



**Request for Proposals (RFP)
General Contractor/Construction Manager
Services (2022-101)**

**City of Everett Municipal Building –
Public Works Tenant Improvements**

**Proposal Submittal Deadline:
January 10, 2023
3:00 p.m. (PST)**

**City of Everett Procurement
October 17, 2022**

1.0 INTRODUCTION

The City of Everett (City or Owner) is requesting RFP Proposals from highly qualified, prospective General Contractor/Construction Manager firms (GC/CM, Firm or Contractor) for Preconstruction Services and potential construction of the Everett Municipal Building – Public Works Tenant Improvement Project.

The selected GC/CM Firm shall:

- Support an integrated GC/CM delivery model with the Owner, Architect, Parametrix, and other consultants to maximize Project value and quality.
- Provide preconstruction consulting services that include cost estimating, scheduling, phasing, logistics planning, value engineering reviews, recommendations, constructability reviews, recommendations, material selection, building system selection, and risk mitigation.
- Provide integrated use of current design and construction technology, including Building Information Modeling and Virtual Design and Construction as part of the pre-construction and construction process.
- Assist in determining performance goals with the Project team for designing, planning, and executing the Project.

If the GC/CM Firm and Owner can successfully negotiate an acceptable Guaranteed Maximum Price (GMP) and the GC/CM Firm is contracted to serve as the Contractor, they shall:

- Solicit and manage subcontractor and supplier procurement and bidding.
- Provide construction services to deliver the Project safely, on time, and within budget.

As defined under 39.10 RCW, Alternative Public Works Contracting Procedures, the Owner intends to award a contract for GC/CM services ("GC/CM Contract") utilizing a three-step competitive process to select the GC/CM Contractor. The three-step process is described in Section 4.0.

The City's project team includes City staff, Parametrix as the GC/CM Advisor and Support, Mackenzie (Architects), and consultants. Key Project team members include:

- Bob Leonard, Director, City of Everett Parks & Facilities
- Jeff Harris, Assistant Director, City of Everett Parks & Facilities
- Ruben Sanchez, Planning & Capital Development Manager, City of Everett Parks & Facilities
- Kim Doyle, Project Manager Senior Associate, Mackenzie
- Theresa Bauccio-Teschlog, Procurement Manager, City of Everett
- Jim Dugan, GC/CM Advisor, Parametrix
- Dan Cody, GC/CM Procurement/Project Manager, Parametrix
- Doug Wisner, Project Manager PM/CM, Parametrix

2.0 PROJECT DESCRIPTION AND REASONS FOR USING GC/CM DELIVERY

2.1 Project Scope

The City of Everett Municipal Building is a 10-story, mid-rise office building of approximately 117,800 sf located in downtown Everett at 2930 Wetmore Avenue, Everett, WA 98201. The building houses many of the City's Administrative and Support functions, including the Police Department, Engineering, Public Utilities, Human Resources, Permitting Services, and the Prosecutor's Office. The building was constructed in 1980 with concrete and steel construction,

glass curtainwall, and a low-slope roof system. This Project will provide modernizations and tenant improvements, primarily to the building systems, building core, and support areas that will generally include, but are not limited to:

- Modernization of the elevator systems
- HVAC equipment and controls upgrades
- Reroof of building
- New emergency generator and transfer switch
- Modernization of lobby, corridor, and support spaces on multiple floors of occupied space that may include but not be limited to:
 - Modernization of restrooms,
 - Replacement of lighting and lighting controls,
 - Replacement of HVAC systems on all floors,
 - Replacement of door, frame assemblies, and hardware,
 - Replacement of floor finishes,
 - Replacement of suspended ceiling panels, and
 - Interior painting and interior finish upgrades.

Construction is anticipated to begin in the spring of 2024 and be completed in the spring of 2025.

The estimated allowable Guaranteed Maximum Price (GMP) of the Work is approximately \$20,000,000.

2.2 Anticipated Schedule

The Owner intends to complete the GC/CM Firm selection process in a timely manner and execute Contract Documents for Preconstruction Services using a separate, modified AIA A133, Agreement Between the Owner and Construction Manager as Constructor (GC/CM Contract or Agreement), and modified AIA A201, General Conditions of the Contract for Construction. Draft forms of the GC/CM Contract Documents, including the modified AIA A133-2019 Agreement and a modified AIA A201-2017 General Conditions, are attached to the RFP. The Owner may provide updates to these forms in the final RFFP document.

GC/CM Procurement Schedule

Activity	Start Date	Finish Date
First publication of RFP for GC/CM Services		October 19, 2022
Second publication of RFP for GC/CM Services		October 31, 2022
Virtual Project Information/Pre-Proposal Conference RSVP by November 15, 2022 at noon – tbauccio@everettwa.gov		Begins at 1:00pm PST November 15, 2022
Last Day for RFP Questions to be Submitted for Response by Addendum <ul style="list-style-type: none"> • Questions will be answered as received, likely resulting in multiple Addendums being issued. 		December 18, 2022 (11:59pm PST)
Final RFP Addendum Issued no later than		December 28, 2022
RFP Proposal Deadline		January 10, 2023 (3:00pm PST)

Open, Review & Score RFP Proposals Received	January 11, 2023	January 18, 2023
Notify Submitters of Short-Listed Firms & Invite them to Interview		January 19, 2023
Interviews with Short-Listed Firms		February 2, 2023
Notify Submitters of Finalists & Invitation to Submit an RFFP Final Proposal		February 3, 2023
Last Day for RFFP Questions to be Submitted for Response by Addendum		February 14, 2023 (11:59pm PST)
RFFP Addendum Issued		February 17, 2023
RFFP Final Proposal Deadline & Opening		February 28, 2023 (3:00pm)
Notify Submitters of Scoring and Highest Qualified GC/CM		March 8, 2023
Pre-Con Work Plan Due		April 4, 2023
City Council Approval of GC/CM Selection, Award, and Authorization to Execute GC/CM Agreement		April 26, 2023
GC/CM Agreement w/ Pre-Con Services Executed		May 19, 2023
Pre-Con Services	May 22, 2023	October 2023

The dates above are subject to change. If deemed beneficial to the Project, the selection of subcontractors will be led by the GC/CM and shall be pursuant to the process described by RCW 39.10.385.

Addenda: All Information, including Addenda regarding this solicitation, can be found at:

- <https://everettwa.gov/2711/Everett-Procurement-Information-Contract>

Contractors are responsible for checking the City of Everett website for the issuance of any addenda before submitting a proposal.

Design and Construction Schedule

Pre-Design		June 2023
Schematic Design		July 2023
SD Estimate & Owner Approval		July 2023
Design Development	July 2023	September 2023
DD Estimate & Owner Approval	September 2023	September 2023
Construction Documents	September 2023	December 2023
GMP Negotiation (90% CDs)	December 2023	December 2023
Building Department Review/Permitting	December 2023	March 2024
City Council Approval of GMP and GMP Amendment Executed		January 2024
Subcontractor Bidding/Buyout	February 2024	February 2024
Construction	March 2024	February 2025
Substantial Completion		February 2025
Final Completion/Closeout	March 2025	May 2025
Warranty Period	May 2025	April 2026

The above design and construction dates are preliminary and may be adjusted after the GC/CM has been selected and the Project team has evaluated Project scheduling. A phased construction schedule

is anticipated to minimize impacts on the facility's continued operation. Early procurement and bid packages will be considered and may be utilized to maximize construction efficiency, take the best advantage of seasons and weather, meet the Project schedule, and minimize cost impacts due to weather and bid climate.

2.3 Funding

The utility-funded part of the project will be funded from a combination of revenue bonds and capital cash reserves and has been included in the City's ten (10)-year capital planning budget. Funding for the A/E design, GC/CM advisor services, and GC/CM preconstruction services are being provided from the cash reserves until the revenue bonds are in place. The remaining cost of project manager/construction manager (PM/CM) services, design services, and project construction will be funded from a combination of funds from the revenue bonds and the cash reserves. The General Government portion will be paid using a variety of cash reserves from CIP 1 and a temporary inter-fund loan from Utilities that will be refinanced through a GO bond issue towards the end of 2024.

2.4 Reason for Using the GC/CM Delivery Method

The Owner desires to retain the GC/CM Firm as a partner early in the Project to work with the Project team to research and document existing conditions and refine and confirm overall Project goals. These goals include budget, Project scope, Project phasing, Project schedule, and potential bid packages.

By delivering the Project using the GC/CM delivery method, the Owner will benefit from the knowledge and experience of the selected GC/CM Firm to obtain a high-value and high-quality Project on time and within budget. The Owner believes the Project's success depends greatly on the knowledge, experience, leadership skills, qualifications, and culture of the selected GC/CM Firm's staff providing preconstruction and construction services.

The Owner expects that the GC/CM procurement and Project delivery method will provide a direct benefit through the following: greater cost certainty associated with the guaranteed maximum price; reduced claim risks; reduced change orders; opportunity to optimize scope, delivery, and overall schedule for the work that is subject to critical phasing and schedule requirements.

3.0 SCOPE OF GC/CM SERVICES

The scope of services will be provided in the GC/CM Contract as executed between the Owner and the GC/CM Contractor. The description of the scope below is only a preliminary summary.

3.1 General

The Owner seeks a highly qualified, customer-focused GC/CM Firm to collaborate with and participate as a critical, integrated team member throughout the design, preconstruction, and construction phases. The successful GC/CM Firm shall demonstrate highly effective involvement in Preconstruction Services, including early scope development, estimating, constructability reviews, value engineering recommendations, and risk management. The GC/CM Firm will work closely with the Owner and the design team through design/preconstruction, construction, and commissioning to maximize the value and quality of the Project and achieve the end goal leading to cost-effective construction, efficient facility operations, and minimizing maintenance costs.

The successful GC/CM Firm shall demonstrate its qualifications and relevant experience by:

- Demonstrating outstanding knowledge and skills in construction management, cost-estimating, collaboration with the Project team, subcontractor, and supplier buyout,

obtaining maximum value, price competitiveness, and encouraging both local subcontractors, supplier, and disadvantaged business participation.

- Demonstrating an understanding of the aspects of work in Snohomish County and specifically within the City of Everett, including the availability and procurement of products, materials, equipment, freight, labor, and other factors affecting price or schedule.
- Demonstrating experience and success working in an occupied environment and safely conducting construction activities adjacent to active operational facilities, staff, and the public.
- Demonstrating experience with sustainable design and construction practices.

If selected as the GC/CM Contractor, the GC/CM Firm shall provide all services typical of a general contractor, including, but not limited to:

- Competitive bidding of subcontractor and supplier work utilizing competitive bidding in compliance with State of Washington statutes related to public procurement, including RCW Chapter 39.10
- CPM scheduling
- On-site supervision
- Subcontractor coordination
- Safety leadership
- Construction meeting organization
- Communications
- Maintenance of a clean Project site
- Training of Owner's staff
- Coordination with the Owner's other consultants, such as independent commissioning agents and special inspection agencies
- Coordination with the Owner's contractors with separate, simultaneous contracts related to the work.
- Implementation and evaluation of sustainable design and construction practices. Note that the City of Everett supports sustainable practices but is not seeking LEED certification for this Project.

3.2 Preconstruction Services

During preconstruction, the GC/CM Firm shall work collaboratively and proactively with the Owner and the Owner's Project Manager, GC/CM Advisor, PM/CM Consultant, Architect, and other Design Team members. The GC/CM Firm shall be responsible for providing necessary consulting expertise to the Owner to ensure that the program scope is maximized and the construction budget and the Project schedule will be met.

The GC/CM Firm shall provide construction management advice during the preconstruction period that includes but is not limited to the following:

- Recommending cost-effective phasing and sequencing of work and construction schedule based on achieving Project goals.
- Identifying alternative construction means/methods/options for cost savings or construction efficiency, coordinating with the Owner & Design Team, track/log their acceptance/rejection, and implementing accepted recommendations into the Project documents.

- Identifying products for Value Engineering (VE) and engineering systems for life cycle cost design considerations recommending all work necessary to support their implementation, coordinating with the Owner & Design Team, tracking and logging their acceptance or rejection, and implementing accepted recommendations into the Project documents;
- Providing cost estimating, including GMP and Negotiated Support Services budgeting;
- Identifying and reconciling constructability issues in the design documents before subcontract bidding;
- Identifying and initiating procurement of long lead-time materials;
- Participating in Owner's Schematic Design, Design Development, and Construction Documents Phase QA/QC;
- Review and identify safe work practices;
- Recommending site logistics;
- Assisting in providing information for the Owner's preparation of environmental permit documents;
- Assisting the Owner in providing Project updates to the City Council and the public;
- Assisting in public outreach efforts.

3.3 GMP Negotiations and GMP Amendment

Prior to completion of the GMP Negotiations, the GC/CM, with the Owner's written approval, may opt to develop a series of smaller, defined bid packages whereby each bid package will be competitively bid and culminate in the negotiation of a defined portion of the work ("mini-MACC"). Upon successful negotiation of each succeeding mini-MACC, the parties shall execute an amendment to the GC/CM Contract reflecting the increase in the Total Contract Cost. The cost of any such packages shall be included in the negotiated and agreed-upon GMP.

The Contractor's GMP estimate or estimates shall be completed no later than 21 days from receipt of the documents to be used for GMP negotiations for the Project. When a GMP for the Project is successfully negotiated, the parties will, subject to the City Council's approval, sign a GMP Amendment using a modified AIA A133 Exhibit A as provided in the GC/CM Contract. If the Owner is unable to negotiate to its reasonable satisfaction any aspect of the proposed GMP Amendment, then the Owner may terminate negotiations. The Owner may, but is not obligated to, solicit bids or negotiate with the next highest-scored proposer and continue until an agreement is reached or terminate the process, or take any other action consistent with Chapter 39.10 RCW.

3.4 Construction Services

Following successful negotiations of a GMP for the Project and City Council approval of the GMP Amendment, the Owner and the GC/CM Firm will execute a GMP Amendment for the construction services. The GC/CM Firm will provide full general contracting services for the construction of the Project in accordance with the requirements of the contract documents, except for work specifically indicated in the contract documents to be the responsibility of others.

4.0 GC/CM EVALUATION AND AWARD PROCESS

The Owner intends to solicit, evaluate, and contract for GC/CM services based on a combination of qualifications, fees, and Firm culture well suited to the Owner, using a three-step, competitive selection process in accordance with RCW 39.10. All firms submitting an RFP Proposal and RFFP Final Proposal must be registered by the Washington State Department of Labor and Industries in accordance with RCW 18.27.020. The process for selection of the GC/CM Firm, negotiation of the GMP, award of the GC/CM Contracts, and payment for Preconstruction Services is anticipated to be as follows:

4.1 Eligibility

Qualified firms interested in being considered for selection as the GC/CM Firm may submit an RFP Proposal in accordance with the submittal requirements set forth in this RFP.

4.2 Process Summary

Step 1: RFP Proposals will be evaluated, and well-qualified GC/CM Firms from that group will be short-listed and selected for further evaluation and an interview by a Selection Committee.

If only one responsive RFP Proposal is received at the date and time noted in Section 2.2 – Anticipated Schedule, or as modified by subsequent addenda, the Owner reserves the right, at its sole discretion, to either proceed with the procurement process with the single respondent; cancel the RFP and procurement process; or reschedule the due date and time for the RFP and procurement process. In the event that the RFP and GC/CM procurement process is canceled, the Owner reserves the right, at its sole discretion, to either reissue the RFP for GC/CM Services at a later date, revise the Project delivery method (i.e., Design/Bid/Build, etc.), or cancel/postpone the Project.

Step 2: Shortlisted GC/CM Firms will be invited to an Interview and evaluated using a structured and scored Interview process. Upon completion of the Interview process, highly qualified GC/CM Firms will be identified and selected as Finalists based on the cumulative score of the RFP Proposal and Interview.

Step 3: Finalists will be invited to submit an RFFP Final Proposal that consists of pricing that includes proposed costs for Specified General Conditions and a GC/CM Fee. Before the due date for submission of RFFP Final Proposals, Finalists will receive an RFFP document that includes Div. 0 & 1 specification sections, including a detailed cost responsibility matrix that allocates various project costs to the appropriate locations in the budget and cost estimate. The Finalist receiving the highest combined score as a result of the RFP Proposal, Interviews, and RFFP Final Proposals may be identified as the Highest Qualified GC/CM Firm and selected to negotiate Preconstruction Services and enter into a GC/CM Contract with the Owner.

The Owner reserves the right, at its sole discretion, to reject any or all RFFP Final Proposals and to waive as an informality any immaterial irregularities in the proposals received.

Interim scoring for Step 1 and Step 2 will not be released during GC/CM procurement to the submitters, the public, or others until the public opening of the RFFP Final Proposals. Only summary scoring information for Step 1 and Step 2 will be provided. Unless otherwise required by law, the City reserves the right to withhold disclosure of materials related to the GC/CM process (such as, for example, GC/CM RFP Proposals and RFFP Final Proposals, detailed evaluation/scoring, etc.) until after the GC/CM process has been completed.

4.3 GC/CM Contract

The RFFP Final Proposals will be evaluated, and the scores will be added to the other evaluation scores. The candidate with the highest score, based on the Selection Committee's evaluation of

the RFP Proposals, the Interviews, and the RFFP Final Proposals, may be identified as the Highest Qualified GC/CM Firm. The Highest-Qualified Firm will be required to submit a Preconstruction Work Plan and proposed Preconstruction fees for the Project. Subject to negotiation and approval of the Preconstruction Work Plan and Fees by the Owner, and the approval of the City Council, the Contractor, and Owner shall execute the GC/CM Contract as provided in the RFFP. This GC/CM Contract will include information on compensation and payments related to Preconstruction Phase Services. Failure to submit a Preconstruction Work Plan and budget to the Owner within the time specified in the RFP or RFFP may result in revocation of the award, and the Owner reserves the right, at its sole discretion, to cancel negotiations with the first selected candidate and begin negotiations with the next highest-ranked candidate.

5.0 RESPONSE TO REQUEST FOR PROPOSALS (100 points)

GC/CM Firms are invited to submit a clear and concise RFP Proposal as set forth below. RFP Proposals will be evaluated for content, completeness, and responsiveness to the criteria listed below and summarized in Section 8.1. RFP Proposal documents shall be compiled in the same order listed below, separated with tabs, and labeled by the response.

Submitted RFP Proposals not meeting the following criteria for format and content may be considered non-responsive and, at the Owner's discretion, may not be evaluated. RFP Proposals should be limited to thirty-five (35) pages in length, single-spaced, typed pages (minimum 11-point font). Each page face with substantive written information will be considered a "page" for purposes of the page limit.

The page count does not include the proposal cover sheet, letter of interest, employee resumes, GC/CM's accident prevention plan, tabs, or back cover. However, the proposal cover sheet, tabs, and back cover must include no substantive written information; otherwise, they will be counted in the maximum page count. Pages printed on both sides will count as two pages. All information must be printed on 8.5-inch by 11-inch paper, except for charts, exhibits, and other illustrative and graphical information, which may be 11-inch by 17-inch but must be folded down to 8.5-inch by 11-inch. Each side will be counted as one page (a maximum of two (2) 11-inch by 17-inch pages will be allowed). Submitted RFP Proposals exceeding the page limit may be considered non-responsive and may not be evaluated.

GC/CM Firm candidates must submit RFP Proposals in response to the RFP, including the information below and in the following sequence:

5.1 Letter of Interest:

Provide the following information in a Letter of Interest that does not exceed two (2) pages:

- Introduce your firm.
- Include important and relevant information about your firm not provided elsewhere in the RFP Proposal.
- Identify what makes your firm unique and aptly suited to be selected for this Project.
- Provide the firm's primary point of contact, including name, address, telephone number, and email address.

5.2 Staff Qualifications and Responsibilities:

The purpose of subsection 5.2 is to evaluate key personnel's experience and technical competence.

Include an organizational chart and a narrative staffing plan showing proposed staff, reporting

relationships, and key responsibilities for each team member. Describe roles and responsibilities for preconstruction and construction phase services and how your firm will ensure continuity between preconstruction and construction. Identify the key individual(s) who will provide a leadership role for the Project and be the owner's day-to-day contact(s). Demonstrate how each individual has successfully accomplished a similar role on other Projects.

Proposed Staff members will be required to fully participate as proposed and deliver the Project during the entire duration of the schedule. Staff changes proposed by the selected GC/CM Firm after the award of a contract for services will be permitted only by expressed, written permission of the Owner. The Owner will expect that all proposed staff substitutions will meet or exceed the qualifications of the originally proposed staff.

Provide detailed resumes, a maximum of one (1) page per person, for each proposed "key personnel" listed below, including:

- Person's name and proposed role for this Project.
- Education and certifications.
- Work history that identifies their employers, type of position(s) held, and period of employment.
- Summary of prior experience serving in the proposed role and their other qualifications, experience, and other pertinent information related to the ability to serve the proposed role.
- Following information about the last three (3) completed Projects the individual has worked on:
 - Project name.
 - Project Owner.
 - Project location.
 - Project delivery method (Design/Bid/Build, GC/CM, Design/Build, Negotiated).
 - Construction contract value.
 - Completion date.
 - Role of individual on Project.
 - Owner's representative name, telephone number, and email address.
 - Architect's representative name, telephone number, and email address.

The following Contractor's personnel and associated roles are considered "key personnel," and it is desirable that the proposed team members meet the following minimum qualifications:

Corporate Executive:

- Responsible for the overall staffing and oversight of the GC/CM Firm's team during the pre-construction and construction phases of the work.
- Engaged on a part-time basis during the pre-construction and construction phases.

Pre-Construction Manager:

- Primary point of contact between the Owner, the Architect, and the Contractor's team during the pre-construction phase.
- Has a preferred minimum of eight (8) years of experience on Projects of similar size and scope.
- Has successfully completed at least two GC/CM Projects as either a Preconstruction Manager or Project Manager and at least one of these Projects as a Preconstruction Manager.
- Responsible for leading the Contractor's overall effort, including drawing review,

constructability review and recommendations, value engineering review and recommendations, cost estimating and reconciliation, schedule preparation, recommendations on early procurement and early bid packages, and other pre-construction-related tasks.

- Engaged on a part-time basis during the pre-construction phase.

Project Manager:

- The primary point of contact between the Owner, design team, and Contractor's team during the construction phase.
- Has a preferred minimum of ten (10) years of experience on Projects of similar size and scope.
- Has successfully completed at least two GC/CM Projects as a Project Manager of comparable size and scope.
- Shall have the full authority to act on behalf of the Contractor to negotiate contract terms, execute agreements and supervise all Contractor staff, subcontractors, and materials suppliers.
- May also serve as the Preconstruction Manager if this individual meets the requirements identified above for Preconstruction Manager.
- Engaged on a part-time basis during pre-construction and on a full-time basis and fully dedicated to the Project with no other work commitments during the construction phase.

Outreach and Inclusion Coordinator:

- Primary responsibility for developing and implementing the GC/CMs outreach and inclusion plan for DBEs and SBEs as sub-consultants, subcontractors, and suppliers. Will also be responsible for developing a DBE and SBE utilization tracking and reporting system for the Project.
- Has a preferred minimum of four (4) years of experience as an Inclusion and Outreach Coordinator.
- Has successfully been involved in at least one (1) Project of similar size and scope utilizing the GC/CM Project delivery method.
- Engaged on a part-time basis during pre-construction and construction.

Project Superintendent:

- Primary manager on the job site and responsible for day-to-day supervision and direction of in-the-field construction operations.
- Has a preferred minimum of eight (8) years of experience on Projects of similar size and scope.
- Has successfully completed at least one Project of similar size and scope, acting as Project Superintendent, utilizing the GC/CM Project delivery method.
- Must have the full authority to schedule, coordinate and direct the progress of work on the site.
- Must contribute to the Project planning on a part-time basis during the pre-construction phase.
- Engaged on a full-time basis and fully dedicated to the Project with no other Project commitments during the construction phase.

Project Engineer:

- Provides technical support to the Contractor's team during the construction phase.
- Has a preferred minimum of not less than five (5) years of relevant experience on similar Projects and has successfully completed at least one previous GC/CM Project.
- Engaged on a full-time basis and shall be fully dedicated to the Project with no other Project commitments during the construction phase.

Contractor QC Representative:

- Responsible for developing and implementing the Contractor Quality Control (CQC) Plan, facilitating Preinstallation Meetings, providing in-progress inspection and surveillance of construction, developing and issuing CQC Daily Reports, producing Contractor's punch list report(s) and other CQC tasks as outlined in Specification Section 01 45 00.
- Has a preferred minimum of not less than five (5) years of relevant experience on Projects of similar size and scope.
- Engaged on a part-time basis during the construction phase.

Lead Estimator:

- Leads and oversees the Contractor's estimating efforts during the design and construction phases.
- Has a preferred minimum of eight (8) years of experience on Projects of similar size and scope.
- Has successfully completed at least two (2) Projects of similar size and scope, acting as Lead Estimator, utilizing the GC/CM Project delivery method.
- Engaged on a part-time basis during pre-construction and construction.

Scheduler:

- Leads and oversees the Contractor's scheduling efforts during the design and construction phases.
- Has a preferred minimum of five (5) years of experience on Projects of similar size and scope.
- Has successfully completed at least two (2) Projects of similar size and scope, acting as Scheduler, utilizing the GC/CM Project delivery method.
- Engaged on a part-time basis during pre-construction and construction.

Safety Officer:

- Oversees and directs the contractor's safety and security planning, training, execution, and review.
- Has a preferred minimum of not less than five (5) years of relevant experience on Projects of similar size and scope.
- It is desirable that the Safety Officer is OSHA 30 and OSHA 501 trained and be CECSL Certified.
- Engaged on a part-time basis during pre-construction and construction.

5.3 Firm Data:

For the GC/CM Contractor, provide the history and capabilities of your firm, including:

- The types of Projects or services the firm normally performs.
- Number of full-time employees in Washington State.
- Location of the “local office” that will be responsible for the work.
- Number of full-time employees that work at the local office.
- The number of employees identified for this Project based out of the local office.
- The firm’s bonding capacity for 2022 and anticipated bonding capacity for 2023.
- Standard insurance types and coverage amounts carried by the firm.

5.4 Firm History and Capabilities:

The purpose of subsection 5.4 is to evaluate past performance with negotiated or similarly complex projects and to evaluate your firm’s capacity to perform the work.

Describe the history and capabilities of your firm, including the following:

- Percentage of work over the past five (5) years (based on total revenue dollars) delivered as GC/CM, Design/Build, Design/Bid/Build, and other delivery methods.
- Describe your firm’s and your proposed team’s experience and success in safely conducting construction activities in existing occupied operational facilities adjacent to arterials and streets
- Describe your firm’s and your proposed team’s experience and planning and executing construction logistics and phasing of work to minimize the impact on existing operational facilities, existing utilities and infrastructure, and existing adjacent arterials and streets that must remain operational and functional during construction.
- Describe your firm’s experience with sustainable design and construction practices during design and construction. Note that the Owner is not seeking LEED certification but encourages sustainable practices.
- Total construction contract value, listed by year, of projects completed in Washington State in 2020, 2021, and 2022.
- Total construction contract value of projects in Washington State that will be in progress or anticipated to begin construction in 2023, including this project which would begin construction in the Spring of 2024.
- Provide Project information profiles of your firm’s last four (4) completed or currently ongoing Projects that demonstrate complexity, size, scope, and value similar to this Project.

Comparative factors would include, but are not limited to:

- GC/CM delivery
- Phased construction
- Project construction value in the range of \$15-25M
- Construction or modernization of commercial office buildings
- Work at an occupied facility or site where the existing uses and functions must remain fully operational during construction
- Work at a facility or site that includes essential facilities or services
- Work at a facility or site that is shared with agencies or tenants other than the Owner

In each profile, provide the following:

- Project photo(s),
- Short description of the Project and how it is similar to this Project,
- Contracted duration of construction,
- Actual duration of construction,
- Contracted construction value,
- Final cost of construction,
- Contact information for both the Owner and Designer, including the manager who is familiar with your firm's performance,
- Note if any of the individuals named in your Project team participated as members of the profiled Project.
- Indicate which Projects were completed using alternative delivery (cost-reimbursable basis (GC/CM, CM/GC or similar), negotiated contract, or design-build) or had similar elements and services to those delivery methods.

5.5 Project Approach:

The purpose of subsection 5.5 is to evaluate your firm's approach to executing the Project, including the ability to meet the Project time and budget requirements.

Describe your overall approach to maximizing the value of your Preconstruction, Bidding, and Construction Services. In addition, briefly address the following Project issues and provide your firm's plan for the following:

- Integrating your services with the Owner, design team, and GC/CM Consultant to support and ensure the success of the Project.
- Providing preconstruction services.
- Maximizing value and success of the preconstruction phase.
- Tracking Project costs and providing accurate budget forecasting during preconstruction and construction phases.
- Providing realistic cost estimates during the preconstruction phase that avoids overly conservative estimates.
- Attracting subcontractor and supplier interest in the Project, including local businesses, small business enterprises, and socially and economically disadvantaged business enterprises.
- Competitive and successful material and subcontractor buyout.
- Use of BIM technology for the Project during Preconstruction and Construction.
- Scope of work your firm proposes to self-perform and its past performance of that scope of work. How will you ensure price competition in this scope of work?
- Successfully managing and completing a Project with critical phasing, phased completion, and move-in dates. Address how your firm would work on an occupied site with limited room for contractor staging, parking, and construction trailers.

5.6 Location and Workload:

Provide the following information about your firm's location and range of work:

- Address of firm's headquarters or corporate office.
- Address of the local office that will oversee and manage the Project.
- Current geographic range of your entire company's work.

- Current geographic range of work managed by the local office.
- Description of your firm's ability to effectively oversee and manage the preconstruction and construction phases of a Project constructed in Everett, Washington.

Provide the following information about your firm's volume of work:

- Summary of the firm's annual volume of work (in dollars) for each of the past five (5) years.
- Summary of the firm's projected volume of work (in dollars) for the current and next three (3) years.
- How will you manage your resources and workload to provide sufficient resources for this Project?

5.7 Accident Prevention and Safety:

Provide the following information about your firm's accident prevention and safety program:

- Summary of your firm's accident prevention program and commitment to safety.
- Firm's EMR and OSHA (WISHA) Lost Time Accident Rate for each of the past five (5) years.
- Plan for providing a safe environment for staff and the public for this Project.
- Refer to RFP Section 5.12 for the requirement on the submittal of GC/CM firm's accident prevention plan.

5.8 Cost and Risk Management on Prior GC/CM Projects:

The purpose of subsection 5.8 is to evaluate past performance with negotiated or similarly complex projects and to evaluate your firm's capacity to perform the work.

Provide the following information in a matrix or table format for each of the three (3) most recent GC/CM Projects managed and completed by the local office that will manage this Project:

- Project name.
- Project location.
- Construction start date.
- Planned substantial completion date.
- Actual substantial completion date.
- Reasons for late substantial completion, if applicable.
- Planned final completion date.
- Actual final completion date.
- Reasons for late final completion, if applicable.
- GC/CM Fee percentage.
- Budgeted GC/CM Risk Contingency.
- GC/CM Risk Contingency used.
- Negotiated GMP amount.
- Final Cost of Construction.
- Reasons for Final Cost of Construction exceeding GMP, if applicable.
- Name and phone number of the Owner's Project Manager and Architect's Project

manager for the Project.

- Identify any of your proposed team members who were involved in the Project and their role in the Project

5.9 SBE/DBE/Local Business:

The purpose of subsection 5.9 is to evaluate past performance in the utilization of disadvantaged business enterprises and small business entities on previous Projects and to evaluate the project-specific outreach and inclusion plan for small business entities and disadvantaged business enterprises as sub-consultants, subcontractors, and suppliers for this Project, to the extent permitted by law.

The Owner encourages the participation of local businesses, small business enterprises, and socially and economically disadvantaged business enterprises as sub-consultants, subcontractors, and suppliers for this Project.

Provide the following for your last three (3) Projects that had utilization or participation goals:

- A summary of the required or requested MBE, WBE, SBE, or other disadvantaged business and local business utilization goals and the actual participation levels you achieved for each Project.
- A summary of your efforts to recruit and involve MBE, WBE, SBE, or other socially or economically disadvantaged business enterprises and local businesses for each Project.
- Examples of past successes related to the inclusion of small or disadvantaged business enterprises participating in past Projects.
- Based on lessons learned in past Projects, provide a summary of how you have aligned Project work to offer increased opportunities for small businesses and micro businesses, including facilitating mentor relationships between the prime and relevant subcontractors or between subcontractors and relevant small and micro businesses.

For the Everett Municipal Building – Public Works Tenant Improvements Project, provide a summary of your project-specific outreach and inclusion plan devised to:

- Increase opportunities and encourage MBE, WBE, SBE, or other disadvantaged business enterprises and local businesses to participate in this Project.
- Encourage, recruit, mentor, and involve MBE, WBE, SBE, or other socially or economically disadvantaged business enterprises and local businesses in this Project.
- Work with the City of Everett to track, and report monthly, the status of MBE, WBE, SBE, or other disadvantaged business enterprises and local business utilization for this Project.

5.10 Firm Values and Culture:

The Owner has a distinct set of values and culture. Provide information on how your firm aligns with the following and how you would implement policies and procedures within your team to nurture:

- Excellence in customer service.
- Collaboration, communication, teamwork, innovation, and creativity.
- Team approach to design and construction
- Design and construction solutions that enhance value, and ease of maintenance, are operationally and spatially efficient, cost-effective, and sustainable.

- Adherence to program, budget, and schedule.

5.11 Reference Checks:

The Owner reserves the right to conduct reference checks during the review and scoring of the RFP Proposals. If the information obtained from the reference checks reveals concerns about a firm's past performance or their ability to successfully perform the contract to be executed based on this RFP, the Owner may, at its sole discretion, determine that the firm is not qualified and may disqualify the firm from further consideration. In conducting reference checks, the Owner may include itself as a reference if the firm has performed past work for the Owner, even if the firm did not identify the Owner as a reference. Likewise, the Owner reserves the right to check references from other clients of the firm even if they were not identified by the firm as references in the submitted RFP Proposal. A "fail" on this reference criterion will result in that firm's RFP Proposal score being automatically reduced to "0 points".

5.12 Accident Prevention Plan:

Submit a copy of the GC/CM firm's Accident Prevention Plan, as required by RCW 39.10.360(2)(c), for review and reference. Submittal of the Accident Prevention Plan will result in a "pass" for this criterion. Failure to submit an Accident Prevention Plan will result in a "fail" for this criterion. A "fail" on this criterion will result in that firm's RFP Proposal score being automatically reduced to "0 points".

6.0 INTERVIEWS

GC/CM firms that submitted an RFP Proposal and are among the highest scoring from the RFP stage will be short-listed for an Interview and further evaluation by the Selection Committee using a structured and scored Interview process. Upon completion of the Interview process, highly-qualified candidates will be identified and selected as Finalists.

7.0 RFFP FINAL PROPOSALS

Finalists will be invited to submit an RFFP Final Proposal in response to the Request for Final Proposal (RFFP). The RFFP Final Proposal shall include a total cost for the Specified General Conditions (SGCs) and an amount for the "GC/CM Fee" expressed as a percentage of the estimated GC/CM MACC identified for the Project. The terms "GC/CM Fee" and "Specified General Conditions" will be defined in the RFFP and the GC/CM Contract documents.

The GC/CM Fee shall be stated as a percentage, which will be multiplied by the estimated GC/CM MACC to determine a single, lump-sum dollar amount of the GC/CM Fee. The lump-sum dollar amount of the GC/CM Fee will be added to the total dollar amount for the Specified General Conditions to determine a single amount that will constitute the total "Final Proposal Bid" for the Project.

8.0 EVALUATION CRITERIA AND SCORING

A selection committee will review the RFP Proposals and RFFP Final Proposals received by the Owner. The evaluation criteria have been assigned the following points:

8.1 RFP Proposal

The following selection criteria and point allocation will be the basis for the review and scoring of the RFP Proposal:

Statement of Qualifications Evaluation Criteria	Points Possible
Letter of Interest	5
Staff Qualifications and Responsibilities	20
Firm Data	5
Firm History and Capabilities	10
Project Approach	20
Location and Workload	5
Accident Prevention and Safety	5
Cost and Risk Management on Prior GC/CM Projects	15
SBE/DBE/Local Businesses	5
Firm Values and Culture	10
Reference Checks	Pass/fail
Accident Prevention Plan	Pass/fail
Total Points Possible	100

8.2 Interviews

An agenda of the Interview process will be provided in advance to the short-listed GC/CM Firms selected to be interviewed. The candidate's Interview will be scored by the Selection Committee and included as part of the GC/CM Firm's total score. The evaluation criteria and assigned points are as follows:

Interview Evaluation Criteria	Points Possible
<u>Presentation</u> : Clarity of expression and thoroughness of presentation, firm's understanding of and approach to the requirements of the project.	20
<u>Responses to Specific Questions</u> : Thoroughness and insight in providing direct and clear answers to the questions asked.	20
<u>Communication</u> : Overall quality of the team's presentation, including interpersonal communications between team members and the interview panel. Quality of questions asked by the firm.	40
Total Points Possible	80

8.3 RFFP Final Proposal

Finalists selected after the Interview process will be invited to submit a sealed RFFP Final Proposal for the GC/CM Fee and Specified General Conditions. The lowest responsive and conforming RFFP Final Proposal bid will receive **20 points**. All other RFFP Final Proposal bids shall be scored as follows:

- Score = (Low Conforming RFFP Final Proposal Bid / RFFP Final Proposal Bid being evaluated) x **20 points**. If this results in a decimal, the score will be rounded to the nearest whole number.
- The Owner reserves the right, at its sole discretion, to reject and remove from consideration any RFFP Final Proposal if that RFFP Final Proposal value is not within 20% of the Low Conforming RFFP Final Proposal Bid.

8.4 Identification of the Highest Qualified GC/CM Firm

Following the scoring of the RFFP Final Proposals, the cumulative scores of all shortlisted firms will be tallied to determine the Highest Ranked GC/CM firm. Points earned based on the RFP Proposal and Interviews will be added to the points received on the RFFP Final Proposal. The GC/CM Firm receiving the highest combined the cumulative score will be determined as the Highest-Qualified GC/CM Firm and may be selected to execute Contract Documents (including the Agreement and General Conditions) with the Owner that provides for Preconstruction Services and GMP negotiations. The total possible cumulative points available are as follows:

Criteria	Points Possible
RFP Proposal	100
Interview	80
RFFP Proposal	20
Total Points Possible	200

9.0 RFP PROPOSAL REQUIREMENTS

9.1 RFP Proposal Delivery

Interested GC/CM Firms must submit an RFP Proposal, in response to the RFP, for GC/CM Services in a sealed envelope or box clearly marked as "(GC/CM Name), RFP Proposal, RFP 2022-101, Everett Municipal Building Public Works Tenant Improvements". It is recommended that Proposers use the label below.

Delivered proposals are accepted Monday through Friday, from 8:00 am to 3:00 p.m., excluding city-observed holidays. If submitting in person, call (425) 257-8901 to access the locked elevator.

URGENT – SEALED PROPOSAL ENCLOSED
Do Not Delay – Deliver Immediately

URGENT



Procurement
2930 Wetmore Avenue, Suite 9E
Everett, WA 98201

URGENT

RFP Number: 2022-101

RFP Title: Everett Municipal Building Public Works Tenant Improvements

Procurement Professional: Theresa Bauccio-Teschlog, MBA, NIGP-CPP, CPPB

Supplier:

The RFP Proposal submittal shall include the following:

- One original unbound, clipped 8 ½"x11" hardcopy and nine (9) bound hard copies.
- One electronic copy of the RFP Proposal (in PDF format) containing the information listed in RFP Section 5 must be uploaded to the following FTP site: <https://ftp.everettwa.gov/?ShareToken=06A129D6E1CE20808034889EC0399F4D544452DE>
- Note: the FTP site address will change if the RFP due date changes. In that instance, check Addendums for the current FTP address.
- Note: The Owner cannot accept responses via electronic media (i.e., flash drives, CDs, etc.), fax or e-mail. RFP Proposals (hardcopy and electronic copy) in response to the RFP must be received by no later than the time and date identified in RFP Section 2.2 unless modified by addendum.

The Owner will record the date and time of receipt of the submittal as evidence of the actual receipt of the RFP Proposal.

Any RFP Proposal that fails to meet the deadline or delivery requirements may be rejected and returned to the GC/CM Firm without being opened, considered, or evaluated at the Owner's discretion.

In the event of any conflicts between the hard copy and the uploaded electronic copy, the hard copy will prevail.

9.2 Cancellation of RFP or Postponement of Submittal Due Date and Time

The Owner reserves the right to cancel this RFP at any time. The Owner also reserves the right to change the date and time for receiving RFP Proposals before the date and time established for submittal.

9.3 Project Information/Pre-Proposal Conference

A Virtual Project Information/Pre-Proposal Conference will be held at the time and date identified in RFP Section 2.2 unless modified by addendum. The meeting link must be requested no later than **noon on November 15, 2022**, by emailing tbauccio@everettwa.gov to RSVP for the meeting.

Prospective GC/CM firms are strongly encouraged to attend. The Project Information/Pre-Proposal Conference intends to provide information about the Project and assist the contractor's understanding of the requirements of the RFP. Contractors are encouraged to submit questions before the Conference to enable the Owner or GC/CM Consultant to prepare responses. All questions shall be submitted via electronic mail (E-mail) to tbauccio@everettwa.gov or through the EPIC Portal at: <https://www.everettwa.gov/2711/Everett-Procurement-Information-Contract>.

Questions will also be encouraged and welcomed during the Conference. However, they should still be sent via e-mail following the Conference so they can be addressed by addendum.

9.4 Questions and Comments from Prospective GC/CM Firms

Oral interpretations of the RFP shall not be provided. All RFP questions and comments from prospective GC/CM Firms shall be submitted in writing to the Owner no later than the date specified in Section 2.2 – Anticipated Schedule or as modified by addendum. Oral explanations or instructions are not binding. Any information modifying the RFP will be furnished solely by a written addendum. Communications concerning this RFP with other than the persons listed below may cause a prospective GC/CM Firm to be disqualified.

All questions and comments regarding this RFP must be submitted electronically via <https://www.everettwa.gov/2713/Bid-opportunities> or may be submitted in writing directly to:

Theresa Bauccio-Teschlog, MBA, NIGP-CPP, CPPB
Procurement Manager
City of Everett
E-mail: tbauccio@everettwa.gov
Phone: (425) 257-8901

9.5 Cost and Return of RFP Proposals and RFFP Final Proposals

Prospective GC/CM Firms are responsible for all costs of preparing and submitting an RFP Proposal, an RFFP Final Proposal, and participating in the GC/CM Firm selection process. The RFP Proposal, RFFP Final Proposal, and related documents remain the property of the Owner and shall not be returned.

9.6 Collusion or Improper Contact

The Project Information/Pre-Proposal Conference and Interview shall be the only opportunity for candidates to speak directly with representatives of the Owner, design team, and GC/CM Advisor regarding the Project and selection process. Any other contact with the Owner's staff, design team members, or GC/CM Advisor regarding this RFP, other than communications identified in Section 9.4, is strictly prohibited. GC/CM Firms violating this prohibition may be disqualified from the competition.

9.7 Public Disclosure

- 9.7.1. General. All materials (including, for example, all RFP Proposals and RFFP Final Proposals) submitted in response to this RFP or the RFFP shall become the property of the City of Everett and will not be returned. Selection or rejection of a GC/CM firm does not affect this. Pursuant to Chapter 42.56 RCW and other statutes regarding public agencies, all materials (including,

for example, all RFP Proposals and RFFP Final Proposals) submitted under this RFP or the RFFP shall be considered public records and with limited exceptions will be available for inspection and copying by the public.

9.7.2. Trade Secrets/Confidentiality.

9.7.2.1. In accordance with RCW 39.10.470 (2), trade secrets (as defined in RCW 19.108.010) or other proprietary information submitted in connection with this RFP or with the RFFP might not be subject to public disclosure under chapter 42.56 RCW (the Public Records Act) if the GC/CM firm specifically states in writing the reasons why protection from disclosure is necessary, and identifies the data or materials to be protected. Each GC/CM firm shall specifically designate and clearly label as "CONFIDENTIAL" any and all such materials or portions thereof that it deems to contain trade secrets or other proprietary information or anything else that it believes is exempt from disclosure under the Public Record Act. If multiple pages are claimed as "CONFIDENTIAL," then each page must be marked "CONFIDENTIAL." For all claims of "CONFIDENTIAL," the GC/CM firm shall provide the legal basis for the claimed exemption to the City upon request. GC/CM firms are advised that this exemption is subject to judicial review, and the GC/CM firm's designation of "CONFIDENTIAL" may or may not be upheld by a Court.

9.7.2.2. If a Proposal or other material does not clearly identify the "CONFIDENTIAL" portions, the Owner has no obligation to notify the GC/CM firm that its RFP Proposal or RFFP Final Proposal or other material will be made available for inspection and copying, and the Owner may publicly disclose such non-clearly identified portion with no liability whatsoever to the GC/CM firm. For example, this means that any and all pages of an RFP Proposal or an RFFP Final Proposal not marked as "CONFIDENTIAL" may be disclosed without notice.

9.7.2.3. If a request is made for disclosure of material or any portion thereof marked "CONFIDENTIAL," the Owner will determine whether the material should be made available under the law. If the Owner determines that the material is subject to disclosure, the Owner will seek to notify the GC/CM firm of the request and allow the GC/CM firm ten (10) business days after such notification to take appropriate legal action in Snohomish County Superior Court at the GC/CM firm's sole expense and liability. If the GC/CM firm does not, within such ten (10) business days, serve the Office of the City Attorney for the City of Everett with a copy of an order entered by the Superior Court that expressly prohibits the Owner from disclosure of the material marked "CONFIDENTIAL," then the GC/CM firm will be deemed to have consented to the public disclosure of the material marked "CONFIDENTIAL" and the Owner may publicly disclose such material without any liability whatsoever to GC/CM firm.

9.7.2.4. To the extent that the Owner withholds from disclosure all or any portion of Proposal or material marked "CONFIDENTIAL," the

marking GC/CM firm, by submitting an RFP Proposal or RFFP Final Proposal in response to this RFP or the RFFP, agrees to indemnify, defend and hold harmless the City of Everett from all lawsuits, liabilities, losses, damages, penalties, attorneys' fees and costs the City of Everett incurs arising from or relating to such withholding from disclosure.

9.7.2.5. Each GC/CM firm, by submission of an RFP Proposal or RFFP Final Proposal, acknowledges and agrees that the Owner will have no obligation to advocate for nondisclosure in any forum and has no liability whatsoever to any GC/CM firm for the disclosure of any Proposal or material or record of any kind when that disclosure is in accordance with applicable law or in accordance with an order applying applicable law entered by the Snohomish County Superior Court or a Washington appellate court.

9.7.3. No Disclosure Until Completion of GC/CM Process. Unless otherwise required by law, the Owner reserves the right to withhold disclosure of materials related to the GC/CM process (such as, for example, RFP Proposals, RFFP Final Proposals, and scoring information) until after the GC/CM process has been completed.

9.7.4. Consent. By submitting an RFP Proposal or RFFP Final Proposal, the GC/CM firm consents and agrees to this Section 9.7 and waives and releases all claims against the City arising from the City's actions taken in accordance with Section 9.7.

9.8 Non-Disclosure Obligation

Any data provided by the Owner either before or after the Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute Owner-provided data in any form without the express written approval of the Owner.

9.9 Addenda

If at any time, the Owner revises, deletes, clarifies, or otherwise modifies the RFP, the Owner will issue a written Addendum to the RFP, which will be posted at: <https://www.everettwa.gov/2713/Bid-opportunities>.

The firm shall be responsible for obtaining, reading, and addressing addenda information in their RFP Proposal and RFFP Final Proposal.

10.0 PROPOSAL GUARANTEE

Submittal of a bid bond and letter from Surety is not required to be submitted as part of the RFP Proposal.

11.0 PROTEST PROCEDURES

Chapter 3.46 of the Everett Municipal Code (EMC) governs all protests of this GC/CM procurement. A copy of Chapter 3.46 EMC is attached to this RFP. The City reserves the right to require strict compliance with all requirements of Chapter 3.46 EMC.

- **Protest Related to RFP.** A protest of any specification, term, requirement, condition, or any other item or process in connection with the RFP must be filed with the Everett City Clerk no later than five business days prior to the deadline for the submittal of RFP Proposals.

- **Protest Related to RFFP.** A protest of any specification, term, requirement, condition or any other item or process in connection with the RFFP must be filed with the Everett City Clerk no later than five business days prior to the deadline for submittal of RFFP Final Proposals. This deadline is also the deadline for any protest that a GC/CM firm was not short-listed for an Interview or was not determined to be a Finalist.
- **Protest of City Selection/Award.** The City will notify GC/CM firms of the City Council's action to approve the selection of the GC/CM Contractor and to award the Project to the GC/CM Contractor. Any protest of such selection and award must be filed with the Everett City Clerk no later than four business days after such notice. If a timely protest is so filed, the City will not execute the GC/CM Contract until at least two business days after the final protest decision is transmitted to the protestor, in accordance with RCW 39.10.360(5).

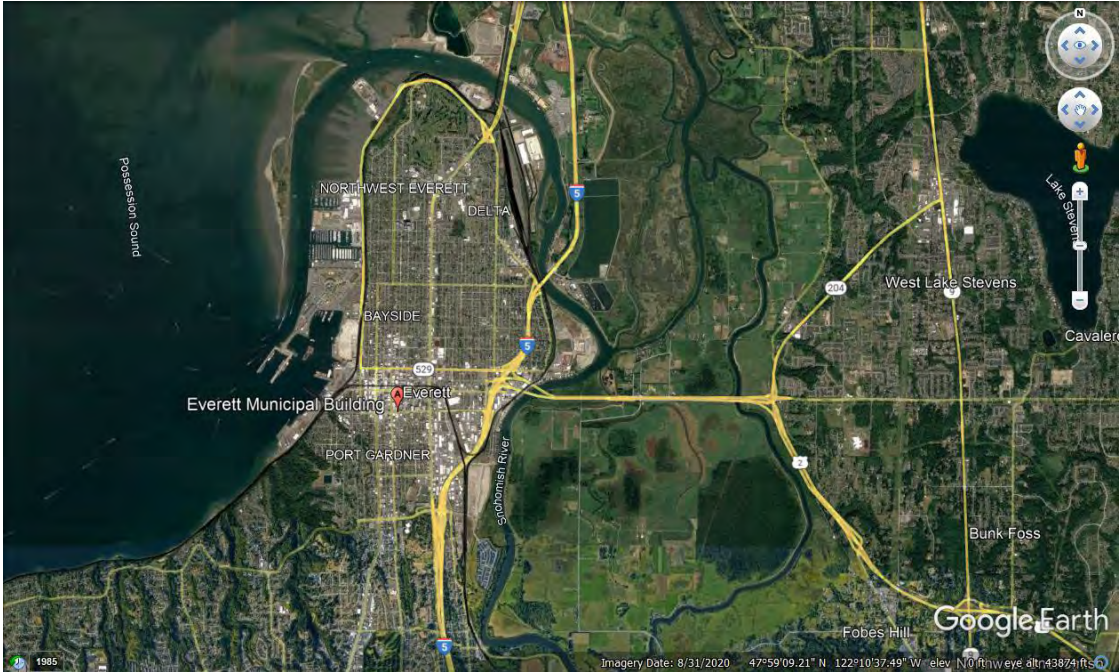
Any conflict between state law applicable to GC/CM and any provision of Chapter 3.46 EMC (or this Section 11) will be resolved by deeming the conflicting provision of Chapter 3.46 EMC (or this Section 11) to be superseded by state law and therefore, not applicable to this GC/CM procurement.

END OF REQUEST FOR PROPOSALS

Appendix:

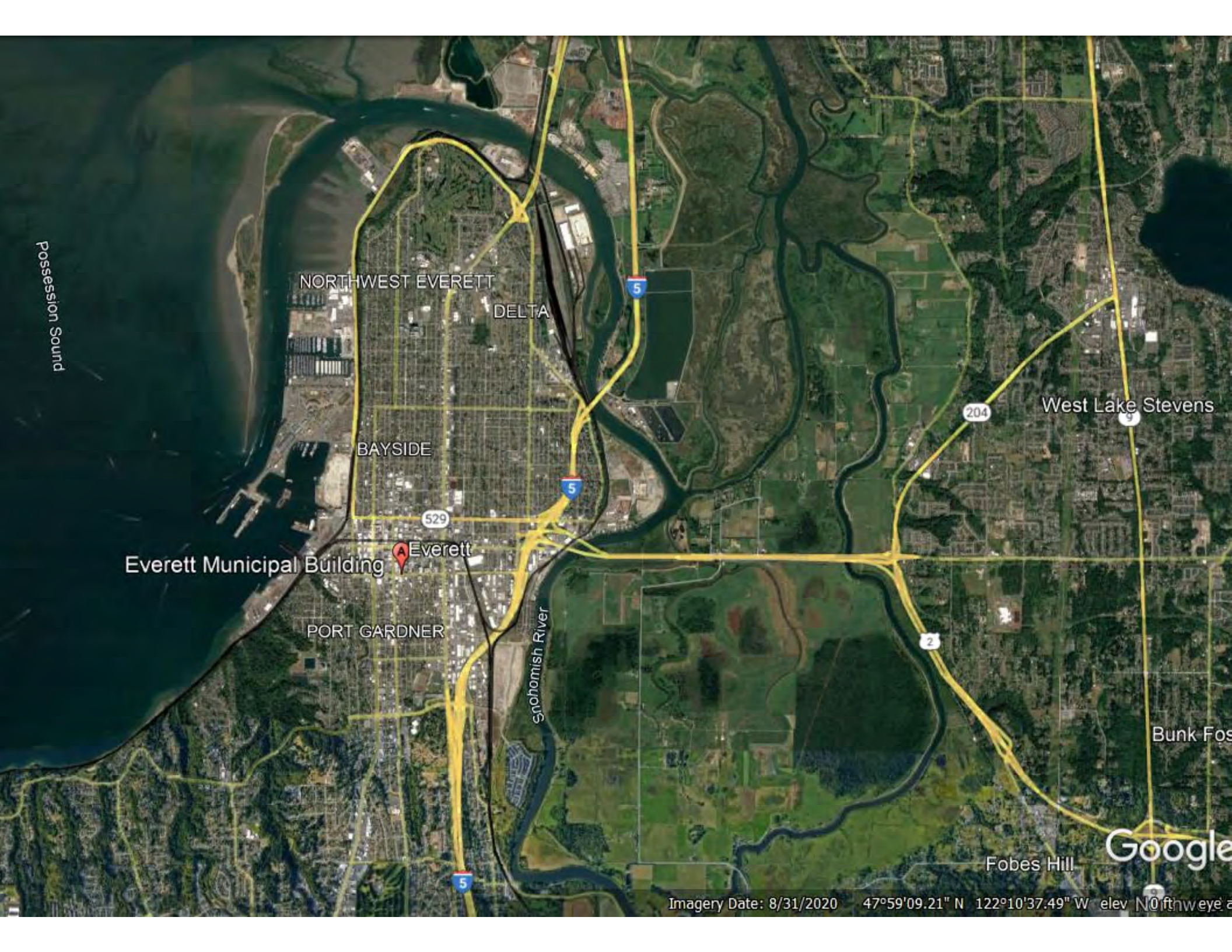
- Vicinity Map
- Site Aerial
- Concept Floor Plans
- Chapter 3.46 EMC
- Draft Contract Documents

Vicinity Map



Aerial Site Plan





Possession Sound

NORTHWEST EVERETT

DELTA

BAYSIDE

529

Everett

Everett Municipal Building

PORT GARDNER

Snohomish River

5

5

5

204

West Lake Stevens

2

Bunk Foss

Google

Fobes Hill

Imagery Date: 8/31/2020 47°59'09.21" N 122°10'37.49" W elev N0ftnw eye a



Hewitt Ave

Hewitt Ave

Hewitt Ave

Colby Ave

Colby Ave

Colby Ave

Wetmore Ave

Wetmore Ave

Wall St

Wall St

Everett Municipal Building

Google

Concept Floor Plans



City of Everett | Everett Municipal Building Tenant Improvement
01/05/2022 © 2022 Mackenzie

FIRST FLOOR
2300235.00 M.



City of Everett | Everett Municipal Building Tenant Improvement
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SECOND FLOOR
2300235.00 M.



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THIRD FLOOR
23.02.25.00 M.



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FOURTH FLOOR
23.02.25.00 M.



- LEGEND**
- PERMITTING SERVICES
 - PUBLIC INFORMATION & EDUCATION
 - ENGINEERING
 - UTILITY BILLING / FINANCE
 - TRAFFIC
 - PROSECUTOR'S OFFICE
 - POLICE
 - HUMAN RESOURCES
 - SHARED AMENITIES
 - BUILDING SUPPORT
 - CIRCULATION
 - NOT IN SCOPE

City of Everett | Everett Municipal Building Tenant Improvement
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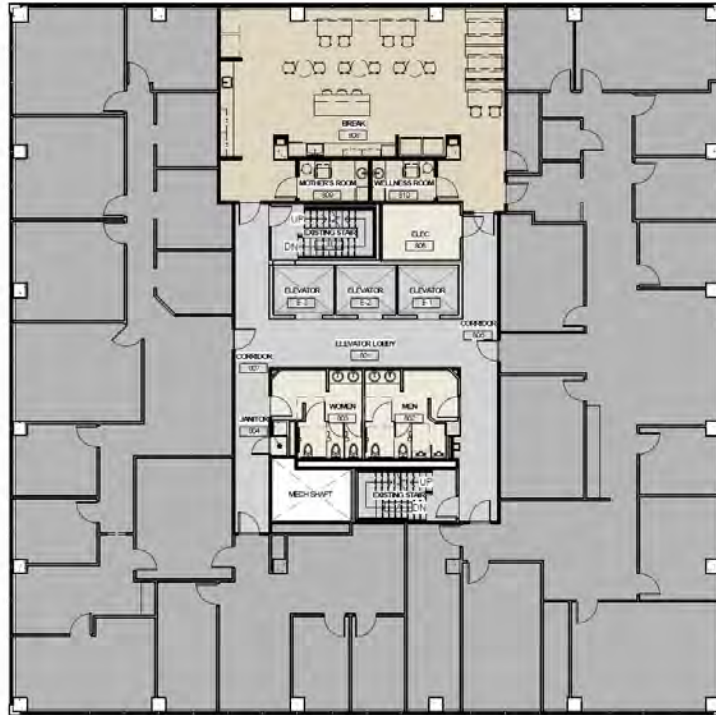
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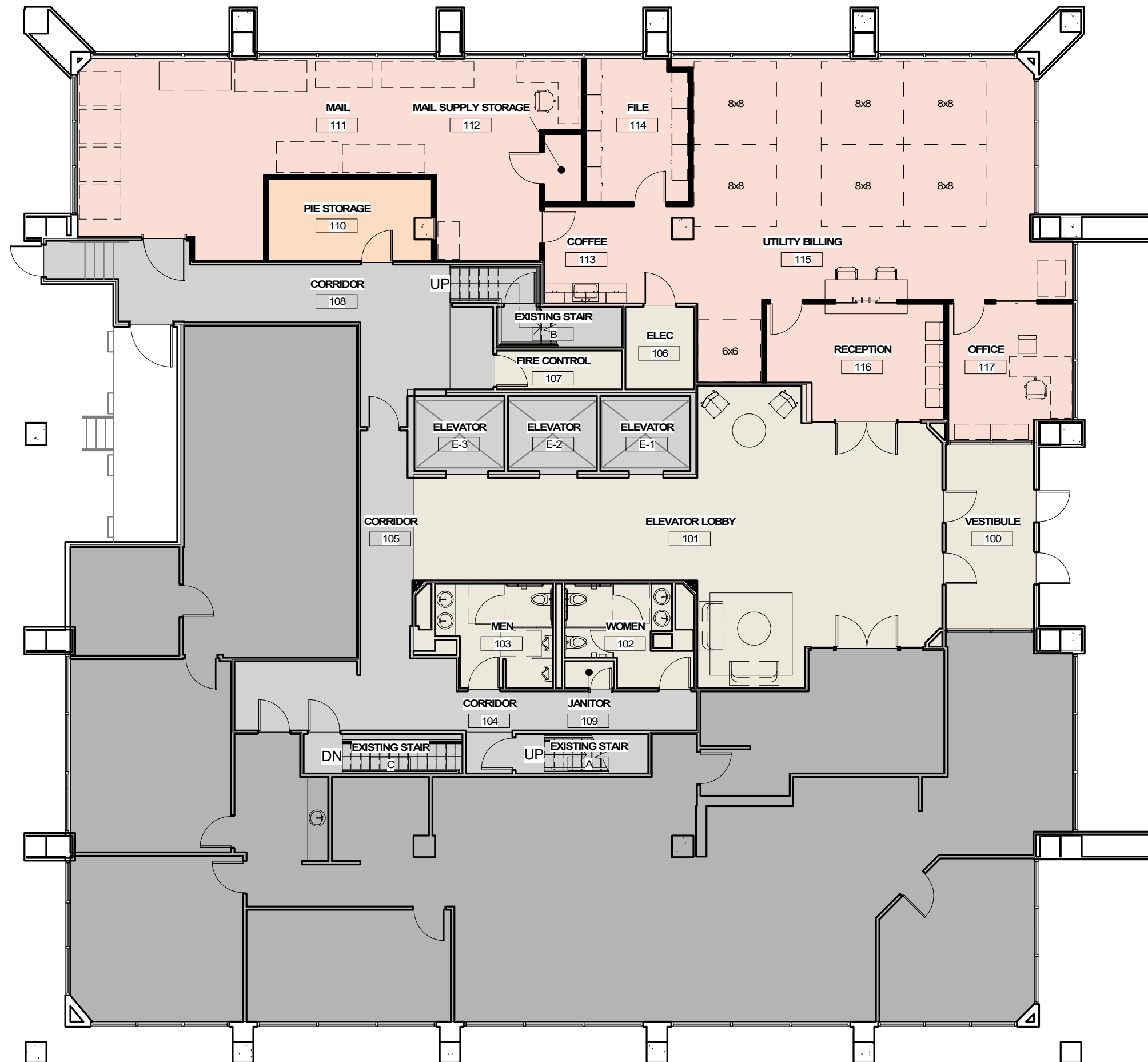
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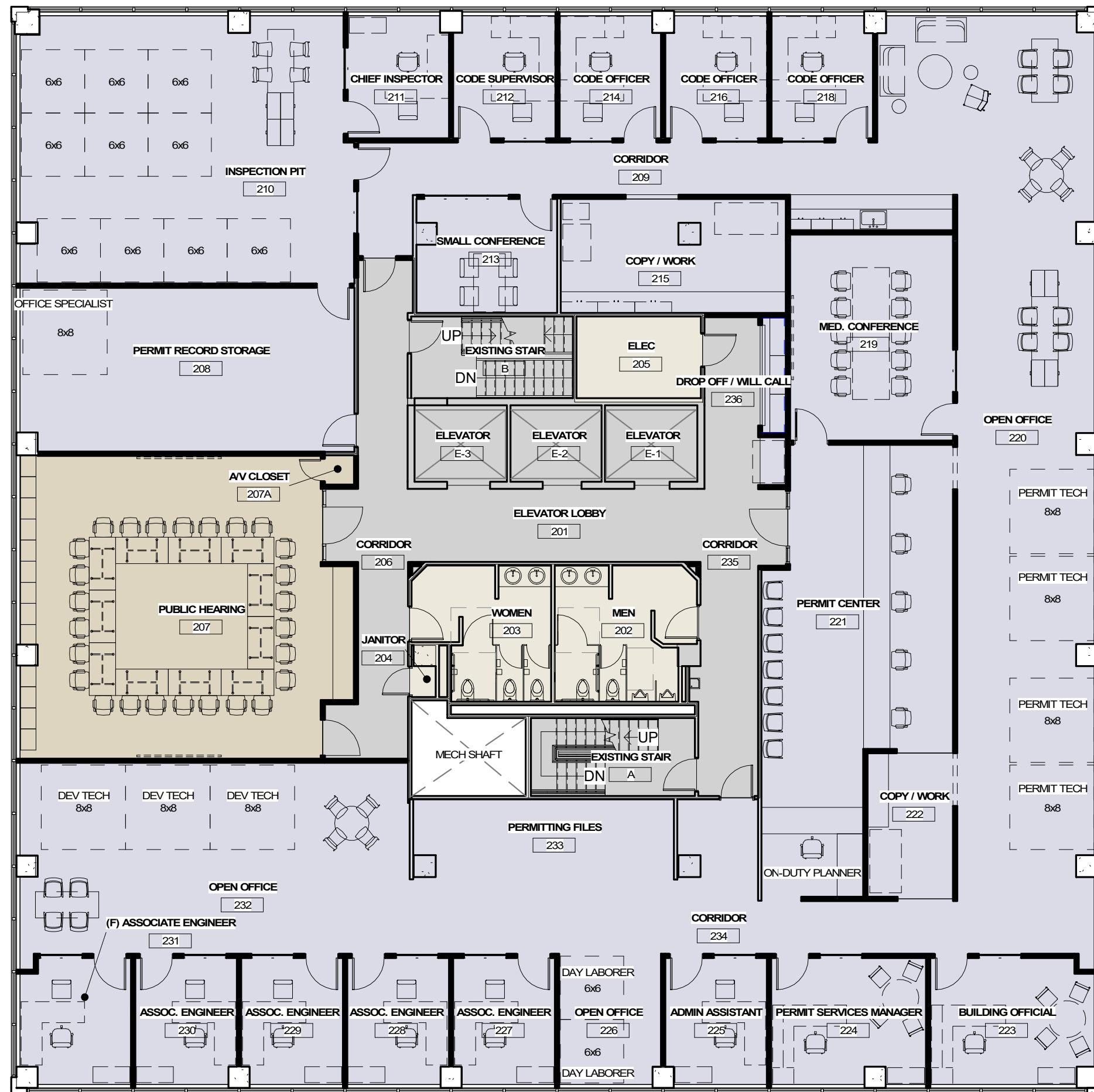
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CONCEPT FLOOR PLANS



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- POLICE
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- SHARED AMENITIES
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- CIRCULATION
- NOT IN SCOPE

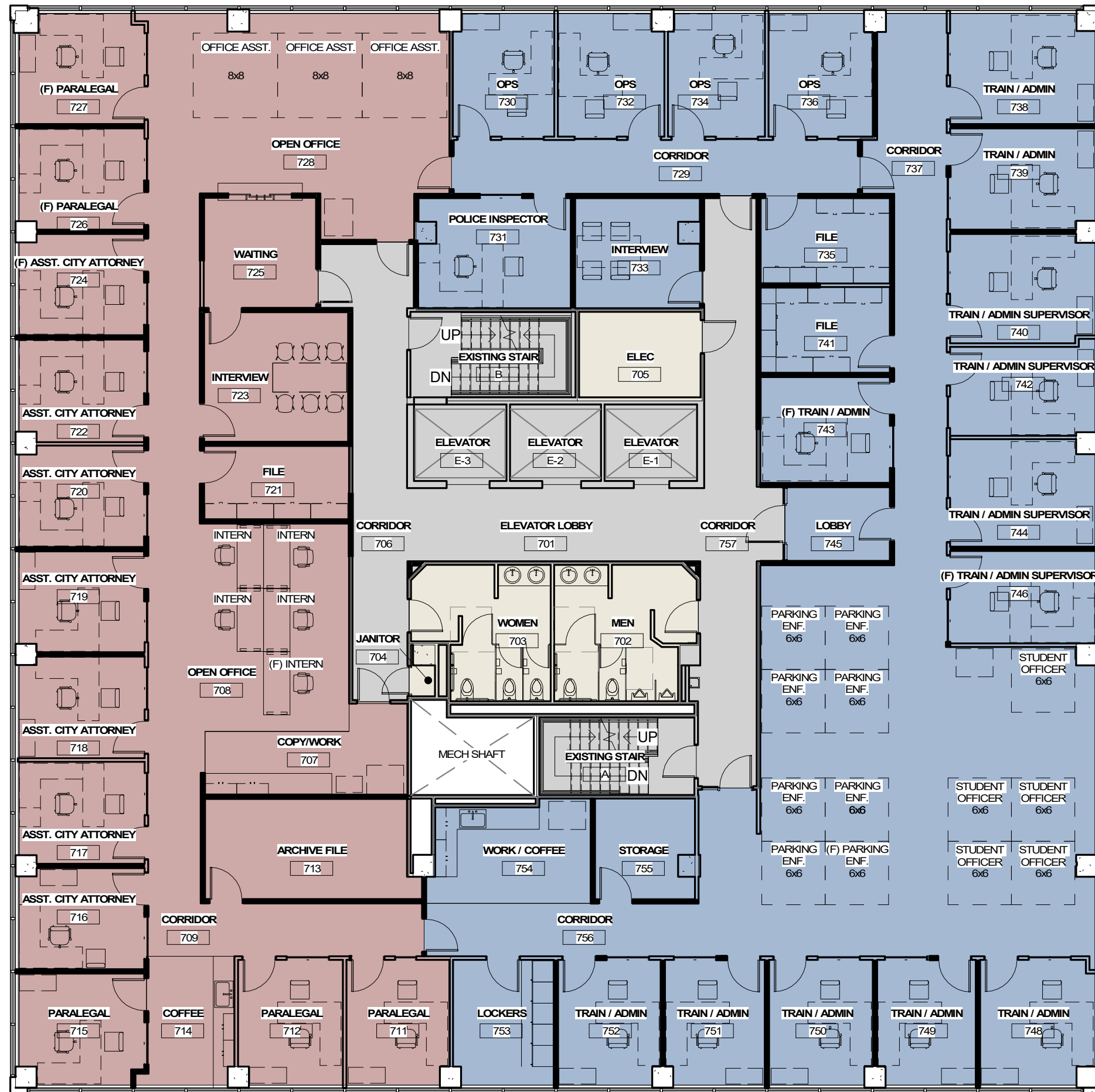


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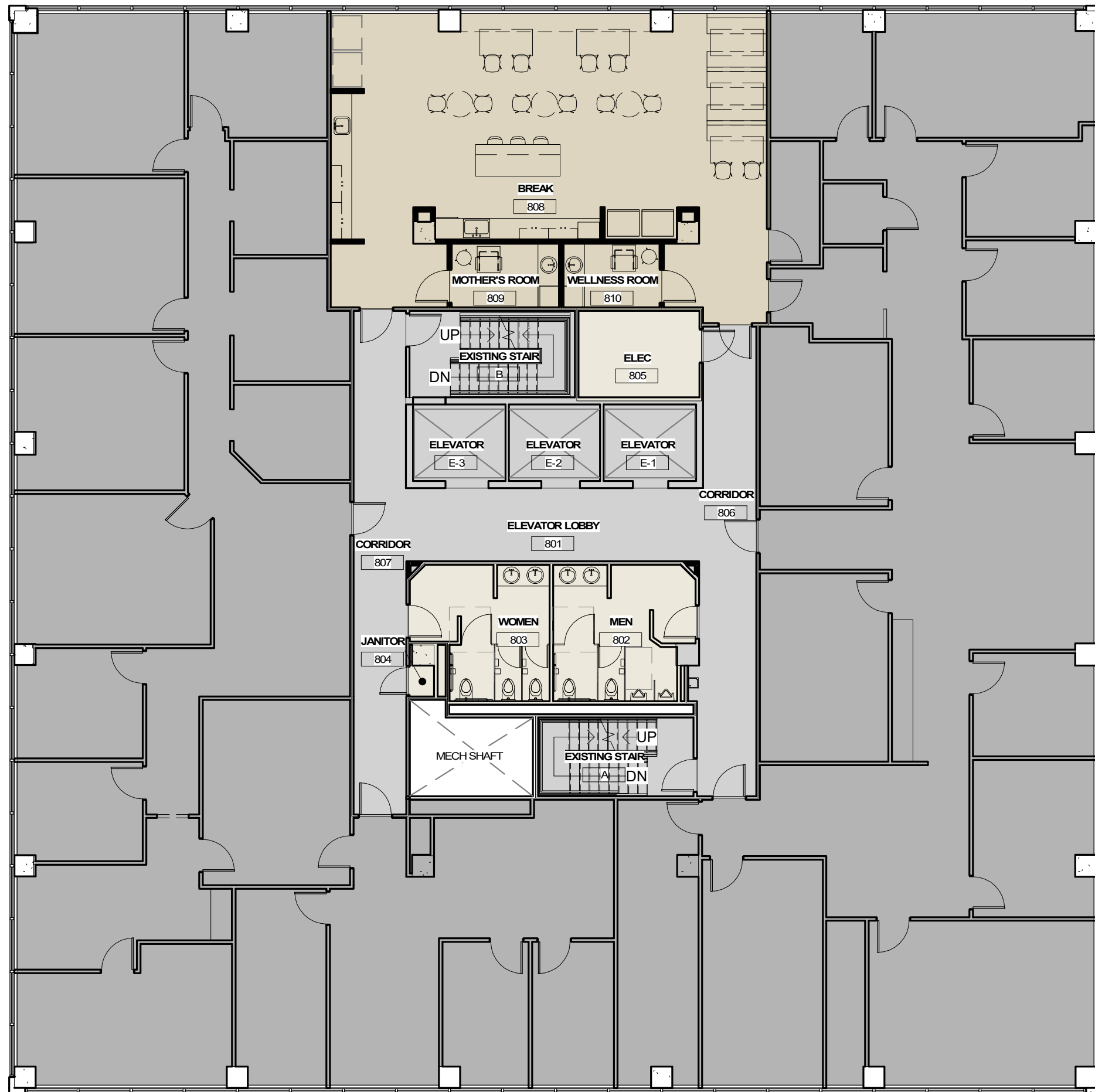


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Chapter 3.46

BID PROTEST PROCEDURES

Sections:

- 3.46.010 Purpose.**
- 3.46.020 Definitions.**
- 3.46.030 Protest authorized—Exhaustion of remedies and timeliness required.**
- 3.46.040 Contents.**
- 3.46.050 Filing and deadline.**
- 3.46.060 Determination of protest.**
- 3.46.070 Remedies.**
- 3.46.080 Venue—Notice required.**
- 3.46.090 Limited appeal of city decision to federal agency.**

3.46.010 Purpose.

The purpose of this chapter is to protect the public purse, not to provide a specific type of forum for bidders, contractors, vendors and anyone who seeks to contract with the city to provide goods and services. (Ord. 2726-03 § 1, 2003.)

3.46.020 Definitions.

- A. "Award" shall mean a decision by the city to purchase goods or services from a particular bidder or proposer. For the purposes of this chapter, "award" includes the city's selection of a particular proposal as most advantageous to the city.
- B. "Federal agency" means any federal government agency that provides grants or funds to the city that the city will use in a procurement.
- C. "Filing" shall mean physical delivery during regular city business hours to the city clerk requiring a receipt signed by a staff member of the city clerk's office, such as United States certified first class mail, return receipt requested, or commercial document courier who obtains a receipt upon delivery. Filing does not mean or include electronic submission via the Internet or by fax.
- D. "Interested party" means: (1) prior to submission of bids, proposals, or offers to the city, an actual or prospective bidder, proposer or offeror whose direct economic interest would be affected by the procurement; and (2) after submission of bids, proposals or offers to the city, an actual bidder, proposer, or offeror. "Interested party" does not include subcontractors, suppliers, or any person contracting with, or intending to contract with, an actual bidder, proposer, or offeror.

- E. "Procurement" means: (1) a solicitation, invitation, or other request by the city for offers for a contract for the purchase, lease or acquisition of goods or services; and (2) an award or proposed award of such a contract. "Procurement" does not include the acquisition of any interest in real estate.
- F. "Protest" means a written objection by an interested party to a procurement.
- G. "Protestor" means an interested party who files a protest as provided in this chapter. (Ord. 2726-03 § 2, 2003.)

3.46.030 Protest authorized—Exhaustion of remedies and timeliness required.

- A. An interested party may protest a procurement only and exclusively as provided in this chapter. An interested party must exhaust the administrative remedies provided in this chapter before seeking other or additional relief in a court of law, except for temporary measures to preserve the status quo pending exhaustion of the remedies established by this chapter. An interested party who fails to exhaust the remedies provided by this chapter waives its protest.
- B. Notwithstanding subsection A of this section, the city council may by resolution adopt substitute protest procedures in lieu of some or all of the procedures of this chapter for public works procurements estimated at five million dollars or more where the city council determines that substitute procedures are appropriate. If the city council does not adopt substitute protest procedures for such a public works procurement, then this chapter applies to the procurement. If the city council does adopt substitute protest procedures for a procurement, then the substitute protest procedures shall be included in the request for proposals or other initial bidding document; an interested party may protest the procurement only and exclusively as provided in the substitute protest procedures; an interested party must exhaust the administrative remedies provided in the substitute protest procedures before seeking other or additional relief in a court of law, except for temporary measures to preserve the status quo pending exhaustion of the remedies established by the substitute protest procedures; and an interested party who fails to exhaust the remedies provided by the substitute protest procedures waives its protest. (Ord. 3267-12 § 4, 2012; Ord. 2726-03 § 3, 2003.)

3.46.040 Contents.

- A. A protest must contain the information required by this chapter and shall be denied if it does not.
- B. A protest must clearly: (1) identify itself as a protest and (2) identify the procurement protested.
- C. A protest must be written and contain the following statement signed by a responsible official of the interested party: "I declare under penalty of law for perjury or falsification that the information contained in the protest is true and correct to my personal knowledge, that this protest is filed in good faith and without any intent of delaying the procurement, and that I reasonably believe the protest to be meritorious," and such statement shall be subscribed and sworn before a notary public. A protestor must strictly comply with this requirement.

- D. The protestor must state in its protest all reasons and bases in law and fact supporting the protest, including, but not limited to: (1) identification of any and all specifications, terms, requirements, conditions, or any other item or process to which the protestor objects; and (2) a complete description of the facts, circumstances and reasons, including legal reasons, why an award should or should not be made.
- E. The protestor must attach to the protest all documents upon which it relies to support its protest.
- F. A protestor waives any and all grounds for protest that are not clearly identified or described in the protest initially filed with the city clerk. (Ord. 2726-03 § 4, 2003.)

3.46.050 Filing and deadline.

- A. A protestor must strictly comply with the time limits established by this chapter. A protestor waives its protest by failing to comply strictly with the time limits established in this chapter.
- B. A protest of a specification, term, requirement, condition, or any other item or process in a procurement must be filed with the city clerk within the time limits established by this subsection.
1. If the procurement is advertised and:
 - a. There are less than ten business days between the date the procurement is advertised and the date scheduled for submission of bids or proposals, a protest of a specification, term, requirement, condition, or any other item or process must be filed no later than three business days prior to the scheduled deadline for submission of bids or proposals.
 - b. There are ten or more business days between the date the procurement is advertised and the date scheduled for submission of bids or proposals, a protest of a specification, term, requirement, condition, or any other item or process must be filed no later than five business days prior to the scheduled deadline for submission of bids or proposals.
 2. If the procurement is not advertised, a protest of a specification, term, requirement, condition, or any other item or process must be filed no later than three business days prior to the scheduled deadline for submission of bids or proposals.
 3. If the city changes the deadline for submission of bids or proposals from the date originally scheduled in the procurement, the time limit for filing a protest shall be determined by using the latest date to which the submission of bids or proposals is changed.
- C. A protest of an award or rejection of all bids or proposals must be filed with the city clerk within the time limits established by this subsection.
1. If the city provides at least three business days' notice to bidders or proposers of its intent to award or reject all bids or proposals, any protest must be filed with the city clerk no later than the business day prior to the date of proposed award or rejection of all bids or proposals. For the purposes of this subsection, the city may notify bidders or proposers by providing them with a copy of the tabulation of the bids or proposals.

2. If the city has not provided at least three business days' notice to bidders or proposers of its intent to award or reject all bids or proposals, any protest must be filed with the city clerk no later than three business days after award or decision to reject all bids or proposals.

D. The city may choose to proceed with the procurement and execute a contract in the absence of an injunction or restraining order. The city will notify the protestor or other interested party of the city's intent to execute a contract if, and to the extent, required by law. (Ord. 2726-03 § 5, 2003.)

3.46.060 Determination of protest.

A. The city may request information relating to the procurement or protest from any other source, including, but not limited to, other interested parties. A protestor may request copies of any such information from the city clerk. A protestor may file written comment upon such information. The city will consider such comments if, and only if, the comments are (1) received in sufficient time for the city to review and analyze them, and (2) the city has the expertise, resources, and financial ability readily available to review and analyze them.

B. If the procurement is to be made or awarded by city council action as provided under city ordinances or policies existing at the time of the procurement, city council shall decide the protest. In its sole discretion, council may designate a person or committee of the council to review the protest and recommend a decision. In the event of such designation and recommendation, council shall consider the recommendation and decide the protest. A protestor and any other interested party may appear before council or designated person or committee to comment upon the protest, but only if allowed by, and pursuant to, existing procedures for public participation or comment, and shall not include examination of witnesses, the taking of evidence, or the submission of evidence. The council's decision shall be final and binding.

C. If the procurement is to be made without city council action, as provided under city ordinances or policies existing at the time of the procurement, the city attorney shall designate a person to decide the protest. A meeting or conference with the protestor will occur only if such designated person determines, in his or her sole discretion, that a meeting or conference with the protestor would materially assist him or her in making a decision, but such meeting shall not include examination of witnesses, the taking of evidence, or the submission of evidence. The person designated by the city attorney will issue a written decision. The decision shall be final and binding.

D. The decision will be decided based upon the protest, including documents attached to the protest in support of the protest, and any other information obtained by the city.

E. Only those issues raised by the protestor in its protest filed with the city clerk will be considered. (Ord. 2726-03 § 6, 2003.)

3.46.070 Remedies.

A. A decision on the protest may include, but is not limited to, upholding or denying the protest, in whole or in part. Remedies may include rejection of one or more bids or proposals, a call for new bids or proposals,

acceptance of the selected bid or proposal in the event the protest is denied, and such other relief as may be appropriate.

B. A protestor or interested party may obtain injunctive relief only. No protestor or interested party shall be entitled to damages of any kind whatsoever.

C. No contract is formed until a written contract, agreement, or memorialization has been completely executed by the city and the successful bidder, proposer, or offeror. A bid, proposal, and offer do not create any property right of any kind in a procurement or its offer related to the procurement. (Ord. 2726-03 § 7, 2003.)

3.46.080 Venue—Notice required.

A. Any and all lawsuits arising out of, or relating to, a protest shall be filed in the superior court for Snohomish County, Washington, including, but not limited to, application by an interested party or protestor for temporary measures to preserve the status quo pending exhaustion of the remedies enumerated herein. If concurrent jurisdiction exists between the superior court of Snohomish County and some other court, such as the United States District Court, venue shall lie in the superior court of Snohomish County.

B. An interested party or protestor who applies to the Snohomish County superior court for temporary measures to preserve the status quo pending exhaustion of remedies granted hereunder shall give notice of such application to the city attorney so as to allow the city to appear before any commissioner or judge hearing such application. Failure to give the city such notice shall constitute a waiver of the protest. (Ord. 2726-03 § 8, 2003.)

3.46.090 Limited appeal of city decision to federal agency.

A protestor may appeal the city's decision on a protest to the federal agency: (A) if and to the extent allowed by the federal agency's regulations then in existence, such as Federal Transit Administration Circular 4220.1D or its successor; and (B) if the procurement is funded in whole or in part by the federal agency allowing such appeal. A protestor must exhaust all administrative remedies with the city of Everett as a condition precedent to appealing the city's decision on a protest to the federal agency. The federal agency will only review appeals that allege the city failed to follow the city's protest procedures. Any such appeal to the federal agency must be in writing and received by the appropriate federal agency's regional or headquarters office no later than five business days following a final decision rendered by the city of Everett. A copy of any such appeal to the federal agency must be promptly filed with the city clerk. (Ord. 2726-03 § 9, 2003.)

DRAFT AIA® Document A133™ - 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the [] day of [] in the year []
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

The City of Everett
Parks & Facilities Dept.
802 E. Mukilteo Blvd., Suite 100
Everett, WA 98203

and the Construction Manager:
(Name, legal status, address, and other information)

<>

for the following Project:
(Name, location, and detailed description)

Everett Municipal Building – Public Works Tenant Improvements

The Architect:
(Name, legal status, address, and other information)

Mackenzie Engineering, Inc.
500 Union Street #410
Seattle, WA 98101

The Owner and Construction Manager agree as follows

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.2 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Ruben Sanchez
Parks & Facilities Dept.
802 E. Mukilteo Blvd., Suite 100
Everett, WA 98203

§ 1.1.3 The Architect's representative:

(List name, address, and other contact information.)

<< >>

§ 1.1.4 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

<< >>

§ 1.1.5 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.10:

(List any Owner-specific requirements to be included in the staffing plan.)

« Contractor staff members shall be as proposed in the response to the RFP and will remain for the duration of the Project. Staff changes proposed by the Contractor after execution of this Agreement are allowed only in accordance with this Agreement and with the written consent of Owner. All proposed staff substitutions must meet or exceed the qualifications of the staff who were originally proposed in the response to RFP »

§ 1.1.6 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

«All subcontracts shall be procured in conformance with the requirements of Washington State law, including but not limited to RCW 39.10.380. »

§ 1.1.7 Other Initial Information on which this Agreement is based:

None

§ 1.2 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.0 Definitions

§ 2.0.0 These Definitions are often shorthand references to more formal definitions elsewhere in the Contract Documents. When a defined term is described elsewhere in the Contract Documents, the more descriptive definition shall control over any general description in this Section 2.0.

§ 2.0.1 The **Agreement** is this revised A133-2019 Agreement between Owner and Construction Manager. All references to the A133 in the Contract Documents are to this revised document.

§ 2.0.2 An **Allowance** is a stated amount included in the Guaranteed Maximum Price ("GMP") for a stated part of the Work that is not fully defined and/or quantified at the time the GMP is established. When that part of the Work is adequately defined and/or quantified, the GMP will be adjusted to account for the difference between the Allowance and the actual or estimated Cost of the Work for that item in an amount that is mutually agreeable to the Owner and Construction Manager. Following the adjustment, that part of the Work will no longer be an Allowance item.

§ 2.0.3 An **Application for Payment** is described in Section 9.3 of the revised General Conditions and Section 11.1 of this Agreement. An Application for Payment is generally a document the Construction Manager submits to the Owner and the Architect itemizing amounts due for and operations completed at the Project site in accordance with the Contract for Construction.

§ 2.0.4 The **Architect**, listed above, is the entity with which the Owner has contracted in a separate Owner-Architect agreement; the Architect is described in Section 4.3 of this Agreement and defined in Section 4.1 of the revised General Conditions.

§ 2.0.5 A **Change Order** is defined in Section 7.2 of the revised General Conditions and is generally a written instrument prepared by the Architect and signed by the Owner, the Construction Manager and the Architect that modifies the Contract for Construction and states their agreement upon a Change in the Work, the amount of the adjustment, if any, in the GMP; and the extent of the adjustment, if any, in the Contract Time. A Change Order may, in accordance with the Everett Municipal Code, require approval of the Everett City Council.

§ 2.0.6 A **Claim** is defined in Section 15.1.1 of the revised General Conditions and generally consists of a demand or assertion by one of the parties seeking, as a matter of right, adjustments or interpretations of Contract terms, payment of money, extension of time or other relief. The term "Claim" includes disputes and matters in question between the Owner and the Construction Manager arising out of or relating to the Contract Documents.

§ 2.0.7 A **Construction Change Directive** is defined in Section 7.3 of the revised General Conditions as a written order

prepared by the Architect and signed by the Owner and Architect, with or without the agreement of the Construction Manager, directing the Construction Manager to perform a change in the Work, or perform Work the Construction Manager contends to be a change in the Work, prior to agreement of the basis for adjustment, if any, to the Contract for Construction.

§ 2.0.8 The **Construction Manager** is the entity identified above as the party to this Agreement responsible for performing the Preconstruction Services and, upon successful negotiation and execution of the GMP Amendment, responsible for construction of the Work through its own services as well as through Subcontractors. The Construction Manager is identified as the "Contractor" in the General Conditions and shall provide the services of a General Contractor / Construction Manager as defined in RCW 39.10.

§ 2.0.9 The **Construction Manager's Contingency** is described in Section 3.2.4.1.

§ 2.0.10 The **Construction Phase** is defined in Section 3.3 of this Agreement and any Special Conditions, and generally consists of the period of the Contract during which the Construction Manager performs construction of the Work after the earlier of execution of the GMP Amendment or the Owner's issuance of a Notice to Proceed.

§ 2.0.11 The **Construction Schedule** is the schedule defined in Section 3.10 of the revised General Conditions and prepared, revised and utilized by the Construction Manager for its performance under the Contract for Construction.

§ 2.0.12 The **Contract Documents** are defined in Section 1.1.1 of the revised General Conditions and Section 2.1 of this Agreement.

§ 2.0.13 The **Contract for Construction** (sometimes referred to as the **Contract** or **Agreement**) is defined in Section 1.1.2 of the revised General Conditions and is the agreement between the Owner and the Construction Manager.

§ 2.0.14 The **Contract Sum** is defined in Section 6.1 of this Agreement and Section 9.1 of the revised General Conditions that the Owner agrees to pay the Construction Manager for its performance of the Work under the Contract for Construction. The Contract Sum consists of the sum of the Cost of the Work (including Negotiated Support Services and Specified General Conditions) as well as the Construction Manager's Fee, and it shall not exceed the GMP. Neither the Preconstruction Services Cost nor Washington State sales tax is included in the Contract Sum.

§ 2.0.15 The **Contract Time** is the time defined in Section 8.1.1 of the revised General Conditions and specified in the GMP Amendment to achieve Substantial Completion of the Work.

§ 2.0.16 The term **Contractor** means the Construction Manager.

§ 2.0.17 The **Cost of the Work** is defined in Article 7 of this Agreement.

§ 2.0.18 **Drawings** are defined in Section 1.1.5 of the revised General Conditions and generally are the graphic and pictorial portions of the Contract Documents showing the design and location of the Work, and generally include plans, elevations, sections, details, dimensions, schedules and diagrams.

§ 2.0.19 The Construction Manager's **Fee** is the amount specified in the GMP Amendment based on the percentage contained in Section 6.1.2 of this Agreement that the Construction Manager is to receive under this Contract in addition to the Cost of the Work for its performance of the Work. The Fee compensates the Construction Manager for all aspects of its performance other than the Cost of the Work, and it includes the Construction Manager's profit and all overhead expenses not otherwise reimbursable under this Agreement, including but not limited to home office overhead, and all taxes except sales tax on the Contract Sum, and as otherwise described in this Agreement. The Fee is applied to the MACC. The Fee is only earned on and applied to the Construction Manager's Contingency as such costs are incurred. The Fee is not applied to any other costs except as described above.

§ 2.0.20 **Final Completion** is defined in Section 9.10.1 of the revised General Conditions and generally occurs when the Owner finds that the Work has been completed, the required occupancy permit has been issued, the commissioning process and any validation process have been successfully concluded, incidental corrective or punchlist Work and final cleaning have been completed, the Construction Manager has submitted or delivered all specified items, the Construction Manager has submitted a final Application for Payment, and the Owner has approved a final Application for Payment.

§ 2.0.21 The **General Conditions** (sometimes also referred to as the revised General Conditions) of the Contract are defined in Section 2.3 of this Agreement and are the revised 2017 Edition of AIA Document A201, General Conditions of the Contract for Construction, which is incorporated herein by reference. All references to the A201 General Conditions in the Contract Documents are to the revised document.

§ 2.0.22 The **Guaranteed Maximum Price** (“GMP”) is defined in Section 3.2, described in Section 6.2 of this Agreement, and established in the GMP Amendment. The GMP is equivalent to the “Total Contract Cost” as that latter term is used in RCW 39.10. The GMP consists of the sum that the Owner and the Construction Manager establish in the GMP Amendment as the fixed limit for all Costs of the Work reimbursable under Article 7 of this Agreement, which includes the MACC, the Negotiated Support Services, the Specified General Conditions, and the Construction Manager’s Contingency, together with the Construction Manager’s Fee. The GMP does not include Preconstruction Phase Preconstruction Services Cost or sales tax on progress payments. State and local sales tax on the Contract Sum will be paid by the Owner with progress payments. The Owner is not obligated to pay the Construction Manager more than the GMP for the performance of the Work.

§ 2.0.23 The **GMP Amendment** is described in Section 3.2.6 of this Agreement and generally is an amendment to this Agreement setting forth the GMP, the information and assumptions upon which it is based, the Contract Time, and other information upon which the parties agree. There may be more than one GMP Amendment, such as if the Owner and Construction Manager agree to early Work packages or for securing long-lead items.

§ 2.0.24 The **Maximum Allowable Construction Cost** (“MACC”) generally consists of the sum to which the Owner and the Construction Manager agree in writing in the GMP Amendment as an estimate of the Cost of the Work reimbursable under Article 7 of this Agreement. The MACC does not include the Negotiated Support Services, the Specified General Conditions, the Construction Manager’s Contingency, the Construction Manager’s Fee, Preconstruction Services, or sales tax. A final MACC will be established as part of the GMP negotiation in accordance with this Agreement.

§ 2.0.25 **Negotiated Support Services** are defined in Section 7.7.5 of this Agreement and are generally items the Construction Manager normally would manage or perform on Work of this type, including but not limited to, surveying, laser scanning, hoisting, cleanup and trash removal, street cleaning, dust control, maintenance of traffic on public street and roads, temporary heat, temporary hookups, temporary toilets, temporary signs, fences, enclosures, barriers and barricades, temporary meter installation for water, utilities, natural gas, sewer and storm sewer, advertisement and negotiation of subcontract bid packages, and WSSP documentation. Approved Negotiated Support Services are reimbursable, consistent with the Contract Documents, to the extent they are Costs of the Work within the GMP. The Construction Manager’s management of Negotiated Support Services is included within the Specified General Conditions amount.

§ 2.0.26 The **Notice to Proceed** is described in Section 3.3.1 of this Agreement and is generally a written notice the Owner submits to the Construction Manager that generally permits construction or a designated portion thereof to commence upon the Construction Manager’s compliance with conditions expressed in the notice.

§ 2.0.27 The **Owner** is the entity listed on the first page of this Agreement.

§ 2.0.28 The **Owner-Architect Agreement** is the separate agreement between the Owner and the Architect relating to the design of the Project.

§ 2.0.29 The **Owner’s Designated Representative**, identified above, is a representative of the Owner. His or her duties and responsibilities are specified in the Contract Documents. The Owner’s Representative itself is not empowered to waive any terms or conditions of the Contract Documents or to commit the Owner to additional costs or time except as explicitly provided in this Agreement.

§ 2.0.30 The **Preconstruction Phase** is defined in Section 3.1 and generally consists of the initial portion of the Construction Manager’s services and performance under the Contract prior to execution of the GMP Amendment or issuance of the Notice to Proceed.

§ 2.0.31 The **Preconstruction Services** generally consist of those services provided by the Construction Manager under Section 3.1 of this Agreement.

§ 2.0.32 The **Preconstruction Services Cost** is defined in Section 5.1 of this Agreement and is the compensation payable by the Owner to the Construction Manager for Preconstruction Services.

§ 2.0.33 The **Project** is defined on the cover page above and in Section 1.1.4 of the revised General Conditions.

§ 2.0.34 The Owner's **Project Manager**, listed in Section 1.1.8 above, if any, is the entity with whom the Owner has contracted in a separate Owner-Project Manager agreement. The Owner's Project Manager reports to the Owner's Representative. To the extent determined by Owner, the Owner's Project Manager will provide project management services and will act as the primary point of contact for Owner-Construction Manager communications and for all matters relating to the services and requirements of this Agreement.

§ 2.0.35 The **Project Team** consists of the Construction Manager, the Owner, the Architect, the Project Manager, and all consultants and Subcontractors of any tier employed or retained by each of them.

§ 2.0.36 **Specifications** are defined in Section 1.1.6 of the revised General Conditions and generally consist of the portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance or related services.

§ 2.0.37 **Specified General Conditions** are further defined in Section 6.1.8 and Article 7 of this Agreement and generally mean certain selected general conditions Work and services specified in the Contract Documents to be provided by the Construction Manager for the fixed Specified General Conditions price as a part of the Cost of the Work. The Specified General Conditions are to be performed by the Construction Manager with its own forces in most instances. The Specified General Conditions include and pay for any Preconstruction Services that occur after the GMP is established through execution of the GMP Amendment. The Specified General Conditions include but are not limited to all bonds and insurance required by Article 11 of the A201 (but not builder's risk insurance under Section 11.3 which is a Negotiated Support Service or shall be provided by the Owner), the Construction Manager's construction administration, management services and supervision of the Project, all costs associated with the subcontractor bidding process (except costs of document reproduction), such as developing solicitations, site tours, responding to questions from bidders, providing a bid opening facility (unless the Owner elects to provide such facilities), bidding in accordance with the requirements of the Contract Documents and Chapter 39.10 RCW, subcontract award, and all aspects of safety implementation and administration. Any cost that is not specifically identified as a reimbursable Cost of the Work shall be covered by the amount bid for Specified General Conditions.

§ 2.0.38 The **Subcontracting Plan** is defined in Section 3.1.12 and is prepared by the Construction Manager for the Owner's approval prior to conclusion of the Design Development phase. It identifies all proposed subcontract bid packages, any contemplated alternative subcontractor selection process permitted by RCW 39.10, any bid packages for which the Construction Manager expects to compete, all subcontractor scopes of work, the timing of solicitation of subcontractor bids for the packages to meet the Construction Schedule, major coordination issues with other packages, and means to enhance the opportunity for local businesses to participate in performing the Work.

§ 2.0.39 A **Subcontractor** is defined in Section 5.1 of the revised General Conditions and is generally a person or entity that has a direct contract with the Construction Manager. A **Subcontractor of any tier** is a Subcontractor or a lower tier subcontractor that performs a portion of the Work of the Project at the site or supplies materials or equipment. A **Design-Build Subcontractor** is a Subcontractor that will not only construct discrete portions of the Work but also will design such portion as specified in the GMP Amendment.

§ 2.0.40 **Substantial Completion** is defined in Section 9.8.1 of the revised General Conditions. The date of Substantial Completion for the Project will be established in the GMP Amendment.

§ 2.0.41 The **Work** is defined in Section 1.1.3 of the revised General Conditions and generally means the construction and services performed in the Construction Phase as required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill its obligations.

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in

this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Owner with the assistance of the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The parties shall endeavor to promote harmony, mutual respect, and cooperation among the Owner, Architect, Construction Manager, the Project Manager, authorities having jurisdiction, and other persons or entities employed by them for the Project to the fullest extent possible in order to further the interests of the Owner in the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents, the Contract Time and the GMP.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as revised, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, as revised, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall participate as part of the Project team to provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, and coordinate estimating reconciliation, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall jointly schedule and conduct meetings with the Architect and Owner at a minimum on a weekly basis during the schematic design phase, design development phase, and the Construction Document phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall review the Schematic Design Documents, Design Development Documents and Construction Documents, Specifications, and other Contract Documents as they are developed and completed. These documents will include those prepared by any Design-Build Subcontractors and may be developed at different rates for different components of the Project. The Construction Manager shall also review all other documents provided by the Owner, including but not limited to the associated environmental documents, all record drawings of existing facilities and all documents provided or made available as a part of the GC/CM selection process. The Construction Manager shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Construction Manager has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues. Design review activities are to be a cooperative and collaborative effort with the Architect, the Owner, and their consultants. The Construction Manager shall recommend changes and alternatives to the Architect and Owner, without, however, assuming any of the Architect's design responsibilities, except to the extent the Construction Manager or a Subcontractor performs design-build Work.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Owner and Architect's review and the Owner's acceptance. Regardless of any review, acceptance, or approval of the Construction Manager's schedule, the Owner shall not be responsible for any aspects of the Construction Manager's schedule. The Construction Manager shall obtain the Owner's and Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. The Owner may elect to have an independent estimate prepared in parallel with that of the Construction Manager; the Construction Manager shall cooperate with and fully review the independent estimate.

§ 3.1.6.2 The Construction Manager will collaborate with the Architect and the Owner on cost estimates throughout the Preconstruction Phase, and will prepare detailed cost estimates following completion of the Schematic Design Phase, completion of the Design Development Phase and when Construction Documents are 90% complete (the "GMP

estimate”). The Construction Manager shall also reconcile its estimate with the Architect’s and/or the Owner’s independent cost estimator at each phase for the Construction Manager’s, Architect’s, and Owner’s acceptance. Cost escalation to the time of Subcontractor bidding shall not exceed three percent (3%) of these estimates without approval of the Owner. Timely and complete estimates are critical to the success of the Project; therefore, failure of the Construction Manager to submit timely cost estimates shall be grounds for the termination of the Construction Manager for cause. As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect’s and Owner’s review and the Owner’s approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action, including participation in preparing a list of proposed cost savings equal to or greater than the overage.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager’s cost estimates and the Architect’s cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect to prepare a constructability review plan for the Project to reduce costs, save time, improve quality, reduce risk, and improve the overall process of the Project delivery. Key objectives of the constructability program will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. The constructability plan shall meet the requirements of efficient Project delivery. A primary objective of these efforts will be to assist the Owner to ensure that the final GMP does not exceed the Owner’s budget and the Project is completed on time. As part of this effort, the Construction Manager shall participate in and provide written comments as part of formal constructability reviews following completion of the Schematic Design Documents and Design Development Documents and ninety percent (90%) completion of the Construction Documents, and shall confirm, in writing to the Owner and Architect, prior to solicitation of the first subcontract bid package, that a thorough constructability analysis has been performed.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities. The Construction Manager shall suggest to the Owner and shall perform, as agreed with the Owner under Section 3.1.3.2, site investigation to assist in development of the design and construction planning.

§ 3.1.9 The Construction Manager will participate in value engineering the design documents at 30% completion of the Schematic Design and at 50% completion of the Design Development Phase and on a continuing basis with the Architect in subsequent phases up to 90% completion of the Construction Documents. At the completion of each of its reviews, the Construction Manager will provide the Owner and Architect with a formal record of its findings and recommendations. The Architect and the Construction Manager will brief the Owner and any value engineers and answer their questions to determine the advisability of changes in the design documents. Value engineering will include selecting building systems, other major components and methodologies with final selection of systems, and other major components and methodologies to occur prior to the start of the Construction Documents Phase.

§ 3.1.10 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner’s review and approval.

§ 3.1.11 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.12 Subcontractors and Suppliers

§ 3.1.12.1 The Construction Manager shall develop bidders’ interest in the Project. The Construction Manager shall prepare and submit a construction management and subcontracting plan (“Subcontracting Plan”) to the Owner and the Architect for approval prior to conclusion of the Design Development Phase. Prior to negotiation of the GMP, the Owner and the Construction Manager shall negotiate the following terms and shall include the Subcontracting Plan as

an exhibit to the GMP Amendment. The Subcontracting Plan shall describe the process for allocating scope of Work among the bid packages and shall, for and within each Component, identify:

- .1 All subcontract bid packages, specifying those upon which the Construction Manager or its affiliates intend to bid;
- .2 The scopes of Work, timing of solicitation of bids for the packages to meet the Construction Schedule;
- .3 Major coordination issues with other packages;
- .4 Means to enhance the opportunity for small business entities and minority- and women-owned businesses (as certified with the Washington State Office of Minority & Women's Business Enterprises under Chapter 39.19 RCW) to participate in performing the Work (e.g., through development of multiple work packages);
- .5 The scope and cost estimates for each subcontract bid package.

§ 3.1.12.2 The Construction Manager shall use its best efforts to develop the interest of Subcontractor bidders in the Project. The Construction Manager shall consider prebid determinations of Subcontractor eligibility to the extent permitted by statute and shall furnish to the Owner and Architect for their information as a part of the submittal of its Subcontracting Plan a list of possible eligible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it or the lack of any objection waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.

§ 3.1.12.3 (MCCM & ECCM) If the individual anticipated subcontract value exceeds \$3 million, MCCM and ECCM will be considered utilizing an outline developed by the Construction Manager. The Construction Manager, Architect and Owner shall weigh the pros and cons of using MCCM and ECCM. The Owner shall decide if either or both methods are desired in accordance with RCW 39.10.385.

§ 3.1.13 Long-Lead Time Procurement

§ 3.1.13.1 The Construction Manager shall prepare, for the Architect's and Owner's review and the Owner's acceptance, and update at least monthly, a procurement schedule for items and/or associated services that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. The Owner may authorize the Construction Manager to procure long-lead time items prior to the execution of the GMP Amendment in accordance with the authorization and procedure identified in RCW 39.10.370(2)

§ 3.1.13.2 The Construction Manager shall identify and estimate the value of any items that require off-site storage, together with proposed locations for storage during the course of the Work acceptable to Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site and shall conform with the requirements of Section 7.1.3.5 of this Agreement.

§ 3.1.14 Extent of Responsibility

§ 3.1.14.1 The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications prepared by the Architect are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.14.2 The Construction Manager shall carefully review upon receipt all Drawings, Specifications and Reports submitted to it at each level of design. The Construction Manager shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and shall recommend changes and alternatives. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional, except to the extent the Construction Manager or a Subcontractor has design-build responsibilities.

§ 3.1.15 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, apprenticeship programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.16 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

Exhibit 2

§ 3.2 Guaranteed Maximum Price Proposal and Contract Time

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, and when the Construction Drawings and Specifications are at least 90% complete, the Owner will submit a "GMP set" of Construction Documents to the Construction Manager, and within twenty-one (21) days of receipt of the GMP set, unless a longer period of time is approved by the Owner due to special conditions or circumstances, and in consultation with the Architect and Owner, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Construction Manager shall promptly notify the Owner if it does not consider the Drawings and Specifications to be at least 90% complete and shall not propose a GMP until the Drawings and Specifications are at least 90% complete. A list of items needed to obtain 90% completion shall be prepared by the Construction Manager and agreed to by the Owner and the Architect prior to additional information being added to the Construction Documents.

§ 3.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom by allowing for such further development in its cost estimates. The Construction Manager will also make allowance for market conditions at the time of bidding and possible estimating inaccuracies within the GMP. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. A Change in the Work will not be warranted if the Work in question was reasonably inferable from or contemplated by, or a prudent contractor should have realized that the Work was necessary and appropriate under, the Contract Documents referenced in the GMP Amendment.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, divided into the proposed subcontract bid packages and including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, the MACC, Specified General Conditions, and Negotiated Support Services; the Construction Manager's Contingency; and the Construction Manager's Fee (any Allowances must be limited and preapproved by the Owner);
- .4 The anticipated date of Substantial Completion – by phase as applicable – upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must conclude negotiations and accept the Guaranteed Maximum Price, taking into account that acceptance of the Guaranteed Maximum Prices only occurs by Owner's execution of the GMP Amendment as approved by the Everett City Council.

§ 3.2.4.1 In preparing the Construction Manager's GMP proposal, the Construction Manager shall include its Contingency, not to exceed two and one half percent (2.5%) of the MACC, for the Construction Manager's exclusive use to cover costs arising under Section 3.2.2 and other costs that are properly reimbursable as a Cost of the Work but not qualified for inclusion in a Change Order. The Construction Manager may use the Construction Manager's Contingency to pay for Project issues that are within its control, such as design issues that a reasonable construction

manager should have resolved during the Preconstruction Services Phase, items in Drawings but not in the Specifications, items on one Drawing but not another, items specified but not drawn, non-specified items within Specifications, buy-out errors or shortfalls, scope gaps, ambiguities in the Construction Documents, damaged work not covered by insurance (including, to the extent permitted by the Contract Documents, a deductible), unanticipated general conditions expenses, interdisciplinary design coordination, Subcontractor performance, and expediting costs for critical materials. The Construction Manager's Contingency may also be used for issues beyond the Construction Manager's control such as lost time, increases in bid contracts, and Subcontractor performance or failure. The Construction Manager must give the Owner notice and supporting cost backup when applying to use the Construction Manager's Contingency. This Contingency is not available for Owner-directed design or scope changes, unforeseen or differing site conditions, and design errors or omissions beyond the reasonable inferences described in Section 3.2.2, as those costs entitle the Construction Manager to a Change Order. The Construction Manager shall use the Construction Manager's Contingency only with the Owner's prior written consent, which shall not unreasonably be withheld. Each use of Construction Manager's Contingency shall be shown as a separate line item in the schedule of values submitted with Applications for Payment. Any balance remaining in the Contingency shall be returned to the Owner in a deductive Change Order before Final Payment.

§ 3.2.4.2 The MACC shall consist of all Subcontractor scope of Work by bid package consistent with the Subcontracting Plan, including Work the Construction Manager will self-perform through the Subcontracting bidding process, and all other Article 7 Costs of the Work except the Negotiated Support Services and the Specified General Conditions. The MACC used in negotiating the GMP shall be the summation of the actual amounts of any Subcontract bid packages awarded and estimated amounts for Subcontract bid packages not yet bid. Upon completion of the buyout of Subcontract bid packages, the Construction Manager shall ascertain whether any scope changes beyond those specified in Section 3.2.2 have occurred in the Subcontract bidding documents as a result of completion of the Construction Documents to the 100% level. In the event that these scope changes are required for the Project and approved by both the Construction Manager and the Owner, any balance in the MACC may be accessed to cover such scope changes. Any amounts remaining in the MACC when all the Subcontract bid packages have been awarded shall be added to the Construction Manager's Contingency. It is the intent of the parties that when the GMP is set, the Construction Manager will have participated in and be fully aware of the existing conditions and proposed design for the Project. It is further intended that the GMP will include all elements necessary to complete the Project in accordance with the Contract Documents, and that Change Orders adjusting the GMP will therefore not be necessary except in limited circumstances as set forth below. Accordingly, the GMP shall be adjusted principally for the following events:

- .1 Scope Changes.** Owner revisions on scope items previously approved by the Owner and incorporated in the pricing of the GMP. Examples: The Owner approved use of MC cable in lieu of conduit for branch wiring runs and later decides to change back to conduit; or bid alternates not included in the GMP.
- .2 Concealed or Unknown Conditions** as described in Section 3.7.4 of the revised General Conditions. For example, during the Construction Phase, substantially differing site conditions are encountered that could not have been reasonably anticipated or discovered by the Construction Manager during the Preconstruction Phase. This category includes unknown and unforeseeable hazmat conditions and soil conditions.
- .3 Regulatory Agency Changes.** Costs incurred as a result of changes in regulatory requirements but only where such requirements change after execution of the GMP Amendment. (This shall not include costs incurred as a result of inspections or other enforcement that are based upon pre-existing requirements of the building permit.)
- .4 Significant Design Errors or Omissions.** Significant errors or omissions in the Drawings or Specifications that could not reasonably have been anticipated or discovered by the Construction Manager before the GMP was established. However, design errors and omissions do not include, for example: (1) failure to coordinate between trades; (2) requirements of the Specifications that are not specifically shown in Drawings; (3) requirements of the Drawings that are not specifically described in the Specifications; or (4) design changes made at the request of the Construction Manager in order to facilitate the constructability of the Project. The failure of the Architect to specify every detail in the Construction Documents does not eliminate the requirement for the Construction Manager to provide at least a standard commercially available detail of institutional quality to serve the basic functions of the design.
- .5 Changes required by governmental inspectors to meet requirements beyond those contained in regulations.** Changes required by an inspector of a governmental authority having jurisdiction beyond those contained in regulations or previously communicated.
- .6 Allowance adjustments.**

§ 3.2.4.3 Examples of events for which the GMP shall not be adjusted include but are not limited to:

- .1 **Subcontractor Gaps.** Gaps in scope coverage between Subcontractors, including self-performed Work.
- .2 **Scope Gaps.** An item indicated in the Drawings or Specifications that was not picked up in the GMP.
- .3 **Ambiguities.** Ambiguities in the Construction Documents that the Construction Manager knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the GMP.
- .4 **Interdisciplinary Coordination.** Coordination inconsistencies and errors between design disciplines that the Construction Manager knew of, caused or contributed to, or reasonably should have known of.
- .5 **Subcontractor Failure.** A Subcontractor fails to perform or goes bankrupt.
- .6 **Escalation of materials, equipment or labor prices, including without limitation escalation due to inflation and supply chain issues.**
- .7 **The Construction Manager's estimating errors.**
- .8 **Expediting costs for critical materials.**
- .9 **Coordination Claims.** Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Construction Manager or among Subcontractors. A Subcontractor claim may only increase the GMP if the basis of the claim would have entitled the Construction Manager to an increase in the GMP.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 Owner acceptance of the Guaranteed Maximum Price proposal only occurs by execution of the GMP Amendment by the Owner as approved by the Everett City Council, a copy of which the Owner shall provide to the Architect. The GMP Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize the Architect to provide revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the GMP Amendment. Revisions to the Drawings and Specifications will be included in the 100% Submittal and promptly furnished to the Construction Manager. The Construction Manager shall notify the Owner and Architect promptly and in writing of any inconsistencies between the GMP Amendment and the revised Drawings and Specifications, and shall comply with the contractual procedure in providing notice and asserting and pursuing any Claim that may arise therefrom. If the Construction Manager does not provide this notification within thirty (30) days of its receipt of the revised Drawings and Specifications, the revisions shall be considered accepted with no change in the GMP or Contract Time.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes (but not sales taxes on the Contract Sum) for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the GMP Amendment is executed. The only taxes excluded from the GMP and separately reimbursable by the Owner are State and local sales taxes on the Contract Sum.

§ 3.2.10 If, upon establishing the GMP, the GMP varies more than 15% from the budget specified in the RFP due to changes in the scope requested and approved by the Owner, the percentage applied to the GMP to determine the Fee shall be renegotiated when the GMP is negotiated.

§ 3.2.11 If the Owner is unable to negotiate to its reasonable satisfaction any aspect of the proposed GMP Amendment, then the Owner may terminate negotiations with the Construction Manager. The Owner may, but is not obligated to, solicit bids or negotiate with the next highest scored proposer and continue until an agreement is reached or terminate the process.”

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of the revised General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties (which agreement in order to be effective must be executed by the Mayor of the City of Everett on behalf of Owner and by an authorized representative of Construction Manager). The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and other requirements for such Work, including without limitation insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall comply with the applicable requirements of RCW 39.10 and 39.19, the provisions of which shall take precedence over any inconsistent provisions of the Contract Documents. Except as specified below, the Construction Manager shall assemble the bidding materials, manage the bidding process, and obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and the Owner. The Construction Manager shall analyze the subcontractor bids and deliver them to and the Owner with a recommendation of award. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. Unless all bids are rejected, subcontract bid packages shall be awarded to the "responsible" and responsive bidder submitting the low responsive bid. Determination of "responsibility" shall comply with the requirements of RCW 39.10 and Washington law.

- .1 Other than Work under the Specified General Conditions and Negotiated Support Services, all Work on the Project shall be competitively bid as required by RCW 39.10. The Construction Manager may, subject to RCW 39.10, organize and solicit bids for the subcontract work in whatever combinations or packages it chooses, but the Construction Manager may not use alternates without approval of the Owner.
- .2 The Construction Manager shall bid out the subcontract bid packages in accordance with its approved Subcontracting Plan. The Construction Manager shall document and report monthly to the Owner on its procurement process. The Owner's written approval is required for changes to the Subcontracting Plan.
- .3 Before initially soliciting bids for the first subcontract bid package, the Construction Manager shall submit, and the Owner shall reasonably approve, final bid package estimates for all subcontract bid packages in the approved Subcontracting Plan. The sum of all the final bid package estimates in the Subcontracting Plan, plus any other described Article 7 Costs of the Work other than Negotiated Support Services and Specified General Conditions, shall not exceed the MACC.
- .4 When in the best interests of the Project and when critical to the successful completion of a subcontract bid package, the Owner and Construction Manager may make a Prebid determination of Subcontractor eligibility in accordance with RCW 39.10. In addition, if the anticipated subcontract value will exceed \$3 million and the Owner consents, the Construction Manager may select a mechanical Subcontractor, an electrical Subcontractor, or both, in accordance with the alternative procedure specified in RCW 39.10.385.
- .5 As part of its Subcontracting Plan, the Construction Manager shall promptly notify the Owner of Work (other than Negotiated Support Services and Specified General Conditions) that it will seek to self-perform. The Construction Manager, including its subsidiaries and affiliates, may bid on a subcontract bid package if the Work within the subcontract bid package is customarily performed by the Construction Manager, if the Construction Manager has, in the Owner's reasonable opinion, aggressively sought competition, if the bid opening is managed by the Owner, if notification of the Construction's Manager's intention to bid is included in the public solicitation of bids for the bid package, and if the Construction Manager otherwise complies with RCW 39.10. In no event may the total value of subcontract work performed by the Construction Manager exceed thirty percent (30%) of the MACC negotiated as part of the GMP Amendment. The Construction Manager must provide staff to superintend and manage Work it performs in subcontract bid packages with individuals separate and distinct from the staff involved in the overall management of this Contract. The Construction Manager shall coordinate subcontract bid package Work it performs with the Work of Subcontractors.
- .6 The Construction Manager shall require a bid bond from Subcontractors' bidding Work expected to cost more than \$300,000, and all Subcontractors awarded a subcontract in excess of \$300,000 shall provide a performance and payment bond for the subcontract amount.
- .7 The Construction Manager's solicitations of subcontract bid packages shall be made in accordance with the following procedures:

- .a A representative from the Project Manager or the Owner will participate at each bid opening to observe the procedure.
 - .b Solicitations for bids will be advertised by the Construction Manager at least fourteen (14) days in advance in the Daily Journal of Commerce and the Everett Herald.
 - .c Bidders may obtain the bid results by telephone from the Construction Manager.
 - .d Responsiveness requirements and bidding procedures will be described in each solicitation and may be reviewed with the Owner prior to a bid opening.
- .8 The services performed by the Construction Manager in soliciting subcontract bid packages are covered under Specified General Conditions.
 - .9 The Construction Manager shall ensure compliance with RCW 39.10 and with all the above requirements for Subcontractor solicitation, and subcontracts shall conform to the requirements of RCW 39.10.
 - .10 The Construction Manager shall promptly contract with the selected bidder and shall promptly deliver a copy of each subcontract to the Owner.

§ 3.3.2.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee, except for any contracts awarded under RCW 39.10.385 which shall include a maximum allowable subcontract cost. If a Subcontract is awarded under RCW 39.10.385, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager, and these Subcontractors shall be audited prior to final payment in accordance with Article 10.

§ 3.3.2.3 The Construction Manager shall schedule and conduct weekly progress meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Owner shall prepare and promptly distribute minutes to the Architect and Construction Manager.

§ 3.3.2.4 Upon the execution of the GMP Amendment, the Construction Manager shall prepare and submit to the Owner, the Project Manager and Architect a construction schedule for the Work (the "Construction Schedule") and submittal schedule in accordance with Section 3.10 of the revised General Conditions and other Contract Documents. The Construction Schedule shall be incorporated into the larger Project / Phasing Schedule, including Pre-Construction and parallel projects, if any, under separate contract. The Construction Manager shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as Work progresses. The Schedule shall conform with the requirements of Section 3.10.3 of the revised General Conditions.

§ 3.3.2.5 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The reports shall:

- .1 Include information concerning both the entire Project and each subcontract bid package.
- .2 Identify variances between scheduled and probable completion dates, and recommend action required to meet scheduled completion dates.
- .3 Review the Construction Schedule for portions of the Project not started or incomplete and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates.
- .4 Provide summary reports for each Construction Schedule update.
- .5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change, and the reasons for them.
- .6 Record in writing and by photographs the progress of the Project.
- .7 Identify significant problems in scheduling together with recommended corrective action.
- .8 Maintain and report a QC log.
- .9 Document any outstanding RFIs and risks associated with delayed responses.
- .10 List outstanding submittals and risks associated with delayed responses.
- .11 Document any outstanding Change Orders and any risks associated with delayed responses.
- .12 The status of permits that the Construction Manager is required to obtain or assist in obtaining.

The Construction Manager shall also keep, and make available to the Owner and Architect with its monthly Application for Payment or more often as requested by the Owner, a daily log containing a record for each day of weather, Subcontractors working at the site, deliveries, Work accomplished, portions of the Work in progress, number and employer(s) of workers on site, identification of equipment on site, problems that might affect progress of the work,

accidents, injuries, and other information required by the Owner. The information provided on the daily log does not constitute notice of a potential or actual Claim to the Owner.

§ 3.3.2.6 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.1.6.2 and Section 3.3.2.5 above. The Construction Manager shall include a Project status report in a format acceptable to the Owner, listing (i) all pending and/or approved Change Orders and Construction Change Directives (including amounts), (ii) an analysis of the Specified General Conditions and Negotiated Support Services budget with an explanation of substantial variances from previous budgets, (iii) projected cash flow of construction costs, (iv) an allocation by subcontract bid package and schedule-of-values line item, (v) expenditures to date, (vi) estimates to complete, (vii) forecast at completion, (viii) variances with budget and commitment, and (ix) the items for which the Owner has authorized the Construction Manager to use the Construction Manager's Contingency, the cost of those approved items, and the balance of funds remaining in the Contingency account.

§ 3.3.2.7 The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis (at least as often as described in the Contract Documents) for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any material defects or deficiencies and recommend remedial action. The Construction Manager shall take the lead role in negotiating and resolving any disputes with Subcontractors and obtain the Owner's concurrence or approval of all settlements that may affect the GMP or the Construction Manager's Contingency before executing change orders with Subcontractors.

§ 3.3.2.8 The Construction Manager shall maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, Drawings marked to record all changes made during construction, Specifications, addenda, Change Orders, and other Modifications; shop drawings; product data; samples; submittals; inspection reports; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of subcontracts or Work. These records shall be available to the Owner, and, at completion of the Project, delivered to the Owner.

§ 3.3.2.9 As part of the Specified General Conditions, the Construction Manager shall provide an adequate and experienced staff consistent with or in excess of that specified in its response to the RFP. The staff shall include necessary and appropriate project managers, superintendents, field engineers, engineers, quality control specialists, scheduling engineers, cost engineers, clerical, accounting, data processing personnel, and others so that, among other things:

- The Work is performed and coordinated in a timely manner in compliance with the Contract Documents;
- Change Order Proposals and responses to Construction Change Directives are submitted to the Owner within fourteen (14) days after the Construction Manager's receipt of the Construction Change Directives;
- Responses to correspondence from the Owner, Subcontractors, and Governmental Agencies are provided within seven (7) days after receipt of such correspondence; and
- Final Completion is achieved within the timeline identified in Article 9.10 of the revised General Conditions.

§ 3.3.2.10 Changes to personnel in key positions (project manager, superintendents, preconstruction managers, and field engineers) must be done with a 14-day notice to the Owner and Owner's approval, which may be withheld with reasonable cause. Individuals with an equal or greater level of experience and competencies will be proposed by the Construction Manager to the Owner, Project Manager and the Architect for evaluation. Approval must be obtained by the Construction Manager from the Owner prior to any individual being allowed onto the Project Team. A three-month probationary period shall be afforded the Owner to evaluate each new individual. During this period, the Owner has the right to request that a new individual be introduced, and the process started again.

§ 3.3.2.11 The Construction Manager shall develop a COVID-19 mitigation plan in compliance with all state, county, and federal and CDC requirements, including a comprehensive job site system of exposure control, mitigation and recovery plan. The plan must include policies regarding control measures for PPE utilization, on-site social distancing, hygiene, sanitation, symptom monitoring, incident reporting, safety training, exposure response procedure and recovery plan. The plan must comply with the latest standards defined by Washington State Department of Labor and Industries and mandates/proclamations from Governor Inslee (e.g., Proclamation 20-25.17). A copy of the COVID-19 plan must be available on each job site during any construction activities and available for inspection.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 [Section purposely left blank].

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the information or services described below with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Construction Manager shall review all documents and data provided, and provide comments, concerns or requests for additional or clarification of information within 21 days of receipt.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Construction Manager shall review all documents and data provided, and provide comments, concerns or requests for additional or clarification of information within 21 days of receipt.

§ 4.1.4.3 The Owner, when such services are requested and upon its approval, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. For existing sites, building record reports provided by the Owner shall suffice.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's

designated representative. Because the Owner is a municipal corporation, the Owner's designated representative does not have authority to approve a change in the GMP, a change in the Contract Time, a non-minor change in the scope of the Work, or waivers or modifications of Contract Documents, all of which require approval in accordance with the Everett Charter and Municipal Code.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner is not required to furnish legal, insurance and accounting services for the benefit of the Construction Manager.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, including any services that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Total compensation for the Preconstruction Services (the "Preconstruction Services Cost") shall not exceed \$ _____, which includes \$ _____ in sales tax. Preconstruction Services Cost subject to this not-to-exceed amount includes without limitation payment on an hourly basis at the rates and for the individuals specified in Exhibit 2 to this Agreement, payment for equipment at the hourly rates specified in Exhibit 2, and payment for other additional costs when preapproved in writing (which may include but are not limited to costs of testing, intrusive, or non-intrusive investigation, selective demolition and restoration, copying, blueprints and courier costs). All Preconstruction Services rates include personnel and consultant costs and all benefits, materials, equipment, taxes, profit and overhead. Costs that would cause the not-to-exceed amount to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. The Construction Manager's Fee in Section 6.1.2 does not apply to Preconstruction Services, and any savings from any not-to-exceed amount for Preconstruction Services will revert to the Owner. »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Reference Exhibit 2: Preconstruction Services and Work Plans and Rates.

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within _____ months () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after date when payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

The Bank of America prime rate plus 2.00% per annum, except when a higher interest rate is required by RCW

39.76 or other law.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee for the Work during the Construction Phase shall be the fixed, lump sum amount that will be calculated as the percentage specified in the Fee Proposal Form (____percent (%)) times the MACC negotiated as part of the GMP.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

In the event a Change Order is issued for a Change in the Work, the percent change in the Construction Manager's Fee will be the percentage specified above in Section 6.1.2.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

In the event a Change Order is issued for an additive Change in the Work, the increase in the Construction Manager's Fee will be calculated using the percentage specified above in Section 6.1.2. The Construction Manager shall also be entitled to proven increased premiums associated with the Changed Work for contractually-required insurance and bonds above the amounts already included within the Construction Manager's fixed Specified General Conditions.

Upon request, Construction Manager shall provide the Owner with supporting documentation from its insurer and surety of any associated cost incurred. Construction Manager is not entitled to any increased premium on any retainage bond as such bonds are optional. If the Construction Manager performs Work as a Subcontractor (i.e. on a package on which the Construction Manager was the low Subcontractor-bidder), the Construction Manager shall be paid the Fee as provided in Section 7.5.6 of the A201 but shall not have the above Fee percentage applied to such Changed Work

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the rates identified in Section 7.5.2 herein.

§ 6.1.6 Liquidated damages, if any, shall be established in the GMP Amendment.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

There are no shared savings provisions; all savings shall revert to the Owner.

§ 6.1.8 The Specified General Conditions are in the fixed amount of _____ Dollars (\$ _____) based on the level of staffing and project duration known at the time of fee proposal submission. The final Specified General Conditions sum shall be negotiated based on the level of staffing and duration of service required for Construction Manager's management staff. The weekly unit rates are quoted in the Fee Proposal and Preconstruction Cost Proposal Form.

§ 6.1.9 The allowance for Negotiated Support Services will be negotiated at the time of establishing the MACC.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work, Negotiated Support Services, Specified General Conditions, the Construction Manager's Contingency, plus the Construction Manager's Fee exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect or Owner may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of the revised General Conditions and the term “costs” as used in Section 7.3.7 of the revised General Conditions shall have the meanings assigned to them in Section 7.5 of the revised General Conditions and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.6, and Section 7.9 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts and the Contract Documents.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean the actual, net costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work, without overhead, profit, fee or markup. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel are included in the Specified General Conditions and not separately reimbursable.

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work are included in the Specified General Conditions and not separately reimbursable.

§ 7.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, are included in the Specified General Conditions and not separately reimbursable.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. This does not include insurance required by the Contract Documents, which costs are included within the Specified General Conditions. Costs paid or incurred by the Construction Manager for vacations, bonuses, travel, stock options, deferred compensation, or discretionary payments to employees are not directly reimbursable. As part of the GMP Amendment, the parties may agree to a wage burden rate for all workers, which will be fully burdened, including all the wage-based costs, and fixed for the duration of the Contract time. Burden rates, including any agreed burden rates, are subject to the Owner's audit to confirm that the burden has been correctly calculated and applied in accordance with the Contract Documents.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. The Construction Manager shall maintain a procedure for the review, processing and payment of applications by the Subcontractors for progress and final payments, all in accordance with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and assemble and check all supporting documentation required by the Contract Documents or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction, except costs of on-site storage and handling of materials, which are included under Specified General Conditions.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.4.3 Notwithstanding the above, costs of material and equipment directly procured by the Construction Manager (and not bid through a subcontract package) and incorporated in the completed construction will generally be included in Negotiated Support Services.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges (not to exceed local fair market costs) for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any Construction Manager-owned item may not exceed the lesser of the local fair market rental costs or seventy-five percent (75%) of the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

Rentals from the Construction Manager or any entity in which the Construction Manager or one or more of its owners has a direct or indirect ownership interest ("CM Equipment") shall be separately accounted for and the rental costs shall not exceed the Rental Rate Blue Book by Data Quest, San Jose, California, or average fair market rental costs, whichever are lower. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the

time of the performance of the Work 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 to the same extent as the comparable Blue Book or fair market rate. 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. 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. The rate for CM Equipment necessarily standing by for future use on the Work shall be 50% of the maximum rate established above. If CM Equipment is required for which a rental rate is not established by the Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work. Equipment drop-off and pick-up rates shall also be an average of fair market costs.

§ 7.5.3 Costs of street cleaning (as a Negotiated Support Service), removal of rubbish and debris from the site of the Work and its proper and legal disposal except when performed by a Subcontractor. A separate subcontract that specifically requires progress cleaning, removal of rubbish and debris not normally included in a trade subcontract is not a Cost of the Work. Any progress cleaning, rubbish and debris removal shall be performed under Negotiated Support Services unless included as part of a trade subcontract scope identified above.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in Specified General Conditions and are not separately reimbursable, except for the costs of document reproduction for subcontractor bidding which are a reimbursable Cost of the Work.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.5.6 Notwithstanding the above, costs of other material and equipment, temporary facilities and related items procured by the Construction Manager will generally be included in Negotiated Support Services, but some may be designated for inclusion in the Specified General Conditions. Reference the Cost Responsibility Matrix Exhibit for clarification of such items. All furniture, technology, communication (including cell phones), personal transportation (including pickup trucks) and clerical equipment therein, temporary controls (except cleaning and erosion controls), project identification and temporary signage, and delivery by the Construction Manager, on-site storage, sheds and handling are Specified General Conditions.

§ 7.6 Miscellaneous Costs

§ 7.6.1 The actual, net costs of premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract are included in the Specified General Conditions and are not separately reimbursable.

§ 7.6.2 Use or similar taxes, B&O and income taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable are included in the Fee and are not separately reimbursable. Sales tax on the Contract Sum is paid with and based upon each Application for Payment.

§ 7.6.3 Fees and assessments for Project-specific permits, licenses and inspections of governmental authorities having jurisdiction for which the Construction Manager (but not Subcontractors) is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required of the Construction Manager by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of the revised General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the revised General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, including computers, are included in Specified General Conditions and are not separately reimbursable.

§ 7.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work are included in Specified General Conditions and are not separately reimbursable.

§ 7.6.9 The cost of preapproved warehousing of stored materials or equipment subsequently incorporated into the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior written approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, as revised.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 [Section purposely left blank].

§ 7.7.5 Negotiated Support Services

Negotiated Support Services by the Construction Manager may be accomplished and will be reimbursed as Costs of the Work within the GMP, consistent with Cost Responsibility Matrix Exhibit, only as follows:

- .1 Negotiated Support Services described and included in the GMP.
- .2 Units of Negotiated Support Services may be accomplished by the Construction Manager during the Construction Phase, subject to prior written Owner approval, if the Cost of the unit of the Work is less than \$35,000.
- .3 Subcontractor bidding requirements are not applicable to Negotiated Support Services.

§ 7.7.6 Specified General Conditions

The fixed, lump sum contained in the Construction Manager's response to the RFP for certain identified general conditions Work and services, consistent with the Cost Responsibility Matrix Exhibit, to be provided by the Construction Manager as Specified General Conditions. The Specified General Conditions Work is to be performed by the Construction Manager with its own forces in most instances and also includes any Preconstruction Services and activities that occur after the GMP is established through execution of the GMP Amendment.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below, as all such items are covered by the Construction Manager's Fee or are at the Construction Manager's risk:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2.1, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors of any tier and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase except as specifically allowed herein;
- .9 Direct payments by the Owner (if any) for the building permit and related permits, reserve capacity fees, and plan-check fees, including SEPA, design review, and land use fees are not a part of the Cost of the Work or the GMP;
- .10 Overtime wages, unless preapproved by the Owner;
- .11 Main or home office accounting, data processing, software, hardware or computer-related costs not included in the Specified General Conditions;
- .12 Penalties and fines imposed by a governmental entity;
- .13 Safety costs not included in the Negotiated Support Services or Specified General Conditions;
- .14 Liquidated damages;
- .15 Except as included within the Specified General Conditions or as allowed under Section 7.1 through 7.7, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office;
- .16 Legal, consultant, or claims-related expenses;
- .17 Warehousing in the Construction Manager's facility; and
- .18 Business licenses.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. If the Construction Manager is offered discounts and/or rebates based upon prompt payment, the Construction Manager shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity, the Construction Manager may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Construction Manager does not provide the Owner the opportunity to participate, then the Construction Manager may only charge the net costs after consideration of discounts and rebates. The Construction Manager shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 [Article purposely left blank].

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager and any cost-reimbursable Subcontractors shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. This requirement also applies to any Subcontractor of any tier that submits a Claim or submits costs for a proposed Change Order. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts,

including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six years after Final Acceptance, or for such longer period as may be required by law. The Construction Manager and its Subcontractors shall preserve these records for a period of six years after Final Acceptance, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted in compliance with the Contract Documents to the Owner by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. The Construction Manager's submission of an Application for Payment constitutes a certification that the Work represented is current on the Construction Schedule, unless otherwise noted on the Application. The Application shall be in a form acceptable to the Owner.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 11.1.3 Applications for Payment

§ 11.1.3.1 **Draft Application.** Within the first ten (10) days of each month, the Construction Manager shall submit to the Architect and Owner a report on the current progress of the Work, projected to the end of the month, as compared to the Construction Manager's Construction Schedule, an updated Construction Schedule, and a draft, itemized Application for Payment for Work on forms provided by or approved by the Owner. This shall not constitute a payment request. The Construction Manager, the Architect and the Owner shall meet within the next five (5) days or other reasonable time and confer regarding the current progress of the Work, projections, and the amount of payment to which the Construction Manager is entitled. The Architect or the Owner may request the Construction Manager to provide data substantiating the Construction Manager's right to payment as the Owner or the Architect may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and reflecting retainage as provided elsewhere in the Contract Documents. The Construction Manager shall not be entitled to make a payment request, nor is any payment due the Construction Manager, until such data is furnished.

§ 11.1.3.2 **Payment Request.** Within ten (10) days after the Construction Manager, the Owner, and the Architect have met and conferred regarding the updated draft application for payment, and the Construction Manager has furnished all progress information required and all data requested by the Owner or Architect under Section 11.1.3.1 above, and the Construction Manager has submitted current meeting minutes, daily reports, as-built drawings and commissioning logs (if requested) and an updated (bar chart) Construction Schedule, then the Construction Manager may submit a payment request in the agreed-upon amount, in the form of an itemized Application for Payment for Work properly performed during the prior calendar month on a form supplied or approved by the Owner, along with (if so required by Owner) a lien release on a form approved by the Owner from each Subcontractor for whose Work the Owner paid the Construction Manager for the prior month. The Application shall also state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. Any payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 11.1.3.3 **Payment.** See Section 9.6.1 of the revised General Conditions.
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.3.4 **Disputed Amounts.** If the Construction Manager believes it is entitled to payment for Work performed during the calendar month under review, in addition to the agreed-upon amount, the Construction Manager may, also within seven (7) days after the meeting in Section 11.1.3.1, submit along with the approved Application for Payment a separate written payment request specifying the exact additional amount due, the category in the schedule of values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, pursuant to WAC 296-127-320, the Construction Manager and all

Subcontractors shall file with the Owner by the same date certified copies of all payroll records relating to the additional amount sought.

§ 11.1.3.5 Stored Materials. If authorized by the Owner, an Application for Payment may include a request for payment for material delivered to the Project site and suitably stored and for completed preparatory Work. An Application for Payment may include a request for payment for material stored off the Project site if authorized by the Owner in writing and provided that the Construction Manager complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a bonded warehouse that is structurally sound, dry, lighted, secure and suitable for the materials to be stored; temperature conditioned as needed determined by items being stored per manufacturer's recommendations.
- .2 The warehouse is approved in writing by the Owner. The Owner generally will not approve locations beyond a 25-mile radius of the Project absent special circumstances.
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project, clearly labeled and tied to a detailed itemized inventory list).
- .4 The Construction Manager furnishes the Owner a certificate of insurance extending the Construction Manager's insurance coverage for damage, fire and theft to cover the full value of all materials stored, or in transit.
- .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only the Construction Manager's authorized personnel shall have access.
- .6 The Owner shall at all times have the right of access to stored materials in the possession of the Construction Manager.
- .7 The Construction Manager assumes total responsibility for the stored materials.
- .8 The Construction Manager furnishes to the Owner proofs of title bearing the Owner's name, satisfactory evidence that the Construction Manager has paid for the materials in question, certified lists of materials stored, bills of lading, invoices and other information as may be required, and shall also furnish notice to the Owner when materials are moved from storage to the Project site.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit the reports required in Section 3.3 and its current detailed computerized substantiation (such as a detailed job cost report) and lien releases (if required by Owner); the Construction Manager shall also submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence if required by the Owner or Architect. The Construction Manager may be required to account on a monthly basis as part of its Application for Payment for the Cost of the Work for certain portions of the Project that the Owner defines prior to setting the GMP – such Costs of the Work will include allocation of Specified General Conditions as well as building system and other shared costs. Upon request, the Construction Manager shall demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 11.1.4.1 As a part of its Application for Payment, the Construction Manager shall promptly, following the date of execution of the GMP Amendment, prepare a comprehensive list of equipment that it anticipates to use on the Project, whether owned or rented. The Construction Manager shall maintain and submit to the Owner monthly a detailed equipment inventory of all equipment it has purchased and charged as a Cost of the Work or job-owned through aggregate rentals and shall prepare an equipment rental report that identifies the equipment rented for the month and identifies the source of the rented equipment. The inventory shall include (1) the original acquisition cost and date, (2) the Owner-approved fair market value of the equipment when first used on the Project, and (3) the final disposition.

§ 11.1.5 At least fourteen (14) days before the first Application for Payment, the Construction Manager shall submit to the Owner and Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. These schedules, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee, Negotiated Support Services, Specified General Conditions, and Contingency shall be shown as single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the revised General Conditions, subject to Change Order approval limits and process defined by the Everett Municipal Code;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner in such documentation;
- .6 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment or the Owner has withheld payment as provided in Section 9.5 of the revised General Conditions; and
- .7 Subtract the statutory retainage of five percent (5%) of the completed Cost of the Work (items .1 - .6 above) as a fund for the protection and payment of the claims of any person or entity arising out of the Work and the State with respect to taxes, pursuant to RCW 60.28, if a retainage bond is not presented.

§ 11.1.8 [Section purposely left blank]

§ 11.1.9 Except with the Owner's prior approval in writing, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 11.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect, Project Manager, and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect, Project Manager, or Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect, Project Manager, or Owner has made exhaustive or continuous on-site inspections; or that the Architect, Project Manager, or Owner has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner. Payment by the Owner shall not constitute final approval of the Work done or the amount due.

§ 11.1.11 The Construction Manager shall obtain Affidavits of Wages Paid from each Subcontractor of any tier within fourteen (14) days of each Subcontractor's completion of its Work on the Project.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, except for statutory retainage, shall be made by the Owner to the Construction Manager within 30 days of the Owner's Final Acceptance of all the Work under the Contract, which shall occur when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of the revised General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work (including final accountings from any cost reimbursable Subcontractors) and a final Application for Payment;
- .3 Final Completion has been achieved;
- .4 a final Certificate for Payment has been issued by the Architect;
- .5 Final Acceptance has been approved by the Everett City Council; **and**
- .6 the requirements for Final Acceptance in the revised General Conditions are met.

The Owner's final payment to the Construction Manager shall be made in accordance with the Contract Documents.

§ 11.2.2 The Owner or Owner's auditors will review and report in writing on the Construction Manager's final accounting (including the final accounting of any mechanical and/or electrical subcontracts under RCW 39.10.385) within 30 days after delivery of the final accounting to the Project Manager, Architect and Owner by the Construction Manager. Based upon such Cost of the Work as the Owner or Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 11.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner or Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the revised General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the revised General Conditions. Neither the Architect nor the Owner is responsible for verifying the accuracy of the Construction Manager's final accounting. The Owner's final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of this Contract.

§ 11.2.3 If the Owner or Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to invoke the dispute resolution procedure of Article 15 of the revised General Conditions. Commencement of the dispute resolution procedure for the disputed amount shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to commence the dispute resolution procedure within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the undisputed amount in the final Application for Payment.

§ 11.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 7.1.1 and not excluded by Section 7.9 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 6.1.7, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 12 DISPUTE RESOLUTION

All Claims shall be brought and resolved in accordance with Article 15 of the revised A201 General Conditions.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017, as revised.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 If the Owner terminates the Contract pursuant to Section 13.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the

Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and
- .4 Adjust for statutory retainage in accordance with RCW 60.28.

§ 13.1.4 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.4.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017, as revised.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, as revised, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as revised, shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017, as revised.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, as revised, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner’s convenience.)

None

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as revised; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, as revised, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017, as revised, or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, as revised, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 Permits, Fees and Notices

§ 14.2.2.1 The Owner will obtain and pay only for the initial building permit and fees. The Construction Manager shall obtain all additional permits and licenses necessary for the execution of the Work and pay all permit, utility, miscellaneous, and ancillary fees required. The costs of such permits and licenses shall be as an allowance in the Negotiated Support Services, except for Subcontractor permits, fees, and licenses which costs shall be included within the subcontract bid packages.

§ 14.2.2.2 The Construction Manager shall coordinate and schedule all Work with permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Construction Manager shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority as necessary to timely obtain and coordinate permits, utility and other such connections. The Construction Manager shall obtain all permit renewals during the course of the Work.

§ 14.2.2.3 The Construction Manager will be responsible for providing information to the Department of Labor and Industries and/or local jurisdiction.

§ 14.2.2.4 The Construction Manager will be responsible for any renewals of and penalties arising from the building permit and other permits and governmental fees.

« »

§ 14.3 Insurance and Bonds

§ 14.3.1 The Construction Manager shall maintain the insurance and provide bonds as set forth in the Contract Documents, including Article 11 of the revised General Conditions. All of the costs for the insurance required by Section 11.1 of the revised General Conditions and the bond required by Section 11.4 of the revised General Conditions are included within the Construction Manager’s Fee and are not separately reimbursable.

§ 14.4 Project Information The Construction Manager and all Subcontractors shall submit Project information required by the state Capital Projects Advisory Review Board.

§ 14.4 RCW 35.22.650. Contractor Manager agrees that the Contractor Manager shall actively solicit the employment of minority group members. Contractor Manager further agrees that the Contractor Manager shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor Manager shall furnish evidence of the Contractor Manager 's compliance with these requirements of minority employment and solicitation. Contractor Manager further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The Contractor Manager shall be required to submit evidence of compliance with this section as part of the bid.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, as revised, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A201™-2017, as revised, General Conditions of the Contract for Construction
- .4 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- Exhibit 1: RFP, RFPF, GC/CM’s Response to RFP, GC/CM’s Final Proposal Form
- Exhibit 2: Preconstruction Services and Work Plans and Rates
- Exhibit 3: GC/CM’s Construction Schedule Requirements
- Exhibit 4: Cost Responsibility Matrix
- Addenda ___ through ___

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

Cassie Franklin, Mayor

Attest

Office of the City Clerk

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

Approved as to Form

Office of the City Attorney

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Everett Municipal Building – Public Works Tenant Improvements

THE OWNER:

(Name, legal status and address)

City of Everett
Parks & Facilities Dept.
802 E. Mukilteo Blvd., Suite 100
Everett, WA 98203

THE ARCHITECT:

(Name, legal status and address)

Mackenzie Engineering, Inc.
500 Union Street #410
Seattle, WA 98101

TABLE OF ARTICLES

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner or Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

In the event of a conflict or discrepancy among or in the Contract Documents that cannot be resolved by interpreting the Contract Documents as a single, integrated document and giving effect to each provision therein, interpretation shall be governed in the following priority, with an Addendum or a revision to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

- .1 Agreement (revised A133-2019, including exhibits) (written amendments having precedence)
- .2 Any Supplementary Conditions
- .3 These revised General Conditions (A201-2017)
- .4 Any Special Conditions
- .5 Specifications
- .6 Drawings (large-scale having precedence over small-scale, and written or computed dimensions having precedence over scaled dimensions)
- .7 RFP and RFFP Documents (with Owner-issued documents having precedence)
- .8 Material and Systems Schedules

In the event that Work is shown on Drawings but not contained in Specifications, the Work as shown shall be provided at no change in the GMP or Contract Time, according to specifications to be issued by the Architect that are consistent with and reasonably inferable from the Work shown on the Drawings.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (although the Owner does not waive any third-party beneficiary rights it may otherwise have as to Subcontractors of any tier), (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction services and administrative procedures required by the Contract Documents, whether completed or partially completed and whether new construction or modification of existing structures, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Where the Work requires construction that modifies or interfaces with existing structures, the Contractor shall ensure that the Work is compatible and interfaces with the as-built conditions of the existing structures.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 [Section Purposely Not Used]

§ 1.1.8 Project Manual

The Project Manual is a volume or volumes usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, Specifications, and other related materials such as construction details and schedules.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, nor shall it remove the Contractor's obligation to complete all of the Work when coordination between the Specifications and the Drawings or coordination between subcontracts is required.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words not defined in the Contract Documents that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If the Contractor discovers that the Specifications, Drawings, or Project Manual fail to particularly describe the material or kind of goods to be used in any place or discovers an inconsistency or ambiguity between the Specifications, Drawings, or Project Manual or an inconsistency or ambiguity arises internally within the Specifications, Drawings, or Project Manual, then the Contractor shall make inquiry of the Architect as to what is best suited. The material that a competent contractor, having participated in a preconstruction phase and following accepted construction industry standards, would use in its place to produce first quality finished Work shall be considered a part of the Contract without adjustment to the GMP or Contract Time. If the Contractor discovers such an inconsistency or ambiguity and fails to notify the Architect, there shall be no adjustment to the GMP or Contract Time.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Sections in this document, (3) the titles of other documents published by the American Institute of Architects, or (4) published codes and standards.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation.

§ 1.5 [Section Purposely Not Used]

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner of this Project is the City of Everett. The Owner shall designate in writing an Owner's representative who shall have the authority to make decisions on behalf of the Owner only to the following extent: Approving details of location; approval of colors and products or materials which meet specifications; making ministerial decisions in administration of the Contract; and the giving of written notice as provided in the Contract Documents. No proposed Change Order or any change of Contract Sum or Contract Time is effective or binding upon the Owner unless and until the Mayor or his or her designee signs it, as authorized by City Council or by ordinance. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.

WAIVERS OF PROVISIONS OF THIS CONTRACT CAN ONLY BE MADE IN WRITING AND ONLY IF THE MAYOR OR HIS OR HER DESIGNEE SIGNS IT, AS AUTHORIZED BY CITY COUNCIL OR BY ORDINANCE. No other person is authorized to grant such waivers on behalf of the Owner. No officer, agent, representative, or employee of the Owner shall be personally responsible for any liability arising under this Agreement.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 The Contractor is responsible to secure and pay for licenses and all permits, subject to Section 3.7.1.

§ 2.2.2 [Section Purposely Not Used]

§ 2.2.3 [Section Purposely Not Used]

§ 2.2.4 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor should assume that the locations of any underground or hidden utilities, active or abandoned underground tanks, plumbing or electrical runs indicated in the survey or Contract Documents are shown in approximate locations, but the Contractor is responsible for making all utility location checks and verifications. The Contractor is responsible for performing all utilities investigation and location work to determine the precise locations thereof. The Contractor shall not damage or interrupt utilities or utilities services of any kind. The Contractor shall bear the risk of loss arising out of its Work which directly or indirectly damages or interrupts any utilities or utilities services, or causes or contributes to damages of any nature, except in the case where the loss resulted because the utility location information provided by Owner or Utility Provider was inaccurate.

§ 2.2.5 The Owner shall, upon reasonable written request, furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly or materially fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of itself or the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of notice from the Owner to commence and continue to make reasonable progress toward the correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In the event such deficiencies threaten the health or safety of the Owner's employees, occupants or the public, or exist within fourteen (14) calendar days of the date on which the Owner is scheduled to occupy or otherwise begin operations at the Project, the Owner may immediately proceed to correct such deficiencies without notice. In either such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses. The right of the Owner to correct the Work pursuant to this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Owner's exercise of its rights under this Section shall not adversely affect any warranties applicable to the Project.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, bonded, and insured in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved or accepted pursuant to Section 3.12.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract and the GMP Amendment by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated its personal observations with the requirements of the Contract Documents. By executing this Contract and the GMP Amendment, the Contractor represents and acknowledges that the GMP is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that it has carefully examined the Contract Documents and the Project site, including any existing structures and access thereto, and any drawings of the existing conditions available from the Owner, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, products, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other foreseeable matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, local regulations, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and season; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor to fully acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the GMP and shall not be the basis of a Claim.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Drawings, Specifications, and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.4, shall take

field measurements and verify any existing conditions, including all general reference points and any interfering existing conditions, related to that portion of the Work, and shall observe any conditions at the site affecting it and shall carefully compare and verify such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. The Contractor shall comply with all applicable federal, state, county and city laws, ordinances, rules and regulations, including, but not limited to, the latest applicable versions of:

- .1 International Building Code (with Washington State amendments);
- .2 Uniform Plumbing Code;
- .3 Uniform Mechanical Code;
- .4 International Fire Code;
- .5 National Electrical Code;
- .6 Washington State Energy Code;
- .7 Washington State Rules and Regulations for Barrier-Free Design;
- .8 Americans With Disabilities Act (ADA);
- .9 Federal and State Safety Codes as adapted and/or modified by State and Local Ordinances;
- .10 [Section purposely not used];
- .11 Any applicable municipal codes.
- .12 All governmental laws, regulations, requirements, and orders relating to COVID-19 applicable to the Work, including without limitation OSHA, L&I or other safety rules relating to COVID-19 and COVID-19 gubernatorial proclamations and orders. These laws, regulations, requirements, and orders are referred to as "COVID-19 Requirements."

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of any design errors or omissions or inconsistencies noted by the Contractor, or clarifications or instructions issued by the Owner or Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit any Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Owner and the Architect. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents or reports referenced therein without such notice to the Owner and the Architect, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

§ 3.2.5 Any investigations of hidden or subsurface conditions have been made for design purposes. The results of these investigations may be bound into the Project Manual or otherwise available for the convenience of the Contractor and the Sub-bidders but are not a part of the Contract Documents unless specifically so indicated. While the Contractor may reasonably rely upon such investigation results, there is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. The Contractor is solely responsible for reasonably interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location.

§ 3.2.6 The Contractor shall do no work, except work related to means and methods and temporary controls, without applicable Drawings, Specifications, or written modifications or, where required, Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, assembly details and procedures, and for coordinating all portions of the Work under the Contract. The Contractor shall review any such specific instructions concerning construction means, methods, techniques, sequences, assembly details or procedures, shall evaluate the jobsite safety thereof, and shall advise the Owner and Architect (a) if the specified instruction or procedure deviates from what the Contractor considers to be good construction practice or jeopardizes jobsite safety, (b) if following the instruction or procedure will negatively affect any warranties, or (c) if the Contractor objects to the instruction or procedure. The Contractor shall propose alternative instructions or procedures acceptable to the Contractor, for which no increase in the GMP or Contract Time will be made. The Contractor shall not proceed with such alternative instruction or procedure without the written acceptance of the Owner, and the Contractor shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's principals, agents, employees, Subcontractors of any tier and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors of any tier.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no condition shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related Work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times. The Contractor shall require its Subcontractors of any tier to be familiar with all aspects of the Contract Documents related to their Work. The Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive its Work and has notified the Contractor (who shall notify the Owner and Architect in writing) of any defects or imperfections in preparatory work that will, in any way, affect satisfactory completion of the Work. The lack of such notification, or the failure of the Contractor to inspect such portions of the Work, shall constitute an acceptance of preparatory work and a waiver of any later claim of defect therein.

§ 3.3.4 The Contractor shall perform such detailed examination, inspection and quality control and surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the then current issue of the Drawings, Specifications, and accepted Shop Drawings. The Contractor shall be responsible for examination, inspection and quality control and surveillance of all Work performed by any Subcontractor of any tier. The Contractor shall determine when it is necessary to perform, and shall perform, tests (as a Cost of the Work and in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents. The Contractor shall report known errors, omissions, or inconsistencies to the Architect and the Owner before commencing Work. Inspections by or on behalf of the Owner shall not constitute approval of the Work.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of installation so as to coordinate all Work without delay or revision. The Contractor is responsible for coordination of all the Drawings related to specific locations. The Contractor shall establish and maintain existing lot lines, restrictions, existing survey markers of any kind, and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to initially lay out and be responsible for the accuracy of the Work and to create and submit to the Owner an as-built survey and accurate utility as-builts for use by the Owner. The Contractor shall provide an as-built surveyed site plan noting all site improvements, including but not limited to building corners, storm, sewer, drains, grade and invert elevations, edge of pavement, signs, markings, back of curb, and sidewalks.

§ 3.3.6 The Contractor's superintendent shall provide a Daily Report to the Owner for each work day during the Contract time, whether or not any Work is performed, and for each non-work day in which Work is performed on

the site. The Daily Report shall be completed on a form approved by the Owner and Architect, and submitted to the Owner and the Architect on the work day following the day covered in the Report. Some of the required report forms are included in the Specifications.

§ 3.4 Labor and Materials

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

§ 3.4.2 After the GMP Amendment has been executed, the Owner and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents only as described in the Specifications and following the procedures of the Contract Documents. The written request must include the specifications for the material or product and any proposed change in the GMP or Contract Time. The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified (or if not equal or better in all respects, the Contractor shall identify such deficiencies), that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the GMP or Contract Time, that it has coordinated with affected Subcontractors, and the substitution will not impact other parts of the Work, and that it will coordinate the installation of the substitution if accepted and make all associated changes in the Work.

§ 3.4.3.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work, including observance of badging, drug testing and all smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of personnel at the Owner's property and at the Project site. Upon the Owner's request and for any employee working on the Project, the Contractor shall provide the Owner with background checks on each of its employees and of the employees of all Subcontractors of any tier. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable without change in the GMP or Contract Time. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the GMP or Contract Time, the Owner may provide written notice requiring the Contractor to remove from the Work any employee or other person carrying out the Contract the Owner considers objectionable. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 3.4.4 Prevailing Wages

§ 3.4.4.1 Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries. The prevailing rate of wage shall be the rate of hourly wage, usual benefits, and overtime paid in the locality to the majority of workers, laborers, or mechanics, in the same trade or occupation. The locality for the purposes of the prevailing rate of wage shall be the largest city in the county wherein the physical work is being performed. See RCW 39.10.010. The schedule of the prevailing wage rates for the locality or localities where this contract will be performed is attached to the executed contract and made a part of the Contract Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the Bid Date for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the Owner's office with advance notice, and a hard copy will be mailed upon request. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the GMP. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing Address: Department of Labor and Industries
Prevailing Wage Office
PO Box 44540
Olympia, WA 98504-4540
Telephone: 360-902-5335
Facsimile: 360-902-5300
Website: www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp

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

§ 3.4.4.3 The Contractor must have received training on the requirements related to public works in prevailing wage under Chapters 39.04 and 39.12 RCW. The Contractor must designate a person or persons to be trained on 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. Contractors 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 requirement. The Department of Labor and Industries maintains records of entities that have satisfied the training requirement or are exempt and makes the records available on its website. The Owner may rely on the records made available by the Department regarding satisfaction of the training requirements or exemption.

§ 3.4.4.4 The Contractor shall defend, indemnify and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of Chapter 39.12 RCW ("Prevailing Wages on Public Works") and Title 51 RCW ("Industrial Insurance"), including without limitation RCW 51.12.050.

§ 3.4.5 The Contractor shall comply with all applicable provisions of Chapter 49.28 RCW ("Hours of Labor").

§ 3.4.6 Pursuant to Chapter 49.70 RCW ("Worker and Community Right to Know Act") and WAC 296-307-560 *et seq.*, the Contractor shall provide the Owner copies of and have available at the Project site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project site. Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulation.

§ 3.4.7 All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards. At the completion of the Project, the Contractor shall submit Certificates of Asbestos-Free and of Lead-Free Materials, certifying that all materials and products incorporated into the Work meet the requirements of this section.

§ 3.4.8 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony.

§ 3.4.9 Materials shall conform to the manufacturer's standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturer's instructions, specifications and directions. The Contractor shall, if required in writing by the Owner or Architect, furnish satisfactory evidence regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Contract Documents.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or explicitly permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. The Contractor's

warranty excludes remedy for damage or defect caused by abuse by the Owner, alterations to the Work not executed or supervised by or through the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance, final payment, and the correction period identified in Section 12.2. The Contractor shall collect, assign, and deliver to the Owner any specific written warranties given by others. Warranty language shall comply with the Contract Documents and shall be submitted to the Owner and Architect at least thirty (30) days prior to ordering the warranted material or equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Owner will pay Washington State sales tax through the Contractor in addition to the GMP. Washington State sales tax shall not be included in the GMP. The Contractor shall pay sales, consumer, use, B&O, income, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, as part of the Cost of the Work, the Contractor shall secure and pay for all permits except those explicitly listed as the Owner's responsibility in the A133 Agreement, which include without limitation all fees, licenses, Subcontractor permits and fees including plan check fees for deferred submittals, application fees and review fees for any and all Shop Drawings or bidder designed systems, any inspection fees not covered by the initial building permit fee, including reinspection fees, government fees, Department of Labor and Industries fees, renewals and penalties, and inspections by government agencies necessary for proper execution and completion of the Work that are legally required at the time bids are received or negotiations concluded. The Owner will not pay, and the Contractor will not be reimbursed, for license fees or any renewals or penalties.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall coordinate and schedule all Work with entities having jurisdiction over the site, permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Contractor shall keep the Owner informed of communications from these authorities and utilities. The Owner will assist the Contractor with such coordination and scheduling, but the Owner is not responsible for any delays caused by such permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority. The Contractor shall be responsible for providing all information and documents to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority within 30 days after issuance of the Notice to Proceed as necessary to obtain and coordinate permits, utility and other such connections. The Contractor shall obtain all permit renewals during the course of the Work. The Contractor is responsible for providing information and fees to the Department of Labor and Industries.

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in any soils reports made available to the Contractor by the Owner or in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause

an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the GMP or Contract Time, or both, consistent with the requirements of the Contract Documents. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing. Any Claim of the Contractor arising from the Owner's determination or recommendation shall be made in accordance with the dispute resolution procedure in Article 15. No increase to the GMP or the Contract Time shall be allowed if the Contractor knew or reasonably should have known of the concealed conditions prior to its executing the GMP Amendment.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall immediately notify the Owner and Architect by telephone and email. Upon receipt of such written notice, the Owner and Contractor shall promptly cooperate with each other and take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations that may affect the human remains, burial markers, archaeological sites or wetlands until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the GMP and Contract Time, if any, arising from the existence of such remains or features shall be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the GMP all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has made reasonable and timely written objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, except sale tax on progress payments, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and
- .3** whenever costs are more than or less than allowances, the GMP shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual, reasonable costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2, except where the allowance is based upon a unit price specified in the Agreement.

Allowances are defined in the Contract Documents due to the uncertainty in the scope, price and quantity of the Allowance items at the time the Contract was executed. Whenever actual costs are more or less than the Allowance, the GMP will be adjusted accordingly by Change Order. The Contractor must provide the Owner with written notice of its intent to exceed an Allowance amount, with estimates and justification (providing the Owner with the opportunity to approve or reject the excess costs) before exceeding an Allowance amount.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with sufficient time to avoid delay in the Work.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent, computer literate, and experienced project manager, project engineer, superintendent and necessary assistants as identified in the Contractor's proposal who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The project manager, project engineer, and superintendent shall be employees of the Contractor and shall remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, or termination of the Contract in accordance with the Contract Documents or unless Final Completion is attained.

§ 3.9.3 Within ten (10) days after issuance of the Notice to Proceed, the Contractor shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent, project manager, and project engineer. The Owner or Architect may reply within a reasonable time to the Contractor, stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent, project manager, or project engineer, or (2) that the Owner or Architect requires additional time for review. Failure of the Owner or Architect to reply within a reasonable time shall constitute notice of no reasonable objection. Within ten (10) days after issuance of the conditional Notice to Proceed, the Contractor shall also furnish to the Owner and Architect:

- .1 A chain-of-command organizational chart which includes all supervisory personnel, including the project manager, the project engineer and the superintendent, assistant superintendent and lead foreman, that the Contractor intends to use on the Work. The chart shall specify any limits of authority for each person, including any limitation on his or her ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, Contract Time, and issues affecting quality of the Work.
- .2 Complete resumes, including all past and current projects, for the project manager, project engineer, and superintendent. The Owner intends to review the resumes and verify references and reserves the right to reject personnel reasonably believed to be unsuitable or incompatible for the Project. The Contractor shall replace any rejected personnel with an agreeable replacement at no increase in the GMP or Contract Time.
- .3 A list of telephone numbers for all key personnel of the Contractor and its principal subcontractors for purposes of contacting personnel after hours in the event of an emergency. The list shall be periodically updated as necessary to ensure the Owner has the most current information.

§ 3.9.4 The Contractor shall not employ a proposed superintendent, project manager, or project engineer to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent, project manager, project engineer, or any individual identified in the Contractor's RFP response without the Owner's consent, which shall not unreasonably be withheld or delayed. The Contractor shall have available for work on site experienced, skilled workers, such as carpenters, and laborers, to perform work as needed. The Owner reserves the right, after consultation with the Contractor, to require the Contractor to replace a superintendent, project engineer, project manager or other assistants if the Owner determines that such replacement is in the best interests of the Project. The Owner shall exercise such right in a reasonable manner. The Owner shall be entitled to exercise the same rights concerning any replacement.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract and again following execution of the Contract, shall prepare and submit for the Owner's and Architect's information a preliminary Contractor's construction schedule for the Work consistent with the requirements of the Contract Documents. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall allocate in the schedule of values a separate line item in the amount of at least one-half of one percent (0.5%) of the GMP for scheduling, which shall cover both the initial schedule and all monthly updates. The Contractor shall request payment for this line item with each Payment Application, based upon the percentage completion of the Project. For any month that the Contractor fails to submit an updated schedule, the Contractor shall not be entitled to any payment for scheduling for that month, and the percentage of the scheduling line item represented by that month's percentage of completion of the Work shall be permanently deducted from the GMP by Change Order

§ 3.10.1.1 The Contractor shall promptly notify the Owner and Architect in writing of any proposed change in the Project Schedule or the Contract Time or of any event which could delay performance of any item of the Work, stating the cause of the delay, expected duration of the delay, the anticipated effect of the delay on the Project Schedule, and the action being taken to correct the delay. Notification of potential delay does not constitute a change in the Contract Time; only a Change Order signed by the Owner can amend the Contract Time. The Contractor shall comply with Article 15 with regard to any delays that it believes are the responsibility of the Owner or are otherwise the subject of a Claim for additional Contract Time.

§ 3.10.1.2 If any Project Schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the Dates of Substantial Completion established in the Contract Documents (as the same may be extended as provided in the Contract Documents), the Contractor shall submit to the Architect and the Owner for their review and approval a narrative description of the means and methods which the Contractor proposes to use to expedite the progress of the Work to ensure timely completion of the various phases of the Work and the Work as a whole. Regardless of the cause of any delay, the Contractor shall exercise reasonable efforts to bring the Project back into compliance with the Project Schedule.

§ 3.10.1.3 To the extent that the Contractor or any Subcontractor or material supplier of any tier is responsible for the delay, the Contractor shall take all necessary action to bring the Project back into compliance with the Project Schedule, including without limitation increasing the number of personnel on the Project and implementing overtime and double shifts.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's approval. The Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and/or Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in GMP or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect and shall promptly notify the Owner of any substantial deviations from those schedules. The Contractor's Construction Schedule shall be based upon a critical path method ("CPM") analysis of construction activities and sequence of operations needed for the orderly performance and completion of all separable parts of the Work, in the form of a precedence diagram and activity listing and time-scaled, all in accordance with the Contract and within the Contract Time. The Contractor shall utilize scheduling software for its CPM scheduling. The Schedule shall be resource loaded and provided to the Owner in electronic, readable format. It shall include the Date of Commencement, any milestone dates identified in the Specifications, the Date(s) of Substantial Completion, and the Date(s) of Final Completion in accordance with the Contract Documents. The Schedule shall be updated monthly and submitted with the Contractor's Application for Payment. The Critical Path shall be clearly indicated on the Contractor's Construction Schedule.

§ 3.10.4 The Contractor shall not be entitled to any adjustment in the Contract Time, the Contractor's Construction Schedule, or the GMP, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Contractor's Construction Schedule. To ensure that the Owner is substantively aware and effectively able to mitigate any Project delays, the Contractor shall not be entitled to any extension of time, compensable or otherwise, for any delay that occurred during any time the Contractor has not timely submitted an updated Construction Schedule as required by the Contract Documents.

§ 3.10.5 The Contractor shall attend and participate in and ensure applicable Subcontractors of any tier attend and participate in:

- .1 A preconstruction meeting;
- .2 Regular weekly on-site Project status meetings scheduled by the Owner or Architect to review progress of the Work, to discuss the Contractor's progress reports, to obtain necessary Owner's or Architect's approvals, and generally to keep the Owner and Architect informed and involved in the progress of the Project; and
- .3 Other meetings scheduled from time to time by the Owner or by the Architect to review progress of the Work and other pertinent matters.

§ 3.10.6 Should the Contractor fail to meet any scheduled date as shown, the Contractor shall, upon request, be required at its own expense to submit within ten (10) days of the request a revised Progress Schedule and at its own expense to increase its work force and working hours (*e.g.*, through weekends, overtime and additional shifts) to bring the actual completion dates of the activities into conformance with the Progress Schedule. The Contractor shall also submit a revised Progress Schedule at its own expense (a) with each of its applications for payment and (b) within ten (10) days of notice from the Construction Project Manager or Architect that the sequence of work varies significantly from that shown on the Progress Schedule. The revised Progress Schedule will be reviewed at

the construction site one (1) week prior to the due date of the Contractor's monthly application for payment. If requested by the Owner or Construction Project Manager, the Contractor shall provide copies of two (2) tabular reports: (a) a total float report clearly indicating the current critical path through project completion, and (b) a report of activity sorted by early start dates commencing with the previous update and including all undated activities during the previous month. Actual progress of the previous month will be recorded and incorporated into the update. The Owner may withhold any progress payment until such time as the Contractor has provided an approved revised Progress Schedule in a form satisfactory to the Construction Manager and Architect.

§ 3.10.7 The activities defined in the Contractor's Progress Schedule shall represent the planned durations in anticipation of normal manpower and equipment utilization and durations of whole working days. No activity duration shall exceed fifteen (15) working days unless approved by the Owner for non-construction activities such as procurement, delivery or submittal activities. All durations shall be determined based upon resource planning under contractually defined onsite work conditions. All durations shall be of whole working days. In calculating activity durations, normal inclement weather shall be considered. The Contractor shall schedule the Work to minimize the effect of weather. The Contractor shall also protect the Work site from the effects of weather or take other necessary measures such that the Work can be completed within the time established in the Contract and include these provisions in the Schedule as appropriate.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The location of all existing or new hidden piping, valves, conduit, cabling and utilities, as located during the course of construction, shall be appropriately marked until the actual field location dimensions and coordinates are incorporated on the as-built drawings, and mechanical and electrical deviations and changes shall be included. The documents shall include all Architectural, Mechanical, Electrical, Structural, Landscape, and Civil as-built drawings, whether changes occur or not, using Owner-approved CAD software. These documents, as well as the approved permit set of plans, shall be available to the Architect and Owner at the site and reviewed with them on a weekly basis. Upon Final Completion of the Work, the Contractor shall transfer all as-built information in a clear and legible manner as described in the Contract Documents and in compliance with all requirements of local governmental entities, shall certify in writing that these documents reflect complete and accurate "as-built" conditions and shall deliver the following in a clear, clean and legible manner and in compliance with all requirements of local governmental authorities: (i) complete, integrated copies of the documents in both paper form in good condition and in electronic form in the same format as originally created by the Architect; (ii) the approved permit set of plans; and (iii) the full-size record documents, Shop Drawings, Specifications, Addenda, maintenance manuals and warranties to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Satisfactory maintenance of up-to-date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples and/or assemblies or mock-ups that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is for the Contractor to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review and acceptance or approval of such submittals by the Owner or Architect is subject to the limitations of Section 4.2.7 and shall not constitute an approval or acceptance of the Contractor's means and methods or a waiver or modification of any requirement of the Contract Documents. Informational submittals upon

which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be (but are not required to be) returned by the Owner or Architect without action.

§ 3.12.5 The Contractor shall be responsible for tracking the status of submittals. The Contractor shall review for compliance with the Contract Documents, note any deviations from the Contract Documents, approve in writing, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule accepted by the Owner and Architect or, in the absence of an accepted submittal schedule, with reasonable promptness and frequency and in such sequence and uniform flow rate consistent with the submittal schedule as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall notify the Owner and Architect of any expedited review required. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action, which will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall inform the Architect in writing if expedited review is requested or if there is any deviation in the Shop Drawings, Product Data, or Samples from the requirements of the Contract Documents. So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated work shall be submitted at approximately the same time. Unless otherwise directed in writing, the Contractor shall submit one reproducible copy and eight (8) black line print copies to the Architect for its use and distribution. The Architect will retain the reproducible copy. The Contractor shall keep accurate records of the receipt, review and delivery of all submittals and shall submit to the Owner reports every other week on the status of their review, identifying the location and the causes of any failure to promptly receive such submissions and suggesting responsibility.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

- .1** Each submittal shall bear a stamp or specific written indication that the Contractor has satisfied its responsibilities under the Contract Documents with respect to the review of the submission. The Contractor's superintendent must initial each submittal. Submittals that are simply passed through by the Contractor's clerical staff are not sufficient to meet these requirements.
- .2** Each submittal shall be accompanied by a completed Submittal Cover Sheet, as included in the Project Manual or provided by the Architect, which shall clearly identify applicable Specification Section and paragraph number(s), material, supplier, pertinent data such as catalog numbers, and the use for which it is intended.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review and acceptance of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and no exceptions taken by the Architect.

§ 3.12.8 The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval, review or acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance of the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval, review or acceptance thereof. Any corrections or modifications to Shop Drawings made by the Architect shall be deemed accepted by the Contractor, without change in GMP or Contract Time, unless the Contractor provides the Architect with written notice at least three (3) working days before commencing any Work from such Shop Drawings and complies with the change procedures in the Contract Documents. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected submittal without change in the GMP or Contract Time.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval or acceptance of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to Section 4.2.7, the Architect will review, accept or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

Any mechanical systems shown in the Drawings are diagrammatic. (Other Drawings may also be diagrammatic.) The Contractor shall provide dimensioned Shop Drawings and details for all plumbing piping, ductwork, heating system piping, underground hot water piping, hot water boilers, and accessories to indicate complete systems. Shop Drawings shall be to 1/4" = 1'-0" minimum scale in all mechanical rooms, boiler rooms, as well as where accuracy or location is necessary for coordination or installation purposes. Ductwork Shop Drawings shall include a separate drawing to not less than 1/4" = 1'-0" scale showing all duct penetrations through structure (floors, roof, and walls) dimensioned, and all equipment locations, weights and pad details for all HVAC equipment. Critical dimensions of all equipment pad, and pipe or duct penetrations through structure shall be included.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, permits, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Materials and equipment on site shall be used directly in the Work and not stored on site after their use is complete. There shall be no use of existing on-site facilities (parking, toilets, etc.) without the Owner's prior approval. Portions of the site may be occupied and in use during construction. The Contractor is responsible to coordinate its Work with any such occupation or use at no increase to the GMP or Contract Time and at no disruption to the occupancy or use.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 Existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and it shall pay for such work at no change in the GMP or Contract Time.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area, including roads, free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall furnish portable containers on site for use by all trades. At the Owner's request and, in any event, at the completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor for any cleanup costs. The Contractor shall only use waste receptacles provided by the Contractor and shall appropriately dispose of any waste material off site.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 Contractor will defend, indemnify and hold harmless the Owner from any and all Claims arising out or relating to any acts, errors, omissions, or conduct by Contractor in connection with its performance of this Contract, including without limitation (and without limiting the generality of the foregoing) all Claims resulting from Contractor's performance of, or failure to perform, its express and implied obligations under the Contract. The Contractor will defend and indemnify and hold harmless the Owner whether a Claim is asserted directly against the Owner, or whether a Claim is asserted indirectly against the Owner, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the Owner. The amount of insurance obtained by, obtainable by, or required of the Contractor does not in any way limit the Contractor's duty to defend and indemnify the Owner. The Owner retains the right to approve Claims investigation and counsel assigned to said Claim and all investigation and legal work regarding said Claim shall be performed under a fiduciary relationship to the Owner. This Section is in addition to any other defense or indemnity or hold harmless obligation in the Contract Documents.

§ 3.18.2 The Contractor's obligations under this Section shall not apply to Claims caused by the sole negligence of the Owner. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Contractor and (b) the Owner, then the Contractor's obligations under this Section shall be only to the extent of Contractor's negligence.

§ 3.18.3 As used in this section: (1) "Owner" includes the Owner's officers, employees, agents, and representatives; (2) "Claims" include all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether threatened, asserted or filed against the Owner, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Contractor" includes Contractor, its employees, agents, representatives and subcontractors. If, and to the extent, Contractor employs or engages subcontractors, then

Contractor shall ensure that each such subcontractor (and subsequent tiers of subcontractors) shall expressly agree to defend and indemnify and hold harmless the Owner to the extent and on the same terms and conditions as the Contractor pursuant to this section.

§ 3.18.4 Contractor waives any right of contribution against the Owner. It is agreed and mutually negotiated that in any and all claims against the Owner, its agents or employees, the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts. Contractor's and Owner's signatures hereto indicate specific waiver of Contractor's industrial insurance immunity in order to fulfill the indemnities hereunder. Solely for the purpose of indemnification and defense as provided in this Contract, the Contractor specifically waives any immunity under the State Industrial Insurance Law, Title 51 RCW. The Contractor expressly acknowledges that this waiver of immunity under Title 51 RCW was the subject of mutual negotiation and was specifically entered into pursuant to the provisions of RCW 4.24.115..

§ 3.19 Substitutions

§ 3.19.1 Substitution requests after the Contract has been executed are disfavored; the Owner and the Architect may consider a written request for the substitution of material or products only under exceptional circumstances as specified in the Contract Documents. The written request must include all information designated in the Contract Documents, including without limitation the specifications for the material or product and any proposed change in the GMP or Contract Time.

§ 3.19.2 By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the GMP or Contract Time, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative and does not include any employees of the Owner.

§ 4.1.2 [Purposely not used].

§ 4.1.3 [Purposely not used].

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will assist in providing administration of the Contract as described in the Contract Documents and will be an Owner's representative but not the Owner's agent during construction until the date the Architect issues the final Certificate for Payment and from time to time during the one (1) year period for correction of Work. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. Neither the Architect nor the Owner's Project Manager is the agent of the Owner and neither is authorized to agree on behalf of the Owner to changes in the GMP or Contract Time, nor to waive provisions of the Contract Documents, nor to direct the Contractor to take actions that change the GMP or Contract Time except that the Owner's representative may issue Construction Change Directives in accordance with Section 7.3.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with and to keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Architect nor the Owner will have control over, charge of, or

responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived. The Contractor shall reimburse the Owner for any amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Architect nor the Owner will have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communication have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect and Owner's Project Manager in all communications that relate to or affect the Architect's services or professional responsibilities or matters arising out of or relating to the Contract. The Contractor shall simultaneously provide the Owner with a direct copy of all written communications to the Architect, including all notices, requests, transmittals, substitutions, RFIs, Claims, and potential changes in the GMP or Contract Time but not including Shop Drawings, Product Data or Samples. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor except as provided in the Contract Documents. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's observations and evaluations of the Work and the Contractor's Applications for Payment, the Architect will make recommendations to and otherwise assist the Owner to determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 Both the Architect and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Section 13.5, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner or their representatives to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, accept or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, Samples, and other submittals required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with reasonable promptness in accordance with the submittal schedule accepted by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, weights or gauges, fabrication processes, coordination with the work of other trades, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval or acceptance of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor shall

clearly note, and the Architect shall not be required to search out, any deviations from the Contract Documents not clearly identified by the Contractor, nor shall the Architect be required to review partial submissions of those for which submission for correlated items have not been received. Regardless of how a submittal is marked, the Contractor should not presume that the Architect has reviewed a submittal in every aspect.

§ 4.2.8 The Architect or Owner will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will make observations, make recommendations and otherwise assist the Owner to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents and pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, Drawings and Specifications and any modifications thereto on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.11, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance of the Contract by both Owner and Contractor, will not show partiality to either, and will not be liable to the Contractor for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and agreeable to the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within a reasonable time and any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or to supply materials or equipment. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 A Subcontractor of any tier is a Subcontractor or a Sub-subcontractor.

§ 5.1.4 The designation of terms in this Article 5 is not meant to change or alter the definitions contained in Chapter 60.28 RCW (“Lien for Labor, Materials, Taxes on Public Works”), Chapter 39.12 RCW (“Prevailing Wages on Public Works”), or other statutory definitions of a subcontractor for the purposes of such statutes.

§ 5.1.5 Responsible Subcontractor: This designation reflects a person or entity who is qualified and can document training, experience, license, and special certification to perform work, supply materials, or provide equipment required and specified by the Contract Documents.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Within ten (10) days after issuance of the Conditional Notice to Proceed, the Contractor shall notify the Owner and Architect in writing of all persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design (i.e., at least two percent (2%) of the GMP), as well as the proprietary names and the suppliers of the principal items or systems of materials and equipment proposed for the Work. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specification Sheets, and state the Work category followed by the name of the Subcontractor and/or fabricator (or “Contractor” where the portion of the Work is by the Contractor’s own forces), including the address, telephone number, individual name of the project contact, and his or her email address. The list shall be accompanied by evidence of any qualifications required within the technical sections of the Project Manual and satisfactory to the Architect and Owner. The list shall be updated promptly as part of the payment process if additional Subcontractors of any tier are engaged. No action or inaction of the Owner or Architect in response to receipt of the names of the proposed Subcontractors of any tier shall constitute approval of any Subcontractor of any tier or of its performance. The Architect may reply promptly to the Contractor in writing stating whether or not the Owner or the Architect (1) has, after due investigation, reasonable objection to any such proposed person or entity or (2) requires additional time for review. “Reasonable objection” shall include without limitation lack of “responsibility” of the proposed Subcontractor, as defined in RCW 39.26.160(2) or lack of qualification as required within the technical sections of the Project Manual, or as otherwise described in Section 5.2.3. Failure of the Architect to reply promptly shall constitute notice of no reasonable objection. If the Owner makes a reasonable objection, the Contractor shall replace the Subcontractor with no increase to the GMP or Contract Time. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work and compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made a timely and reasonable objection as not “responsible.”

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor or a Subcontractor as not “responsible,” the Contractor or Subcontractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was qualified, “responsible,” and reasonably capable of performing the Work, the GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the GMP or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting qualified names as required, and no increase in the GMP or Contract Time shall be allowed for such change (1) if the Owner reasonably concludes that a proposed Subcontractor of any tier has materially failed to perform satisfactorily (such as causing a material delay) on one or more projects for the Owner within three years of the bidding date or is otherwise not “responsible” as defined in the Contract Documents, the bidding documents, and RCW 39.26.160(2) and Chapter 39.04 RCW; (2) if the proposed Subcontractor is not qualified as required within the technical sections of the Project Manual; or (3) if the proposed lower-tier Subcontractor is different from the entity listed with the first-tier Subcontractor’s Bid. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being performed in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. This removal shall not relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the GMP and Contract Time, nor shall the Owner be obligated to so request.

§ 5.2.5 The Contractor shall verify responsibility criteria for each first-tier Subcontractor. A Subcontractor of any tier that engages other Subcontractors must verify responsibility criteria for each of its lower-tier Subcontractors. Verification shall include that each Subcontractor of any tier, at the time of subcontract execution, meets the responsibility criteria listed in the bidding documents for the bid package.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any Subcontractor, and a Subcontractor and any sub-tier Subcontractor, upon request.

§ 5.3.2 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any assigned Subcontractors. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship. The Owner shall provide to the Contractor copies of any written Owner-Supplier agreements to any early procurement contracts, to the extent that such agreements are identified in the Specifications.

§ 5.3.3 The Contractor agrees to diligently, and using its best efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor of any tier that is defective in material or workmanship or otherwise fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If any Subcontractor of any tier defaults in its obligations to promptly correct any such deficiency, the Contractor shall be responsible for correcting the deficiency.

§ 5.3.4 The Contractor shall provide, and shall cause its Subcontractors of any tier to provide, all required notices and comply with all applicable health and safety laws, rules, regulations, codes and lawful orders of public authorities and of quasi-governmental authorities relating to the Work, including without limitation all OSHA and WISHA requirements, and the Contractor shall, and shall cause applicable Subcontractors of any tier to, indemnify, defend and hold harmless the Owner from and against any and all claims, liabilities, fines and attorneys' fees arising from any failure of the Contractor or a Subcontractor of any tier to have complied with any such requirements in any respect.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner pursuant to Section 14.2 or 14.4 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, but only for events and payment obligations that arise after the date of the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than sixty (60) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.5 Subcontractor Responsibility

§ 5.5.1 The Contractor shall include the language of this Section 5.5 in each of its first tier subcontracts, and shall require each of its Subcontractors to include the same language of this Section 5.5 in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that each Subcontractor meets the Subcontractor responsibility criteria in Section 5.5.2 below. The requirements of this Section apply to all Subcontractors regardless of tier.

§ 5.5.2 At the time of subcontract execution, the Contractor shall verify that each of its first tier Subcontractors meets the following bidder responsibility criteria:

1. At the time of subcontract Bid Submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
2. Have a current state unified business identifier number;
3. If applicable, have:
 - a. Industrial insurance coverage for the Subcontractor's employees working in Washington as required in Title 51 RCW;
 - b. An employment security department number as required in Title 50 RCW;
 - c. A state excise tax registration number as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
5. If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, 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;
6. Within the 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; and
7. Have received training on the requirements related to public works and prevailing wage under in accordance with the requirements of RCW 39.04.350(f), or demonstrate exemption from such requirements.

§ 5.6 Liens

§ 5.6.1 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier) to the extent that the Owner has paid the Contractor for such. The Contractor shall furnish to the Owner such releases of liens and Claims and other documents monthly with its payment application to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor may provide other security acceptable to the Owner, such as a bond, in lieu of paying disputed liens or Claims.

§ 5.6.2 The Contractor shall defend, indemnify, and hold harmless the Owner from any liens, including all expenses and the Architect's and attorneys' fees, except to the extent a lien has been filed because of the failure of the Owner to make a contractually required payment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15, except that the Contractor shall have no Claim for such construction or operations to the extent disclosed in the Bidding Documents or Contract Documents or known to the Contractor prior to execution of the GMP Amendment. The Contractor is also responsible to coordinate its Work with any other entities performing work on or adjacent to the site, such as work in the right of way and work by utility companies, and the Contractor shall incorporate such work into its project schedule.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. If the Contractor receives items from a separate contractor or from the Owner for storage, erection or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse and indemnify the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction of the separate contractor. If such a separate contractor sues or initiates any proceeding against the Owner on account of any damages or delays alleged to have been caused by the Contractor, the Owner shall notify the Contractor. The Contractor shall defend all such proceedings at its own expense, and shall defend, indemnify, and hold the Owner harmless from any damages awarded on such claims, including all attorneys' fees and other costs incurred by the Owner.

§ 6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 Should the Contractor or any of its Subcontractors of any tier cause damage of any kind, including but not limited to delay, to any other contractor or Subcontractor on the Project, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor or Subcontractor by agreement or otherwise to resolve the dispute.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible plus a ten percent (10%) markup on such costs.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor. A Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Owner or Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 A "minor change in the Work" referenced above is a change which has no direct or indirect effect upon the GMP or Contract Time and includes, but is not limited to, a supplemental instruction.

§ 7.1.5 The Owner may request the Contractor via a Change Proposal Request to propose the amount of change in the GMP, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible and within ten (10) days, and shall in good faith specify the components and amount by which the GMP and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Sections 7.1 through 7.7 of the A133 Agreement for the Contractor and Section 7.5 of these General Conditions for Subcontractors of any tier. If the Contractor fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included promptly in a future Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not effectuate the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Architect and the Owner may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

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

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Owner, with assistance from the Architect, and signed by the Owner and Contractor, stating their agreement upon all of the following:

- .1 The change in the Contract Documents, including any change in the Work;
- .2 The amount of the adjustment, if any, in the GMP; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect or the Owner and signed by the Owner or Architect, directing a change in the Work prior to agreement on adjustment, if any, in the GMP or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the GMP and Contract Time being adjusted accordingly. The Owner's use of a Construction Change Directive does not constitute agreement that the directive constitutes a change in the Work, the GMP, or the Contract Time. For any change in the Work, whether initiated by a Construction Change Directive or a Change Order Proposal, the Contractor must submit its proposed price and any proposed extension of the Contract Time to the Owner within ten (10) days of the date of the Construction Change Directive or Change Order Proposal. If the Contractor fails to submit a proposed price and time within this time period, the Owner may establish what it believes to be the fair price of the changed work, and any additional Contract Time, and this price and time submitted by the Owner shall be final and binding upon the parties, as if they had signed a Change Order in this amount, without recourse to submitting any claims or litigation. Payment for any Changes to the Work shall not exceed the labor and equipment indicated on the daily work logs.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the GMP, the adjustment shall be based on one of the following methods or as mutually agreed by the Owner and the Contractor:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be proposed by the Owner and determined in a manner agreed upon by the parties (accompanied by the Contractor's itemized estimate of probable cost) and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor disagrees pursuant to Section 7.3.5, or if cost is to be determined under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs including labor, materials, and subcontract costs. Labor and materials shall be itemized in the manner described in Section 7.5. When major cost items arise from Subcontractors or Suppliers of any tier, these items shall also be itemized, using the approved Change Proposal Detail provided to the Contractor by the Owner. Approval may not be given without such itemization. Failure to provide data within fourteen (14) days of the Owner's issuance of a Constructive Change Directive shall constitute waiver of any Claim for changes in the GMP or Contract Time. Furthermore, the Owner shall have the right to audit the books, records and contracts of the Contractor and of any Subcontractor or Supplier of any tier seeking a change in the GMP. The total cost of any change, including a Claim under Article 15 shall be limited to the reasonable value, as determined by the Owner, assisted by the Architect (subject to appeal through the dispute resolution procedure of Section 15.3), of the items in Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the Architect in writing of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the GMP or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively

be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the larger amount submitted.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the GMP and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a Change Order.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the GMP shall be the largest of (i) the reasonable and prevailing value of the deletion or change, (ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, and provided that any reservations of rights regarding the Construction Change Directive have been initialed by the Owner, amounts not in dispute for such changes in the Work may be included in Applications for Payment, accompanied by a Change Order indicating the parties' agreement with part or all of such costs..

§ 7.3.9 When the Owner and Contractor agree with a determination made by the Architect and the Owner's Construction Project Manager concerning the adjustments in the GMP and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner, with the Architect's assistance, will include the change in the next available Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.10 The Owner's final determination, in consultation with the Architect and the Owner's Construction Project Manager, concerning the adjustments in the GMP and/or Contract Time resulting from a Construction Change Directive constitute an "Event" for the purposes of submitting a Claim under Section 15.2.

§ 7.4 Minor Changes in the Work

The Architect and the Owner have authority to order minor changes in the Work (sometimes called a Design Clarification) not involving adjustments in the GMP or the Contract Time and not inconsistent with the intent of the Contract Documents and do not involve an adjustment in the GMP or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the GMP or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the GMP or Contract Time, the Contractor waives any adjustment to the GMP or extension of the Contract Time.

§ 7.5 Pricing Components

For the Contractor, the value of any changed Work or of any Claim for an increase or decrease in the GMP shall be limited to the Cost of the Work and Fee defined in the revised A133 Agreement. For Subcontractors of any tier, the total cost of any Change in the Work or of any other increase or decrease in the GMP, including a Claim, shall be limited to the following components:

§ 7.5.1 Direct Labor Costs: These are the labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the Change in the Work. The hourly cost shall be based upon the following:

- .1 Basic wages and fringe benefits:** The hourly wage (without markup or labor burden) and fringe benefits paid by the Subcontractor 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 Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Subcontractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Contractor shall provide copies of certified payrolls for itself and Subcontractors of any tier upon the Owner's request.

- .2 Workers' insurances: 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.
- .3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).
- .4 Safety costs not to exceed two percent (2%) of the sum of amounts in .1, .2 and .3 above.

Upon the Owner's request, the Contractor shall substantiate all claimed wage rates and shall provide a breakdown of the various components of the labor costs in a form provided or approved by the Owner.

§ 7.5.2 Direct Material Costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the Change in the Work. The unit cost 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 advance by the Owner. If the Contractor is offered discounts and/or rebates based upon prompt payment, the Contractor shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity the contractor may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Contractor does not provide the Owner the opportunity to participate then the Contractor may only charge the net costs after consideration of discounts and rebates.

§ 7.5.3 Construction Equipment Usage Costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the Change in the Work at the site times 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, reasonable rate paid to unrelated third parties 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 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. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the changed Work 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 to the same extent as the comparable Blue Book or fair market rate. 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. 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. The rate for equipment necessarily standing by for future use on the changed work shall be no more than 50% of the rate established above. If equipment is required for which a rental rate is not established by Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.4 Cost of Change in Insurance or Bond Premium: This is defined as:

- .1 Subcontractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under Section 11.1.3, and subject to audit) of any change in the Subcontractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability under Section 11.4.1, and subject to audit) of the change in the Subcontractor's premium for the Subcontractor's statutorily required performance and payment bond arising directly from the changed Work.

Upon request, the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred. The Contractor is not entitled to any increased premium for insurance or bonds as those costs are included within the Contractor's Fees. The Contractor is not entitled to any increased premium on any retainage bond as such bonds are optional.

§ 7.5.5 Lower-Tier Subcontractor Costs: These are payments the Subcontractor makes to lower-tier Subcontractors for changed Work performed by such Subcontractors. The lower-tier Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5.

§ 7.5.6 Subcontractor's Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including facilities, purchasing, clerical, project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Change Order and Claim preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise). No such costs may be added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No fee shall be due, however, for direct settlements after Substantial Completion by the Owner of Subcontractor Claims. The Fee shall be limited in all cases to the following schedule:

- .1 A Subcontractor of any tier shall receive 12% of the cost of any materials supplied or work properly performed by that Subcontractor's own forces.
- .2 A Subcontractor of any tier shall receive 8% of the amount owed (less fee) directly to a lower-tier Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier.
- .3 A Subcontractor of any tier shall receive no more than 5% of any amounts owed to any remote, sub-tier subcontractors which are within the lines of contractual responsibility but not in privity of contract with such subcontractor, for work performed by that remote, sub-tier subcontractor.
- .4 The cost to which this Fee is to be applied shall be determined in accordance with Section 7.5.1 through 7.5.4.
- .5 The total summed Fee of the first-tier Subcontractor and all lower-tier Subcontractors shall not exceed 25%. If the Fee would otherwise exceed 25%, the Contractor shall proportionately reduce the Fee percentage for the Contractor and all Subcontractors except for the Subcontractor supplying material or performing work with its own forces. None of the Fee percentages authorized in this Section 7.5.6 may be compounded with any other Fee percentage or percentages authorized in this Section.

If a Change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the Fees listed in this Section 7.5.6 are substantially greater than the fees and overhead normally included in determining the GMP bid and Subcontractor bid prices; that these higher percentages are a sufficient amount to compensate the Subcontractors for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Subcontractors for some Changes compensates the subcontractors for any Changes for which the Contractor or Subcontractors believe the percentage is otherwise insufficient.

§ 7.5.7 The cost of any changed Work or of any other increase or decrease in the GMP, including a Claim, shall not include, among other things, consultant costs, attorneys' fees, or Claim preparation expenses.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established by the Owner in its conditional notice to proceed issued for each phase of the Work. Work on the site may begin for a phase when the Contractor complies with the requirements of the notice to proceed. The date of commencement of all the Work is the date established by the Owner in its first conditional notice to proceed issued for a phase of the Work.

§ 8.1.3 The date of Substantial Completion of the Work (or a designated portion thereof) is the date certified by the Architect and set by the Owner in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 "Conditional Notice to Proceed" is the written notice issued by the Owner identifying the date of commencement of the Work and identifying conditions to be satisfied before Work on site may commence.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve Final Completion within thirty (30) days thereafter (or such other period of time for specific phases as is specified in the Contract Documents).

§ 8.2.4 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial damage if Substantial Completion of the Work does not occur within the Contract Time; however, it would be difficult, if not impossible, to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, governmental fees, storage costs, portable rental costs, loss of use, and lost opportunities. Consequently, provisions for liquidated damages as a reasonable estimate of loss may be included in the Contract Documents. The Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to insure the completion of the Work in accordance with the date of Substantial Completion and the accepted Contractor's Construction Schedule. If the Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) of any tier fails to meet the Contractor's Construction Schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work or other means and methods, all without additional cost to the Owner.

§ 8.2.5 If the Work is to be performed in phases, with separate dates set forth for Substantial Completion elsewhere in the Contract Documents, then the specified liquidated damages shall apply separately to each such phase unless otherwise specified.

§ 8.2.6 Any provisions in the Contract for liquidated damages are intended to be in lieu of the liability of the Contractor for special, incidental and consequential damages (such as cost of capital and loss of profits, use and revenue) sustained by the Owner but shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors.

§ 8.2.7 It is the Contractor's option, but not its right, to attempt to complete the Project earlier than the dates specified in the Contract Documents. Thus, any Claim based upon delay shall be evaluated based upon the dates specified in the Contract Documents, not an earlier projected completion that the Contractor may propose.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work only to the extent reflected in approved Change Orders providing for specific extensions of the Contract Time; (3) by unanticipated, abnormal weather (see Section 15.1.5.2); (4) by unexpected industry-wide labor disputes, fire, seismic event, unusual delay in deliveries, governmental delays (including unanticipated permit delays not caused by the Contractor; delays caused by a local jurisdiction's scheduled days off shall not be considered an excusable delay), unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (5) by delay authorized by the Owner pending mediation and binding dispute resolution; or (6) by other causes that the Contractor asserts, and the Owner determines, may justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine, limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby, as the Owner may determine consistent with the provisions of the Contract Documents. In no event, however, shall the Contractor be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the Contract schedule, so as to actually delay the Project completion beyond the date of Substantial Completion, or (2)

delay transforming an activity into the critical path of the Contract Schedule, so as to actually delay the Project completion beyond the date of Substantial Completion.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and shall include any proposed changes in the Contractor's Construction Schedule or the Contract Time, a description of any event that could delay performance or supplying of any item of the Work, the expected duration of the delay, the anticipated effect of the delay on the Contractor's Construction Schedule, and the action being taken to correct the delay situation. That the Owner or the Architect may be aware of the occurrence or existence of a delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim. The Contractor has an obligation to minimize and mitigate schedule impacts.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

- .1 If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not an increase in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP. The Contractor shall be entitled to a change in the GMP only if the delay was caused by the Owner or the Architect, or anyone acting on behalf of them. The Contractor shall not recover damages, an equitable adjustment or an increase in the GMP or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence. The Contractor shall be able to recover an increase in the GMP, provided it is consistent with the terms of the Contract Documents, only if the delay was in the critical path, could not have reasonably been avoided, was unreasonable and was caused by the Owner or anyone acting on its behalf as permitted under the Contract Documents. The Owner is not obligated directly or indirectly for damages, an equitable adjustment, or an increase in the GMP for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.
- .2 In the event the Contractor (including any Subcontractors of any tier) is held to be entitled to damages from the Owner for delay beyond the payment permitted in Section 7.5.6, it is agreed that the total combined damages to the Contractor and any Subcontractors of any tier for each day of delay shall be limited to the original Specified General Conditions divided by the number of days of Contract Time. By submitting its proposal and by signing the Contract, the Contractor represents that it would be difficult, if not impossible, to determine the amount of any delay damages due it, that it has taken this provision for liquidated damages into consideration in its bid, and that these liquidated damages are a reasonable estimate of its loss. No damages will be allowed for any time prior to fourteen (14) days before receipt of written notice of the Claim of the delay pursuant to Article 15.
- .3 The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; rescheduling of work, schedule compression; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended or expanded overhead or general conditions; profit upon damages for delay; impact damages; cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Contractor or its Subcontractors of any tier is fully compensated through the percentage Fee on Change Orders paid through Section 7.5.6 and any liquidated damages paid hereunder.
- .4 The Contractor shall not be entitled to any adjustment in the Contract Time or the GMP, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time not on the critical path or time between the Contractor's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Contractor's Construction Schedule.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The GMP is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

At least fourteen (14) days before the first Application for Payment, the Contractor shall submit a schedule of values to the Architect allocating the entire GMP to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. At a minimum, the schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

- .1 Mobilization shall be a maximum of one-half of one percent (0.5%) of the GMP, and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner.
- .2 Payment applicable to the expenses of Contractor's bond and/or builder's risk insurance will be made only upon receipt of paid invoices from surety and/or insurance carrier.
- .3 No payment will be made for Shop Drawings or submittals until on-site receipt of materials, except for structural steel, fire sprinkler, automatic temperature control, and fire alarm shop drawings that have been reviewed and accepted by the Architect.
- .4 The Schedule of Values shall allocate at least one percent (1%) of the GMP to Commissioning of Operational Systems, as defined in the Contract Documents.
- .5 The Schedule of Values shall allocate at least one percent (1%) of the GMP for completion of punch list items.
- .6 The Schedule of Values shall allocate at least one half percent (.5%) of the GMP for completion of approved operations and maintenance data and the delivery of warranties.
- .7 The Schedule of Values shall allocate at least one half percent (.5%) of the GMP for completion of record drawings, delivery of extra stock, and all other documentation or items of the Work required for Final Completion of the entire Project.

Any changes to the schedule of values shall be submitted to the Architect and Owner and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application. These amount are paid in trust to the Contractor for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment.

§ 9.3.1.1 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.2 **Payments to Subcontractors.** No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of sub-subcontractors), the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of project specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to

establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Retainage

§ 9.3.4.1 The Owner shall, in accordance with RCW 60.28, retain a sum equal to five percent (5%) of each approved Application for Payment. After award of a Contract for public improvements, or work for which retained percentages are required to be reserved under the provision of RCW 60.28, the Owner shall require the Contractor to exercise, in writing, one of the options listed below:

- .1** Retained percentages will be retained in a fund by the Owner not subject to release until sixty (60) days following the Final Acceptance of the Work as completed and as provided in Section 9.10.4; or
- .2** Deposited by the Owner in an interest-bearing account in a bank, mutual savings bank or savings and loan association and not subject to release until sixty (60) days following Final Acceptance of the Work as completed and as provided in Section 9.10.4; or
- .3** Placed in escrow with a bank or trust company and not subject to release until sixty (60) days following the Final Acceptance of the Work as completed and as provided in Section 9.10.4.
- .4** If the Contract provides a bond in place of retainage, it shall be in an amount equal to 5% of the GMP plus change orders. The minimum requirements for the bond are that it must be on a form acceptable to the Owner, with an A.M. Best rating of A- or better and a financial rating of no less than VII, and signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the Owner may be applied.

§ 9.3.4.2 The Contractor or a Subcontractor may withhold payment of not more than five percent (5%) as retainage from the monies earned by any Subcontractor or Sub-subcontractor, per RCW 60.28, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of retainage and interest due a Subcontractor.

§ 9.3.4.3 In addition to the amounts required by RCW 60.28 to be withheld from the progress or retained percentage payments to the Contractor, the Owner may, in its sole discretion, withhold any amounts sufficient to pay any claim against the Contractor of which the Owner may have knowledge and regardless of the informalities of notice of such claim arising out of the performance of this Contract. The Owner may withhold the amount until either the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment in favor of the claimant on such claim. The Owner shall not be liable for interest during the period the funds are so held.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's approved Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to correction of

minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the GMP.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Owner may, with or without the Architect's concurrence, withhold payment, and the Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1** defective Work not remedied;
- .2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4** reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .5** damage to the Owner or a Separate Contractor;
- .6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7** unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8** delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Contractor's Construction Schedule requirements;
- .9** failure to submit affidavits pertaining to wages paid as required by statute;
- .10** failure to submit a properly updated Construction Schedule;
- .11** failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .12** liquidated damages;
- .13** failure to properly maintain as-builts;
- .14** failure to properly submit daily construction records;
- .15** failure to properly submit certified payrolls; or
- .16** failure to properly submit any other documents required of the Contractor under the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 Pursuant to Chapter 39.12 RCW ("Prevailing Wages on Public Works"), the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier for whom payment is sought have submitted state-approved "Statements of Intent to Pay Prevailing Wage" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the Owner. The statement must include the Contractor's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Contractor agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Contractor and the respective Subcontractors of any tier shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

§ 9.5.4 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect, and the Architect shall reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, and it has been approved by the Owner, the Owner shall make payment in the manner and within the time provided in the Contract Documents. The Owner will make a progress payment within thirty (30) days of its receipt and approval of the Architect's Certificate for Payment. The Owner shall be entitled to withhold payment to the extent provided by the Contract Documents, notwithstanding the issuance of a Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not receive payment for any cause which is not the fault of a particular Subcontractor but does receive payment for materials supplied or work performed by that Subcontractor, the Contractor shall pay that Subcontractor in accordance with its subcontract for its satisfactorily completed work, less the retained percentage

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor, satisfactory to the Owner, that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work and the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the GMP, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect improperly fails to issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's timely Application for Payment under Section 9.3.1.2 (subject to the approved payment schedule), or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount due and owing to the Contractor, then the Contractor may, upon thirty (30) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been

received. The Contract Time shall be extended appropriately and the GMP shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, as provided for in A133 and Section 7.5 of these General Conditions.

§ 9.8 Substantial Completion and Occupancy

§ 9.8.1.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof designated and approved by the Owner is sufficiently complete in accordance with the Contract Documents so that the Owner can fully occupy or utilize the work, or the designated portion thereof, for its intended use, including FF&E and staff occupancy. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is acceptable in whole or in part. All Work other than incidental corrective or punch list work and final cleaning shall be completed, including but not limited to the following:

- .1 Obtain applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificate by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- .2 Submit the Contractor's punch list of items to be completed or corrected and written request for inspection.
- .3 Complete final start-up, testing, and commence instruction and training sessions on all major building systems including HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks, and establish a Date of Commissioning.
- .4 Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- .5 Discontinue or change over and remove unnecessary temporary facilities and services from the project site.
- .6 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- .7 Complete final cleaning.

The work is not Substantially Complete unless the Architect reasonably judges that the Work can achieve Final Completion within sixty (60) days (or such other period of time as is specified in the Contract Documents), appropriate cleaning has occurred, all designated systems and parts are commissioned and usable, including balancing of the HVAC system, utilities are connected and operating normally and training sessions have occurred, all required temporary occupancy permits, pressure vessel permits, elevator permits, and similar approvals or certificate by governing authorities and franchised services, assuring the Owner's full access to the Work have been issued, O & M manuals have been submitted for review, and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

§ 9.8.1.2 Date of Commissioning of Operational Systems. The systems of the Work so designated in the Contract Documents are considered "Operational Systems." Unless otherwise specified in the Contract Documents, the Operational Systems include the HVAC system, the data communications system(s), the intercom system, the life safety system(s), the clock system, the telephone system, and the security system. When the Contractor considers that the Operational Systems are complete and fully functional, up and running and ready for normal operation and functional performance testing (as may be specified overall or for any phases), and after all pre-commissioning checklists have been completed, the Contractor shall so notify the Architect in writing a minimum of fourteen (14) days prior to the Date of Substantial Completion for that portion or phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection and observe the functional performance tests of these systems identified in the Contract Documents to determine whether the Operational Systems are complete and ready for normal operation. If the Architect's inspection discloses that the Operational Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Commissioning, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Operational Systems and pay the costs associated with the reinspections, including fees of any commissioning agent and the Architect and its consultants. As each of the Operational Systems is determined to be complete, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Training of Owner personnel shall not begin until the Date of Commissioning and shall be conducted prior to departure of the installing entity from the site by appropriate Subcontractor personnel on site who are knowledgeable with the

construction and operation of each system. Warranties on the Operational Systems required by the Contract Documents shall commence on the Date of Substantial Completion, unless otherwise provided, but the Contractor shall retain the responsibility to maintain the systems until Final Acceptance. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

§ 9.8.1.3 Indemnification. The Contractor shall defend, indemnify, and hold harmless the Owner and the Architect and their agents, employees, and consultants, successors and assigns from and against all claims, damages, losses and expenses of third parties, direct and indirect, or consequential, including costs, design professional fees, and attorneys' fees incurred by the Owner related to such claims and in proving the right to indemnification, arising out of or resulting from the failure of the Contractor to attain the Date of Commissioning less than thirty (30) days prior to the Date of Substantial Completion fixed by the Contract Documents. In particular, the Contractor acknowledges that a 30-day period after the Date of Commissioning and prior to occupancy is specified during which all HVAC, mechanical, electrical, control and environmental management systems are fully operational under procedures and loads intended to provide unoccupied space with positive performance for pre-occupancy environmental documentation, and the systems are scheduled to operate under a procedure intended to dissipate out-gassing that may occur from interior and other materials.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list and shall immediately clean up any dust or debris created through punch list work activities. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list and upon verification by the Architect that all permits, approvals, testing, training and other submittals and administrative actions required under the Contract Documents for obtaining Substantial Completion have been satisfied, the Architect and, at its option, the Owner, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractor shall expeditiously complete the Work or designated portion, and again request an inspection. The Contractor shall pay the costs associated with this third and any further re-inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that, upon approval of the Owner, shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion, except that warranties for HVAC equipment shall commence with acceptance of the Commissioning Report by the Owner. The Contractor shall attach and submit with the executed Certificate of Substantial Completion the Certificate of Occupancy as well as a written list of each outstanding and unresolved Claim; any Claim not so submitted and identified, other than retainage and the undisputed balance of the GMP, shall be deemed waived and abandoned. If the Owner or Architect determines that the Work or designated portion is not Substantially Complete, the Contractor shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection, including Architect and consultant fees.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Any items not included by the Architect but required or necessary for Final Completion of the Contract shall be supplied and installed by the Contractor as a part of the GMP, notwithstanding if the items were not recorded by the Architect. Upon written acceptance of the Certificate of Substantial Completion by the Owner and the Contractor, and upon the Contractor's Application for Payment and consent of surety if any, the Owner shall make payment as provided in the Contract Documents. Such

payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. NO further payment will be due or owing until the payment following Final Completion.

§ 9.8.6 The Contractor shall prepare, continue to monitor with the Architect, and cause to be completed, all punch lists with respect to the activity of each Subcontractor and report weekly to the Owner on all outstanding punch list items. Beginning thirty (30) days before the scheduled date of Substantial Completion, the Contractor shall prepare reports weekly, identifying items to be completed in order to obtain required certificates of occupancy and make recommendations to the Owner with respect to effectuating the earliest possible completion. The Contractor shall include this report as a schedule item on its CPM schedule.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may, upon written notice to the Contractor, take possession of, operate, occupy or use any completed or partially completed portion of the Work at any stage. Such partial occupancy or use may commence whether or not the portion is substantially complete. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of the risk of loss or any of its obligations under the Contract, nor establish a Date of Substantial or Final Completion, nor establish a date for termination or partial termination of the running of liquidated damages, nor constitute a waiver of any Owner claims. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve Final Completion of the Work within thirty (30) days of Substantial Completion (or such other period of time as is specified in the Contract Documents), the Owner may take possession of, use or operate all or any part of the Work without an increase in the GMP or the Contract Time on account of such possession or use. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Final Completion

§ 9.10.1.1 The Contractor shall cause punch list items to be completed within thirty (30) days of Substantial Completion of each phase (or such other period of time as is specified in the Contract Documents) or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period), provided that the Contractor commences to correct the item within that period and thereafter diligently and in good faith pursues the corrective action to completion. If, at fifteen (15) days after the Date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed within thirty (30) days of the date of Substantial Completion of each phase (or such other period of time as is specified in the Contract Documents), the Owner may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. If the Contractor fails to correct the deficiencies within this seven (7) day period, the Owner may back-charge the actual cost of performing this punch list work, including any design costs, plus 15% to account for the Owner's transaction costs.

§ 9.10.1.2 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection accompanied by the Contractor (if requested by the Architect or Owner). If the Architect or Owner determines that some or all of the punch list items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspection to determine compliance with the punch list. When the Architect finds all punch list items complete and the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing that, to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents. The Architect's final Certificate for

Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.3 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all Architect, engineer or other design consultant fees and all Commissioning Agent and Construction Manager fees incurred by the Owner for services performed more than thirty (30) days after Substantial Completion of all the Work (or such other period of time as is specified in the Contract Documents), whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.4 When the Architect finds that the Work has been concluded, a final occupancy permit has been issued, any commissioning process and validation process have been successfully concluded and the Commissioning Report has been accepted by the Owner, and the Contractor has submitted all the items identified in Section 9.10.1.5 to the Architect, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a final Certificate for Payment stating that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment shall establish the date of Final Completion upon its execution by the Owner.

§ 9.10.1.5 "Final Completion" will be attained when the Contractor has accomplished the following:

- .1 Complete all requirements listed in Section 9.8 for Substantial Completion.
- .2 Complete all remaining punch list items and remaining Work, and obtain approval by Architect and Owner that all Work is complete.
- .3 Obtain permanent occupancy permits (if only a temporary occupancy permit was issued at Substantial Completion).
- .4 Submit final change order and final Application for Payment.
- .5 Submit record documents, any final property survey, and operation and maintenance manuals required by the Contract Documents.
- .6 Deliver tools, spare parts, extra stock of material and similar physical items to the Owner as required by the Contract Documents.
- .7 Complete final cleaning after punch list work (in addition to the final cleaning that was required to obtain Substantial Completion).
- .8 Complete instruction and training sessions on all major building systems including HVAC, intercom, data communications, fire alarm, telephone, fire sprinkler, emergency power, security and clocks.
- .9 Submit executed warranties.
- .10 Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- .11 Discontinue or change over and remove temporary facilities and services from the project site.
- .12 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.

§ 9.10.2 Final Acceptance and Payment

§ 9.10.2.1 Neither final payment nor any retained percentage shall become due until the Everett City Council has formally accepted the Project ("Final Acceptance"). To achieve Final Acceptance, the Architect must have issued a final Certificate for Payment under Section 9.10.1.4, an occupancy permit must have been issued, Final Completion must have occurred, and the Contractor has submitted the following to the Architect and the Owner:

- .1 if required by Owner, an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, except for any claims that are specifically identified on the affidavit (Affidavit of Payment of Debts and Claims, AIA Form G706 or equivalent);
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;
- .3 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 if required by Owner, consent of surety, if any, to final payment (AIA Form G707 or equivalent);
- .5 if required by Owner, other data establishing payment or satisfaction of or protection against obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances

- arising out of the Contract, to the extent and in such form as may be designated by the Owner (Contractor's Affidavit of Release of Liens, AIA Form G706A or equivalent). If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees;
- .6 pursuant to RCW 39.12.040, an Affidavit of Wages Paid from the Contractor and from each Subcontractor of any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor;
 - .7 a letter from the Architect indicating that the Work is complete and recommending Final Acceptance of the Project by the Owner;
 - .8 certification that the materials in the Work are "lead-free" and "asbestos-free";
 - .9 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project, including but not limited to all city or county departments, health districts and utility districts, provided to Owner with a copy of all closed or signed-off permits;
 - .10 recorded documents; and
 - .11 all warranties, guarantees, training, manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings and other documents, training or items required by the Contract Documents or local governmental entities.

§ 9.10.2.2 Pursuant to Chapter 60.28 RCW ("Lien for Labor, Materials, Taxes on Public Works"), completion of the Contract Work shall occur upon Final Acceptance.

§ 9.10.3 Lien Notices shall be served at:

City Clerk's Office
2930 Wetmore Ave Suite 1A
Everett, WA 98201

A copy shall be submitted to the Architect.

§ 9.10.4 **Release of Retainage:** The retainage will be held and applied by the Owner as a trust fund in a manner required by Chapter 60.28 RCW. Release of the retainage will be processed in ordinary course of business upon the expiration of sixty (60) days following Final Acceptance of the Work by the Owner provided that no notice of lien shall have been given as provided in Chapter 60.28RCW, that no Claims have been brought to the attention of the Owner and that the Owner has no claims under this Contract; and provided further that, for state-funded projects, release of retention has been duly authorized by the State. The following items must also be obtained prior to release of retainage: pursuant to Chapter 60.28 RCW, a certificate from the Department of Revenue; pursuant to Chapter 50.24 RCW, a certificate from the Department of Employment Security; and appropriate information from the Department of Labor and Industries.

§ 9.10.5 **Waiver of Claims**

§ 9.10.5.1 [Section purposely not used]

§ 9.10.5.2 **Final Payment to Contractor:** Acceptance of final payment by the Contractor, a Subcontractor, or a material or equipment supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled and attached to the Contractor's final Application for Payment.

§ 9.10.5.3 The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are initialed by the Owner.

§ 9.10.6 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain in the fund, account, or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or (b) accept

a bond from the Contractor, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.7 The Contractor and all Subcontractors of any tier shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, emails, facsimiles, and other tangible and electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. The Contractor shall preserve such records for a period of six (6) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owner's request, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives. These requirements shall also be applicable to each Subcontractor of any tier and included in each Subcontract and purchase order issued with respect to the Work, except fixed-price Subcontracts where the price is \$25,000 or less. The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the Owner. Failure to fully comply with any requirements of this Section shall constitute a material breach of contract and shall constitute a waiver of all claims by the Contractor and any Subcontractor that does not fully comply.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall have the right to control and shall be solely and completely responsible for conditions of the work site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner or the Architect of the Contractor's performance shall not be construed to include a review of the adequacy of the Contractor's safety measures in, on or near the site of the Work.

§ 10.1.2 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof shall in any way: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner or Architect to ensure the Contractor performs the Work safely or to provide such notice to the Contractor or any other person or entity; (4) affect the Contractor's sole and complete responsibility for performing the Work safely or the Contractor's responsibility for the safety and welfare of its employees and the employees of Subcontractors of any tier; or (5) affect the Contractor's responsibility for the protection of property, staff and the general public.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on or involved in the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall comply with all notices and comply with all requests

from the Owner regarding the safety and protection of the Owner's visitors and staff. The Contractor shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Washington State Department of Labor and Industries. The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent applicable regulation or requirement shall apply.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall maintain at the work site office or other well-known place at the work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to work on the site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care. The Contractor and/or any Subcontractors shall ensure that at least one of such employees has a valid, effective first aid card.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work and explicitly permitted by the Contract Documents, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief, and shall bear the risk of any uninsured loss or destruction of, or injury to damage to, all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion and all Work in process and completed Work or designated portion. Protection of the Work shall include but not be limited to protection of soils, subgrade preparation, exterior concrete, masonry, sealant, gypsum sheathing, roofing and interior finishes. The Contractor is responsible for any delays or costs resulting from the Contractor's failure to protect the Work from weather damage, weather, deterioration, theft, vandalism and malicious mischief. Contractor is further responsible for any deductible amounts related to any insurance coverage.

§ 10.2.9 Any notice given to the Contractor by the Owner or the Architect of a safety or property protection violation will not: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or for sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's

compliance with the requirements of this Article 10; or (3) impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other persons or entity.

§ 10.2.10 Injury or Damage to Person or Property

If the Contractor suffers injury or damage to person or property because of an alleged act or omission of the Owner, or of others for whose acts the Owner may be legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This Section does not apply to Claims, damages for additional costs or time, acceleration, or delay.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, as defined by CERCLA, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect in writing of the condition. The Contractor shall proceed with the Work in areas not affected.

§ 10.3.2 Upon receipt of the Contractor's notice, and with the Owner's agreement, the Owner shall obtain the services of a licensed laboratory to reasonably verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection, but the Owner shall not be responsible for any delay resulting from the Contractor's objection to such person or entity. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time may be extended appropriately and the GMP may be increased by the amount of the Contractor's demonstrated and reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be accomplished as provided in Articles 7, 8 and 15.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity or if the removal of such material or substance was a part of the Contractor's Work.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault, misuse, or negligence in the use and handling of such materials or substances. The Contractor shall store all hazardous materials safely, whether or not required by Contract Documents. The Contractor shall not install hazardous materials, including without limitation asbestos, lead, mercury, or polychlorinated biphenyl (PCB), in the Work.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without fault or negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 Public Safety and Convenience

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 General

The Contractor shall obtain and keep in force during the term of the Contract and until thirty (30) days after the Completion Date, unless otherwise indicated below, the following insurance with insurance companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

§ 11.2 Insurer Rating

The insurance provided must be with an insurance company with a rating of A-: VII or higher in the A.M. Best's Key Rating Guide, which is licensed to do business in the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). The Owner reserves the right to approve the security of the insurance provided, the company, terms and coverage, and the Certificate of Insurance.

§ 11.3 Claims Made Form Requirements

If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims made form coverage shall be maintained by the Contractor for a minimum of three years following the expiration or earlier termination of this Contract, and the Contractor shall annually provide the Owner with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Owner to assure financial responsibility for liability for services performed.

§ 11.4 Cross Liability Endorsement

The policies of insurance shall contain a "cross liability" endorsement substantially as follows:

The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other insured. This policy shall protect each insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one insured been named.

§ 11.5 Additional Insured

The policies of insurance for general liability, automobile, and pollution policies shall be specifically endorsed to name the Owner, Owner's Representative, and each of their respective officers, elected officials, employees, agents, representatives, Subconsultants and volunteers, and other entities specifically required by the Contract Documents, as additional insured(s). Such endorsement shall not limit the policy limits available to the Owner as additional insured to the coverage amounts required herein if the Contractor maintains larger policy limits.

§ 11.6 Contractor Insurance Primary / Waiver of Subrogation

Contractor's insurance shall be primary as respects the Owner, and any other insurance maintained by the Owner shall be excess and not contributing insurance with the Contractor's insurance.

The Contractor waives all rights against the Owner and its separate contractors, and their agents and employees, for damages caused by fire or other perils to the extent such damage cost is actually paid by property insurance applicable to the Work. The Contractor shall require similar waivers from all Subcontractors.

§ 11.7 Assumption of Risk

Contractor hereby assumes all risk of damage to its property, or injury to its officers, directors, agents, contractors, or invitees, in or about the Property from any cause, and hereby waives all claims against the Owner. The Contractor further waives, with respect to the Owner only, its immunity under RCW Title 51, Industrial Insurance.

§ 11.8 Cost Included in Price

All costs for insurance shall be incidental to and included in the unit contract prices or lump sum price of the Contract and no additional payment will be made for required insurance.

§ 11.9 Subcontractors

Contractor shall furnish separate evidence of insurance as stated above for each Subcontractor or shall include all Subcontractors as insureds under its policies. All coverage for Subcontractors shall be subject to all the requirements stated herein and applicable to their profession. If Contractor does not include Subcontractors as insured under Contractor's own insurance policies, Contractor shall be responsible for assuring that all Subcontractors obtain all insurance as required by this Agreement and that the Owner be specifically endorsed as an additional insured on such insurance.

§ 11.10 No Work Until Insurance Requirements Met

Neither the Contractor nor any of its subcontractors shall begin work under the Contract until all required insurance has been obtained and approved by the Owner, irrespective of whether a Notice to Proceed has been issued. Working or calendar days will be charged against Contract Time from the date specified in the Notice to Proceed (or the date of the Notice to Proceed, if no start date is specified in the Notice to Proceed), and will not be suspended or not charged if insurance requirements are not fulfilled. Purchase of appropriate insurance and providing satisfactory evidence of required insurance is wholly the obligation of the Contractor, and any Delay that is not the fault of the Owner shall be attributed to the Contractor.

§ 11.11 Failure to Procure and Maintain Insurance

Failure on the part of the Contractor to obtain, maintain and deliver the policy or policies (in whole or in part) and receipt or receipts as required shall constitute a material breach of Contract. After giving five (5) working days notice to the Contractor to correct the breach, the Owner may, in its sole discretion and option: (a) immediately terminate the Contract; (b) procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Owner on demand, or, at the sole discretion of the Owner, offset against funds due the Contractor from the Owner; (c) withhold progress payments (in whole or in part); and (d) avail itself of any other remedy at law, in equity, or allowed by Contract. These remedies are cumulative and not exclusive. The Contractor hereby appoints the Owner its true and lawful attorney, to do the things necessary for the purpose of procuring or renewing insurance as provided herein. Failure of the Owner to obtain such insurance shall in no way relieve the Contractor of its responsibilities under this Contract.

§ 11.12 Cancellation

The Owner shall be given at least forty-five (45) days prior written Notice of any cancellation, non-renewal, or other material change in any insurance policy. Owner acknowledges that the Contractor's Worker's Compensation/Employer's Liability insurance cannot be endorsed or amended to provide the Owner with prior Notice of material changes.

§ 11.13 Evidence of Insurance

The Contractor shall deliver the executed Contract for the Work to the Owner together with a Certificate(s) of Insurance and endorsements for each policy of insurance meeting the requirements set forth above. The certificate must conform to the following requirements:

- .1 An ACORD certificate Form 25-S, or equivalent, showing the insuring company, policy effective dates, limits of liability and the schedule of Forms and Endorsements.
- .2 A copy of either: (a) the endorsement naming Owner and any other entities required by the Special Provisions as Additional Insured(s), and stating that coverage is primary and non-contributory, showing the policy number, and signed by an authorized representative of the insurance company on Form CG2010 (ISO) or equivalent; or (b) the blanket additional insured policy provision.

- .3 A copy of an endorsement stating that the coverage provided by this policy to the Owner or any other named insured shall not be canceled, not renewed or materially changed without providing at least forty-five (45) days prior written Notice to the Owner.
- .4 The certificate(s) shall not contain the following or similar wording regarding cancellation notification to the Owner. "Failure to mail such Notice shall impose no obligation or liability of any kind upon the company."
- .5 The certificate(s) shall not contain the phrase "endeavor to", or any substantially similar phrase, regarding issuance of written Notice of cancellation of the policies prior to their expiration dates.

Within ten (10) days upon Owner's written request, the Contractor shall deliver to the Owner certified copies of all policies of insurance and the receipts for payment of premiums thereon. The Owner acknowledges that Contractor may pay its premium on a monthly basis, and may not be able to provide complete evidence of payment of premiums until the final premium is paid.

§ 11.14 Coverages and Limits

The insurance shall provide the minimum coverages and limits set forth below. Owner does not warrant or represent that such coverages and limits are appropriate or adequate to protect the Contractor. Providing coverage in these stated minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits. All deductibles must be disclosed and are subject to approval by the Owner. The cost of any claim payments falling within the deductible shall be the sole responsibility of the Contractor.

§ 11.14.1 CGL

A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form: (CG 00 01) or equivalent, including all the usual coverage known as:

- Per Project aggregate endorsement (CG2503)
- Premises/Operations Liability
- Products/Completed Operations – for a period of one year following Final Acceptance.
- Personal/Advertising Injury
- Contractual Liability
- Independent Contractors Liability
- Stop Gap or Employers Contingent Liability
- Explosion, Collapse, or Underground (XCU), (as applicable)*
- Liquor Liability/Host Liquor Liability (as applicable)*
- Fire Damage Legal
- Blasting (as applicable)*

*These coverages are only required when the Contractor's Work under this agreement includes exposures to which these specified coverage respond.

If the Contract requires working over water, the following additional coverages are required:

- a. Watercraft, owned and non-owned
U.S. Harborworkers'/Longshoremen and Jones Act

§ 11.14.2 Builders' Risk

The Contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by Owner, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake. The policy shall be endorsed to cover the interests, as they may appear, of the Owner, Contractor and subcontractors of all tiers with the Owner and sub-contractors listed as a Named Insured. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Contract and acceptance of the project by the Owner, the Contractor shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Contractor

or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract..

§ 11.14.3 Other Coverages

Other additional coverages that may be required will be listed in the Specifications.

§ 11.14.4 Limits

Such policy(ies) must provide the following minimum limits:

Bodily Injury and Property Damage -

\$ 5,000,000	General Aggregate
\$ 2,000,000	Products & Completed Operations Aggregate
\$ 2,000,000	Personal & Advertising Injury
\$ 2,000,000	Each Occurrence
\$ 100,000	Fire Damage

Stop Gap Employers Liability

\$ 1,000,000	Each Accident
\$ 1,000,000	Disease - Policy Limit
\$ 1,000,000	Disease - Each Employee

A stop gap policy limit of \$500,000 will be acceptable if, and only if, the Contractor Excess or Umbrella Liability policy required by Section 11.14.6 Excess or Umbrella Liability provides coverage over the stop gap policy.

§ 11.14.5 Automobile

Commercial Automobile Liability: as specified by Insurance Services Office, form number CA 0001, Symbol 1 (any auto), with an MCS 90 endorsement and a CA 9948 endorsement attached if “pollutants” as defined in exclusion 11 of the commercial auto policy are to be transported. Such policy(ies) must provide coverage with a combined single limit of not less than \$1,000,000 for each accident.

§ 11.14.6 Excess or Umbrella Liability

The limits stated in this section 11.14 may be satisfied by a combination of commercial general liability and, if necessary, commercial umbrella/excess policies.

§ 11.14.7 Pollution Liability

A policy providing coverage for claims involving remediation, disposal, or other handling of pollutants arising out of Contractor’s operations for others; contractors site (owned); arising from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos.

Such Pollution Liability policy shall provide at least \$2,000,000 per occurrence coverage for Bodily Injury and Property Damage.

§ 11.14.8 Worker’s Compensation

A policy of Worker’s Compensation, as required by the Industrial Insurance Laws of the State of Washington. As respects Workers’ Compensation insurance in the state of Washington, Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of RCW Title 51. If Contractor is qualified as a self-insurer in accordance with RCW 51.14, Contractor shall so certify by letter signed by a corporate officer indicating that it is a qualified self insured, and setting forth the limits of any policy of excess insurance covering its employees.

§ 11.14.9 Self-Insurance

At its sole option and in its sole discretion, Owner may accept Contractor’s self-insurance for a liability coverage in lieu of insurance from an insurer. Contractor must provide a letter from its Corporate Risk Manager, or appropriate Finance Officer representing and warranting the following minimum information: whether the self-insurance program is actuarially funded; the fund limits; any excess declaration pages to meet the Contract requirements; a description of how Contractor would protect and defend the Owner as an Additional Insured in their Self-Insured layer; and claims-handling directions in the event of a claim. Any amounts due to, sought by, or paid to third party

claimants shall be the sole responsibility of the Contractor, irrespective of whether such amount falls wholly within the level or amount of the Contractor's self-insured retention.

§ 11.15 Performance Bond and Payment Bond

§ 11.15.1 Contractor's Bonds: The Contractor shall secure and pay for, from a surety company acceptable to the Owner and admitted and licensed in the State of Washington and possessing an A.M. Best's policyholder's rating of A or better and a financial rating of no less than VIII, separate bonds each in the form provided by Owner covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the GMP plus sales tax, pursuant to Chapter 39.08 RCW ("Contractor's Bond"). Within ten (10) days of executing the GMP Amendment, the Contractor shall deliver two originals of the bonds to the Owner and one copy to the Architect. **THE OWNER MAY WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BONDS ARE RECEIVED AND MAY TERMINATE THE CONTRACT FOR CAUSE.** The Contractor shall be responsible for any delay in the Contract Time because of failure to submit acceptable bonds.

§ 11.15.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.15.3 Subcontractors' Performance and Payment Bonds: Each Subcontractor so required by a bidding package or RCW 39.10.380 shall secure and pay for, from a surety company acceptable to the Owner and the Contractor and admitted and licensed in the State of Washington, bonds covering the faithful performance of the subcontract and payment of obligations arising under the Contract Documents related to the subcontract, each in the full amount of the subcontract sum, pursuant to Chapter 39.10 RCW and Chapter 39.08 RCW. Within ten (10) days of entering into the subcontract, and before any payment is due, the Subcontractor shall deliver copies of the bonds to the Owner and to the Architect.

§ 11.16 If the Owner is damaged by the failure of the Contractor to maintain any of the bonds or insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance and bonds. Failure to withhold payment shall not constitute a waiver.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or the Owner's request or to requirements of a governmental authority or as otherwise specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Owner, or governmental authority, be uncovered for the requesting party's examination and be replaced at the Contractor's expense without change in the GMP or the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect, Owner or governmental authority has not specifically requested to examine prior to its being covered and for which neither the Contract Documents nor governmental laws or regulations required inspection, the Architect, Owner or governmental authority may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor employed by the Owner, and in that event the Owner or the separate contractor shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one (1) year after the later of the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under the Contract Documents, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract

Documents, the Contractor shall correct it according to the requirements of this Section 12.2.2 with no change in the Cost of the Work promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. If the Contractor does not promptly in accordance with the provisions of this Section 12.2.2 initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work and may, without further notice, dispose of materials and equipment as it sees fit, and the Contractor will be liable for all costs. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

- .1 If, in the Owner's opinion, the nonconforming Work either prevents the use of a portion of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), the Contractor shall initiate corrective work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete corrective action within 48 hours.
- .2 If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, of affecting internal security, or of limiting the use of the facility (e.g., potential loss of heat in a single room, failure of one or more plumbing fixtures, loose carpet seam in corridor, interior door lock not working, etc.), the Contractor shall initiate corrective work on site within two (2) working days and shall complete corrective action within five (5) working days.
- .3 If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.), the Contractor shall initiate corrective work on site within fourteen (14) days and shall complete corrective action within twenty-eight (28) days.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the GMP will be reduced by the greater of the (1) cost of correction, or (2) diminution of value of the Work that is not in accordance with the requirements of the Contract Documents. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Venue

The Contract shall be governed by the law of the State of Washington. The exclusive venue for any litigation shall be in the Superior Court for Snohomish County.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party respect to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.2.3 If a majority of the ownership or the control of Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty (30) days' written notice of termination and the opportunity for the Contractor to cure prior to termination.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to the designated representative as identified in the A133 Agreement, or to an officer of the corporation for which it was intended; or if delivered at, or sent by facsimile, email (if notice to Contractor), registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual receipt by facsimile or email (if notice to Contractor), or three (3) calendar days after the date of postmark.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The Contractor's sole remedy for Claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to, the Contract Documents or breach thereof, except Claims which have been waived under the terms of the Contract Documents, however, is the dispute resolution procedure of Article 15.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4.3 If any portion of this Contract is held to be void or unenforceable, the remainder of the Contract shall be enforceable without such portion.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made at an appropriate time and as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of necessary tests, inspections, and approvals, except that the Contractor will be responsible for any costs of re-testing and any extra costs caused by the Contractor. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written

authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.5.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and Architect.

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

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall provide the Owner and Architect at least forty-eight (48) hours' notice prior to all tests and inspections.

§ 13.5.7 If the Owner is responsible under the Contract Documents, law or regulation to pay only for an inspection of any inspector, consultant or Architect, the Owner shall be required to pay only for the first actual inspection. If the Contractor arranges for an inspection and an extra cost is incurred because the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or re-inspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within thirty (30) days of billing, the Owner has the option to pay the charges directly and back-charge the Contractor on the next progress payment for the amount paid plus a 10% handling fee.

§ 13.5.8 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failures to inspect or test by the Owner, the Owner's representatives, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery. Entities performing inspections and/or testing do not have the authority to direct the Contractor's means and methods and are not agents or representatives of the Owner or Architect. Inspections which meet the requirements of code shall not override the requirements of the Contract Documents, which may be more stringent.

§ 13.6 Interest

N/A

§ 13.7 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement, and within the shorter of the time period specified by applicable law and the time limits identified in this Agreement. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 Statutes and Other Requirements

The Contractor shall abide by the provisions of all applicable Washington statutes and regulations. Although a number of statutes are referenced in the Contract Documents, these references are not meant to be a complete list and should not be relied upon as such.

§ 13.8.1 Contractor Registration and Related Requirements

Pursuant to Chapter 39.06 RCW (“Public Works – Registration, Licensing of Contractors”) the Contractor shall be registered and licensed as required by the laws of the State of Washington, including but not limited to Chapter 18.27 RCW (“Registration of Contractors”). The Contractor shall: have a current state unified business identifier number; have industrial insurance coverage for the Contractor’s employees working in Washington as required in Title 51 RCW; have an employment security department number as required in Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW; and not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

§ 13.8.2 Law Against Discrimination

The Contractor shall comply with pertinent statutory provisions relating to public works of Chapter 49.60 RCW (“Discrimination”).

§ 13.8.3 Provisions for Aged and Handicapped Persons

The Contractor shall comply with pertinent statutory provisions relating to public works under Chapter 70.92 RCW (“Provisions in Buildings for Aged and Handicapped Persons”) and the Americans With Disabilities Act.

§ 13.8.4 Safety Standards

The Contractor shall comply with pertinent provisions of Chapter 49.17 RCW (“Washington Industrial Safety and Health Act”) and Chapter 296-155 WAC (“Safety Standards for Construction Work”).

§ 13.8.5 Unemployment Compensation

Pursuant to Chapter 50.24 RCW (“Contributions by Employers”) in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Contract or arrange for a bond acceptable to the Commissioner of the Washington State Employment Security Department.

§ 13.8.6 Drug-Free Workplace

The Contractor and all Subcontractors of any tier shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-Free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work.

§ 13.8.7 Tobacco-Free Environment

Smoking or use of any kind of lighted pipe, cigar, cigarette or any other lighted smoking equipment, material or smokeless tobacco products is prohibited Owner property.

§ 13.8.8 Weapons-Free Environment

The Contractor and its employees, agents, and Subcontractors of any tier shall not bring onto the Project site or onto any Owner property any firearm or any other type of weapon described in either RCW 9.41.280(1) or RCW 9.41.250. Any person violating this Section shall immediately be removed from the Work, and such a violation shall be grounds for a termination of this Agreement for cause at the Owner’s discretion.

§ 13.8.9 Asbestos Removal

To the extent this Project involves asbestos removal, the Contractor shall comply with Chapter 49.26 RCW (“Health and Safety – Asbestos”) and any provisions of the Washington Administrative Code promulgated thereunder, and the applicable section of the Specifications should be viewed for possible insurance required for the applicable Subcontractor.

§ 13.8.10 Lead, Copper, and Cadmium in Drinking Water

No materials or products may be installed or otherwise incorporated into the Work that contain lead, copper, or cadmium that exceed the actionable limits of the Environmental Protection Agency and the Safe Drinking Water Act. Neither the Architect nor the Owner will approve any substitution of material or product that may contain harmful levels of lead, copper, or cadmium, whether in plumbing, water fixtures, or any other fixture, equipment or incorporated building material. At the time of Final Acceptance, Contractor shall submit a letter to the Owner that no lead contamination or lead products have been installed in the building or anywhere throughout the Project in violation of this contractual provision and applicable laws.

§ 13.8.11 Pursuant to Chapter 49.70 RCW ("Worker and Community Right to Know Act") and WAC 296-62-054 et seq., the Contractor shall provide the Owner copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project Site. Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulation.

§ 13.8.12 City of Everett Business License

Contractor agrees to obtain a City of Everett business license prior to performing any Work pursuant to this Contract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 Except as provided by RCW 60.28.080, the Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect (during which period the Owner has the opportunity to cure), terminate the Contract and recover from the Owner payment for Work properly executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, as well as reasonable overhead and profit on Work executed, direct costs incurred by reason of such termination, and direct damages. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP less the remaining contingencies.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect (during which period the Owner has the opportunity to cure), terminate the Contract and recover from the Owner as provided in Section 14.1.3. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP less the remaining contingency.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may, upon seven (7) days' written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority having jurisdiction;
- .4 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;

- .5 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .6 staffs the Project with personnel different from the personnel listed in its proposal; or
- .7 otherwise is guilty of a material or substantial breach of or default under a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor on all or a portion of the Work and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4;
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work; and
- .4 Take or direct any or all of the actions in Section 14.5.1.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the GMP, less the remaining contingencies, exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. The remaining contingency shall accrue to the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

§ 14.2.5 If the Owner terminates a portion of the Work, the Contractor shall continue the performance of the remainder of the Work in accordance with the Contract Documents to the extent not terminated.

§ 14.2.6 If, after the Contractor has been terminated pursuant to this Section 14.2 or otherwise for cause, it is determined that none of the circumstances set forth in Section 14.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The GMP and Contract Time shall be adjusted for changes in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the GMP shall be consistent with the terms of the Contract Documents. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor consistent with the Contract Documents for Work properly executed and costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders), along with reasonable profit on the Work not executed, not to exceed the Contractor's Fee in the Agreement of the Cost of the Work not performed. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the GMP, less the remaining contingencies, as reduced by the amount of payments otherwise made, by the larger of (1) the actual value, or (2) the scheduled value of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Sections 14.5.1.6 or 14.5.1.7.

§ 14.5 Effects of Termination by Owner

§ 14.5.1 Unless the Owner directs otherwise, after receipt of a Notice of Termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;
- .3 procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, as directed by the Owner, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 with the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 use commercially reasonable efforts to sell any property of the types referred to in Section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 continue performance only to the extent not terminated.

§ 14.5.2 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

- .1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim the Owner may have against the Contractor;
- .3 an amount necessary to protect the Owner against outstanding or potential liens or Claims;
- .4 the agreed price for or the proceeds of sale of any materials, suppliers or other things acquired by the Contractor or sold, pursuant to the provisions of Section 14.5.1.7, and not otherwise recovered by or credited to the Owner; and
- .5 the remaining contingency.

§ 14.5.3 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any Claim by the Contractor for an equitable adjustment under this Section must be asserted within sixty (60) days from the effective date of the partial termination.

§ 14.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under the Contract Documents.

§ 14.5.5 The Contractor shall, from the effective Date of Termination until the expiration of three (3) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work. The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.6 The damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be initiated in writing and include the information and substantiation required by the Contract Documents. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor a Daily Report, nor any log entry or ROM log entry, nor an Owner's request for or the Contractor's response to a Change Order proposal or a proposal request, nor a notice of a potential or future Claim shall constitute a Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Continuing Contract Performance

Pending final resolution of a Claim, including the dispute resolution process and except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract maintain the Contractor's Construction schedule and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.3 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the GMP, written notice as provided herein shall be given before proceeding to execute the Work, and a written notice and a written Claim must be made in accordance with this Article 15, or it will be waived. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 15. The Contractor shall not be entitled to an increase in the GMP or Contract Time arising out of an error or conflict in or among the Contract Documents where the Contractor failed adequately to review the Contract Documents or failed to report the error or conflict to the Architect and the Owner in a timely manner consistent with the requirements of the Contract Documents. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4 Claims for Additional Time

§ 15.1.4.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given, and a written Claim must be made in accordance with Article 15 or it will be waived. The Contractor's Claim shall include an estimate of any cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Project directly caused thereby. If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not a change in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP.

§ 15.1.4.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction, and that the Work was on

schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the GMP will be adjusted for normal inclement weather. The Contractor shall be entitled to a change in the Contract Time only (but not a change in the GMP) if the Contractor can substantiate to the reasonable satisfaction of the Owner and Architect that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. The change in Contract Time shall be provisional until Substantial Completion has been achieved, at which time the change in the Contract Time shall be the extent to which the total net accumulated number of calendar days lost due to inclement weather from commencement of the Work until Substantial Completion exceeds the total net accumulated number to be expected for the same period from the aforesaid data.

§ 15.1.5 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes without limitation:

- .1 damages incurred by the Owner for rental expenses, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for loss of profit and for interest or financing costs.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.5 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, or to preclude an obligation of the Contractor to indemnify the Owner for direct, indirect or consequential damages alleged by a third party.

§ 15.2 Claim Procedure

§ 15.2.1 In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof, except Claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following alternative dispute resolution procedure unless the parties mutually agree in writing otherwise. To the extent that the Owner and Contractor agree to any partnering process to help resolve disputes, such processes shall be in addition to, and not in place of, the mandatory dispute resolution procedures in the Contract Documents.

§ 15.2.2 Except for Claims requiring notice before proceeding with the affected Work as otherwise described in the Contract Documents, the Contractor shall submit a written notice of any Claim to the Owner and the Architect within fourteen (14) days of the occurrence of the event giving rise to such Claim and shall include a clear description of the event leading to or causing the Claim. For all Claims, the Contractor shall submit a written Claim as provided herein within thirty (30) days of submitting the notice. Claims shall include a clear description of the Claim and any proposed change in the GMP (showing all components and calculations) and/or Contract Time (showing cause and analysis of the resultant delay in the critical path and other information referenced in Section 8.3.2) and shall provide data fully supporting the Claim, including without limitation a complete explanation as to why the relief sought is not within the scope of the Contract Documents. The Contractor may delay submitting data by an additional fourteen (14) days if it notifies the Owner in its Claim that substantial data must be assembled. Failure to properly submit the notice or Claim shall constitute a waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and Subcontractors of any tier) is entitled and may not contain reservations of rights without the Owner's written approval; any such unapproved reservations of rights shall be without effect. Any Claim of a Subcontractor of any tier may be brought only through, and after review by, the Contractor. For the purposes of calculating such time periods, an "event giving rise to a Claim" is not a Request for Information but rather is a response that the Contractor believes would change the GMP and/or Contract Time. The fact that the Owner and the Contractor may consider, discuss or negotiate an untimely or waived Claim shall in no way be deemed to constitute a waiver of any notice or other provisions of the Contract Documents.

§ 15.2.3 Notice and Claims

All notices and Claims shall be made in writing as required by the Contract, and shall be addressed to the Owner's Designated Representative identified in the A133. Any notice of a Claim of the Contractor against the Owner and any Claim of the Contractor, whether under the Contract or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract. No act, omission, or knowledge, actual or constructive, of the Owner or the Architect shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless the Owner and the Contractor sign an explicit, unequivocal written waiver, with Owner's signature being the signature of the Mayor of the City of Everett. The fact that the Owner and the Contractor may consider, discuss, or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute a waiver of the provisions of the Contract Documents unless the Owner and Contractor sign an explicit, unequivocal waiver, with Owner's signature being the signature of the Mayor of the City of Everett. The Contractor expressly acknowledges and agrees that the Contractor's failure to timely submit required notices and/or timely submit Claims has a substantial impact upon and prejudices the Owner, including but not limited to the inability to fully investigate or verify the claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, the parties stipulate that the Owner is prejudiced by the Contractor's failure to timely submit notices and/or Claims as required by the Contract Documents, and that the Owner shall not be required to establish any actual prejudice in order to enforce the notice and Claim provisions of the Contract Documents.

ALL CLAIMS SHALL BE ADDRESSED TO:

Ruben Sanchez
City of Everett
Parks & Facilities Dept.
802 E. Mukilteo Blvd., Suite 100
Everett, WA 98203

A COPY OF ALL CLAIMS SHALL ALSO BE SUBMITTED TO THE ARCHITECT AND CONSTRUCTION PROJECT MANAGER.

§ 15.2.4 At any time following the Owner's receipt of the written Claim, the Owner may require that an officer of the Contractor, a principal of the Architect, and the Owner's Superintendent or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim. If the Claim is not resolved, the Contractor may bring no litigation against the Owner unless the Claim is first subject to nonbinding mediation as described in this Article 15. This mediation requirement cannot be waived except by an explicit written waiver by both parties.

§ 15.2.5 The Owner shall accept, dispute, or reject a Claim properly submitted in accordance with the requirements of Section 15.2 no later than 30 calendar days after the receipt of the (1) Claim and (2) all documentation and/or data required by Section 15.2.2. If the Claim is disputed or rejected, the Owner shall state in writing why part or all of the request is disputed or rejected. If the Owner does not respond within the specified time period, the Contractor shall not be deemed to have waived any right to the claims process.

§ 15.2.6 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.7 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect or the Owner, by mediation or by litigation.

§ 15.3 Mediation

§ 15.3.1 If a Claim is not resolved in the dispute resolution procedure of Section 15.2.4, neither the Contractor nor any Subcontractor or supplier of any tier may bring a claim or action against the Owner in litigation unless all unresolved claims are first subject to nonbinding mediation before a single mediator. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty (30) days of the request, either party

may submit the unresolved Claims to either JAMS or Judicial Dispute Resolution, LLC (“JDR”), Seattle, Washington, or such other alternative dispute resolution service to which the parties mutually agree, for appointment of a single mediator according to its procedures.

§ 15.3.3 The parties to the mediation shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.4 An officer of the Contractor and the Owner’s Superintendent or designee, each having full authority to settle the Claims, must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as the Architect or Subcontractors or suppliers of any tier, their representatives, also with authority to settle the Claim, shall also attend the mediation session. Unless the Owner and the Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion but prior to Final Acceptance by the Owner.

§ 15.4 Litigation

§ 15.4.1 The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures of this Article 15. The Contractor shall have the burden to demonstrate in any litigation that it has complied with all requirements of this Article 15. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion approved in writing by the Owner, or (b) ninety (90) days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of a mediation (the time period between the written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the date of the mediation session. Neither the Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys’ fees directly or indirectly from the Owner (but may recover attorneys’ fees from the bond or statutory retainage fund itself to the extent allowable under law).

§ 15.4.2 The Owner may join the Contractor as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of the Contractor or Subcontractor of any tier.

DRAFT AIA[®] Document A133[™] - 2019

Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the <> day of <> in the year <>, is incorporated into the accompanying AIA Document A133[™]-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the <> day of <> in the year <> (the "Agreement")

(In words, indicate day, month, and year.)

for the following PROJECT:

(Name and address or location)

Mackenzie Engineering, Inc.
500 Union Street #410
Seattle, WA 98101

THE OWNER:

(Name, legal status, and address)

The City of Everett
Parks & Facilities Dept.
802 E. Mukilteo Blvd., Suite 100
Everett, WA 98203

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

<><><>
<>

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed <> (\$ <>), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

« »

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[« »] The date of execution of this Amendment.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages shall be assessed as follows:

Construction Manager understands that if it fails to achieve Substantial Completion by the Substantial Completion Date (as specified in the GMP Amendment), Owner will suffer damages that are difficult to determine and accurately specify. Construction Manager agrees that if it fails to achieve Substantial Completion by the Substantial Completion Date, Construction Manager shall pay Owner _____ as liquidated damages for each calendar day that Substantial Completion extends beyond the relevant Substantial Completion Date.

Any liquidated damages assessed pursuant to this Contract shall be in lieu of all monetary liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are caused by any delay in achieving Substantial Completion or Final Completion, provided this limitation shall not apply to Construction Manager's duty to indemnify the Owner or to warrant Construction Manager's Work as provided in this Contract and shall not apply to any loss, damage, cost or liability incurred by Owner due to factors unrelated to Construction Manager's delay.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

« »

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews,

testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

<< >>

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

<< >>

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

<< >>

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

<< >><>

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

<< >><>

(Printed name and title)