CITY OF WEST RICHLAND
REQUEST FOR QUALIFICATIONS – POLICE FACILITY
SUBMITTALS DUE: Wednesday, February 19, 2020, 3:00 p.m., EXACTLY, Pacific Local Time

Public notice is hereby given the City of West Richland has issued the above request for qualifications (RFQ) for Design-Build Project Teams interested in providing Progressive Design-Build services for the City of West Richland’s Police Facility under the design-build delivery method. Full notice and complete details of the RFQ are available to download at www.westrichland.org or by contracting Becky Blankenship, Hill International, at (509)570-0939 or by email at beckyblankenship@hillintl.com. In the event it becomes necessary to revise any part of this RFQ, addenda will be posted on the City’s website no later than 2/14/20.

The City of West Richland will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.

Dates of Publication: **Feb 02, 2020 and Feb 09, 2020**
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1. INTRODUCTION

1.1. BACKGROUND AND PURPOSE

1.1.1. The City of West Richland (hereinafter “City”) is a 22-square mile City located in Benton County, WA. West Richland and its sister cities of Kennewick, Pasco and Richland make up the Tri-Cities Metropolitan Statistical Area (MSA) (population 283,830). West Richland is the fourth largest City with approximately 15340 residents. The City has a Mayor-Council form of government and was incorporated in 1958.

1.1.2. The City is initiating this Request for Qualifications (RFQ) to solicit Statements of Qualifications (SOQs) from Design-Build Project Teams interested in providing Progressive Design-Build services pursuant to (RCW 39.10.300-.320) (“DB Delivery Method or DB”) for the proposed Police Facility project.

1.1.3. The proposed project includes the design and construction of a new Police Facility with associated site improvements in the City of West Richland, Washington. The facility is estimated at approximately 22,500 square feet, including space for police administration operations, staff and administrative support, animal control, evidence and Department of Corrections. The building will replace an existing single-story facility that no longer meets the needs of the Police Department and will be located at a new site.

1.1.4. The new Police Facility is planned to be located on an approximate 5-acre lot on the southeast corner of Keene Road and West Van Giesen Street. The site will include secured parking for both staff and official police vehicles, secured parking for impounded vehicles, and non-secured parking for the visiting public. This facility will address current and anticipated growth in West Richland, improving City-wide response times and public access to police services.

1.1.5. The project has been approved by the West Richland City Council and is fully funded.

1.1.6. The project Design-Build Budget. The established Guaranteed Maximum Price (GMP) for this Project is $10,038,000.


1.1.8. Procurement Approach. The City recently received approval from the Capital Project Advisory Review Board Project Committee to use the progressive design-build (DB) delivery method for this project.

1.1.9. The City will select up to three firms to enter the Request for Proposals (“RFP”) phase. The City’s intent is to limit the Design-Build Team’s efforts required during the RFP phase (including submittal requirements) and select the most qualified team based on criteria described in detail in this RFQ and the subsequently issued RFP.
1.1.10. Existing Information. The City engaged Integrus Architecture to perform a limited scope program study for the Police Facility to verify basic space and budgetary needs for use in securing project funds. The resulting report, which is available on the City of West Richland website, was created solely for the purposes of budgeting and does not reflect the City’s intent for the project approach. The City fully expects the DB team to engage with the City and key stakeholders to validate program needs and to develop the project design. This document will be provided to finalists selected to enter the RFP phase. The City has made a determination that the work performed by Integrus Architecture is preliminary in nature and will not give them an advantage over other teams. Therefore, the City will allow Integrus Architecture to compete on this project.

1.1.11. The Project Goals will be used to evaluate the proposers and finalists, and proposers and finalists should focus their submittals on the Project Goals identified below. Evaluators will score based on their assessment as to the proposer’s and finalists’ strengths and weaknesses regarding whether proposers and finalists are more or less likely to exceed the Project Goals.

A. **The Efficient and Effective Design.** The Design-Build Team will provide designs that utilize the needs assessment previously performed by the City as a baseline and then creatively improve on the concepts in the needs assessment to:

   a. Include the functions and amenities in an efficient space within the limited budget and incorporate as many additional amenities as the budget allows and in accordance with the accreditation standards of Washington Association of Sheriffs and Police Chiefs and;

   b. Provide a building that sets an attractive standard for the successful commercial development of surrounding parcels;

   c. Design for easy long and short term maintenance and upkeep, including the sustainable nature of the building and the ease of maintenance of the landscaping;

   d. Utilize the topography of the parcel efficiently and to the advantage of the project; and

   e. Allow for future expansion of the facility.

B. **Exceed Schedule Expectations.** The Design-Builder will develop a design and construction phasing plan and schedule that will achieve completion as soon as practicable within the budget.

C. **Efficient Pricing.** The Design-Build Team will provide transparent pricing that takes advantage of the efficiency of progressive design-build, including the following:

   a. Fast track design and construction to maximize the Owner’s budget and minimize the schedule; and

   b. Utilize materials and equipment that are easily maintained from reliable suppliers with excellent warranty service.
D. **High Functioning Team.** The Design-Build Team will develop and promote a high functioning, collaborative relationship between itself, the Owner, and the Stakeholders to exceed the Project Goals within the Owner’s budget and schedule and demonstrate exemplary project management.

E. **Design for Safety.** The Design-Build Team will create designs that enhance the safety of the project(s) in both construction and in the operation of the facility. The design and construction process will reduce re-work and interference with operations with a goal of no recordable incidents.

1.2. **MINIMUM QUALIFICATIONS**

   The Design Builder must be licensed to do business in the State of Washington.

1.3. **PERIOD OF PERFORMANCE**

   The period of performance of any contract resulting from this RFQ and RFP process is tentatively scheduled to begin on or about May 11, 2020 and end in approximately late January, 2022.

1.4. **DEFINITIONS**

   1.4.1. Definitions for the purposes of this RFQ include:

   1.4.2. City – The City is the City of West Richland, a Washington State municipal corporation that is issuing this RFQ.

   1.4.3. Design-Build Team – Individual/s or company/team whose Proposal has been accepted by the City and is awarded a fully executed, written contract.

   1.4.4. Design-Build Team Member – A company who is part of the Design-Build Team.

   1.4.5. Key Team Member – An individual who works for a Design-Build Team Member.

   1.4.6. Projects of Similar Scope and Complexity - The definition of “Projects of Similar Scope and Complexity” are projects that had completion dates within the past 6 years and that have many or all of the following characteristics:

   A. Projects of a similar size that include design and construction of police stations or corrections facilities;

   B. Projects where the design and construction were fast tracked and achieved schedule efficiencies;

   C. Projects that utilize an integrated delivery method (GC/CM, DB, private Integrated Project Delivery, etc.) that require strong coordination and integration of the design and construction team and early involvement of the contractor during design;
D. Projects where the Design-Builder was selected prior to the establishment of the final scope, price, and schedule and where the Design-Builder collaborated with the Owner to develop the final scope, price, and schedule; and

E. Projects where the design maximized function within a limited space.

1.4.7. Proposal – A formal offer submitted in response to a solicitation.

1.4.8. Proposer -- Individual or company submitting a Proposal in order to attain a contract with the City.

1.4.9. Finalist – Proposer selected to proceed to the RFP phase.

1.4.10. Request for Qualifications (RFQ) – Formal procurement document in which a service or need is identified. The purpose of an RFQ is to solicit the Design Build community to submit their qualifications and, experience for evaluation and short list Design Builders to proceed to the RFP phase.

1.4.11. Request for Proposals (RFP) – Formal procurement document in which a service or need is identified. The purpose of an RFP is to solicit the shortlisted Design Builders to submit their management approach, and pricing component for evaluation and selection of the highest scored proposer.

2. PROJECT DELIVERY AND SELECTION PROCESS

2.1. PROJECT DELIVERY

2.1.1. This Project has been approved by the Washington State Project Review Committee for use of the "Progressive Design-Build" delivery system pursuant to RCW 39.10.280. Use of the DB delivery method provides an economic benefit by providing cost-effective design and construction. The City is also using the DB delivery method in order to contract with a single entity for both design and construction. The design and construction services shall be set forth in a Design-Build Agreement, the proposed form of which is provided with this RFQ.

2.2. SELECTION PROCESS

2.2.1. RFQ Phase. Proposers shall submit a Statement of Qualifications “SOQ” pursuant to this RFQ and any addenda. The City shall initially determine whether DB Teams are "Responsive and Responsible" with respect to the submission of the SOQ.

2.2.2. Short List. The City will establish a selection committee and evaluate each Project Team responding to this RFQ solely upon the factors, weighting and process identified in this RFQ and any addenda thereto. Based on the selection committee’s findings, the City intends to short list no more than three responsive and responsible finalists to submit proposals.
2.2.3. The City will notify all proposers of the Finalists selected to move to the next phase of the selection process. The procurement process will not proceed to the next phase until two business days after all proposers are notified of the committee’s selection decision. At the written request of a Proposer not selected as a Finalist, the City will provide the requesting Proposer with a scoring summary of the evaluation factors for its SOQ.

A. RFP Phase. The City will provide the short-listed firms a Request for Proposal (“RFP”), including addenda, that will contain a description of the Project generally as described in this RFQ and any addenda, including the City’s criteria requirements with a detailed description of the project including programmatic, performance, and technical requirements; functional and operational elements; and the established GMP for the design-build portion of the project and matters listed in RCW 39.10.330(3).

B. Proposal. The short-listed Project Teams will submit a proposal responsive to the RFP and any addenda, which is anticipated to require, at a minimum, a brief narrative of the technical approach, a description of the DB Team’s management approach to meet the time and budget requirements and other factors including, but not limited to GMP Development and Construction Management, Proposed Project Team members. Finalists will also be required to submit a Price Proposal for general conditions and fees.

C. Proprietary Interactive Meetings. Prior to submitting a response to the RFP, the short-listed Project Teams will be invited to meet individually with the City ("Interactive Meetings"). The City is anticipating holding one Interactive Meeting with each finalist. The purpose of the Interactive Meeting is to permit the Finalists to ask the City questions to help prepare responses to the RFP and for the Selection Committee to meet and become familiar with key members of the proposed Project Team and their design ideas. The Selection Committee will also ask the Finalists questions. The Finalists should treat the Interactive Meeting as the first project meeting and should come prepared to address challenges specific to the Project and how the Project Team will address those challenges. Only Key Team Members who are expected to perform substantial work on the Project should attend the Interactive Meeting, and the number of Key Team Members in attendance is limited to seven. The City will notify each short-listed Project Team of the specific time for the Interactive Meeting.

D. Interview. After submitting their Proposals, the Finalists will participate in an interview with the City. The purpose of the interview will be for the Project Teams to communicate their understanding of the Project approach and their Project Team’s ability to meet the City’s stated objectives for the Project. The Project Team should be prepared to discuss with specificity the Project Team’s capacity to conduct this work in compliance with the City’s timetable, budget, and expectations. In addition, Project Teams will be provided an opportunity to present previous projects and explain how the Key Team Members achieved project excellence in budget, management and design. Only Key Team Members who are expected to perform substantial work on the Project should attend the Interview, and the
number of Key Team Members in attendance is limited to seven. The City will notify each short-listed Project Team of the specific time for the interviews.

E. Selection. The selection committee will evaluate the Proposals based solely on the factors, weighting, and process identified in the RFQ, the RFP and in any addenda. The City will then initiate negotiations with the firm submitting the highest scored proposal. If the City is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated, and the City may proceed to negotiate with the next highest scored firm. The City shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated. The City shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification.

F. Honorarium. Responsible Finalists who submit responsive Proposals and who are not selected will each receive a $5,000 stipend 60 days after the later of 1) highest-ranking Project Team is selected and confirmed at a meeting of the West Richland City Council and 2) successful negotiation of the design-build contract.

G. Expenses. The City accepts no liability for the costs and expenses incurred by firms in responding to this Procurement. Each Proposer that enters into the Procurement process shall prepare the required materials, the SOQ and the Proposal at its own expense and with the express understanding that it cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the process even in the event the City cancels this Project or rejects all Proposals. Proposers and Finalists will pay their own expenses for travel and participation in the Interviews.

3. GENERAL INFORMATION

3.1. RFQ COORDINATOR

3.1.1. The RFQ Coordinator is the sole point of contact for the City for this procurement. All communication between the Proposer and the City upon receipt of this RFQ shall be with the RFQ Coordinator, as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Becky Blankenship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone Number</td>
<td>(509) 570-0939</td>
</tr>
<tr>
<td>E-Mail Address</td>
<td><a href="mailto:beckyblankenship@hillintl.com">beckyblankenship@hillintl.com</a></td>
</tr>
</tbody>
</table>

3.1.2. Any other communication will be considered unofficial and non-binding on the City. Proposers are to rely on written statements issued by the RFQ Coordinator on behalf of the City of West Richland. Communication directed to parties other than the RFQ Coordinator may result in disqualification of the Proposer.
3.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DATE</th>
<th>TIME</th>
<th>LOCATION</th>
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</thead>
<tbody>
<tr>
<td>DB RFQ Advertisement</td>
<td>2/2/20 &amp; 2/9/20</td>
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<tr>
<td>Last Date to Submit RFQ Questions</td>
<td>2/13/20</td>
<td></td>
<td></td>
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<tr>
<td>RFQ Last Addendum Issued</td>
<td>02/14/20</td>
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<tr>
<td>Statement of Qualifications Due</td>
<td>02/19/20</td>
<td>3:00 PM</td>
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<tr>
<td>Short-List Announced</td>
<td>02/28/20</td>
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<tr>
<td>RFP Issued</td>
<td>03/04/20</td>
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<tr>
<td>Site Walk</td>
<td>03/10/20</td>
<td>11:00 AM</td>
<td>*West Richland, WA</td>
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<tr>
<td>Interactive Meetings</td>
<td>03/17/20</td>
<td>TBD</td>
<td>Municipal Services</td>
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<td>Facility</td>
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<td>3100 Belmont Blvd.</td>
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<td>West Richland</td>
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<tr>
<td>Last Day for Questions</td>
<td>3/24/20</td>
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<td>RFP Last Addendum Issued</td>
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<td>Proposals Due</td>
<td>4/1/2020</td>
<td>3:00 PM</td>
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<tr>
<td>Interviews</td>
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<td>TBD</td>
<td>Municipal Services</td>
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<td>West Richland</td>
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<tr>
<td>Selection of Design-Build Project Team</td>
<td>4/17/20</td>
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<tr>
<td>Anticipate NTP</td>
<td>5/5/2020</td>
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<tr>
<td>*Substantial Completion</td>
<td>Dec. 2021</td>
<td></td>
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<tr>
<td>*Final Completion</td>
<td>Feb. 2022</td>
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* Site walk location will be provided in the RFP.

The City reserves the right to revise the above schedule.

3.3. SUBMISSION OF STATEMENTS OF QUALIFICATIONS (SOQ)

3.3.1. Preparation of Submission

A. Submittals shall be submitted electronically by electronic mail to the RFQ Coordinator in a searchable PDF form to. Submittals delivered by hand, fax, telephone or any postal carrier will not be accepted. Submittals shall be submitted no later than Wednesday, February 19, 2020 at 3:00 pm to beckyblankenship@hillintl.com.

B. Electronic submittals shall be limited to the documents specified in the RFQ document and shall not include additional brochures, booklets or other sales material that are not specifically requested in the RFQ. Electronic submittals shall
clearly indicate in the title of the email the title of the Project, the name of the Proposer, and the date of the Proposal.

C. It is the Responder’s responsibility to make sure that submissions are received in a timely fashion and to ensure attached files are not corrupt or damaged. If the RFQ Coordinator is unable to open an attachment because it is damaged, corrupt, infected, etc., the City may disqualify the Responder’s submission.

3.4. PROPRIETARY INFORMATION / PUBLIC DISCLOSURE

3.4.1. Materials submitted in response to this competitive procurement shall become the property of the City and will not be returned.

3.4.2. All received submittals, including but not limited to SOQs, Proposals, and the required attachments shall remain confidential until the award of contract recommendation has been approved by the West Richland City Council. Thereafter, the SOQs/Proposals shall be deemed public records as defined in RCW 42.56, “Public Records.”

3.4.3. Any information in the SOQ that the Proposer desires to claim as proprietary and exempt from disclosure under the provisions of state law shall be clearly designated. Each page claimed to be exempt from disclosure must be clearly identified with the word “Confidential” printed on it. Marking the entire SOQ exempt from disclosure will not be honored.

3.4.4. The City will consider a Proposer’s request for exemption from disclosure; however, the City will make a decision predicated upon state law and regulations. If any information is marked as proprietary in the SOQ, it will not be made available until the affected Proposer has been given an opportunity to seek a court injunction against the requested disclosure.

3.4.5. All requests for information should be directed to the RFQ Coordinator.

3.5. REVISIONS TO THE RFQ

3.5.1. In the event it becomes necessary to revise any part of this RFQ, addenda will be posted on the City of West Richland website at www.westrichland.org no later than 2/14/20.

3.5.2. The City also reserves the right to cancel or to reissue the RFQ in whole or in part, prior to final award of a contract.

3.6. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

3.6.1. The City encourages participation in all of its contracts by entities certified by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE). Proposers may contact OMWBE at www.OMWBE.wa.gov to obtain information on certified entities.
3.7. ACCEPTANCE PERIOD

3.7.1. Statement of Qualifications shall remain in effect for ninety (90) days for acceptance by the City from the due date for receipt of SOQs.

3.8. RESPONSIVENESS

3.8.1. The Proposer is specifically notified that failure to comply with any part of the RFQ may result in rejection of the SOQ as non-responsive. The City also reserves the right, however, at its sole discretion to waive minor administrative irregularities. The City reserves the right to contact a Proposer for clarification of its SOQ.

3.9. REJECTION OF STATEMENT OF QUALIFICATIONS

3.9.1. The City reserves the right to cancel at any time for any reason this solicitation and to reject all SOQs. The City shall have no liability to any respondent arising out of such cancellation or rejection. The City reserves the right to waive minor variations in the selection process.

3.10. SUBSTITUTION OF DESIGN-BUILDER AND KEY TEAM MEMBERS

3.10.1. Design-Build Team Members and Key Team Members included by the Design-Builder in the SOQ (collectively “Team Members”), will be used as a basis for selection. Substitution of Team Members at any time during the solicitation process and in the performance of the work will not be allowed without written authorization from the Owner, which shall not be unreasonably withheld. Proposers and Finalists must submit the qualifications information of all proposed substituted Team Members to the Owner. Even with written authorization from the Owner, a change to any submitted Team Member will result in re-evaluation and may result in a change to the evaluation and ranking of the Proposer, which may result in the removal of a Finalist from the short list.

4. STATEMENT OF QUALIFICATION CONTENTS

4.1. SOQ ORGANIZATION AND REQUIREMENTS

4.1.1. Each firm's SOQ must include a Table of Contents and be organized by discrete sections corresponding to the scoring criteria and in the same order as below. SOQs not following the prescribed format will lose points. There is a 25 page - single sided - limit requirement. The following are excluded from the 25 page limit:

A. Covers, tabs and dividers, provided that they do not contain substantive content;

B. Resumes;

C. Required attachments, including but not limited to the Corporate Structure Questionnaire and Proposer Responsibility Statement and the insurance and bond submittals;

D. The Identification of Projects Table; and
E. The Cover Letter.

4.1.2. The font shall not be smaller than 10 point.

4.1.3. SOQs should be easy to read, concise and not contain repetitive language.

4.1.4. With the exception of the Identification of Projects Table. A “page” is defined as (when printed) a single sided 8.5 x 11 inch piece of paper. For the Identification of Projects Table, Proposers may use 11 x 17 inch paper.

4.2. LETTER OF SUBMITTAL

4.2.1. The Letter of Submittal shall be signed and dated by a person authorized to legally bind the Design Builder to a contractual relationship, e.g., the president or executive director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include the following information about the Design Builder and any proposed subcontractors:

   A. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
   
   B. Legal status of the Design Builder (sole proprietorship, partnership, corporation, etc.).
   
   C. Location of the facility from which the Design Builder would operate.
   
   D. Identify any current or former City employees employed by or on the Design Builder’s governing board as of the date of the Proposal or during the previous twelve (12) months.
   
   E. Statement of Acknowledgement that the Design Builder will comply with all terms and conditions set forth in the Request for Qualifications, unless otherwise agreed by the City.

4.3. STATEMENT OF QUALIFICATIONS

4.3.1. Design-Build Team Organization and Responsibilities

   A. Provide an organization chart (showing proposed Design-Build Team Members, Key Team Members and their firm affiliation) for all phases of the Project from programming through final acceptance and warranty and maintenance period. Key Team Members include the following individuals:

      a. Corporate executive(s) dedicated to the project,
      
      b. DB project manager,
      
      c. Constructor project manager (if not the DB project manager),
      
      d. Lead Estimator,
e. Construction Superintendent,

f. Design Manager

g. Lead Designer

h. Designer Project Manager

The City reserves the right to reject the inclusion of any individual or consultant firm from the winning Design Build team.

B. Provide a resume for all Key Team Members. Resumes should be no longer than 1 page and should include the following information:

1) Description of the Key Team Member’s proposed Project role and the percentage of time that the Key Team Member will be assigned to the Project for both Phase 1 and Phase 2;

2) Identification of Key Team Member’s specialized experience and competence on at least three (3) Projects of Similar Scope and Complexity.

3) DBIA designation, if applicable.

C. Provide a narrative describing the qualifications of Design-Build Team Members and Key Team Members and why the Design-Build Team proposed in this SOQ will exceed the City’s Project Goals.

D. Provide litigation/dispute history for the lead contractor and the designer-of-record for the last 5 years.

4.3.2. Demonstrated History of Successful Projects of Similar Scope and Complexity

A. Describe the proposed Design-Build Team’s experience in successfully managing Projects of Similar Scope and Complexity that include management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.

B. Describe the Design-Build Team’s experience in developing and/or managing costs within a Guaranteed Maximum Price. If costs exceeded the budget estimates, what was done to bring the costs back within project requirements?

4.3.3. Budget Adherence

A. What processes will the proposed Design-Build Team implement to ensure that the project is designed and constructed to a fixed fee and a set GMP? Include in your description projects where the Design-Build Team creatively managed issues regarding sequencing, scheduling, and site access.
B. Describe the proposed Design-Build Team’s approach to the following:
   - Quality assurance/quality management: and
   - Changes in scope

C. What formal and informal protocols and processes will the proposed Design-Build Team implement to ensure a project that is “designed to the budget” the first time. Include the proposed Design-Build Team’s experience in commissioning and testing Projects of Similar Scope and Complexity.

D. Describe your project buyout process and how you progress from the preliminary budget to final construction budget.

4.3.4. Safety, Financial, Legal: Pass/Fail.

A. Provide evidence of capacity of the Design-Builder to provide bonding in the amount of the estimated GMP. (An actual bond does not need to be submitted with the SOQ, but inability to provide the required bonding capacity will result in disqualification).

B. Provide a copy of certificate(s) of insurance showing the current limits of liability for commercial general liability, employer’s liability, business automobile liability, and professional liability for the lead contractor and the designer-of-record.

C. Provide a signed Corporate Structure Questionnaire and Proposer Responsibility Statement set forth in Attachment 1 demonstrating that the Design-Builder meets the responsibility criteria set forth in RCW 39.04.350:
   a. Have a certificate of registration in compliance with chapter 18.27 RCW
   b. Have a current state unified business identifier number;
   c. If applicable, have industrial insurance coverage for the Design-Builder’s employees working in Washington as required in Title 51 RCW;
   d. If applicable, have an employment security department number as required in Title 50 RCW;
   e. If applicable, have a state excise registration number as required in Title 82 RCW;
   f. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065;
   g. Not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one year period immediately preceding the date of the bid solicitation;
h. Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The proposer must designate a person or persons to be trained under these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. Proposers that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection.

i. Within a three year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW

D. Provide the Table of Contents of the constructor’s accident prevention program and a brief overview of its implementation.

E. Provide the safety and accident prevention record of the construction members of the Design-Build team. Include other relevant information that documents their safety record, including Total Recordable Incidence Rate (TRIR).

F. Provide a list of all OSHA, WISHA, or other state safety agency citations and their dispositions for the past five (5) years against the Design-Builder.

G. Disclose past or current bankruptcies, convictions, debarments, or suspensions involving the lead contractor and the designer-of-record.

4.3.5. Past Utilization of OMWBE Certified Businesses

A. Describe the Proposer’s successful past utilization of businesses certified by the Washington State Office of Minority and Women Business Enterprises. The information provided in response to this section will be evaluated on a pass/fail basis.

4.3.6. Identification of Projects Table (not scored)

A. The Proposer must submit an Identification of Projects Table with the required information set forth herein. The Identification of Projects Table may be submitted on 11” x 17” paper and may be no more than two pages in length. The Proposer is responsible for ensuring that contact information contained in their Identification of Projects is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications. The Owner reserves the right to contact any person listed in the Identification of Projects or any other person with knowledge regarding any Project in which any Design-Build Team Member or Key Team Member participated.
a. Name of project;

b. Owner/Customer;

c. Location of project (include address);

d. Description of the delivery method and integration of design and construction and identify the firm(s) role as a prime consultant, subconsultant, contractor, subcontractor or other;

e. Project description and applicability and relevance of the referenced project to the evaluation criteria Project.

f. Name of each Key Team Member who is proposed for this contract who played a significant role on the project example, including a description of their project responsibilities and functions;

g. The initial contract price, the final contract price, and an explanation for any difference between the two amounts;

h. The initial date scheduled for substantial completion, the actual date of completion, and an explanation for any difference between the two dates; and

i. Project contact of the owner or customer (current address, e-mail, and phone number) who can verify the characteristics of the submitted project example.

B. The information provided in this section will not be scored separately. Rather, the information will be used to obtain basic information regarding the projects and determine whether projects identified in the SOQ are within the definition of Projects of Similar Scope and Complexity.

5. EVALUATION

5.1. PRELIMINARY EVALUATION WEIGHTING AND SCORING

5.1.1. In the evaluation and ranking of Proposers, the City will consider the information submitted pursuant to the RFQ and the RFP with respect to the evaluation criteria set forth below. The result of the evaluation will be a comparative ranking of Proposers.

5.1.2. For the purpose of selecting and evaluating Proposers, the evaluation criteria will be given the following relative weights. Note, this information is subject to change.

<table>
<thead>
<tr>
<th>SCORING CRITERIA FOR RFQ PHASE ONLY</th>
<th>Total Points:</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOQ</td>
<td></td>
</tr>
<tr>
<td>Design-Build Team Organization and Responsibilities</td>
<td>30 points</td>
</tr>
<tr>
<td>Demonstrated History of Successful Projects of Similar Scope and Complexity</td>
<td>30 points</td>
</tr>
<tr>
<td>Budget Adherence</td>
<td>20 points</td>
</tr>
<tr>
<td>Safety, Financial and Legal</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>Past Performance in Utilizing Certified OMWBE Businesses</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td><strong>Total RFQ Points:</strong></td>
<td><strong>80</strong></td>
</tr>
</tbody>
</table>
SCORING CRITERIA FOR RFP PHASE (NOT INCLUDED IN THIS RFQ)
THIS IS FOR INFORMATIONAL PURPOSES ONLY

| RFP Management Proposal, Proprietary Meeting, and Interview | Overall Management Approach | 40 points |
| Design Development & Management | 15 points |
| Project Controls, Cost Tracking and GMP Development | 30 points |
| Scheduling, Sequencing & Construction Management | 10 points |
| Price Proposal | 25 points |
| **Total RFP Points: 120** | |

**FINAL SCORING – SUMMARY OF RFQ AND RFP PHASES**

| Total Points of All Elements | 200 |

## 5.2. AWARD OF CONTRACT

5.2.1. This RFQ does not obligate the City to award a contract. The City reserves the right to cancel at any time for any reason this solicitation and to reject all SOQs and/or Proposals. The City shall have no liability to any respondent arising out of such cancellation or rejection. The City reserves the right to waive minor variations in the selection process.

5.2.2. The City of West Richland reserves the option of awarding this contract in any manner most advantageous for the City.

5.2.3. Award of contract, when made, will be to the proposer whose Proposal is the most favorable to the City, taking into consideration the evaluation factors. The City of West Richland shall make the award of contract.

5.2.4. Reservation of Rights
The City reserves without limitation and may exercise at its sole discretion, the following rights and conditions with regard to this Procurement process:

A. To cancel the Procurement process and reject any and all SOQs and/or Proposals;

B. To waive any informality or irregularity;
C. To revise the Procurement Documents and schedule via an addendum;

D. To reject any Proposer that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;

E. To require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its SOQ or Proposal and require additional evidence of qualifications to perform the work described in this RFQ or a subsequent RFP;

F. To provide clarifications or conduct discussions, at any time, with one or more Proposers;

G. To conduct reference checks for all DB Teams. The City may, at its sole discretion, consider the information obtained through this process and adjust the team’s scores with respect to the factors identified above.

H. To contact references that are not listed in the Proposer’s SOQs and investigate statements on the SOQs and/or qualification of the Proposer and any firms or individuals identified in the SOQ;

I. To consider alternative technical concepts and/or approaches identified by Proposers;

J. To take any action affecting the RFQ process, the RFP process, or the Project that is determined to be in the City’s best interests.

K. Approve or disapprove of the use of particular Design Consultants, Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Design Consultants, Subconsultants, Subcontractors, or Key Team Members from those identified in the SOQ or Proposal.

5.3. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

5.3.1. Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. Discussion will be limited to a critique of the requesting Design Builder’s Proposal. Comparisons between Proposals or evaluations of the other Proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone.

5.4. PROTEST PROCEDURE

5.4.1. The following protest procedures shall apply to any protest by any DB Team filing a protest with respect to any decision by the City regarding this procurement.

5.4.2. All protests regarding the form of the RFQ, the form of the RFP, or any actions or activities of the City in conducting the RFQ and/or RFP must be submitted by the date for submittal of the Statement of Qualifications for the RFQ and the Proposal for the RFP, as applicable. For example, any protest based on the RFQ or any action taken by the
City in the RFQ process must be submitted by the date set forth in the RFQ for submittal of the Statement of Qualifications.

5.4.3. Per RCW 39.10.330, the City shall notify all proposers in writing upon selection of the short listed finalists and shall notify all finalists upon selection of the winning DB Team. The proposers not selected for either the short list or as the selected Design-Builder shall have 4 calendar days from notification to submit a protest. If there is a protest, the City will not advance to the next phase of the procurement (in the case of a Protest at the RFQ phase) or execute the contract with the winning team (in the case of a Protest at the RFP phase) until 2 calendar days after the final Protest decision is transmitted to the protestor.

5.4.4. Form of Protest: Form of Protest: In order to be considered, a protest shall be in writing, addressed to the RFQ Coordinator. The protest shall include the following:

A. The name, address, and phone number of the proposer protesting, or the authorized representative of the proposer submitting an RFQ or RFP;

B. The Solicitation Number and Title under which the Protest is submitted;

C. A detailed description of the specific grounds for Protest and any supporting documentation. It is the responsibility of the protesting proposer to supplement its Protest with any subsequently discovered documents prior to the Manager’s decision; and

D. The specific ruling or relief requested.

5.4.5. Timeliness of Protest. Failure to submit a timely protest shall constitute a waiver of the right to submit a Protest.

5.4.6. Determination of Protest. Upon receipt of a timely written Protest, the City shall investigate the Protest and shall respond in writing to the Protest prior to execution of the contract per the RCW’s. The decision of the City shall be final.

6. MISCELLANEOUS

6.1. CITY OF WEST RICHLAND BUSINESS REGISTRATION AND LICENSING

6.1.1. Chapter 15.01.022 of the West Richland Municipal Code states that all contractors and sub-contractors shall have a valid and current business license to conduct business within the City of West Richland pursuant to the West Richland Municipal Code and shall have a valid and current contractor’s license and registration with the State of Washington, Department of Labor and Industries per RCW Chapter 18.27, prior to submitting the Statement of Qualifications. The Design Builder shall be responsible for contacting the State of Washington Business License Services at http://bls.dor.wa.gov or 1-800-451-7985 to obtain a business registration. If the Design Builder does not believe it is required to obtain a business registration, it may contact the City at (509) 967-3431 to request an exemption status determination.
6.2. **ANTI-KICKBACK**

6.2.1. No officer or employee of the City of West Richland, having the power or duty to perform an official act or action related to this procurement shall have or acquire any interest in the contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the contract.

7. **ATTACHMENTS**

Attached to this RFQ and incorporated herein by reference are the following background documents:

7.1.1. **ATTACHMENT 1** – Corporate Structure Questionnaire and Proposer Responsibility Statement

7.1.2. **ATTACHMENT 2** – Statement of Acknowledgement

1. Proposers shall complete the following information for the Proposed Design-Builder and all proposed Design-Build Team Members:

<table>
<thead>
<tr>
<th>Legal Name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address</td>
<td></td>
</tr>
<tr>
<td>Mailing Address</td>
<td></td>
</tr>
<tr>
<td>Point of Contact</td>
<td></td>
</tr>
<tr>
<td>Position</td>
<td></td>
</tr>
<tr>
<td>Email</td>
<td></td>
</tr>
<tr>
<td>Telephone Number</td>
<td></td>
</tr>
<tr>
<td>Fax Number</td>
<td></td>
</tr>
<tr>
<td>Type of Business</td>
<td></td>
</tr>
<tr>
<td>Federal Tax Identification Number</td>
<td></td>
</tr>
</tbody>
</table>

2. If the Proposed Design-Builder is a Joint Venture, Proposers must:
   a. Submit the above information the Joint Venture as well as for each member of the Joint Venture; and
   b. Attach a copy of the Joint Venture Agreement to this form.

3. Proposer Responsibility: The Proposer must complete the following information for the Design-Builder to be determined to be responsible and eligible to submit a Statement of Qualifications. Failure to sign the certification at the end of this document may result in a Proposer’s disqualification.

<table>
<thead>
<tr>
<th></th>
<th>Washington State Contractor’s Registration Number</th>
<th></th>
<th>Washington State Unified Business Identifier Number</th>
<th></th>
<th>Does the Design-Builder have employees?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>□ Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>□ No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Does the Design-Builder have employees?</td>
<td></td>
<td>□ Yes</td>
<td></td>
<td>□ No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>If the Design-Builder has employees, then does the Design-Builder have industrial insurance as required under Title 51 RCW?</td>
<td></td>
<td></td>
<td></td>
<td>□ Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>If the Design-Builder has employees, provide the Design-Builder’s employment security department number</td>
<td></td>
<td></td>
<td></td>
<td>□ Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Design-Builder’s state excise registration number as required in Title 82 RCW</td>
<td></td>
<td></td>
<td></td>
<td>□ Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Has the Design-Builder been disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065?</td>
<td></td>
<td>□ Yes</td>
<td></td>
<td>□ No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Has the Design-Builder been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate</td>
<td></td>
<td>□ Yes</td>
<td></td>
<td>□ No</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one year period immediately preceding the date of the bid solicitation

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 Has the Design-Builder completed three or more public works projects and had a valid business license in Washington for three or more years are exempt from this subsection? If the answer is no, complete questions 10 and 11. If the answer is yes, skip questions 10 and 11.</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>10 Has the Design-Builder received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department.</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>11 Provide the name of the person or persons designated by the Design-Builder that were trained under these requirements.</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>12 Within a three year period immediately preceding the date of the bid solicitation, has the Design-Builder been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW?</td>
<td>☐</td>
<td></td>
</tr>
</tbody>
</table>

I am authorized to make the representations in this document on behalf of the Design-Builder. I declare under the penalty of perjury under the laws of the State of Washington that the information provided in this Corporate Structure Questionnaire and Proposer Responsibility Statement to be true and correct.

Signed this ___ day of [month] _______, [year] __________

at [insert location]____________________

___________________________________
Signature

___________________________________
Printed Name

___________________________________
Title
ATTACHMENT 2

RFQ STATEMENT OF ACKNOWLEDGEMENT

Police Facility

ALL RESPONDERS COMPLETE THIS PAGE AND INCLUDE WITH SUBMITTAL:

1. By submitting a response, the Responder certifies that the Responder has fully read and understands this RFQ document and has full knowledge of the scope, nature, quantity, and quality of work to be performed; the detailed requirements of the services to be provided; and the conditions under which the services are to be performed.

2. The Responder certifies that he or she has read and understands all terms and conditions of this solicitation.

3. By signing this document, the Responder certifies that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding. If the City determines that collusion has occurred among the Responders, none of the submittals from the participants of such collusion will be considered. The City's determination will be final.

4. The Responder acknowledges that the person who signs below is fully authorized to sign on behalf of the firm listed and to fully bind the firm to all conditions and provisions thereof.

5. The Responder acknowledges receipt of the following addenda: _________ through _________.

Respectfully submitted this _______ day of __________________________, 20_____.

Name of Firm: __________________________________________

Address: ______________________________________________

Signature: ____________________________

Name of ____________________________ (Print):

Title: ______________________________________________

Email: __________________________________________ Phone: ____________________________
REVISED FORM OF PROGRESSIVE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE

Note: This document has been modified from the DBIA Form. A redlined copy will be provided upon request.

Document No. 530
Second Edition 2010
© Design-Build Institute of America
Washington, DC
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<th>Name</th>
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<td>Representatives of the Parties</td>
<td>17</td>
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<tr>
<td>Article 10</td>
<td>Bonds and Insurance</td>
<td>17</td>
</tr>
<tr>
<td>Article 11</td>
<td>Other Provisions</td>
<td>18</td>
</tr>
</tbody>
</table>
REVISED Form of Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This AGREEMENT is made as of the _______________ day of ______________ in the year of 20______, by and between the following parties, for services in connection with the Project identified below:

OWNER:
(Name and address)

DESIGN-BUILDER:
(Name and address)

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

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.
Article 1
Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2
Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition, as amended) ("General Conditions of Contract"), including but not limited to The GMP Amendment in accordance with Section 6.6 herein, provided such Amendment is executed between the parties.

2.1.2 This Agreement, including all exhibits but excluding the GMP Amendment:

  .1 Exhibit A: Initial Basis of Design Documents
  .2 Exhibit B1: Insurance Exhibit – Design-Builder's Insurance Requirements
  .3 Exhibit B2: Form of Payment Bond
  .3 Exhibit B3: Form of Performance Bond
  .4 Exhibit C: Phase 1 and 2 Scope of Services
  .5 Exhibit D: Phase 1 Level of Effort and Hourly Rates and Allowance Items
  .6 Exhibit E: Form Phase 2 Amendment
  .7 Exhibit F: Form Change Orders

2.1.3 The General Conditions of Contract; and

2.1.4 Interim Design Submissions, the Design Log, and the Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, the most recent approved documents governing over previously approved documents.

Article 3
Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including but not limited to the various documents in the Initial Basis of Design Documents set forth in Exhibit A, and the Phase 1 and 2 Scope of Services set forth in Exhibit C, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement or after the parties’ execution of the GMP
Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. (Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)

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

3.4 If the Initial Basis of Design Documents contain design or prescriptive specifications the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Initial Basis of Design Documents, including any performance specifications for the purposes of developing the Scope of Services for Phase 1, the Phase 1 Not to Exceed Amount and the Design-Builder’s Fee Percentage. However, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner during Phase 1. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Initial and Final Basis of Design Documents as well as all applicable Legal Requirements. Provided Design-Builder complies with other requirements set forth in this Agreement such as those regarding notice of claims to Owner and identification of differing site conditions, Design-Builder shall be entitled to an adjustment in the Scope of Services for Phase 1, the Phase 1 Not to Exceed Amount and/or the Design-Builder’s Fee Percentage, but only to the extent Design-Builder’s cost and/or time of performance have been adversely impacted by such inaccurate design or prescriptive specifications that are inconsistent with meeting the performance requirements.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner’sLimited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project, conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner’sLimited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:
4.3.1 Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party, and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 below, and

4.3.2 Owner shall not be required to pay Design-Builder additional compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 **Owner’s Limited License upon Design-Builder’s Default.** If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 **Owner’s Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys’ fees, arising out of or resulting from the use or alteration of the Work Product.

**Article 5**

**Contract Time**

5.1 **Date of Commencement.** The Work shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) unless the parties mutually agree otherwise in writing.

5.2 **Substantial Completion and Final Completion.**

5.2.1 Phase 1 shall be completed no later than _______________ (“Phase 1 Completion Date”). The parties will establish a date for Substantial Completion of the entire Work (“Scheduled Substantial Completion Date”) in the GMP Amendment.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work (“Scheduled Interim Milestone Dates”) shall be determined during Phase 1: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.13 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the “Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.
5.3 **Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 **Liquidated Damages.** Design-Builder understands that if Substantial Completion associated with any Interim Milestone Date is not attained by the Scheduled Interim Milestone Date or Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Therefore provided the parties enter into the GMP Amendment, Design-Builder and Owner will establish a liquidated damage rate for delay in the GMP Amendment for each day that Substantial Completion extends beyond any Scheduled Interim Milestone Date and/or the Substantial Completion Date.

5.5 Any liquidated damages assessed pursuant to this Agreement for delay damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

5.6 In addition, the parties may establish liquidated damages as a remedy for other breaches of contract or failure to achieve performance standards. Such liquidated damages provisions may be added in the GMP Amendment or by written Change Order.

**Article 6**

**Contract Price**

6.1 **Contract Price.**

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") as set forth herein.

.1 The total Compensation to Design-Builder shall not exceed the Guaranteed Maximum Price ("GMP") of $_______________dollars, as adjusted pursuant to the Contract Documents.

.2 The parties acknowledge that the scope of work for this Project is not fully developed. The Design-Builder shall develop the Initial and Final Basis of Design Documents such that the total Compensation to the Design-Builder shall not exceed the GMP set forth herein, unless the parties agree in writing to increase the GMP or the Design-Builder is otherwise entitled to an increase to the GMP pursuant to the terms of the Contract Documents.

6.2 **Design-Builder’s Fee Percentage and Fixed Fee.**

6.2.1 Design-Builder’s Fee Percentage shall be:

________________________ percent (___________________%) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

The Fee Percentage and any Fixed Fee shall include the following items, which shall not be charged as a Cost of the Work:

.1 All profit of the Design-Builder for this Project; and
.2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project.

6.2.2 Prior to the execution of the GMP Amendment, Design-Builder’s Fee Percentage will only be adjusted pursuant to Section 3.4 of this Agreement.

6.2.3 If the Parties enter into the GMP Amendment, Design-Builder shall be paid a fixed fee (the “Fixed Fee”) determined by multiplying the Fee Percentage by the estimated Cost of the Work included in the GMP Amendment. The Fixed Fee will be earned and paid on a monthly basis following execution of the GMP Amendment on a percentage of completion basis, specifically taking into account payments previously made, including during Phase 1. The following costs shall be excluded from the Cost of the Work when calculating the Fixed Fee:

.1 Owner Directed Allowances, as defined in Section 6.4.1.6; and

.2 The Design-Builder's Contingency as defined in Section 6.4.4.1.b.

6.2.4 The Fixed Fee established in the GMP Amendment shall not be modified unless the GMP varies, either upward or downward, by more than fifteen percent (15%) from the GMP set forth in this Agreement (“Original GMP”).

.1 If the GMP increases by more than fifteen percent (15%) above the Original GMP, the Fixed Fee shall be increased by the amount of theFee Percentage multiplied by that portion of the Cost of the Work that is in excess of one hundred fifteen percent (115%) of the Cost of the Work set forth in the Original GMP.

.2 If the GMP decreases by more than fifteen percent (15%) below the Original GMP, the Fixed Fee shall be decreased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is less than eighty-five percent (85%) of the Cost of the Work set forth in the Original GMP.

.3 The following costs shall be excluded from the Cost of the Work when calculating adjustments to the Lump Sum Fee:

a. Owner Directed Allowances, as defined in Section 6.4.1.6; and 

b. The Design Builder's Contingency as defined in Section 6.4.4.1.b.

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

6.3.1 Unless included in Fixed General Conditions, direct labor costs of employees of Design-Builder performing the Work at the Site or, with Owner’s agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of Prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement. Wages for those employees performing construction services shall be paid as follows: Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits. Whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. The Design-Builder shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier for the period upon the Owner’s request. Direct labor costs also include direct contributions to the State of Washington as industrial insurance, medical aid,
and supplemental pension by class and rates established by the Washington Department of Labor and Industries and contributions required by the Federal Insurance Compensation Act (FICA), the Federal Unemployment Tax Act (FUTA) and the State Unemployment Compensation Act (SUCA).

6.3.2 Unless included in Fixed General Conditions, wages or salaries of Design-Builder’s supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.3.3 Unless included in Fixed General Conditions, wages or salaries of Design-Builder’s personnel stationed at Design-Builder’s principal or branch offices, but only to the extent said personnel are approved in advance in writing by the Owner.

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

6.3.5 Unless included in Fixed General Conditions, the reasonable portion of the cost of travel, accommodations and meals for Design-Builder’s personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be approved in writing by Owner in advance.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. The costs for those employees performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those Hourly Rates set forth in Exhibit E. Contracts to Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld.

6.3.7 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

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

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

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

6.3.11 Unless included in Fixed General Conditions, rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred
in the performance of the Work. The rental charge the applicable rental cost as established by the lower of the local prevailing rate published in the Rental Rate Blue Book by Data Quest. San Jose, California, as modified by the AGC/WSDOT agreement or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner’s prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks) on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

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

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

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work, with the exception of Washington State Sales Tax, which shall be paid outside the Phase 1 NTE or GMP.

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

6.3.16 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.

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

6.3.19 Accounting and data processing costs related to the Work.

6.3.20 Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Design-Builder will be required to submit to Owner, a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

6.3.21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder’s Contingency, Design Builder’s Fee Percentage, the Fixed Fee, or the Fixed General Conditions.
6.4 Other Methods of Compensation

Within the Phase 1 NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder’s Compensation

6.4.1 Allowance Items and Allowance Values.

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Exhibit D or the GMP Amendment and are included within any established NTE and the GMP, as applicable.

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

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

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

.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.1.4; however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

.6 The Owner and the Design Builder may designate certain Allowances as “Owner Directed Allowances.” Design Builder shall be compensated for Owner Directed Allowances for the Cost of the Work associated with such allowances plus the Fee Percentage. Items designated as “Owner Directed Allowances” shall not be included in the calculation to determine the Fixed Fee.

6.4.2 Not To Exceed Sums

.1 The Owner and Design Builder may establish Not to Exceed (“NTE”) Sums for specific scopes of the Work. Any such NTE Sum will be negotiated between the Owner and Design-Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
a. A specific description of the Scope of the Work that is subject to the NTE Sum;

b. An updated Schedule of Values that incorporates the NTE Sum; and

c. Any milestone dates associated with the scope of the Work associated with the NTE Sum.

.2 For each scope of work for which a NTE Sum has been established, the Design-Builder shall be reimbursed for the scope of the Work as a Cost of the Work; however, Design-Builder’s compensation shall not exceed the NTE Sum without a written Change Order.

.3 Design-Builder shall not request reimbursement for costs subject to the NTE Sum, unless those costs are identified in the Payment Application as subject to the NTE Sum.

.4 NTE Sums may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

.1 The Owner and Design-Builder may establish Lump Sums for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

a. A specific description of the Scope of the Work that is subject to the Lump Sum;

b. An updated Schedule of Values that incorporates the Lump Sum; and

c. Any milestone dates associated with the scope of the Work associated with the Lump Sum.

.2 For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.

.3 Design-Builder shall not request reimbursement for costs subject to the Lump Sum, unless those costs are identified in the Payment Application as subject to the Lump Sum.

.4 Lump Sums may only be modified via Change Order pursuant to the General Conditions.

6.4.4 Contingencies

.1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for Design-Builder’s exclusive use for the below described unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively “Contingency Items”). Contingency Items include the costs described below, which are subject to written
approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.

(a) Cost of the Work Contingency. The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:

(i) Trade buy-out differentials; and

(ii) Escalation of materials

(b) Design-Builder’s Contingency. The Design-Builder’s Contingency is available to the Design-Builder for items that are not excluded by Section 6.5 hereof and include but are not limited to the following items:

(i) Overtime or acceleration;

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

(iii) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder’s performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder; or

(iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond.

.2 The Design-Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3 of the Agreement; however, Design-Builder’s compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design-Builder’s Contingency in the applicable NTE or GMP without a written Change Order. Design-Builder shall not be entitled to any Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder’s Contingency. Further, the amounts included in the Design-Builder’s Contingency set forth in Section 6.4.4.1.b shall be excluded from the calculation set forth in Section 6.2.3 to establish the Fixed Fee and the calculation set forth in Section 6.2.4 to determine whether the GMP has changed.

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

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

6.4.5 Fixed General Conditions Costs

.1 If the Parties enter into the GMP Amendment, the Parties shall establish an amount for the Fixed General Conditions Costs. The parties shall determine the portions of the Cost of the Work set forth in Section 6.3 that are included in the Fixed General Conditions Costs, and the parties shall include a description of such costs in the GMP Amendment.

.2 For the Costs of the Work that are included in the Fixed General Conditions Costs, the Design-Builder shall no longer be entitled to be reimbursed for such costs as part of the Cost of the Work, and the Design Builder’s sole compensation for the costs set forth in the identified General Conditions shall be through the Fixed General Conditions Costs.

.3 The Owner shall have the right to examine the back-up documentation establishing the Fixed General Conditions Costs, including but not limited to all estimates, proposals, contracts and other financial documentation on a transparent basis.

.4 The Fixed General Conditions Costs shall only be modified if the Design-Builder is entitled to compensation for a delay pursuant to Section 8.2 of the General Conditions. Any modification to the Fixed General Conditions Costs shall be calculated as follows:

a. The Design Builder shall be entitled to receive a liquidated daily rate for extended General Conditions Costs (“Design-Builder’s Delay Rate”) for each day that the Contract Time is extended pursuant to Section 8.2 of the General Conditions.

i. The Design-Builder’s Delay Rate shall be calculated by dividing the Fixed General Conditions Costs by the number of days in the Contract Time for Phase 2.

ii. Then, the Design-Builder’s Delay Rate is multiplied by the number of days that the Contract Time is extended for Design-Builder’s Delay, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.

iii. The result from the Design-Builder’s Delay Rate multiplied by the number of days is the Extended General Conditions Costs which shall be added to the Fixed General Conditions Costs by Change Order and paid to the Design Builder pursuant to the Schedule of Values, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.

b. The Design-Builder’s Delay Rate shall not apply to delays occurring after Substantial Completion is achieved.

c. The Parties agree that determining the Design Builder’s damages for delay in Phase 2 would be extremely difficult or impracticable to determine and that the Design-Builder’s Delay Rate, as calculated in this Section 6.4.5.4, is a reasonable estimate of and reasonable Sum for such damages; therefore, the
Design-Builder’s Delay Rate shall be payable to the Design Builder as liquidated damages and not as a penalty.

6.5 Non-Reimbursable Costs.

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

.1 Compensation for Design-Builder’s personnel stationed at Design-Builder’s principal or branch offices, except as expressly provided for in Section 6.3 hereof.

.2 Overhead and general expenses, except as provided for in Section 6.3 hereof.

.3 The cost of Design-Builder’s capital used in the performance of the Work.

.4 Costs that would cause the Phaes 1 NTE, the GMP, the Cost of the Work Contingency, the Design Builder’s Contingency, or any other NTE or Lump Sum Amount, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Project Phases.

6.6.1 Phase 1

.1 Compensation. During Phase 1, the Design Builder shall be compensated for the following:

   a. The Cost of the Work set forth in Section 6.3;
   b. Design-Builder’s Fee Percentage set forth in Section 6.2.1 multiplied by the Cost of the Work;
   c. Any Lump Sums established pursuant to Section 6.4.3; and
   d. Contingency Items charged under Section 6.4.4.

.2 Phase 1 Not to Exceed Amount. Design-Builder guarantees that its Compensation during Phase 1 shall not exceed the Phase 1 Not to Exceed Amount (“Phase 1 NTE”) of ___________ Dollars ($__________). Documents used as a basis for the Phase 1 NTE shall be identified in Exhibit D to this Agreement. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the Phase 1 NTE, as adjusted in accordance with the Contract Documents.

.3 The Phase 1 NTE includes the Cost of the Work Contingency in the amount of ___________ Dollars ($__________) and the Design-Builder’s Contingency in the amount of ___________ Dollars ($__________).

.4 The Phase 1 Completion Date is ________________________.

.5 GMP Proposal. At the conclusion of Phase 1, Design-Builder shall submit a GMP Proposal to Owner which shall include the deliverables set forth in Exhibit C, unless the parties mutually agree otherwise.

.6 Submission of the GMP Proposal. Submission of the GMP Proposal constitutes Design-Builder’s representation and agreement that it has adequately investigated the site and the project parameters, the Project is adequately defined, the Final Basis of Design Documents are sufficiently defined to provide an accurate GMP
and Project Schedule, and subject to the assumptions and clarifications in the GMP Proposal, the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the Original GMP.

.7 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner’s notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner’s review of the GMP Proposal, the Design Builder shall, upon the Owner’s Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner shall make its best efforts to review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

.8 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP Proposal shall be set forth in the GMP Amendment. The Design-Builder understands that the Guaranteed Maximum Price is established in the Agreement.

.9 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

a. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.5 above;

b. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

.10 Performance of Work After Submission of GMP Proposal. The Design-Builder shall not perform any Work after the submission of the GMP Proposal until the Owner has approved and signed the GMP Amendment unless the Design-Builder obtains the Owner’s prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent. If Design-Builder performs such Work, Design-Builder shall be compensated pursuant to the written approval.

6.6.2 Phase 2 Post GMP Period.

.1 Compensation. During Phase 2, the Design Builder shall be compensated for the following, all subject to the GMP:

a. The Cost of the Work set forth in Section 6.3;

b. Design-Builder’s Fixed Fee established pursuant to Section 6.2.3;

c. Any Lump Sums established pursuant to Section 6.4.3;

d. Contingency Items charged under Section 6.4.4; and
e. Design-Builder’s Fixed General Conditions Costs established pursuant to Section 6.4.5.

.2 GMP The total compensation paid to Design-Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract. By agreeing to the GMP Amendment, the Design-Builder understands that if the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design-Builder, and Design-Builder hereby assumes liability for such costs without reimbursement by the Owner.

6.6.3 Savings.

.1 If the sum of the actual Cost of the Work and Design-Builder’s Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference (“Savings”) shall go to 100% to the Owner.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner’s receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder’s Fee under Section 6.2 hereof is a fixed amount, the amount of Design-Builder’s Fee to be included in Design-Builder’s monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder’s Fee.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage pursuant to RCW Chapter 60.28, and Owner shall release such retainage pursuant to state law. Pursuant to RCW Chapter 60.28, the Design-Builder may submit a bond in lieu of the retainage that the Owner would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form approved by the Owner. In the event the Design-Builder fails at any time to pay persons protected under RCW Chapter 60.28 or the Owner has reason to believe that the Owner or other obligee under the bond has a claim against the retainage or for other good cause, the Owner may, at its option, resume retaining from monies earned by the Design-Builder in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the Owner’s resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Design-Builder. After the Design-Builder has paid protected persons or otherwise cured any default, the Owner may, at its option, again release retainage pursuant to the terms of the bond.
7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder’s properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the statutory rate of interest per month until paid.

7.5 **Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an “open book” arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner, Owner’s accountants, the Washington State Department of Commerce and the Washington State Auditor shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

**Article 8**

**Termination for Convenience**

8.1 Upon ten (10) days’ written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for allowable costs and subject to any established Not to Exceed Amount or GMP:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above based on Design-Builder’s Fee Percentage, provided, however, if a Fixed Fee has been established, then the Fixed Fee shall only be modified pursuant to Section 6.2.4 above.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner’s rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder’s express written consent and such third parties’ agreement to the terms of Article 4.

**Article 9**
Representatives of the Parties

9.1 Owner’s Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative (“Owner Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: (Identify individual’s name, title, address and telephone numbers)

9.1.2 Owner designates the individual listed below as its Owner’s Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: (Identify individual’s name, title, address and telephone numbers)

9.2 Design-Builder’s Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative (“Design-Builder’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: (Identify individual’s name, title, address and telephone numbers)

9.2.2 Design-Builder designates the individual listed below as its Design-Builder’s Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Identify individual’s name, title, address and telephone numbers)

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the Phase 1 NTE in the form set forth as Exhibit B. Upon execution of the GMP Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the GMP in the form set forth as Exhibit B.
10.3 All bonds furnished by Design-Builder shall be from a surety that is qualified and registered to conduct business in the state of Washington.

**Article 11**

**Other Provisions**

11.1 *Other provisions, if any, are as follows:* *(Insert any additional provisions)*

11.2 *Wages.*

11.2.1 The Design-Builder and its Subcontractors, Consultants and Sub-Consultants shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the applicable state prevailing wage rate required by (RCW Chapter 39.12). The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Design-Builder’s responsibility to verify the applicable prevailing wage rate.

11.2.2 Before payment is made by the Owner to the Design-Builder for any Work performed by Design-Builder or any Subcontractor, Consultant or Sub-Consultant whose work is included in the application for payment, the Design-Builder shall submit, or shall have previously submitted, to the Owner a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of employees, laborers, workers, or mechanics employed for the Work by Design-Builder, Consultants, Subcontractors and Sub-Consultants. The “Statement of Intent to Pay Prevailing Wages” shall include: (1) the Design-Builder’s registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Design-Builder for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefilled statement or statements of intent to pay prevailing wages on file with the Owner.

11.2.3 Design-Builder and each Subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a “Statement of Intent to Pay Prevailing Wages” approved by the industrial statistician of the Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.4 Prior to release of the retainage, the Design-Builder shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Design-Builder and every Consultant, Sub-Consultant, and Subcontractor of any tier that performed work on the Project.

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

11.2.6 Each Application for Payment submitted by Design-Builder shall state that prevailing wages have been paid in accordance with the prefilled statement(s) of intent, as approved. Copy of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.7 In compliance with WAC Chapter 296-127, Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.
11.2.8 Consistent with WAC 296-127-320, the Design-Builder and all Consultants, Sub-Consultants and Subcontractors shall submit a certified copy of payroll records if requested.

11.3 Hours of Labor

11.3.1 Design-Builder shall comply with applicable provisions of RCW Chapter 49.28, and such provisions are incorporated herein by reference.

11.3.2 RCW 49.28 permits entities performing public works contracts to enter into an agreement where employees work up to ten hours in a calendar day, subject to the provisions of the statute. No such agreement may provide that employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees.

11.4 Off Site Prefabricated Items.

11.4.1 In accordance with RCW 39.04.370, Design-Builder shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington as a part of the Affidavit of Wages Paid form filed with the Washington State Department of Labor and Industries.

11.5 Nondiscrimination.

11.5.1 No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Design-Builder agrees to comply with and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable.

11.6 Business Registration Requirement.

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

11.7 Contractor’s Registration Requirement.

11.7.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 39.06.010.

11.8 Apprenticeship Program

11.8.1 Design-Builder shall comply with the apprenticeship program set forth in RCW 39.04.320, as applicable.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.
(Name of Owner)                                                                 (Name of Design-Builder)

(Signature)                                                               (Signature)

(Printed Name)                                             (Printed Name)

(Title)                                                                 (Title)

Date:                                                                 Date:

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.
1.1 Insurance Types and Limits.

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

*(Specify each type of insurance as applicable, minimum ratings of the carriers, applicable limits and deductible amounts, required endorsements, and other terms and conditions, as applicable.)*

<table>
<thead>
<tr>
<th>Type of Insurance [Insert Rating of Carrier]</th>
<th>Minimum Limits Required Per Claim/Occurrence</th>
<th>Minimum Limits Required Aggregate Policy Limits</th>
<th>Maximum Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Worker’s Compensation</td>
<td>Statutory Limits</td>
<td>Statutory Limits</td>
<td>All deductibles shall be commercially reasonable and acceptable to the Owner</td>
</tr>
<tr>
<td>2. Employer’s Liability (Bodily Injury by Accident)</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
<td>See above</td>
</tr>
<tr>
<td>3. Commercial General Liability</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
<td>See above</td>
</tr>
<tr>
<td>4. Contractor's Protective Liability (if applicable)</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
<td>See above</td>
</tr>
<tr>
<td>5. Commercial Automobile Liability</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
<td>See above</td>
</tr>
<tr>
<td>6. Professional Errors and Omissions pursuant to Section 1.3 (A) and 1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
<td>See above</td>
</tr>
<tr>
<td>7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
<td>See above</td>
</tr>
<tr>
<td>8. Umbrella Excess Liability Insurance</td>
<td>$3,000,000</td>
<td>$3,000,000</td>
<td>See above</td>
</tr>
<tr>
<td>Builder's Risk</td>
<td>Full amount of contract</td>
<td></td>
<td>$50,000</td>
</tr>
</tbody>
</table>

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

1.1.3 PROFESSIONAL LIABILITY INSURANCE.

1.1.3(A) Professional Liability Insurance To Be Provided By Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant. *(Note: Even if this coverage part is selected, the Design-Builder should consider obtaining its own professional liability coverage.)*
The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

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

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

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

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

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

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

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

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

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

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

1.1.3(B).1 The Design-Builder’s policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder’s valid and collectible commercial general liability/umbrella excess liability policies. Notwithstanding the above, a Design-Builder’s professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.
1.1.3(B).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

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

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

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

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

1.1.4 Any coverage required to be maintained after Final Payment shall be identified below. (List here any coverages required to be maintained after Final Payment is made)

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

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

2.1 Coverage Parameters and Endorsements.

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

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

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

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

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

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.
2.1.5 Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

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

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

3.1 Additional Insureds

3.1.1 Owner and Owner’s officers, directors and employees shall be included as an additional insured on general liability, umbrella and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder’s Contractor’s Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates, and upon request of the same will furnish them to the Owner. Owner shall not be an additional insured on any other of Design-Builder’s policies except for those which are specifically listed below. (List here any other policies for which the Owner will be an additional insured, as well as other entities who are to be named an additional insured.)

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

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

4.1 Terms and Effective Dates.

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

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

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

4.1.4 RESERVED

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

4.1.6 List here any coverage required to be maintained after Final Payment:
General Liability, including completed operations coverage
Worker's Compensation
Professional Liability, including Contractor's Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.
GENERAL CONTRACTOR’S PAYMENT BOND FOR DESIGN-BUILD PROJECTS

This bond form has been endorsed by The National Association of Surety Bond Producers and The Surety & Fidelity Association of America

<table>
<thead>
<tr>
<th>GENERAL CONTRACTOR/PRINCIPAL:</th>
<th>SURETY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name and address)</td>
<td>(Name and address)</td>
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<thead>
<tr>
<th>DESIGN-BUILDER/OBLIGEE:</th>
<th>PROJECT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Name and address)</td>
<td>(Name and location)</td>
</tr>
</tbody>
</table>

AGREEMENT BETWEEN DESIGN-BUILDER AND GENERAL CONTRACTOR:

Dated:

Amount:

BOND DATE:

(Not earlier than date of Agreement)

BOND AMOUNT:

MODIFICATIONS TO THIS BOND:

(List modifications to this Bond below. If none, write “None”)
BOND TERMS AND CONDITIONS

1 Binding Effect. The General Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay for labor, services, materials and equipment furnished by Claimants for use in the performance of the above-referenced Agreement between Design-Builder and General Contractor (the “Agreement”), which is incorporated herein by reference.

2 Intent of Bond. If the General Contractor promptly makes payment of all sums for all labor, services, materials, and equipment furnished for use in the performance of the Agreement, then the Surety’s obligations under this Bond are null and void. Otherwise the Surety’s obligations shall remain in full force and effect.

3 Notice of Claim. Every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after such Claimant provided or performed the last of the work, services or labor, or furnished the last of the materials or equipment for which said claim is made, may have a right of action on this Bond.

3.1 Claimants shall provide written notice to the Surety and send a copy, or notice thereof, to Design-Builder and General Contractor, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim, and the last date such work, services or labor were performed, or the last materials or equipment were furnished in furtherance of the Agreement.

3.2 If Claimant does not have a direct contract with General Contractor, the notice shall identify the person or entity with whom Claimant contracted and who has not made payment to Claimant.

4 Surety’s Obligations. When a Claimant has satisfied the conditions of Section 3, the Surety shall promptly take the following actions at the Surety’s expense:

4.1 Send an answer to that Claimant, with a copy to the Design-Builder and General Contractor, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any disputed portions or amounts.

4.2 Pay or arrange for payment of any undisputed amounts.

5 Bond Liability. The Surety’s total obligation shall not exceed the Bond Amount, plus the amount of reasonable attorney’s fees provided for herein.

5.1 If the Surety fails to discharge its obligations under Sections 4.1 or 4.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to successfully recover any sums found to be due and owing to the Claimant. If Claimant does not recover the entire amount claimed in its notice under Section 3, then such attorney’s fees shall be reduced in proportion to the amount actually recovered.

5.2 The Surety shall not be liable to the Design-Builder, Claimants or others for obligations of the General Contractor that are unrelated to the Agreement, and the Contract Balance under the Agreement shall not be reduced or set off on account of any such unrelated obligations.

6 Waiver of Notice. The Surety hereby waives notice of changes to the Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

7 Dispute Resolution. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the State in which the Project is located. Such suit or action must be filed within one (1) year from the date: a) on which the Claimant sent a claim to the Surety pursuant to Section 3.1; or, b) on which the Claimant last performed labor or services or furnished materials or equipment on the Project, whichever occurs first. If the provisions of this Section 7 are
prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

7.1 In the event of bankruptcy of the General Contractor, the Surety agrees that the General Contractor is not a necessary or indispensable party to any legal action by any party against the Surety to enforce the Surety’s obligations under this Bond.

8 Statutory Compliance. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

9 Copy To Be Furnished. Upon written request of any person or entity appearing to be a potential Claimant on this Bond, General Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

10 Claimant Defined. A Claimant is any individual or entity having a direct contract with the General Contractor or having a contract with a subcontractor that has a direct contract with the General Contractor to furnish services, labor, materials or equipment for use in the performance of the Agreement.

10.1 A Claimant may include amounts owed by the General Contractor for design and other professional services furnished or performed by Claimant regardless of whether such services might form the basis for a mechanic’s lien under applicable State law.

11 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Design-Builder or General Contractor shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)

For Claims on this Bond:
(check appropriate box)
☐ Use the contact information shown on page 1; or
☐ Use the following alternate contact information:
(fill in Surety claims administrator contact information below)

12 Subcontractor Bonds. If this Bond is issued for an agreement between the General Contractor and a subcontractor, the term General Contractor in this Bond shall be deemed to be the bonded subcontractor and the term Design-Builder shall be deemed to be General Contractor.

13 Authorization. The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and General Contractor, intending to be legally bound hereby, subject to the terms set out above, do each cause this Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

<table>
<thead>
<tr>
<th>GENERAL CONTRACTOR (AS PRINCIPAL)</th>
<th>SURETY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company:</td>
<td>Company:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Name and Title:</td>
<td>Name and Title:</td>
</tr>
<tr>
<td></td>
<td>Corporate Seal</td>
</tr>
</tbody>
</table>
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title
PERFORMANCE BOND FORM
CITY OF WEST RICHLAND
POLICE FACILITY

PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

This bond form has been endorsed by The National Association of Surety Bond Producers and The Surety & Fidelity Association of America

<table>
<thead>
<tr>
<th>DESIGN-BUILDER/PRINCIPAL: (Name and address)</th>
<th>SURETY: (Name and contact information)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>OWNER/OBLIGEE: (Name and address)</th>
<th>PROJECT: (Name and location)</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>DESIGN-BUILD AGREEMENT:</th>
<th>BOND DATE: (Not earlier than date of Design-Build Agreement)</th>
<th>BOND AMOUNT:</th>
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<tbody>
<tr>
<td>Dated:</td>
<td></td>
<td></td>
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<tr>
<td>Amount:</td>
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MODIFICATIONS TO THIS BOND:
(List modifications to this Bond below. If none, write "None")
BOND TERMS AND CONDITIONS

1 Binding Effect. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Design-Build Agreement, which is incorporated herein by reference.

2 Intent of Bond. If the Design-Builder performs its obligations under the Design-Build Agreement, then the Surety's obligations under this Bond are null and void, except to participate in meetings as provided in Section 5.

3 Waiver of Notice. The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

4 Owner’s Obligations. If there is no default in Owner’s obligations under the Design-Build Agreement, then the Surety’s obligation under this Bond shall arise after the following steps have been taken by Owner, as a condition precedent to a Bond claim:

4.1 The Owner has first provided written notice to the Design-Builder and Surety at the addresses listed on page 1 of this Bond, that Owner is considering declaring the Design-Builder in default and has requested and attempted to arrange a meeting with the Design-Builder and Surety, to be held not later than fourteen (14) days after receipt of Owner's notice, to discuss methods of performing the Design-Builder's obligations under the Design-Build Agreement. If the Owner, Design-Builder and Surety agree, the Design-Builder shall be allowed a reasonable time to perform its obligations under the Design-Build Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare the Design-Builder in default;

4.2 The Owner declares the Design-Builder to be in default, terminates the Design-Build Agreement and notifies the Surety in writing; and

4.3 The Owner has agreed to pay the balance remaining under the Design-Build Agreement (i.e., the total amount payable by the Owner to the Design-Builder thereunder less amounts properly paid by the Owner to the Design-Builder, the “Contract Balance”) to:

.1 The Surety, in accordance with the terms of the Design-Build Agreement; or
.2 Another design-builder selected pursuant to Section 5.3 to perform the remaining obligations under the Design-Build Agreement.

5 Surety’s Obligations. When Owner has satisfied the conditions of Section 4, the Surety shall promptly take one of the following actions, at the Surety's expense:

5.1 Arrange for the Design-Builder to perform and complete the remaining obligations under the Design-Build Agreement, with consent of Owner;

5.2 Undertake to perform and complete the remaining obligations under the Design-Build Agreement itself, through its agents or through independent contractors;

5.3 Obtain bids or negotiated proposals from qualified design-builders acceptable to Owner for a contract for performance and completion of the Design-Build Agreement, arrange for a contract to be prepared for execution by Owner and a design-builder selected with Owner's concurrence, to be secured by performance and payment bonds equivalent to those for the Design-Build Agreement, issued by a qualified surety. The Surety shall: a. make available as Work progresses sufficient funds to pay the cost of completion of the Design-Build Agreement; and, b. pay to Owner the amount of damages as described in Section 7;

5.4 Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Owner the amount of its reasonable costs to complete the Work; or
5.5 Deny liability, in whole or in part, and notify the Owner in writing, citing reasons therefor.

6 Owner's Rights. If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, under Section 5.5, the Owner shall be entitled without further notice to enforce any remedy available to it.

7 Damages Covered. In any event, the Surety's obligations to the Owner, and the Owner's obligations to the Surety, shall not be greater than those of the Owner and Design-Builder to each other, respectively, under the Design-Build Agreement. Subject to commitment by Owner to payment of the Contract Balance, the Surety is obligated without duplication for:

7.1 The responsibilities of Design-Builder for correction of defective Work and completion of the Project;
7.2 Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Paragraph 5; and
7.3 Liquidated damages, or if no liquidated damages are specified in the Design-Build Agreement, actual damages caused by delayed performance or non-performance of Design-Builder.

8 Bond Liability. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

9 Beneficiaries. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.

10 Dispute Resolution. All disputes related to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two (2) years after: a. the Owner declares the Design-Builder in default under Section 4.2; or, b. Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 10 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

10.1 In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by Owner against Surety to enforce the Surety's obligations under this Bond.

11 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)

For Claims on this Bond:
(check appropriate box)
□ Use the contact information shown on page 1; or
□ Use the following alternate contact information:
(fill in Surety claims administrator contact information below)

12 Statutory Compliance. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.
13 **Warranty Obligation.** The Surety’s obligations to the Owner for warranties of the Design-Builder shall be the same as those required of the Design-Builder under the Design-Build Agreement, subject to the time limitation in Section 10. Unless otherwise stated below, the Surety’s obligation for such warranties excludes: a) products, materials or equipment covered by a manufacturer’s separate warranty; and b) claims by the Owner first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Design-Build Agreement.

*List below any exceptions to the above limitations on Surety’s warranty obligation, if any*

14 **Authorization.** The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

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<thead>
<tr>
<th>DESIGN-BUILDER (AS PRINCIPAL)</th>
<th>SURETY</th>
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<tbody>
<tr>
<td>Company:</td>
<td>Company:</td>
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<td>Signature:</td>
<td>Signature:</td>
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<tr>
<td>Name and Title:</td>
<td>Name and Title:</td>
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<tr>
<td>Corporate Seal</td>
<td>(Attach Power of Attorney)</td>
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(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title