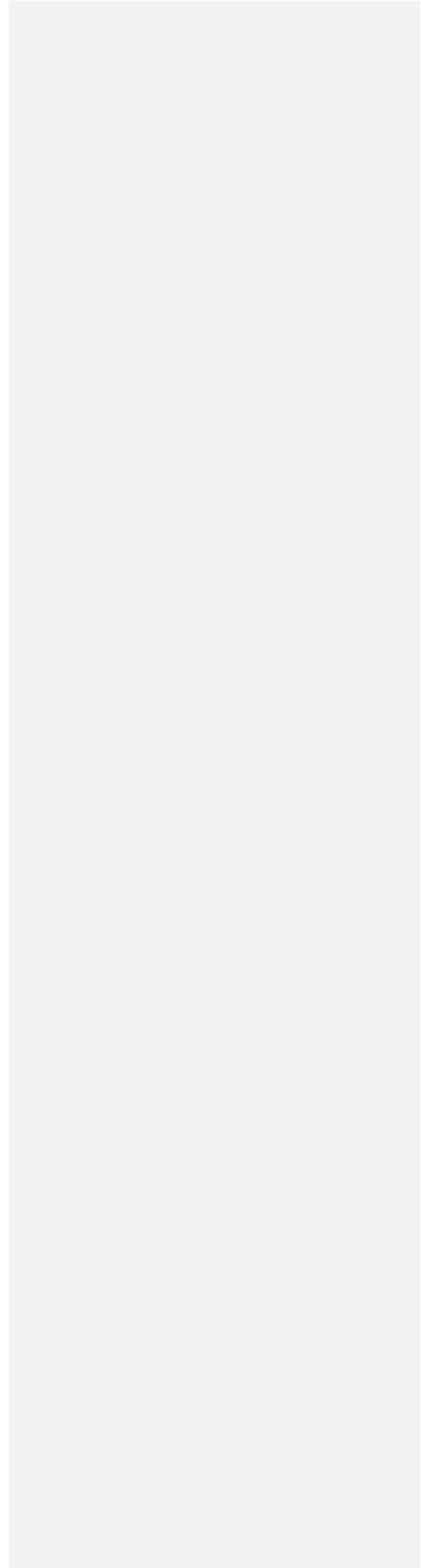
Title

**List
of
Exhibits**

March 20, 2014

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DESIGN-BUILD CONTRACT



**CHILDREN AND FAMILY JUSTICE CENTER
Request for Proposal**

Addendum 11



King County

**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 11

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART A – REQUEST FOR PROPOSAL
11.1	01 45 00 - 9	1.7.1. DELETE 3, and REPLACE with: “1.7.1.3 Payment for these services will be by the County.”

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: April 14, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist