



**REQUEST FOR QUALIFICATIONS (RFQ)
COLVILLE TRIBAL FEDERAL CORPORATION (CTFC)**

RFQ TITLE	12 TRIBES LAKE CHELAN CASINO HOTEL												
DATE ISSUED	March 10, 2023												
PURPOSE	CTFC is soliciting statements of qualifications from Design-Builder candidates to provide Progressive Design-Build services for the proposed 12 TRIBES LAKE CHELAN CASINO HOTEL project.												
DEADLINE FOR SUBMISSIONS	April 6, 2023 3:00 P.M. Pacific Local Time Late submittals will not be accepted.												
LAST DATE TO SUBMIT QUESTIONS	The last date to submit questions regarding this RFQ is March 27, 2023 at 3:00 p.m. Pacific Local Time.												
DIRECT ALL INQUIRIES IN WRITING TO	<table border="1"> <tr> <td>OWNER</td> <td>Kary Nichols</td> <td>Dean Gable</td> </tr> <tr> <td>TITLE</td> <td>CEO of CTFC</td> <td>Owner's Rep. Project Mngr</td> </tr> <tr> <td>EMAIL</td> <td>k.nichols@ctfc.biz</td> <td>deangable@hillintl.com</td> </tr> <tr> <td>PHONE NO.</td> <td>509.422.7782</td> <td>509.570.0934</td> </tr> </table>	OWNER	Kary Nichols	Dean Gable	TITLE	CEO of CTFC	Owner's Rep. Project Mngr	EMAIL	k.nichols@ctfc.biz	deangable@hillintl.com	PHONE NO.	509.422.7782	509.570.0934
	OWNER	Kary Nichols	Dean Gable										
	TITLE	CEO of CTFC	Owner's Rep. Project Mngr										
	EMAIL	k.nichols@ctfc.biz	deangable@hillintl.com										
PHONE NO.	509.422.7782	509.570.0934											
REQUIRED NO. OF COPIES	Submit (1) one original electronic submission												
ELECTRONIC SUBMITTAL	All required documentation shall be submitted to k.nichols@ctfc.biz with CC: to deangable@hillintl.com See Section 4 for SOQ Content requirements. SOQ Submission instructions are provided in Section 3.3.												
RESULTS OF SUBMITTALS RECEIVED	Submittals received will be evaluated for shortlisting by CTFC.												

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**CTFC
REQUEST FOR QUALIFICATIONS
RFQ 12 TRIBES LAKE CHELAN CASINO HOTEL
SUBMITTALS DUE: April 6, 2023, EXACTLY 3:00 p.m. Pacific Local Time, or earlier.**

Public notice is hereby given that CTFC has issued the above solicitation for Progressive Design-Build services for a proposed Casino and Hotel. The submittal documents are available at <https://www.colvilletribes.com/tero> and <https://www.colvilletribes.com/rfp> .

If unable to access documents online, contact the RFQ Coordinator, per Section 3.1. Other than access to documents, no phone calls and/or verbal request/inquiries about the content of this RFQ will be accepted. Individuals or Proposers who solicit information about this RFQ either directly or indirectly from other sources, other than obtaining copies of the RFQ, will be disqualified.

Proof of Indian Ownership

If your business is certified by the Tribal Employment Rights Office of the Colville Tribes, please provide a copy of that certification.

Indian-owned businesses will be given preference in accordance with Tribal law, but non-Indian ownership does not preclude a business from submitting an SOQ or being awarded the contract.

II. Notice of Intent to Submit a Statement of Qualifications

Notice of Intent to Submit a Statement of Qualifications for CTFC. This notice is strongly recommended for Proposers to submit in order to receive courtesy notification of information related to this RFQ.

This notice should be submitted no later than the close of business on March 27, 2023 and shall be sent by email TO: k.nichols@ctfc.biz with CC: deangable@hillintl.com.

NOTICE OF INTENT TO SUBMIT A STATEMENT OF QUALIFICATIONS
Design-Build Services

I, _____, authorized representative of the below named company, hereby notifies Colville Tribal Federal Corporation of its intent to submit a Statement of Qualifications in response to the Progressive Design-Build Services RFQ. By signing and returning this form, I stipulate that I have reviewed the RFQ, and that I am interested in submitting a Statement of Qualifications.

Print Name:	
Title:	
Company Name:	
Mailing Address:	
Phone Number:	
Email Address:	
Date:	

1. INTRODUCTION

1.1. BACKGROUND AND PURPOSE

1.1.1. The COLVILLE TRIBAL FEDERAL CORPORATION (hereinafter “CTFC”) is headquartered in Omak, Washington. CTFC currently manages two enterprises that include gaming (Colville Gaming LLC), and wood products (Colville Tribal Forest Products LLC). CTFC is an economic leader in the region, employing more than 475 people. CTFC’s goal is to provide revenue for the Colville Tribes, and employment and training opportunities for tribal members.

1.1.2. CTFC is initiating this Request for Qualifications (RFQ) to solicit Statements of Qualifications (SOQs) from Proposers interested in providing Design-Build services for the proposed 12 TRIBES LAKE CHELAN CASINO HOTEL project.

1.1.3. The proposed project is a new casino and hotel to be built on Indian trust land in Manson, WA, north of Highway 150, between N Madeline Rd and Wapato Lake Rd; south of CTFC’s current casino. CTFC commonly refers to this land as MA-8 (Moses Allotment 8). The scope priorities include:

- Casino
 - Sized for 650 slot machines and 9 table games.
 - 100 seat table service restaurant
 - 100 seat bar area with a small stage for entertainment
 - 25 seat center bar on the casino floor
 - A coffee shop/café with grab-n-go food options.
- Hotel
 - A 3-star, 3-diamond, 100-room hotel with an indoor pool and whirlpool, small exercise room, and divisible 10,000 SF ballroom.
- Parking
 - At least 750 vehicle parking lot

1.1.4. The Project has been approved by the CTFC Board of Directors.

1.1.5. The proposed Guaranteed Maximum Price (GMP) for the project is approximately \$70 - \$76 Million.

1.1.6. Schedule. Anticipated Notice to Proceed: Late June / Early July, 2023, Owner Occupancy is anticipated around June, 2025.

1.1.7. Procurement Approach. CTFC is using the Progressive Design-Build (PDB) delivery method for this project.

1.1.8. CTFC plans to short list up to three firms to enter the RFP phase. CTFC’s intent is to limit the Finalists efforts required during the RFP phase (including submittal

requirements) and select the most qualified team based on criteria described in detail in this RFQ and the subsequently issued RFP.

1.1.9. In response to the subsequently issued RFP, the Finalists will be required to submit a Price Proposal with the following elements:

- A. The Price Proposal requirements will be further explained in the RFP, but are expected to include the Finalist's overhead and profit fee percentage. This Price proposal shall be submitted separately in a password protected pdf, to be opened after other evaluation criteria have been scored.
- B. Indian preference applies to this project. Fifteen percent of the total number of available rating points will be given to qualified certified firms, in accordance with Colville Tribal Law and Order Code (CTC) 10-3-7(b).

1.1.10. After the Design-Builder is under contract, and as the design/budget progresses, the Design-Builder will collaborate with and update CTFC regarding the development of the Basis of Design Documents.

1.1.11. **Project Goals.** CTFC is an economic leader in the region, employing more than 475 people. CTFC's goal is to provide revenue for the Tribes, and employment and training opportunities for tribal members; leading to self-sufficiency and strong tribal governments.

The following are related project goals:

- Fulfill the Tribes' 30-year dream to build a premiere destination resort casino and hotel that reflects the values of the people and culture of the Confederated Tribes of the Colville Reservation, while providing economic development, and a source of pride within the community.
- Build a trusting relationship with an honest project team that is committed to the Project, and is committed to exceeding client expectations by performing to a high standard of care, resulting in a quality-built Project that will last for future generations.
- Through the use of local/regional trade partners, create an efficient facility that can be maintained with local resources, and provide a long service life.
- Expand upon the expertise of the entire Project team to enable the development of future projects within CTFC.
- Achieve completion of the Project within the timeframe and budget while providing scope and quality that exceeds CTFC expectations, while also maintaining a safe and healthy work environment.

1.2. MINIMUM QUALIFICATIONS

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

The Proposer must be able to demonstrate the following minimum qualifications:

- Completed at least two (2) resort projects with each exceeding \$50 million in construction costs within the last 10 years. Preference will be given to specific experience with Native American casino resorts.
- Extensive experience with related infrastructure requirements for casino and hotel projects.
- Demonstrated track record of achieving project completion on time and on budget.
- Experience working with the requirements and covenants of financial institutions.

1.3. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFQ and RFP process is tentatively scheduled to begin around late June / early July, 2023 and end around June, 2025.

1.4. DEFINITIONS

1.4.1. Definitions for the purposes of this RFQ include:

1.4.2. County – The County is Chelan County, Washington.

1.4.3. CTFC – Colville Tribal Federal Corporation, a wholly owned section 17 corporation of the Confederated Tribes of the Colville Reservation, is issuing this RFQ. CTFC owns Colville Gaming, LLC, which operates the collection of 12 Tribes Casinos and Hotels.

1.4.4. Design-Builder – Individual/s or company/team whose Proposal has been accepted by CTFC and is awarded a fully executed, written contract.

1.4.5. Projects of Similar Scope and Complexity - The definition of “Projects of Similar Scope and Complexity” are projects that had completion dates within the last ten (10) years and that have many or all of the following characteristics:

- A. Projects of a similar size that include design and construction of Casinos and Hotels.
- B. Tribal client projects.
- C. Projects that utilize an integrated delivery method (GC/CM, DB, private Integrated Project Delivery, etc.) that require strong coordination and integration of the design and construction team and early involvement of the contractor during design.
- D. Projects where the Design-Builder was selected prior to the establishment of the final scope, price, and schedule and where the Design-Builder collaborated with the Owner to develop the final scope, price, and schedule; and
- E. Projects requiring excellent communications skills.
- F. Projects where the design maximized function within the space.

1.4.6. Proposal – A formal offer submitted in response to an RFP solicitation.

- 1.4.7. Proposer -- Individual or company submitting an SOQ in response to an RFQ.
- 1.4.8. Finalist – Proposer selected to proceed to the RFP phase.
- 1.4.9. Request for Qualifications (RFQ) – Formal procurement document in which a service or need is identified. The purpose of an RFQ is to solicit members of the Design-Build community to submit their qualifications and experience for evaluation and Finalists to proceed to the RFP phase.
- 1.4.10. Request for Proposals (RFP) – Formal procurement document in which a service or need is identified. The purpose of an RFP is to solicit the Finalists to submit their management approach, and overhead and profit percentage fee pricing component for evaluation and selection of the highest scored Finalist.

2. PROJECT DELIVERY AND SELECTION PROCESS

2.1. PROJECT DELIVERY

2.1.1. Use of the Design-Build delivery method provides an economic benefit by providing cost-effective design and construction. CTFC is also using the Design-Build delivery method to contract with a single entity for both design and construction. The design and construction services shall be set forth in a Design-Build Agreement, the Draft form of the Design-Build Agreement will either be an attachment to this RFQ, or will be distributed in a future Addendum. We anticipate using the DBIA 530 form of Contract as well as the DBIA 535 General Conditions, and Supplementary Conditions.

A. The Design-Build Agreement is anticipated to follow the format below:

- 1) The Design-Builder will be compensated on the basis of the Cost of the Work plus the Overhead and Profit Percentage Fee Proposal. The Design-Builder's compensation will be subject to the Phase 1 Not to Exceed Amount as well as an established Guaranteed Maximum Price (GMP) that will be set at or below the Design-Build budget of approximately \$70 - \$76 million dollars (\$70,000,000 - \$76,000,000).
- 2) The Design-Build Agreement will have several phases. A general description of those phases is below:

B. Phase 1: During Phase 1, the Design-Builder will, among other duties, perform the following tasks:

- 1) Complete the validation of all information provided by CTFC as well as the site investigation.
- 2) Generate the deliverables set forth in the Phase 1 Scope of Services, Exhibit C. Such deliverables are anticipated to include, but not be limited to: the Final

Basis of Design Documents, the Final Schedule, and the fully developed GMP estimate budget, all of which shall be consistent with CTFC's established GMP.

C. Phase 2: Phase 2 commences upon CTFC's acceptance of the items submitted at the end of Phase 1, which form the basis of the GMP Agreement. In Phase 2, the Design-Builder completes the final construction documents, secures all necessary permits, and completes construction pursuant to the Final Basis of Design Documents, the GMP and the Project Schedule.

2.1.2. At the conclusion of Phase 1, CTFC has the option to consider an "off-ramp" if there are permitting issues or the Phase 1 deliverables cannot be negotiated. If the off-ramp is selected, CTFC reserves the right to utilize the Phase 1 information for subsequent procurements associated with the project. If the parties arrive at agreement on the material commercial terms and CTFC elects to move to Phase 2, the parties will enter into the Phase 2 Amendment to the Design-Build Agreement, incorporating the Phase 2 deliverables.

2.2. SELECTION PROCESS

2.2.1. RFQ Phase. Proposers shall submit a Statement of Qualifications (SOQ) pursuant to this RFQ and any addenda. CTFC will determine whether Proposers are "Responsive and Responsible" with respect to the submission of the SOQ, and will score the SOQs as set forth in this RFQ.

2.2.2. Short List. CTFC will establish a selection committee and evaluate each SOQ solely upon the factors, weighting and process identified in this RFQ and any addenda thereto. Based on the selection committee's findings, CTFC intends to short list approximately three responsive and responsible Finalists to proceed to the RFP Phase.

2.2.3. RFP Phase. CTFC will provide the Finalists a Request for Proposal (RFP), including addenda. CTFC will notify all Proposers whether or not they were selected as Finalists.

2.2.4. Site Walk. A project site visit, site walk, is anticipated as identified in this RFQ; further instructions will be provided in the RFP.

2.2.5. RFP Submittal. Maximum 10-page Submittal document, to be submitted prior to the Propriety Meeting/Interview; instructions will be provided in the RFP.

2.2.6. Proprietary Meeting/Interview. The Finalists will be invited to meet individually with CTFC ("Proprietary Meeting/Interview"). CTFC is anticipating holding one Proprietary Meeting/Interview with each Finalist. The purpose of the Proprietary Meeting/Interview is for the Selection Committee to meet and become familiar with key members of the

Finalist's Team and ask questions of the Finalist, to permit the Finalist to ask CTFC questions, and to serve as a workshop for the Finalist to propose solutions specific to the goals and challenges of the Project. The Finalists should treat the Proprietary Meeting/Interview as the first project meeting and should come prepared to address challenges specific to the Project and how the Finalist's Team will address those challenges. Only Key Team Members who are expected to perform substantial work on the Project should attend the interactive Proprietary Meeting/Interview, and **the number of Key Team Members in attendance is limited to seven**. The Proprietary Meeting/Interview will be scored separately from the Proposal. CTFC will notify each Finalist of the specific time for their Proprietary Meeting/Interview. Placeholder dates and times are shown in this RFQ; exact dates will be provided in the RFP. The Finalists will be responsible for paying all their own expenses associated with the Proprietary Meeting/Interview. Finalists will be required to provide Proprietary Meeting/Interview minutes to document discussions and clarifications; the meeting minutes should reflect the type of documentation that the Owner should expect throughout the course of the Project. Any such documentation will not be understood to alter or reduce in any way the requirements contained in the RFP. Proprietary Meeting/Interview minutes will be kept strictly confidential between CTFC and the Finalist; excepting any items that become Addenda to the RFP. Proprietary Meeting/Interview minutes are due along with the Proposal. Finalists may ask questions during the Proprietary Meeting/Interview; however, Finalists may not rely on any information provided orally during the Proprietary Meeting/Interview unless such information is provided in writing as Addenda to the RFP.

- 2.2.7. Proposal (11x17). The Finalists shall submit a Proposal responsive to the RFP and any Addenda. The Proposal shall adhere to the requirements provided in the RFP, with a focus on Project specific challenges and solutions. Finalists will also be required to submit a Price Proposal for their overhead and profit fee percentage. This Price proposal shall be submitted separately in a password protected pdf. Price Proposal instructions will be provided in the RFP.
- 2.2.8. Selection. The Selection Committee will evaluate the responses to this solicitation (SOQ, RFP Submittal, Proprietary Meeting/Interview, Proposal, and Price Proposal) based solely on the factors, weighting, and process identified in the RFQ, the RFP and in any addenda. CTFC will then initiate negotiations with the Finalist that achieved the highest score. If CTFC is unable to execute a contract with that Finalist, negotiations with that Finalist may be suspended or terminated, and CTFC may proceed to negotiate with the next highest scored Finalist. CTFC shall continue in accordance with this procedure until a Design-Build Agreement is reached or the selection process is terminated. CTFC shall notify all Finalists of the selection decision.
- 2.2.9. Honorarium. Responsible Finalists who submit responsive Proposals and fully participate in the entire procurement process set forth in the RFP, and who are not selected, will each receive a \$3,000 stipend 60 days after successful negotiation and signing the Design-Build Agreement with the Design-Builder.

2.2.10. Expenses. With the exception of the honorarium set forth herein, CTFC accepts no liability for the costs and expenses incurred by Proposers and Finalists responding to this Procurement. Each Proposer that enters into the Procurement process shall prepare the required materials, the SOQ, RFP Submittal, and the Proposal at its own expense. Proposers and Finalists will pay all of their own expenses for all travel and all participation in Proprietary Meetings/Interviews, Site Visits; and all other expenses that may be incurred in connection with pursuit of the project. Proposers and Finalists cannot make any claims whatsoever for reimbursement from CTFC for the costs and expenses associated with the process, even in the event that CTFC cancels this Project or rejects all Proposals.

3. GENERAL INFORMATION

3.1. RFQ COORDINATOR

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

Name	Kary Nichols
Phone Number	509.422.7782
E-Mail Address	k.nichols@ctfc.biz
Also include CC: to Dean Gable on all communication to Kary Nichols.	
Name	Dean Gable
Phone Number	509.570.0934
E-Mail Address	deangable@hillintl.com

3.1.2. Any other communication will be considered unofficial and non-binding on CTFC. Proposers are to rely on written statements issued by the RFQ Coordinator through CTFC. Communication directed to parties other than the RFQ Coordinator will result in disqualification of the Proposer.

3.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

ITEM	DATE	TIME	LOCATION
DB RFQ Advertisement	3/10/2023		https://www.colvilletribes.com/tero and https://www.colvilletribes.com/rfp
Last Day to Submit RFQ Questions	3/27/2023	3:00 PM	K.nichols@ctfc.biz CC: deangable@hillintl.com
RFQ Last Addendum Issued	3/31/2023		
Statement of Qualifications Due	4/6/2023	3:00 PM	K.nichols@ctfc.biz CC: deangable@hillintl.com
Short List Announced	4/13/2023		
RFP Issued	4/17/2023		
Site Walk*	4/25/2023	11:00 AM	TBD
Last Date to Submit RFP Questions or Proposed Changes to Design-Build Agreement	4/28/2023		

RFP Addendum Issued (if needed)	5/4/2023		
RFP Submittal	5/11/2023	3:00 PM	K.nichols@ctfc.biz CC: deangable@hillintl.com
Proprietary Meeting / Interview	5/16/2023	9 AM 12:30 PM 3 PM	12 Tribes Omak Hotel 28968 US-97 Omak, WA 98841
RFP Addendum Issued (if needed)	5/18/2023		
Proposal (11x17), Mtg. Mins., Price Proposal	5/22/2023	3:00 PM	K.nichols@ctfc.biz CC: deangable@hillintl.com
Selection of Design-Builder	5/26/2023		
Design-Build Agreement approval	Throughout June		
Anticipate NTP	Late June / Early July		

* Site walk meeting location will be provided in the RFP.

** Substantial and Final Completion dates will be set by the team upon selection.

CTFC reserves the right to revise the above schedule.

3.3. SUBMISSION OF STATEMENTS OF QUALIFICATIONS (SOQ)

3.3.1. Preparation of Submission

- A. Submittals shall be submitted electronically to the RFQ Coordinator at the contact information provided in 3.1 of this RFQ. Submittals delivered by fax, postal, or other carrier will not be accepted.
- B. Electronic submittals shall be limited to the documents specified in the RFQ document and shall not include additional brochures, booklets or other sales material that are not specifically requested in the RFQ.
 - 1) It is strongly recommended that you follow up with a phone call to confirm your packet has been received prior to the closing date and time for submittal. You may contact the RFQ Coordinator at the contact information provided in 3.1 of this RFQ.

3.4. ADDITIONAL CONDITIONS

- 3.4.1. Materials submitted in response to this competitive procurement shall become the property of CTFC.
- 3.4.2. All received SOQs shall remain confidential until the award of contract recommendation has been approved by the CTFC's Board.
- 3.4.3. All requests for information should be directed to the RFQ Coordinator.

3.5. REVISIONS TO THE RFQ

3.5.1. In the event it becomes necessary to revise any part of this RFQ, addenda will be posted through CTFC's website, and all registered plan holders will be notified.

3.5.2. CTFC also reserves the right to cancel or to reissue the RFQ in whole or in part, at any time.

3.6. TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

3.6.1. Chapter 10 of the Colville Tribal Law and Order Code (CTC) requires CTFC to provide preference to qualified Indian contractors.

3.7. ACCEPTANCE PERIOD

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

3.8. RESPONSIVENESS

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

3.9. COSTS TO PROPOSE

3.9.1. CTFC will not be liable for any costs incurred by the Proposer in preparation of an SOQ submitted in response to this RFQ, in conduct of a presentation, or any other activities related to responding to this RFQ.

3.10. NO OBLIGATION TO CONTRACT

3.10.1. This RFQ does not obligate CTFC to contract for services specified herein.

3.11. REJECTION OF STATEMENT OF QUALIFICATIONS

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

3.12. SUBSTITUTION OF DESIGN-BUILDER AND KEY TEAM MEMBERS

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

evaluation and may result in a change to the evaluation and ranking of the Proposer, which may result in the removal of a Finalist from the short list.

4. STATEMENT OF QUALIFICATIONS CONTENT

4.1. SOQ ORGANIZATION AND REQUIREMENTS

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

- A. Covers, tabs and dividers, provided that they do not contain substantive content
- B. Resumes
- C. Required attachments, including but not limited to the Corporate Structure Questionnaire, Statement of Acknowledgement, Certification Regarding Debarment, and the insurance and bond submittals
- D. The Table of Contents
- E. The Identification of Projects Table; and
- F. The Letter of Submittal.

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

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

4.1.4. With the exception of the Identification of Projects Table. A "page" is defined as an 8.5 x 11-inch (size when printed). For the Identification of Projects Table, Proposers may use 11 x 17-inch (size when printed).

4.2. LETTER OF SUBMITTAL

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

- A. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
- B. Legal status of the Proposer (sole proprietorship, partnership, corporation, etc.).
- C. Location of the facility from which the Proposer would operate.

- D. Identify any current or former CTFC employees employed by or on the Proposer's governing board as of the date of the SOQ or during the previous twelve (12) months.
- E. Statement of Acknowledgement that the Proposer will comply with all terms and conditions set forth in the Request for Qualifications, unless otherwise agreed by CTFC.

4.3. STATEMENT OF QUALIFICATIONS

4.3.1. The SOQ shall demonstrate the Proposer's ability to undertake the Project by providing the following technical and management qualifications of the Proposer, Team Members, and individual Key Team Members. The Proposer is responsible for ensuring that contact information contained in their referenced project profiles is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications.

Emphasis will be placed on experience and expertise in performing substantive work on projects that are of Similar Scope and Complexity, as described in the definitions above. CTFC reserves the right to award more points to projects that have more of the characteristics in the definition of Projects of Similar Scope and Complexity. CTFC also reserves the right to award more points to successful projects in which Proposer, Team Members, and/or individual Key Team Members had substantial responsibility for their respective scopes of work.

4.3.2. Proposer Organization and Responsibilities

- A. Provide an organization chart (showing Team Members, Key Team Members and their firm affiliation) for all phases of the Project from programming through final acceptance and warranty and maintenance period. Key Team Members should include but are not limited to the following individuals:
 - a. Corporate executive(s) dedicated to the project,
 - b. Design-Build Project Manager,
 - c. Construction Project Manager (if not the Design-Build Project Manager),
 - d. Lead Estimator,
 - e. Construction Superintendent,
 - f. Design Manager
 - g. Lead Designer
 - h. Designer Project Manager
 - i. Key Design Consultants

Clearly indicate whether any individuals are proposed to fill multiple roles. CTFC reserves the right to reject the inclusion of any individual or consultant firm from the winning Design-Builder.

- B. Provide a resume for all Key Team Members. Individual resumes should be no longer than 1 page and should include the following information:
- 1) Description of Key Team Member's proposed Project role and the percentage of effort that the Key Team Member will contribute to the Project for both Phase 1 and Phase 2. The intent of the percentage of effort is to help CTFC understand which team members will be the primary points of contact during the different phases.
 - 2) Identification of Key Team Member's specialized experience and competence on Projects of Similar Scope and Complexity completed in the last 10 years.
 - 3) If applicable, name of college attended, dates of attendance, major course of study, and degrees conferred.
 - 4) If an architect or engineer, the states in which the architect or engineer is licensed to practice along with the applicable license numbers.
 - 5) Provide a brief statement of the Key Team Member's past experience and employment for the past 10 years.
 - 6) Design Build Institute of America (DBIA) designation, if applicable.
- C. Provide a narrative describing the qualifications of Proposer Team Members and Key Team Members and why the Team proposed in this SOQ will exceed CTFC's Project Goals.
- D. Provide litigation/dispute history for the lead contractor and the designer-of-record for the last 5 years.

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

- A. Describe the Team's experience in successfully managing design-build (or a similar integrated delivery model) Projects of Similar Scope and Complexity that include management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.
- B. Minimum Requirements, from Section 1.2, list and describe the projects that demonstrate that the Proposer meets the stated minimum requirements.
- C. It is not required that all Team Members have experience with Projects of Similar Scope and Complexity or with the Progressive Design Build delivery method.

However, Proposers should cumulatively possess experience in these areas such that CTFC has confidence in the capabilities of the Proposer as a whole.

4.3.4. Budget Adherence

- A. What processes will the Proposer implement to ensure that the project is designed and constructed to a fixed fee and a set GMP? Include in your description projects where the Proposer creatively managed issues such as; sequencing, scheduling, site access, or other challenging factors.
- B. Describe the Proposer's approach to the following:
 - Quality assurance/quality management: and
 - Changes in scope
- C. What formal and informal protocols and processes will the Proposer implement to ensure a project that is "designed to the budget" the first time. Include the Proposer's experience in commissioning and testing Projects of Similar Scope and Complexity.
- D. Describe your project buyout process and how you progress from the preliminary budget to final construction budget.

4.3.5. Safety, Financial, Legal:

- A. Provide evidence of capacity of the Proposer to provide bonding in the amount of the estimated GMP. (An actual bond does not need to be submitted with the SOQ, but inability to provide the required bonding capacity will result in disqualification).
- B. Provide a copy of certificate(s) of insurance showing the current limits of liability for commercial general liability, employer's liability, business automobile liability, and professional liability for the lead contractor and the designer-of-record.
- C. Provide a signed Corporate Structure Questionnaire set forth in Attachment 1 demonstrating that the Proposer meets the responsibility criteria:
 - a. Have a certificate of registration;
 - b. Have a current state unified business identifier number;
 - c. If applicable, have industrial insurance coverage for the Design-Builder's employees working in Washington as required in Title 51 RCW;
 - d. If applicable, have an employment security department number as required in Title 50 RCW;
 - e. If applicable, have a state excise registration number as required in Title 82 RCW;

- f. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065;
- g. If applicable, not have been found out of compliance with Title 10 of the Colville Tribal Law and Order Code or other TERO requirement. Not having been found out of compliance by the Washington State apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;
- h. Within a three-year period immediately preceding the due date of the SOQ, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW

- D. Provide the Table of Contents of the constructor's accident prevention program and a brief overview of its implementation.
- E. Provide the safety and accident prevention record of the construction members of the Proposer's team. Include other relevant information that documents their safety record, including Total Recordable Incidence Rate (TRIR).
- F. Provide a list of all OSHA, TOSHA, WISHA, or other safety agency citations and their dispositions for the past five (5) years against the Proposer.
- G. Disclose past or current bankruptcies, convictions, debarments, or suspensions involving the lead contractor and the designer-of-record.

4.3.6. Past Utilization of TERO Certified Businesses

- 4.3.6.1. Describe the Proposer's successful past utilization of businesses certified by TERO. Indian-owned businesses will be given preference in accordance with Tribal law, but non-Indian ownership does not preclude a business from submitting a proposal or being awarded the contract.

4.3.7. Identification of Projects Table (not scored)

- A. The Proposer must submit an Identification of Projects Table with the required information set forth herein. The Identification of Projects Table may be submitted on 11" x 17" size and may be no more than two pages in length; this table is excluded from the SOQ 25 page limit. The Proposer is responsible for ensuring that contact information contained in their Identification of Projects is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications. CTFC reserves the right to contact any person listed in the Identification of Projects or any other person with knowledge regarding any Project in which any Proposer Team Member or Key Team Member participated.

- a. Name of project.

- b. Owner/Customer.
 - c. Location of project (include address).
 - d. Description of the delivery method and integration of design and construction and identify the firm(s) role as a prime consultant, subconsultant, contractor, subcontractor or other.
 - e. Project description and applicability and relevance of the referenced project to the evaluation criteria Project.
 - f. Name of each Key Team Member who is proposed for this contract who played a significant role on the project example, including a description of their project responsibilities and functions.
 - g. The initial contract price, the final contract price, and an explanation for any difference between the two amounts.
 - h. The initial date scheduled for substantial completion, the actual date of completion, and an explanation for any difference between the two dates: and
 - i. Project contact of the owner or customer (current address, e-mail, and phone number) who can verify the characteristics of the submitted project example.
- B. The information provided in this section will not be scored separately. Rather, the information will be used to obtain basic information regarding the projects and determine whether projects identified in the SOQ are within the definition of Projects of Similar Scope and Complexity.

5. EVALUATION

5.1. PRELIMINARY EVALUATION WEIGHTING AND SCORING

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

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

SCORING CRITERIA FOR RFQ PHASE ONLY		
SOQ		
RFQ Section 4.3.2	Proposer Organization and Responsibilities	16 points
RFQ Section 4.3.3	Demonstrated History of Successful Projects of Similar Scope and Complexity	20 points
RFQ Section 4.3.3.B	Section 1.2 Minimum Requirements	Responsive? Yes/No
RFQ Section 4.3.4	Budget Adherence	20 points
RFQ Section 4.3.5	Safety, Financial and Legal	Responsive? Yes/No
RFQ Section 4.3.6	Past Performance in Utilizing Certified TERO Businesses	Responsive? Yes/No

RFQ Section 4.3.6	TERO Preference, Certified Firms	10 points
	Total SOQ Points:	66

** Scoring for the chosen Finalists will be defined in the RFP.

** The Price Proposal shall be submitted by the selected Finalists in a password protected pdf, which will be opened after scoring has been completed, so as to not influence scoring of the Proposal and Proprietary Meeting/Interview.

5.2. AWARD OF CONTRACT

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

5.2.2. CTFC reserves the option of awarding this contract in any manner most advantageous for CTFC.

5.2.3. Award of contract, when made, will be to the Finalist whose scoring is the most favorable to CTFC, taking into consideration the evaluation factors. CTFC shall make the award of contract.

5.2.4. Reservation of Rights

CTFC reserves without limitation and may exercise at its sole discretion, the following rights and conditions with regard to this Procurement process:

- A. To cancel the Procurement process and reject any and all SOQs and/or Proposals;
- B. To waive any informality or irregularity;
- C. To revise the Procurement Documents and schedule via an addendum;
- D. To reject any Proposer that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
- E. To require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its SOQ or Proposal and require additional evidence of qualifications to perform the work described in this RFQ or a subsequent RFP.
- F. To provide clarifications or conduct discussions, at any time, with one or more Proposers;
- G. To conduct reference checks for all Proposers. CTFC may, at its sole discretion, consider the information obtained through this process and, at any time, adjust the Proposer's scores with respect to the factors identified above.

- H. To contact references who are not listed in the Proposer's SOQ or Proposal and investigate statements on the SOQ and Proposal of the Proposer and any firms or individuals identified in the SOQ.
- I. To consider alternative technical concepts and/or approaches identified by Proposers;
- J. To take any action affecting the RFQ process, the RFP process, or the Project that is determined to be in CTFC's best interests.
- K. Approve or disapprove of the use of particular Sub consultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Sub consultants, Subcontractors, or Key Team Members from those identified in the SOQ or Proposal.
- L. CTFC is interested in participating in the process for selection of certain subcontract trade partners.

6. CONTRACT TERMS

6.1. ANTIKICKBACK

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

6.2. DISPUTES

- 6.2.1. This contract shall be performed under the laws of the Confederated Tribes of the Colville Reservation. Any litigation to enforce this contract or any of its provisions shall be brought in the Colville Tribal Court, Nespelem, WA.

6.3. NONDISCRIMINATION

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

6.4. INSURANCE COVERAGE

- 6.4.1. Refer to, Insurance Exhibit - B1 Design-Builder's Insurance Requirements.

7. ATTACHMENTS

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

- 7.1.1. ATTACHMENT 1 – Corporate Structure Questionnaire
- 7.1.2. ATTACHMENT 2 – Statement of Acknowledgement
- 7.1.3. ATTACHMENT 3 – Certification Regarding Debarment
- 7.1.4. ATTACHMENT 4 – Site Map
- 7.1.5. ATTACHMENT 5 – DBIA Contract Document #530, Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price
- 7.1.6. ATTACHMENT 6 – DBIA Contract Document #535, Standard Form of General Conditions of Contract Between Owner and Design-Builder
- 7.1.7. ATTACHMENT 7 – Exhibit C – Phase 1 and 2 Scope of Work

Insurance Exhibit – B 1

Design-Builder's Insurance Requirements

Document No. E-INS-I

Second Edition, 2010

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Washington, D.C.





Insurance Exhibit

Design-Builder’s Insurance Requirements

(The Parties should consult their insurance advisors prior to completing this Exhibit)

1.1 Insurance Types and Limits.

1.1.1 Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition):

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

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required <i>Per Claim/Occurrence</i>	Minimum Limits Required <i>Aggregate Policy Limits</i>	Maximum Deductible
1. Worker’s Compensation	Statutory Limits	Statutory Limits	Acceptable to Owner
2. Employer’s Liability (Bodily Injury by Accident)	\$1,000,000	\$1,000,000	(see above)
3. Commercial General Liability	\$3,000,000	\$6,000,000	(see above)
4. Contractor’s Protective Liability (if applicable)	\$2,000,000	\$2,000,000	(see above)
5. Commercial Automobile Liability	\$2,000,000	\$2,000,000	(see above)
6. Professional Errors and Omissions pursuant to Section 1.3 (A) and 1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	\$5,000,000	\$5,000,000	(see above)
7. Contractor’s Pollution Liability including coverage for microbial matter (if applicable)	\$2,000,000	\$2,000,000	(see above)
8. Umbrella Excess Liability Insurance	\$10,000,000	\$10,000,000	(see above)
9. Builder’s Risk	per 5.3 of General Conditions	per 5.3 of General Conditions	(see above)

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

1.1.3 IDENTIFY IN ITEM 6 OF THE ABOVE-REFERENCED INSURANCE MATRIX WHETHER 1.1.3(A) OR 1.1.3(B) IS TO APPLY.

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

Select One

- The professional liability policy required pursuant to Section 1.1.3(A) above shall be written on a Project specific basis and the policy premium shall be paid by Owner.
- The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

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

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

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

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

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

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

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

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

Select One

- The professional liability policy required pursuant to Section 1.1.3(B) above shall be written on a Project specific basis and the policy premium shall be paid by Owner.

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

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

1.1.3(B).1 The Design-Builder's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder's valid and collectible commercial general liability/umbrella excess liability policies. Notwithstanding the above, a Design-Builder's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.

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

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

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

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

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

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

2.1 Coverage Parameters and Endorsements.

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

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

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

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

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

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

2.1.5 Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

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

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

3.1 Additional Insureds

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

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

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

4.1 Terms and Effective Dates.

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

4.1.2 If the Contractor's Pollution Policy is made on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable

extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

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

4.1.4 n/a

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

4.1.6 List here any coverage required to be maintained after Final Payment:

Commercial General Liability, including completed operations coverage
Professional Liability, including Contractor's Protective Liability, if applicable
Umbrella Coverage

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

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Questions? We're here to help.

Contact us



Design-Build Institute of America
1331 Pennsylvania Ave. NW, 4th Floor
Washington, DC 20004

(202) 682-0110
dbia@dbia.org

**ATTACHMENT 1
CORPORATE STRUCTURE QUESTIONNAIRE
COLVILLE TRIBAL FEDERAL
CORPORATION(CTFC)
12 TRIBES LAKE CHELAN CASINO HOTEL**

1) Proposers shall complete the following information for the Proposed Design-Builder:

Legal Name	
Street Address	
Mailing Address	
Point of Contact	
Position	
Email	
Telephone Number	
Fax Number	
Type of Business	
D-U-N-S Number	
Federal Tax Identification Number	
Washington State Contractor's Registration Number (if applicable)	
Washington State Unified Business Identifier Number	

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

ATTACHMENT 2

RFQ STATEMENT OF ACKNOWLEDGEMENT

COLVILLE TRIBAL FEDERAL CORPORATION (CTFC)

12 TRIBES LAKE CHELAN CASINO HOTEL

ALL PROPOSERS COMPLETE THIS PAGE AND INCLUDE WITH SUBMITTAL:

1. By submitting a response, the Proposer certifies that the Proposer has fully read and understands this RFQ document, including Addenda, and has full knowledge of the scope, nature, quantity, and quality of work to be performed; the detailed requirements of the services to be provided; and the conditions under which the services are to be performed.
2. The Proposer certifies that he or she has read and understands all terms and conditions of this solicitation.
3. By signing this document, the Proposer certifies that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding. If CTFC determines that collusion has occurred among the Proposers, none of the submittals from the participants of such collusion will be considered. CTFC's determination will be final.
4. The Proposer acknowledges that the person who signs below is fully authorized to sign on behalf of the firm listed and to fully bind the firm to all conditions and provisions thereof.
5. The Proposer acknowledges receipt of the following addenda: _____ through _____.

Respectfully submitted this _____ day of _____, 20_____.

Name of Firm: _____

Address: _____

Signature: _____

Name (Print): _____

Title: _____

Email: _____

Phone: _____

ATTACHMENT 3
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT,
AND OTHER RESPONSIBILITY MATTERS.

- A. The Firm certifies, to the best of its knowledge and belief, that:
1. The Firm/any of its Principals-
 - (a) Are () are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency or any Tribal Government.
 - (b) Have () have not (), within a 7 year period preceding this offer, been convicted or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - (c) Are () are not () presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in subdivision (A)(1)(b) above.
 - (d) The Firm has () has not (), within a 7-year period preceding this offer, had one or more contracts terminated for default by any Federal agency or any Tribal Government.
 2. Principals for the purposes of the certification, mean officers; directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager; plant manager, head of a subsidiary, division, or business segment, and similar positions). If this certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.
- B. The Firm shall provide immediate written notice to the Contract Officer if at any time prior to contract award the Firm learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. A certification that any of the items in paragraph (A) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Firm's responsibility. Failure of the Firm to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Firm's proposal non-responsive.
- D. Nothing contained in the foregoing shall be construed to require establishment of a system or records in order to render, in good faith, the certification required by paragraph (A) of this provision. The knowledge and information of a Firm is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- E. The certification in paragraph (A) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to the remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

I hereby certify that the information above is true accurate and complete under penalty of fraud.

Authorized Signature

Name

Date

ATTACHMENT 4
SITE MAP – Manson, WA
COLVILLE TRIBAL FEDERAL
CORPORATION(CTFC)
12 TRIBES LAKE CHELAN CASINO HOTEL



ATTACHMENT 5

Standard Form of
Agreement Between
Owner and Design-
Builder – Cost Plus
Fee with an Option
for a Guaranteed
Maximum Price

Document No. 530

Third Edition, 2022

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Washington, D.C.



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DRAFT



Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price

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

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

OWNER:

(Name and address)

Colville Tribal Federal Corporation
1000 East 8th Ave.
Omak, WA 98841

DESIGN-BUILDER:

(Name and address)

PROJECT:

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

12 TRIBES LAKE CHELAN CASINO HOTEL

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

Article 1

Scope of Work

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

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition, as amended) (“General Conditions of Contract”), including but not limited to The GMP Amendment in accordance with Section 6.6 herein, provided such Amendment is executed between the parties;

2.1.2 This Agreement, including all exhibits but excluding, if applicable, the GMP Amendment;

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

2.1.3 The General Conditions of Contract;

2.1.4 General Provisions of the Contract; and

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

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including, but not limited to, the various documents comprising the Owner's Project Requirements, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

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

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

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

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents. The Contract Documents may not be changed, modified, or altered except in writing signed by the parties.

3.6 Design-Builder was selected based in part on the qualifications of the Key Team Members identified in the Design-Builder's Statement of Qualifications and Proposals. Design-Builder may not substitute the identified Key Team Members without written permission from Owner, such permission shall not be unreasonably withheld. Any substituted Key Team Member must possess the same or better qualifications as the previously approved Key Team Member. Prior to substitution, Design-Builder must provide Owner with the qualifications of the proposed substituted Key Team Member.

Article 4

Ownership of Work Product

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

4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder.

Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy

of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural, engineering and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

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

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

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

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within ten (10) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Phase 1 shall be completed no later than _____. The parties will establish a date for Substantial Completion of the entire Work during Phase 1 and as part of the GMP Amendment ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work (“Scheduled Interim Milestone Dates”) shall be determined during Phase 1.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2. of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the “Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Owner and Design-Builder will negotiate liquidated damages with the GMP Amendment.

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

5.6 Not Used

5.7 Not Used

5.8 Owner’s Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.8.1 Owner shall have a minimum of 14 days of receipt by Owner to review all Design Submissions, the Project Schedule and any updates thereto.

5.8.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within 21 days of receipt by Owner.

Article 6

Contract Price

6.1 Contract Price.

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

.1 Subject to the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.6 of the Agreement. Design Builder’s Compensation shall be subject to the Phase 1 NTE and the GMP, as

applicable. The Phase 1 NTE, and the GMP, as applicable, shall be the maximum amount that the Design Builder may be compensated for the applicable Contract Phase, as amended pursuant to this Contract. The maximum amount that the Design Builder may be compensated pursuant to this Agreement for any given phase shall also be referred to as the Contract Price ("Contract Price"). The elements of the Design Builder's Compensation, subject to the Contract Price are set forth herein. If the sum of the Design-Builder's Compensation is less than the Phase 1 NTE and/or the GMP, as applicable, the savings shall go to the Owner.

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

6.2 Design-Builder's Fee Percentage.

6.2.1 Design-Builder's Fee Percentage shall be:

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

The Design-Builder's Fee Percentage shall include the following items, which shall not be charged as a Cost of the Work.

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

The Fee Percentage set forth above does not apply to self-performed construction Work as defined in Section 1.2.36 of the General Conditions. The parties will negotiate the Design-Builder's Fee Percentage on self-performed construction Work pursuant to Section 2.8.4 of the General Conditions.

The Fee Percentage shall not be applied to costs for insurance or bonds.

6.2.2 NOT USED

6.2.3 If the Parties enter into the GMP Amendment, Design-Builder shall be paid a lump sum fee (the "Lump Sum Fee") determined by multiplying the Fee Percentage by the estimated Cost of the Work included in the GMP Amendment. If the parties have negotiated self-performed Construction Work pursuant to Section 2.8.4 of the General Conditions, the Lump Sum Fee shall also include the Design-Builder's negotiated Fee Percentage on self-performed construction Work. The estimated Cost of the Work shall include the Lump Sum General Conditions Amount. The Lump Sum Fee will be earned and paid on a monthly basis following execution of the GMP Amendment on a percentage of completion basis, specifically taking into account payments previously made, including during Phase 1. The Design-Builder's Contingency as defined in Section 6.4.4.1.b and

costs for insurance and bonds shall be excluded from the Cost of the Work when calculating the Lump Sum Fee.

6.2.4 The Lump Sum Fee established in the GMP Amendment shall not be modified unless the GMP varies, either upward or downward, by more than five percent (5%) from the GMP set forth in this Agreement ("Original GMP").

- .1 If the GMP increases by more than five percent (5%) above the Original GMP, the Lump Sum Fee shall be increased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is in excess of one hundred five percent (105%) of the Cost of the Work set forth in the Original GMP.
- .2 If the GMP decreases by more than five percent (5%) below the Original GMP, the Lump Sum Fee shall be decreased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is less than ninety-five percent (95%) of the Cost of the Work set forth in the Original GMP.
- .3 The Design Builder's Contingency as defined in Section 6.4.4.1.b. and costs for insurance and bonds shall be excluded from the Cost of the Work when calculating adjustments to the Lump Sum Fee.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and necessarily incurred by Design-Builder in the proper performance of the Work. Unless included in the Lump Sum General Conditions, the Cost of the Work shall include only the following:

6.3.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit E and performing the function set forth in said Exhibit.

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

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

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. Contracts to Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld. Payments to Subcontractors and Design-Consultants shall be consistent with the hourly rates set forth in Exhibit E.

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

costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

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

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

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

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

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

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

6.3.14 Sales, use or similar taxes, tariffs or duties necessarily incurred in the performance of the Work. Sales and use tax that are subject to the tribal exemption of sales and use tax for deliveries to trust and reservation land are not Costs of the Work.

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

6.3.16 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process or product required by Owner, paying legal judgments against

Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

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

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

6.3.19 Accounting and data processing costs related to the Work.

6.3.20 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder's Contingency pursuant to Section 6.4.4.1.b.

[Design-Builder and Owner may want to consider adding the following Section 6.3.23 to address the payment of warranty work.]

6.4 Other Methods of Compensation

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

6.4.1 Allowance Items and Allowance Values.

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

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

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

.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and Lump Sum General Conditions Costs, Design-Builder's Fee Percentage, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

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

6.4.2 Not To Exceed Sums

- .1 The Owner and Design Builder may establish Not to Exceed (“NTE”) Sums for specific scopes of the Work (“NTE Scopes”). Any such NTE Sum will be negotiated between the Owner and Design-Builder pursuant to Section 6.6.1.5 of the Agreement and memorialized through an NTE Amendment in the form attached as Exhibit H.
- .2 For each scope of work for which a NTE Sum has been established, the Design-Builder shall be reimbursed for the NTE Scope as a Cost of the Work; however, Design-Builder’s compensation shall not exceed the NTE Sum without a written Change Order.
- .3 Design-Builder shall not request reimbursement for costs that are within the NTE Scope unless those costs are identified in the Payment Application as subject to the NTE Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the NTE Scope that are in excess of the NTE Sum shall be the sole responsibility of the Design-Builder.
- .4 NTE Sums and NTE Scopes may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

- .1 The Owner and Design-Builder may establish Lump Sums for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
 - a. A specific description of the Scope of the Work that is subject to the Lump Sum;
 - b. An updated Schedule of Values that incorporates the Lump Sum; and
 - c. Any milestone dates associated with the scope of the Work associated with the Lump Sum.
- .2 For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.
- .3 Design-Builder shall not request reimbursement for costs that are within the scope of the Lump Sum unless those costs are identified in the Payment Application as subject to the Lump Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the scope of the Lump Sum that are in excess of the Lump Sum shall be the sole responsibility of the Design-Builder.
- .4 Lump Sums may only be modified via Change Order pursuant to the General Conditions

6.4.4 Contingencies

- .1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for Design-Builder’s exclusive use for the below

described unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Contingency Items include the costs described below, which are subject to written approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.

- (a) **Cost of the Work Contingency.** The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:
 - (i) Trade buy-out differentials;
 - (ii) Escalation of materials; and
 - (iii) Other direct Costs of the Work that are not included in the Design-Builder's Contingency, but only with the prior written consent of the Owner.
- (b) **Design-Builder's Contingency.** The Design-Builder's Contingency is available to the Design-Builder for items that are not excluded by Section 6.5 hereof and include but are not limited to the following items:
 - (i) Overtime or acceleration;
 - (ii) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work, design errors or omissions (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained;
 - (iii) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder;
 - (iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or
 - (v) Costs that are in excess of an NTE Sum or Lump Sum.

.2 Except as set forth in Section 6.4.4.3 below, the Design-Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3 of the Agreement; however, Design-Builder's compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design-Builder's Contingency in the applicable NTE or GMP without a written Change Order.

.3 Design-Builder shall not be entitled to apply the Design-Builder's Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder's Contingency.

Further, the amounts included in the Design-Builder's Contingency set forth in Section 6.4.4.1.b shall be excluded from the calculation set forth in Section 6.2.3 to establish the Lump Sum Fee and the calculation set forth in Section 6.2.4 to determine whether the GMP has changed.

- .4 Prior to the final accounting, the Contingencies are not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase an NTE or GMP under the Contract Documents.
- .5 Design-Builder shall provide Owner notice of all anticipated charges against the Contingencies and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from a Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.4.5 Lump Sum General Conditions Costs

- .1 If the Parties enter into the GMP Amendment, the Parties shall establish an amount for the Lump Sum General Conditions Costs. The parties shall determine the portions of the Cost of the Work set forth in Section 6.3 that are included in the Lump Sum General Conditions Costs, and the parties shall include a description of such costs in the GMP Amendment. Unless the parties agree in writing otherwise, the costs that will be included in the Lump Sum General Conditions Costs are as follows:
 - a. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Specifically, the following personnel are included in the Lump Sum General Conditions Amount:
 - i. Project Executive
 - ii. Project Manger
 - iii. Superintendent and/or Construction Manager
 - iv. Quality Control Manager
 - v. Project Field Engineer and/or Design Manager
 - vi. Project Controls
 - vii. Project Scheduler
 - viii. Safety Manager
 - b. Wages or salaries of Design Builder's personnel stationed at Design Builder's principal or branch offices, but only to the extent said personnel are approved in advance of the performance of the Work in writing by the Owner.
 - c. Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to

the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under this Section.

- d. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work and with the written consent of the Owner as set forth below:
 - i. Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at www.gsa.gov.
 - ii. Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed the Federal Per Diem maximum lodging rate for the location where the work is being performed.
 - iii. Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car (including fuel), at cost, in the ratio of one mid-size class rental car for each three Contractor's personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the Owner unless such options are approved in advance by the Owner's Representative. Appropriate insurance coverage should be included in the Contractor's insurance policies.
- e. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- f. Premiums for insurance and bonds required specifically by this Agreement or the performance of the Work by the Design Builder.
- g. Accounting and data processing costs related to the Work.
- h. General administrative costs not specifically listed in this subsection, including but not limited to the following:
 - i. Shop Drawing Reproduction
 - ii. Construction Schedule & Updates
 - iii. Safety/Security
 - iv. Field Office Set-up (mobilization/demobilization)
 - v. Office Supplies
 - vi. Telephone System
 - vii. Telephone Service Charge
 - viii. Computer Network/System Set-up
 - ix. Courier Service
 - x. Postage (Fed-X, USPS)
 - xi. Furniture/Equipment

- xii. Office Cleaning
- xiii. Project Superintendent Vehicle
- xiv. Computers
- xv. Copy Machine
- xvi. Temporary Electric Hook-up/Removal
- xvii. Temporary Electric Material
- xviii. Project Signage
- xix. Temporary Water Hook-up/Removal
- xx. Drinking Water & Supplies
- xxi. Chemical Toilets
- xxii. O&M Manuals
- xxiii. Project Record Documents
- xxiv. Field Engineering/Layout Survey

- .2 For the Costs of the Work that are included in the Lump Sum General Conditions Costs, the Design-Builder shall no longer be entitled to be reimbursed for such costs as part of the Cost of the Work, and the Design Builder's sole compensation for the costs set forth in the identified General Conditions shall be through the Lump Sum General Conditions Costs.
- .3 The Owner shall have the right to examine the back-up documentation establishing the Lump Sum General Conditions Costs, including but not limited to all estimates, proposals, contracts and other financial documentation on a transparent basis.
- .4 The Lump Sum General Conditions Costs shall only be modified if the Design-Builder is entitled to compensation for a delay pursuant to Section 8.2 of the General Conditions. Any modification to the Lump Sum General Conditions Costs shall be calculated as follows:
 - a. The Design Builder shall be entitled to receive a liquidated daily rate for extended General Conditions Costs ("Design-Builder's Delay Rate") for each day that the Contract Time is extended pursuant to Section 8.2 of the General Conditions.
 - i. The Design-Builder's Delay Rate shall be calculated by dividing the Lump Sum General Conditions Costs by the number of days in the Contract Time set forth in the GMP Amendment for Phase 2.
 - ii. Then, the Design-Builder's Delay Rate is multiplied by the number of days that the Contract Time is extended for Design-Builder's Delay, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.
 - iii. The result from the Design-Builder's Delay Rate multiplied by the number of days is the Extended General Conditions Costs which shall be added to the Lump Sum General Conditions Costs by Change Order and paid to the Design Builder pursuant to the Schedule of Values, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.
 - b. The Design-Builder's Delay Rate shall not apply to delays occurring after Substantial Completion is achieved.

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

6.4.6 Unit Prices and Hourly Rates

- .1 Any Unit Prices and Hourly Rates shall be agreed upon in writing and set forth in Exhibit E to the Agreement. Design-Builder shall not charge more than a specified Unit Price or Hourly Rate than the amount set forth in Exhibit E, as modified through the Contract Documents.
- .2 Once established, Unit Prices and Hourly Rates shall not be subject to audit and may only be changed by Change Order.
- .3 Design-Builder must maintain a record of the number of Unit Prices and Hours billed using Hourly Rates for review by Owner.

6.5 Non-Reimbursable Costs.

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

6.5.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

6.5.1.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

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

6.5.1.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.5.1.5 Sales and use taxes that are subject to the tribal exemption for deliveries to trust and reservation land.

[The parties shall comply with the following Section 6.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 6.6 shall be deemed inapplicable and compensation to Design-Builder shall be based on those fees and costs identified in the balance of this Article 6.]

6.6 Project Phases

6.6.1 Phase 1

- .1 **Compensation.** During Phase 1, the Design Builder shall be compensated for the following:
 - a. The Cost of the Work set forth in Section 6.3;
 - b. Design-Builder's Fee Percentage multiplied by the Cost of the Work as set forth in Section 6.2.1; and

d. Contingency Items charged under Section 6.4.4.1.b.

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

.3 The Phase 1 NTE includes the Cost of the Work Contingency in the amount of _____ Dollars (\$_____) and the Design-Builder's Contingency in the amount of _____ Dollars (\$_____).

.4 During the first _____ days of Phase 1, Design-Builder shall engage in Validation of the Project information as set forth in Exhibit C, Section 1.03 (the "Validation Period"). At the conclusion of the Validation Period, the parties shall collaboratively determine a Target Budget, Target Schedule and Initial Project Scope.

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

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

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

c. Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP Proposal shall be set forth in the GMP Amendment. At the Owner's option, the GMP may be converted into a Lump Sum.

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

- i. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.6.c above;
- ii. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

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

6.6.2 Phase 2, Post GMP Period

- .1 Compensation.** During Phase 2, the Design Builder shall be compensated for the following, all subject to the GMP:
 - a. The Cost of the Work set forth in Section 6.3;
 - b. Design-Builder's Lump Sum Fee established pursuant to Section 6.2.3;
 - c. Any Lump Sums established pursuant to Section 6.4.3;
 - d. Contingency Items charged under Section 6.4.4.1.b; and
 - e. Design-Builder's Lump Sum General Conditions Costs established pursuant to Section 6.4.5.
- .2 GMP** The total compensation paid to Design-Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract. By agreeing to the GMP Amendment, the Design-Builder understands that if the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design-Builder, and Design-Builder hereby assumes liability for such costs without reimbursement by the Owner.
- .3** If the parties decide to convert the GMP into a Lump Sum, Design-Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.

6.6.3 Savings.

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

Article 7

Procedure for Payment

7.1 Progress Payments.

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

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

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a lump sum amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain five percent (5%) of the cost of the Work, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Not Used

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books,

correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, and the parties have agreed to a payment to Design-Builder in the case of such termination of convenience, Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

8.1.1 The fair and reasonable sums for overhead and profit on the sum of items set forth in Section 11.6.1 of the General Conditions

8.1.2 The total amount to be paid to Design-Builder, exclusive of costs described in Section 11.6.1.2 of the General Conditions, shall not exceed the total GMP.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

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

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

9.2 Design-Builder's Representatives.

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

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

Article 10

Bonds and Insurance

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

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

[Check one box only. If no box is checked, then no bond is required.]

Required Not Required

Payment Bond.

[Check one box only. If no box is checked, then no bond is required.]

Required Not Required

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

Required Not Required

Article 11

Other Provisions

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

[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative dispute resolution clause.]

Any claims, disputes or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

[Section 2.9.1 of the General Conditions contains an option for the parties to establish a limited time frame for Design-Builder's warranty. If the parties agree to such a limited time frame, the parties may insert it below.]

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

OWNER:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

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ATTACHMENT 6

Standard Form of General Conditions of Contract Between Owner and Design-Builder



Document No. 535

Third Edition, 2022

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Washington, D.C.



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Article 1

General

1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price* (2022 Edition, as revised).

1.2.2 *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Amendment as being the “Basis of Design Documents.”

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Owner’s Project Criteria and the Basis of Design Documents unless a deviation from the Owner’s Project Criteria or Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Contract Time* consists of the dates set forth in Article 5 of the Agreement.

1.2.5 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.6 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

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

1.2.8 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.9 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.10 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse

weather conditions not reasonably anticipated, and other acts of God.

1.2.11 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition).

1.2.12 *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

1.2.13 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.14 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work, including but not limited to the Colville Tribal Law and Order Code.

1.2.15 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.16 *Site* is the land or premises on which the Project is located.

1.2.17 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen and suppliers.

1.2.18 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include Design Subconsultants, materialmen and suppliers.

1.2.19 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an Interim Milestone Date, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes without compromising the building operation (including materially increasing operating expenses) or the user's ability to reasonably use all parts of the Project.

1.2.20 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services, incidentals, and labor whether expressly required by or reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the

necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a reports detailing the progress of the Work as set forth in Exhibit C, including but not limited to (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency accounts; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). In addition to the frequency set forth in Exhibit C, status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit the schedules and deliverables set forth in Exhibit C, including but not limited to the Project Schedule for the execution of the Work for Owner's review and response. The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by Exhibit C and the conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project Schedule and other deliverables provided by Design-Builder shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement any procedures additional to Exhibit C, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the information required in Exhibit C and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

2.1.6 Design Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design Builder and may not be withdrawn prior to Final Completion.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.3 Standard of Care for Professional Services.

2.3.1 The standard of care for all professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Project Criteria and/or Final Basis of Design Documents.

2.3.2 Design Builder shall perform all activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the Design Submissions set forth in the Contract Documents. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1 as well as the Commercial Terms. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time and are consistent with the Owner's Project Criteria, the Design Log and Basis of Design Documents, as applicable. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of

the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

2.4.1.5 The Design-Builder shall provide an updated cost model for the Project periodically as required in Exhibit C. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.

2.4.1.6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Initial and Final Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

- a. Both parties must agree to include a Reliable Design Decision in the Design Log.
- b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
- c. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Interim or Final Basis of Design Documents.
- d. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Interim or Final Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Articles 9 and 10.

2.4.1.7 Trend Log. If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.

- a. The request to include a Trend in the Trend Log must include the following information:
 - i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
 - ii. The estimated change in the applicable Commercial Term; and
 - iii. Potential impacts or changes to the Initial or Final Basis of Design Documents as a result of the Trend.

- b. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.
- c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial or Final Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order. If the resolution does not change the Initial or Final Basis of Design Documents and/or any Commercial Term, it shall be removed from the Trend Log.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified by the parties and recorded as set forth in the Contract Documents. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above and Exhibit C. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, the Design Log, the Trend Log, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Unless the parties have identified permits in an Owner's Permit List attached either as an exhibit to the Agreement or as part of the Owner's Project Criteria or Basis of Design Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 The Design-Builder shall assemble and install all equipment according to the applicable manufacturer's installation instructions. Work that does not conform to the applicable instructions and/or any resulting errors in assembly or installation shall be corrected by the Design-Builder. If the Owner determines that the Design-Builder has incorrectly assembled, installed and/or damaged any such equipment, the Design-Builder shall, at its own expense, furnish a competent manufacturer's representative to assist, instruct and approve the Design-Builder's corrected work.

2.7.4 If any materials or equipment are stored by Design-Builder, they shall be stored so as to ensure the preservation of their quality and fitness. Materials and equipment shall be placed on platforms or other hard, clean surfaces, and not on the ground, and shall be placed under cover and heated adequately to prevent condensation, oxidation or freezing. Stored materials and equipment shall be located so as to facilitate observation. The Design-Builder shall be responsible for all damage or loss that occurs as a result of its fault or negligence in connection with the care and protection of all materials and equipment until acceptance by the Owner.

2.7.5 Design-Builder is responsible for verifying that any equipment supplied by the Owner is in working order and sufficient for the purposes for which it was intended in the Project. If equipment furnished by Owner is not in working order or is not sufficient for the Project, Design-Builder shall notify Owner immediately, and Owner shall either repair or replace the equipment, at Owner's sole discretion. Design-Builder is responsible for the proper installation of the equipment furnished by Owner.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Subcontracts

2.8.1 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2.8.2 Design-Builder assumes responsibility to Owner for the proper performance of the Work of

Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.8.3 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.9 Design-Builder's Responsibility for Project Safety.

2.9.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.9.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.9.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. If the parties have opted in Section ___ of the Agreement to establish a limited time frame for the warranty set forth in this Section, the warranty in this section shall be limited to the time frame set forth in Section ____ of the Agreement. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.10 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

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

2.10.3 The one-year period referenced in Section 2.11.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.12 Contract Phases

2.12.1 Phase 1. Phase 1 shall commence upon Notice to Proceed from the Owner and shall end on the Phase 1 Completion Date as set forth in DBIA Document 530, Section 5.2. The services provided by the Design-Builder during Phase 1 shall be established in Exhibit C.

.1 In Phase 1, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit C, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities; necessary testing of existing facilities; geotechnical and other site conditions; and legal, permitting and regulatory requirements and restrictions

.2 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during Phase 1 as set forth in Exhibit C. Notwithstanding the above, the parties recognize that the Design-Builder relied on the information set forth in the Request for Proposals to establish the Phase 1 NTE, and if the actual conditions differ materially from the information set forth in the RFP, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Phase 1 NTE, provided that the Design-Builder meets the requirements in Section 4.2.1 of the General Conditions.

.3 The Design-Builder shall provide the submissions set forth in Exhibit C on a transparent basis, meaning that the Owner is entitled to see all cost back up documentation, including but not limited to timesheets, invoices, purchase orders, or any other document that evidences the Cost of the Work or any other cost for which Design-Builder requests reimbursement. In addition, the Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design Submissions shall be consistent with the GMP and the information set forth in the RFP, as they may develop through the design process set forth in the Contract Documents.

.4 If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the information provided in Exhibit C, Design-Builder shall, at the conclusion of Phase 1, provide Owner with written notice of any such material differences in the GMP Proposal. A "Material Difference" is defined as one that would either a) impact the Owner's Project Criteria or Design-Builder's Fee Percentage or b) be considered a Differing Site Condition. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1 of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1.

.5 At the conclusion of Phase 1, the Design-Builder will submit a GMP Proposal pursuant to Exhibit C and Section 6.6.2 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

.6 If the Design-Builder performs Work after the submission of the GMP Proposal but before the parties enter into the GMP Amendment pursuant to Section 6.6.2 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during Phase 1; however, in no case shall the Design-Builder be entitled to be paid in excess of the Phase 1 NTE.

2.12.2 Phase 2. Phase 2 is the final phase of the Contract where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, (iii) undertakes any necessary warranty services for the Project, and (iv) performs other services as set forth in Exhibit C and the GMP Amendment.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 The Owner's Project Criteria sets forth the information provided by the Owner.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner

is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1 of the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during Phase 1. Unless working with Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions,

Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during Phase 1, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site pursuant to this Section.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

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

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. Notwithstanding the above, provided the parties sign the GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.3 Archaeological Resources

4.3.1 In the event the Design-Builder or any of its Subcontractors inadvertently discover archaeological resources at any time during the project, Design-Builder shall immediately notify the Owner and suspend all excavation activities at the site.

4.3.2 "Archaeological Resource" shall mean any material remains of human life or activities which are of interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and paintings, and other implements and artifacts of any material or form.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

5.1.4 The Design-Builder's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Design-Builder to the coverage provided by such insurance, or otherwise limit the Owner's recourse to any remedy available at law or in equity. Design-Builder shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

5.1.5 If Design-Builder maintains higher insurance limits than the minimums shown above, Owner shall be insured for the full available limits of commercial general and excess or umbrella

liability maintained by Design-Builder, irrespective of whether such limits maintained by Design-Builder are greater than those required by this Agreement or whether any certificate of insurance furnished to the Owner evidences limits of liability lower than those maintained by Design-Builder.

5.1.6 Design-Builder's insurance coverage shall be primary insurance with respect to Owner. Any insurance, self-insurance, or insurance pool coverage maintained by Owner shall be excess of Design-Builder's insurance and shall not contribute with it.

5.1.7 Design-Builder shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of Design-Builder-provided insurance as set forth herein, except Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. Design-Builder shall ensure that the Owner is an additional insured on each subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

5.1.7 Failure on the part of the Design-Builder to maintain the insurance as required shall constitute a material breach of contract, upon which the Owner may, after giving as least five business days' notice to Design-Builder to correct the breach, immediately terminate the Agreement or, at its discretion, 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 Design-Builder from the Owner.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance on an "all risk" or equivalent policy form upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. A copy of the builder's risk policy shall be made available to the Owner. The builder's risk insurance shall include physical loss or damage to the Work, including temporary buildings, debris removal, and damage to materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed

all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under the builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a preliminary schedule of values for all of the Work as set forth in Exhibit C. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and/or materials delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
- .2 The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
- .4 Design-Builder furnishes Owner a certificate of insurance extending Design-Builder'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 Design-Builder's authorized personnel shall have access;
- .6 Owner shall at all times have the right of access in the company of Design-Builder;
- .7 Design-Builder and its surety assume total responsibility for the stored materials;
- .8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and
- .9 Upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice

shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

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

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work representing an Interim Milestone, has achieved Substantial Completion. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Substantial Completion in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

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

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

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

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

6.7.2.6 "As Built" drawings, with any and all implemented changes that constitute a final record set of the Project.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

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

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

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Not used

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations

set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

7.6 Survival

7.6.1 The Indemnification obligations in this Article shall survive the expiration or termination of this Agreement.

7.7 Limited Recourse.

7.7.1 None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement and the GMP Amendment.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price or any Commercial Term; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs and time extensions associated with the Change. Changes Orders will not be allowed unless there is an actual change to the Work.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall work with the Owner to adjust the remaining Work to meet as many of Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 The Cost of the Work as well as fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including the Design-Builder's Fee Percentage (if applicable), as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for

any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

10.4 Duty to Continue Performance.

Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTIONS 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above does not affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if i) its cost or time to perform the Work has been materially and adversely impacted by any suspension of stoppage of the Work by Owner, ii) the Design-Builder is entitled to the adjustment pursuant to the other provisions of the Contract Documents, and iii) the Design-Builder complies with all provisions of the Contract Documents regarding an adjustment to the Contract Price and/or Contract Time..

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, (vi) perform material obligations under the Contract Documents, or (vii) comply with the requirements regarding safety, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide

written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1

hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

11.6 Termination for Convenience.

11.6.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

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

Work;

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

11.6.1.3 The amount set forth in Article 8 of the Agreement.

11.6.2 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design

Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the location of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any

applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

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PART 1 PHASE 1 SCOPE OF SERVICES

1.01 SUMMARY OF WORK

- A. This Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 1.

1.02 PHASE 1 SCOPE

- A. Design-Builder shall review, analyze, and validate the Owner Provided Information, the Owner's Project Criteria, the GMP, and the Project Schedule.
- B. Design-Builder shall conduct such site investigations, environmental assessments, review of regulatory and legal authority and restrictions, and all other actions and review and assess other information as reasonably necessary to verify and validate the Owner Provided Information.
- C. Design-Builder shall review, analyze and validate the concepts for the Project elements as shown in the Owner's Project Criteria. In addition, Design-Builder shall work collaboratively with the Owner and the Stakeholders to examine whether new concepts will better maximize the Owner's Project Goals, and if approved by the Owner, further develop such new concepts and incorporate them into the Project.
- D. Design Builder will review and propose sustainability practices that are applicable to the project for potential use in the project.
- E. Design-Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to obtain input regarding the Project design and functionality, as well as other major Project elements and to develop the Basis of Design Documents.
- F. Design-Builder shall engage and work collaboratively with the Owner and designated Project Work Groups to progress the design to a sufficient state to develop the Basis of Design Documents, the Guaranteed Maximum Price, and the Project Schedule. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner and the Design Builder.
- G. Design-Builder shall provide the Deliverables during Phase 1 as set forth in Sections 2.01.A. and B. herein. Deliverables shall be provided in a format acceptable to the Owner. Design-Builder must utilize the following programs, as applicable:
- H. At the conclusion of the Validation Period, Design-Builder shall provide the deliverables as set forth in Section 2.01C herein and the parties shall negotiate and collaboratively establish a Target Price, Target Budget and Initial Scope of Work.
- I. At the conclusion of Phase 1, Design-Builder shall prepare a GMP Proposal, including Phase 2 Deliverables and any modifications and/or clarifications to the Owner's Project Criteria as set forth in Section 2.01.B herein.

1.03 VALIDATION PERIOD.

- A. Within the time period set forth in Section 6.6.1.4 of the Agreement, Design-Builder shall perform such assessments, reviews and investigations of the Owner Provided Information, as determined by Design-Builder to be reasonably necessary to validate the Owner Provided Information, the Commercial Terms and the Owner Project Requirements. Additional reviews, assessments and

investigations of Owner Provided Information shall include, if reasonably necessary, the following:

1. Verification that any drawings or specifications provided by Owner, including but not limited to the As-Built drawings and other architectural and engineering drawings, plans and specifications are correct,
 2. Constructability, including proposed methods of construction, of the proposed structures in the Owner's Project Criteria,
 3. Verification of the architectural, engineering, and other assumptions and calculations in any Owner Provided Information,
 4. Examination and verification of actual site conditions as set forth below,
 5. Verification of any surveys,
 6. Review and assessment of all applicable legal and regulatory rules and restrictions on the Project,
 7. Verification and validation of assumptions regarding the establishment of the Commercial Terms, including but not limited to the GMP, the Project Schedule, and the Basis of Design Documents.
- B. The Design-Builder shall work with the Owner to determine which site examinations, investigations, explorations, tests, reports, studies or similar may be required. The agreed upon work shall be completed by the Design-Builder and included in the GMP.
- C. Design-Builder shall perform the agreed upon site investigations as necessary for Design-Builder to verify the Owner Provided Information and to validate the Commercial Terms and the Owner Project Requirements. Design-Builder shall visit the Site and examine thoroughly and understand the nature and extent of the Work, site, locality, actual conditions, underground facilities, all physical conditions at or contiguous to the Site, and all local conditions and federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design-Builder and safety precautions and programs incident thereto. Such additional investigations shall be conducted to sufficiently identify or characterize utility locations, site conditions, contaminated materials, and observable or concealed conditions in the existing facilities, including but not limited to the following:
1. Develop requirements for survey by the Owner and submit them to the Owner at least two (2) weeks prior to the need for the survey results.
 2. Undertake surveys, investigations and analysis to provide necessary data and information for project design including sufficient information to evaluate design alternatives.
 3. Perform soils sampling, testing, and analysis to provide necessary data and information for Project design and provide a final Geotechnical Report. Test for contamination during this process.
 4. Review previously completed archeological surveys, coordinate with the Owner to determine the scope of any additional surveys and cooperate with any surveys conducted by the Owner

- D. All reports or analyses generated by Design-Builder's testing, inspections, and investigations, including but not limited to geotechnical evaluations and hazardous materials studies, shall be provided to the Owner promptly, within seven (7) business days, after such reports are analyzed and generated
- E. Design-Builder shall be responsible for ensuring that its design documents and construction work accurately conforms to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the contract.

1.04 DEVELOPMENT OF BASIS OF DESIGN DOCUMENTS

- A. Design-Builder shall manage the design and estimating process in a transparent collaborative, efficient, and coordinated manner and conduct design workshops as required by the Contract Documents. The Basis of Design Documents will establish the scope of the Work and provide the basis for the GMP. The Basis of Design Documents must be consistent with the Owner's Project Criteria, unless the Owner has consented to modify its requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.
- B. Design-Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.
- C. The Owner will review and comment on the Design Materials in a timely fashion.
- D. Design-Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design-Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.
- E. By submitting Design Materials, Design-Builder represents to the Owner that the Design Materials may be designed and constructed for the then current Commercial Terms and in accordance with the Owner's Project Criteria. Notwithstanding the above, Design-Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Owner's Project Criteria; however, with any such Design Materials, Design-Builder must provide notice pursuant to Section 10 of the General Conditions.

1.05 DEVELOPMENT OF GMP

- A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design-Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.
- B. Throughout the Project, Design-Builder will update estimates and forecasts and provide data to the Owner to reflect real time information. Design-Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis. The project controls system used by the Design-Builder shall be acceptable to the Owner and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.

- C. The Design-Builder will coordinate the development of the GMP with the development of the Basis of Design Documents as well as the Project Schedule so that the Owner may obtain an accurate GMP within the Project Budget.

1.06 DEVELOPMENT OF PROJECT SCHEDULE

- A. The forecasting and development of the Project Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design-Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design-Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.
- B. Design-Builder shall provide the Owner with frequent updates to the project schedule in a format acceptable to the Owner.

PART 2 PHASE 1 DELIVERABLES

2.01 SUBMITTALS

- A. Submittals After Phase 1 Notice to Proceed: Design-Builder shall provide the following Submittals within 15 days after the Notice to Proceed with Phase 1, unless otherwise noted in Phase 1 Schedule.
 - 1. Phase 1 Schedule pursuant to Section 2.02.A.
 - 2. BIM Protocol pursuant to 2.03.A.
 - 3. Proposed Work Groups pursuant to Section 2.04.B.
 - 4. Design Submittal Packages and Schedule pursuant to Section 2.04.C.
 - 5. Preliminary Schedule of Values pursuant to Section 2.05.A.
 - 6. Proposed Cost Model pursuant to Section 2.05.B.
 - 7. Proposed Work Breakdown Structure pursuant to Section 2.05.C.
 - 8. Subcontractor Procurement Procedure pursuant to Section 2.06.A
 - 9. Project Safety and Job Hazard Analysis pursuant to Section 2.07.A for Phase 1.
- B. Periodic submittals During Phase 1: On a monthly basis Design-Builder shall provide the following submittals throughout Phase 1.
 - 1. On a monthly basis:
 - a. Updates to the Phase 1 Schedule, and Project Schedule pursuant to Section 2.02.
 - b. Updated Cost Model information pursuant to Section 2.05.
 - 2. Pursuant to the Design Submittal Schedule established by the parties:
 - a. Updated Design Submittals pursuant to Section 2.02.
 - b. Updated project budget information pursuant to Section 2.05.
 - 3. Milestone Design Deliverables pursuant to Section 2.04.E.
- C. Submittals at the Conclusion of the Validation Period: Design-Builder shall provide the following Submittals at the conclusion of the Validation Period, unless otherwise noted in the approved Phase 1 Schedule.
 - 1. Target Schedule pursuant to Section 2.02B

2. Target Budget and updated Cost Model pursuant to Section 2.05.D
 3. Initial Project Scope pursuant to Section 2.04.A.
 4. BIM Model and Execution Plan pursuant to 2.03.B.
- D. GMP Proposal: At the conclusion of Phase 1, Design-Builder shall provide a GMP Proposal that includes the following Deliverables, as applicable.
1. Schedule of Values depicting the Proposed GMP pursuant to Section 2.05.E.
 2. Basis of Design Documents pursuant to Section 2.04.D.
 3. Project Schedule pursuant to Section 2.02.C.
 4. Project Safety and Job Site Hazard Analysis pursuant to Section 2.07.B.
 5. Permitting Strategy Plan pursuant to Section 2.08
 6. TERO Compliance Plan pursuant to 2.9.
 7. QA/QC Plans pursuant to 2.10.
 8. Contract Close-Out Plan pursuant to Section 2.11.
 9. Differing Site Conditions Report pursuant to Section 2.12.
 10. List of potential Deferred Scope pursuant to Section 2.13.A.
 11. A list of long lead items and potential early procurement items pursuant to Section 2.13.B.

2.02 SCHEDULES

- A. Phase 1 Schedule. By the date set forth in Section 2.01A herein, Design-Builder shall provide a Phase 1 Schedule.
1. Phase 1 Schedule shall show the meetings required of the Owner and Design-Builder necessary to meet Phase 1 requirements. The meeting list should include but not be limited to, owner stakeholders required at each meeting, dates and times for the meetings, agenda for the meetings and record of decisions required by the owner at each meeting to keep the project on schedule.
 2. Phase 1 Schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. During Phase 1, Design-Builder will establish the timing for schedule Updates with acceptance from the Owner.
 3. Design-Builder If an update to Phase 1 Schedule indicates that a previously approved milestone will not be met, Design-Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.
- B. Target Schedule. Pursuant to Section 2.10.C, Design-Builder shall submit a Proposed Target Schedule that reflects Design-Builder's sequence of design, procurement and construction activities including the interrelationships of the Demolition and Construction Packages.
1. The Proposed Target Schedule shall show the activities of the Owner and Design-Builder necessary to meet the Project completion requirements.

2. The Proposed Target Schedule shall be updated periodically monthly with the level of detail for each schedule update reflecting the information then available.
 - a. During Phase 1, Design-Builder will establish the timing for schedule Updates with acceptance from the Owner.
 - b. Design-Builder shall also provide updates during the development of the Basis of Design Documents.
 3. Design-Builder shall meet with the Owner to review the Proposed Target Schedule and the parties shall collaboratively develop a final Target Schedule. If the Owner has any comments relative to the Proposed Target Schedule or Target Schedule Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design-Builder, who shall make appropriate adjustments to the Preliminary Schedule, its basis, or both. The parties will work collaboratively to make adjustments in the Basis of Design Document, the Project Schedule, or GMP to fit within the Owner's objectives.
 4. The Target Schedule will be used as a basis for scheduling the Project throughout Phase 1.
 5. If an update to the Target Schedule indicates that a previously approved milestone will not be met, Design-Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.
- C. With the GMP Proposal, Design-Builder shall provide a Project Schedule that will incorporate the Target Schedule developed collaboratively during Phase 1 along with any updates to the schedule.
- D. All schedules must be in the format of a Critical Path Method (CPM) Resource loaded schedule as set forth below.
- E. Critical Path Method (CPM) Resource loaded schedule
1. The CPM Schedule will contain the following
 - a. All tasks required to complete the scope of work for the project.
 - b. Durations for all tasks in the project schedule.
 - c. Logical ties and sequence of work for every task in the schedule.
 - d. Resources for project hours and major material quantities for site construction.
 2. Project Schedule shall be detailed and organized according to pre-defined Design-Builder's WBS that is developed in the Scope Management Plan. The project schedule will include all activities and relationships identified in the Design-Builder's Scope of Work Narrative. Each major area of work within Design-Builder's scope shall be represented by activities in the schedule.
 3. Design-Builder shall prepare a detailed resource loaded CPM Project Schedule in accordance with this specification. The schedule shall be submitted to the Owner for their review. The detailed schedule shall reflect, at a minimum, engineering, procurement, construction, fabrication, and delivery activities for each piece of procured equipment,

key drawing release dates by discipline, and logic and interrelationships between activities so that a logical progression of the work is depicted. Project Milestones shall also be included in schedule.

4. Design-Builder and subcontractors shall meet with the Owner to review and approve the detailed CPM baseline Project Schedule.
5. Once the detailed project schedule has been approved by the Owner, Design-Builder will establish a baseline schedule. Thereafter Design-Builder shall advise the Owner of any proposed Critical Path Schedule changes and promptly provide the Owner with any revisions thereto and recovery plans as required to meet the contractual dates.
6. Schedule Validity and Content
 - a. Prepare schedules in Primavera P6 Version 8.0 or greater format.
 - b. Contain Work Breakdown Structure coding matching deliverables and work packages.
 - c. Schedule will reflect all deliverables and tasks mention in the Scope of Work narrative.
 - d. Schedules shall be coded for grouping by engineering, procurement, construction, and commissioning
 - e. Project schedule activities that DESIGN-BUILDER is responsible for performing shall be resource loaded with engineering and procurement activities. Construction activities shall be resourced loaded 60 days prior to site mobilization.
 - f. Resource loading for project hours and major material quantities for site construction.
 - g. Engineering, procurement and construction activities shall be included, such that Project staffing requirements can be determined or verified with schedule. The original resource-loaded construction schedule shall form basis for progress reporting, and payment.
 - h. Schedules shall be provided in (XER) electronic Primavera format on a monthly basis.
 - i. Complete sequence of engineering, procurement and construction by activity.
 - j. Schedules will be reported and calculated using retained logic. No progress override.
 - k. An unlocked and searchable PDF of monthly schedule with the following
 - (1) Columns showing (Activity ID, Activity Description, Original Duration, Remaining Duration, Activity Percent Complete, Start, Finish, Total Float, Baseline Start, Baseline Finish, and Baseline Finish Variance)
 - (2) Gantt chart illustrating schedule activities start and finish dates, baseline planned progress, actual earned progress, and critical tasks.

- l. No open ends except for one predecessor open end for starting the project and one successor open end for completing the project.
 - m. No out-of-sequence logic.
 - n. Critical path for DESIGN-BUILDER's schedule activities.
- 7. Major Milestone Dates
 - a. NTP
 - b. Outage Dates
 - c. Major Material Delivery
 - d. Design Reviews
 - e. Mobilization Dates
 - f. Inspection Dates
 - g. Substantial Completion Dates
 - h. Performance Test Dates
 - i. Final Completion Dates

2.03 BIM MODEL AND EXECUTION PLAN

- A. BIM Protocol
 - 1. Design-Builder shall develop and submit an appropriate technology protocol for BIM and digital information modeling. The protocol shall define the ownership, access and responsibility with respect to project information, in particular with respect to shared BIM. On a more detailed level the protocol shall develop standards for data interfaces, layering and other criteria to be developed during the validation Phase.
 - 2. Design-Builder shall provide the BIM Protocol by the date set forth in Section 2.01.A.
- B. At the conclusion of the Validation Period, Design-Builder shall submit for the Owner's review and approval a BIM Model plus a BIM Execution Plan which shall meet the objectives and requirements set forth in the Owner's Project Criteria.
- C. The BIM Execution Plan will provide for BIM Reviews at a frequency agreed between the Owner and Design-Builder where Design-Builder will present the BIM model for review. The BIM review will generally consist of a walkthrough of the 3D model showing all systems both individually and integrated, and an identification of any clashes among disciplines. Design-Builder will be responsible for administering this process and resolving any clashes in a timely fashion.
- D. Design-Builder shall meet with the Owner to review the proposed BIM Model and BIM Execution Plan.
- E. Design-BuilderDesign-BuilderThe intended use of BIM for the Project may accomplish the following objectives:
 - 1. For illustrations and presentation to the Owner and Stakeholders of the intended design

2. For coordination between disciplines and trades (clash detection) during design and construction
3. Construction Phasing and Sequencing
4. As a data reach legacy document for Facility Management and Maintenance.

F. Use of BIM for Design and Construction:

BIM shall be an integral part of project delivery and shall enable all stakeholders to see the project clearly as it develops. BIM shall support the use of SD models to iron out sequencing and cost issues where appropriate during construction and allow pull- driven fabrication and just-in-time delivery of information, materials, parts, assemblies and required equipment and resources. Design-Builder

G. Use of BIM for Facility Management and Maintenance:

1. Upon completion and commissioning of the Project, the Owner's goal is to use the Construction Documents prepared in BIM software for Building Management and Maintenance. Design-BuilderDesign-BuilderDesign-Builder

2.04 DESIGN DOCUMENTS

- A. Initial Project Scope. During the Validation Period, the Design-Builder shall review the Project Scope and evaluate the feasibility of including the Owner's Project Criteria within the Owner's budget and schedule. Design-Builder shall develop a Proposed Initial Project Scope that represents the Design-Builder's best estimate of a reasonably feasible scope of work that can be accomplished for the Proposed Target Budget and Proposed Target Schedule. The Design-Builder shall submit its Proposed Initial Project Scope to Owner at the conclusion of the Validation Period, and the parties shall collaboratively develop the Initial Project Scope that will be used as a basis for designing the Project throughout Phase 1.
- B. Work Groups. The parties will establish Work Groups that correspond with the Cost Model and the Design Materials Packages. The purpose of the Work Group is to develop Design Submissions within the applicable Design Materials Package that are consistent with the Target Budget, Target Schedule, and Initial Project Scope.
1. By the date set forth in Section 2.01.A. of this Exhibit, the Design-Builder will provide the Owner with a list of proposed Work Groups. The parties will then collaboratively establish the final Work Groups.
 2. Each Work Group will contain representatives from both the Owner and the Design-Builder.
 3. The Work Groups will provide updated reports pursuant to this Exhibit C to the Owner's and the Design-Builder's Representatives.
 4. Work Groups will make decisions consistent with the Project Goals and the Commercial Terms. If a Work Group cannot make a decision by consensus, then the Work Group shall refer the decision to the Owner's Representative and the Design-Builder's Representative. If the parties' Representatives cannot reach agreement, the decision shall be referred to the Owner's Executive Leadership Team.

- C. Preliminary Design Materials. As Design-Builder develops the Basis of Design Documents, Design-Builder shall collaborate with the Owner to submit and review the Preliminary Design Materials that will be incorporated into the Basis of Design Documents. The Preliminary Design Materials will be submitted pursuant to the Phase 1 Schedule.
1. Design-Builder shall submit preliminary Design Materials Packages to the Owner pursuant to Section 2.01A. of this Exhibit. The parties will then collaboratively develop the final Design Materials Packages for the Project. The Design Materials Packages will correspond with Work Groups established by the Design-Builder and the Owner to develop the Basis of Design Documents.
 2. Each Work Group will submit a schedule for review of Design Submittals pursuant to Section 2.01.A. of this Exhibit for the applicable Design Materials Packages such that the review of Design Submittal is of reasonable scope for prompt and thorough review by the Owner.
 3. Design-Builder shall highlight any material differences between the Initial Project Scope as they are being developed and the Owner's Project Criteria.
 4. If the Owner has any comments relative to the Design Materials or finds any inconsistencies from the Owner's Project Criteria or inaccuracies in the Design Materials, it shall give prompt written notice of such comments or findings to Design-Builder, who shall make appropriate adjustments to the proposed Basis of Design Documents.
 5. The parties will work collaboratively to make adjustments in the Design Materials and in the proposed Basis of Design Documents to fit within the Owner's Project Goals.
- D. The Owner and Design-Builder shall work collaboratively to develop the Basis of Design Documents provided as part of the GMP Proposal. The Basis of Design Documents submitted with the GMP Proposal shall include at a minimum the following documents and set forth the assumptions and clarifications on which the GMP and Project Schedule are based.
1. Project Manual, which shall set forth both the general objectives for the Owner, as well as specific uses for each of the project elements set forth in the Owner's Project Criteria.
 2. Design-Builder shall schedule the review of the Construction Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner.
 3. Design-Builder shall highlight any material differences and developments between the Owner's Project Criteria, any interim Design Materials, and the Basis of Design Documents as the Basis of Design Documents are being developed.
 4. If the Owner has any comments relative to the Design Materials or finds any inconsistencies from the Owner's Project Criteria or discovers inaccuracies in the Design Materials, the Owner shall give prompt written notice of such comments or findings to Design-Builder, who shall make appropriate adjustments to the proposed Basis of Design Documents.
 5. The parties will work collaboratively to make adjustments in the Design Materials and in the proposed Basis of Design Documents to fit within the

- Owner's Project Goals as well as the Target Budget and Target Schedule established in the GMP Amendment.
6. Performance Specifications, which shall set forth the specific requirements for the project and identification of each major system, including but not limited to the following:
 - a. Mechanical, electrical and plumbing systems
 - b. Structural capacities and requirements
 - c. Warranty obligations
 - d. Operations and maintenance requirements
 7. Sustainability Requirements and Plan. Design-Builder shall manage environmental issues and implement and document sustainability goals set forth in the GMP Amendment., including but not limited to: a) outline Subcontractor requirements for Sustainability in the subcontract bid documents; b) monitor the submittal process to ensure compliance with Sustainability goals; c) train Subcontractors in Sustainability requirements; d) review design changes during construction for Sustainability impacts and inform Owner of impacts; e) ensure installed products are compliant with the Sustainability requirements; and f) assemble and maintain records to document Sustainability goals compliance.
- E. Milestone Deliverables
1. Unless the parties agree in writing otherwise and in addition to the other deliverables required in the Contract Documents, Design-Builder will provide the following Milestone Design Deliverables to the Owner during Phase 1. Milestone Deliverables are contingent upon when the Owner and Design Builder agree to set the GMP:
 - a. 50% Schematic Design
 - b. 100% Schematic Design
 - c. 60% Design Development
 - d. 100% Design Development
 2. The Milestone Deliverables shall include, but not be limited to the following.
 - a. Concept, Character, and Principals
 - b. Landscape Plan
 - c. Existing Site Photos
 - d. Site Plan and Access
 - e. Massing Options
 - f. Exterior Elevations
 - g. Building Sections
 - h. Build Entries and Circulation
 - i. Solar Orientation
 - j. Floor Plans

- k. Proposed Materials and Color Palette, interior and exterior
 - l. Parking Concept
 - m. Narrative
 - 3. Design-Builder must have written approval from the Owner to proceed with the project after submission of each of the Milestone Design Deliverables set forth above.
- 2.05 GMP
 - A. Schedule of Values
 - 1. Preliminary Schedule of Values. Within the time frame set forth in Section 2.01.A, Design-Builder shall submit a preliminary Schedule of Values for the Project in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.
 - 2. With the submission of Design Materials Packages, Design-Builder shall provide updated estimates of costs associated with the Design Materials in a format acceptable to the Owner that will be incorporated into the GMP.
 - 3. The updated estimates shall be provided at intervals agreed upon by the Owner and Design-Builder and shall be updated with new information as Design-Builder develops and finalizes the GMP.
 - 4. Schedule of Values. At intervals agreed upon by the Owner and Design-Builder, Design-Builder shall provide an updated Schedule of Values for the Work with actual start and/or finish dates and percentages complete. Updates shall compare the planned progress from baseline schedule with actual progress from the current schedule. The Schedule of Values shall be in conformance with the requirements below and in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may reasonably require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.
 - 5. Schedule of Values Requirements
 - a. Submit to Owner schedule of values allocated to various portions of Work.
 - b. Submit to Owner an updated progressed CPM Schedule will substantiate the % complete of each task.
 - c. Schedule of values shall be used as basis for Design Builder's Applications for Payment, as well as a basis for identifying savings and overruns at the end of the project.
 - 6. Sum of all values listed in schedule shall equal total GMP Contract Price.
 - 7. Each item shall include directly proportional amount of Design-Builder's fee, as applicable.
 - 8. Schedule of Values Form and Content
 - a. Title of Project and location.

- b. Project number.
 - c. Name and Address of CONTRACTOR.
 - d. Date of submission.
 - e. Schedule of Values columns will contain at a minimum the following information
 - (1) Line Item # - Corresponding back to the WBS and CPM Schedule
 - (2) Line Item Description
 - (3) Subcontractor Responsible
 - (4) Budgetary Cost (Original Amount)
 - (5) Scope Change Amount
 - (6) Adjusted Amount
 - (7) Previous Completion Amount Total
 - (8) Materials Purchased and Stored
 - (9) Current Period % Complete
 - (10) Current Period Cost
 - (11) JTD % Complete
 - (12) JTD Cost
 - (13) Variance Column Representing Budgetary Cost Minus JTD Cost or a "Balance to Finish"
 - (14) Retention Amount
 - (15) Retention percentage
- B. Cost Model. Within the time frame set forth in Section 2.01.A, Design-Builder shall provide a preliminary Cost Model, for the Owner's review and acceptance.
- 1. The Cost Model shall, at a minimum, provide the following information:
 - a. List for all Design and Construction Packages, organized by CSI;
 - b. Estimated base bid amounts for all Construction Packages;
 - c. Construction Package Allowances and Deferred Scope.
 - 2. Design-Builder shall utilize a project controls management system (PCMS) that will be reviewed for acceptance to the Owner.
 - 3. Estimates and forecasts within the Cost Model will need to have the capability to be broken down and reported on in many different formats. These formats may include organizing the estimate by different projects, project funding types, Owner cost element codes, contracts, vendors, Construction Package Sets, Construction Packages, etc. Design-Builder shall collaborate with the Owner to determine the appropriate Work Breakdown Structure that will be used for the development of the Cost Model and all Project cost estimates.
 - 4. In developing its Construction Package Plan, Design-Builder shall coordinate with the Owner to determine a packaging strategy deemed

advantageous to all parties. The agreed-upon packaging strategy will be incorporated into the Cost Model and Project schedule.

5. Design Builder shall update estimates and forecasts as data becomes available to reflect real time information. The Owner will rely on this real-time information for accuracy of overall Owner cost forecasts across all Owner projects.
6. At the conclusion of the Validation Period, the Design Builder will provide an updated Cost Model with the Target Budget.

C. Work Breakdown Structure (WBS)

1. The Work Breakdown Structure (WBS) is a task-oriented division of work necessary to engineer, procure, and construct the Project. It categorizes successively smaller tasks, in order to achieve scope, schedule, and budget control at the most practical level. The WBS should correspond with the Cost Model.
2. Within the time frame set forth in Section 2.01.A, Design Builder will propose a WBS structure. Design Builder will work with the Owner to develop a mutual compatible WBS system to satisfy the intent of the project. The WBS structure will represent the Design Builder's entire scope for the project, broken down into manageable deliverables or work packages. This Hierarchy will be used to organize the project's scope narrative, the project's schedule, and the project's budgeted Schedule of Values (SOV). This will not be presented as a list of deliverables but as breakdown of work packages and their deliverables. Design-Builder
3. Scope of Work Narrative
 - a. Design Builder will develop, from the Work Breakdown Structure, a Scope of Work Narrative for the project before Phase 2 is approved. This document will provide a description of the work to be done for each WBS work package. This document will identify the Design-Builder's general understanding of the project, as well as provide a description of the work that will be done, and deliverables that will be produced for work packages in the WBS. A narrative for each work package will include, but is not limited to the following:
 - b. Narrative of work to be performed
 - c. List of major deliverables
 - d. List of information needed (if any) from UTILITIES, or other stakeholders outside of the Contract to perform the work.
 - (1) Washington State Department of Transportation
 - (2) Lake Chelan Reclamation District
 - (3) Chelan Fire District No. 5
 - (4) Chelan County PUD

- D. Target Budget. Pursuant to Section 2.01.C, Design-Builder shall submit a Proposed Target Budget that reflects Design-Builder's best estimate of an achievable GMP for the Project.

1. The Proposed Target Budget shall include a Schedule of Values and Cost Model.
 2. The Proposed Target Budget shall be updated periodically monthly with the level of detail for each update reflecting the information then available.
 - a. During Phase 1, Design-Builder will establish the timing for Target Budget Updates with acceptance from the Owner.
 - b. Design-Builder shall also provide updates during the development of the Basis of Design Documents.
 3. Design-Builder shall meet with the Owner to review the Proposed Target Budget and the parties shall collaboratively develop a final Target Budget. If the Owner has any comments relative to the Proposed Target Budget or Target Budget Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design-Builder, who shall make appropriate adjustments to the Target Budget. The parties will work collaboratively to make adjustments in the Basis of Design Document, the Project Schedule, or GMP to fit within the Owner's objectives.
 4. The Target Budget will be used as a basis for estimating and developing the GMP throughout Phase 1.
 5. If an update to the Target Budget indicates that the Target Budget will be exceeded, Design-Builder shall submit a corrective action plan to the Owner.
- E. Establishment of the GMP.
1. With the GMP Proposal, Design-Builder shall prepare and submit a Schedule of Values that depicts the proposed GMP to the Owner, in a format acceptable to the Owner, reflecting Design-Builder's total cost for the Project on an open book basis. The Schedule of Values shall include:
 - a. The Design-Builder's Lump Sum Fee Percentage pursuant to Section 6.2 of the Agreement;
 - b. The Cost of the Work pursuant to Section 6.3 of the Agreement;
 - c. If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis pursuant to Section 6.4.1 of the Agreement;
 - d. If applicable, a list of all Not to Exceed Amounts and the information required pursuant to Section 6.4.2 of the Agreement;
 - e. If applicable, a list of Lump Sums and the information required pursuant to 6.4.3 of the Agreement;
 - f. The Cost of the Work Contingency pursuant to Section 6.4.4.1.a of the Agreement;
 - g. The Design-Builder's Contingency pursuant to Section 6.4.4.1.b of the Agreement;
 - h. The Lump Sum General Conditions Cost pursuant to Section 4.5 of the Agreement;
 - i. If applicable, a schedule of Unit Prices and Hourly Rates pursuant to Section 4.6 of the Agreement

2. In support of the proposed GMP, Design-Builder shall provide:
 - a. A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP to supplement the information contained in the Basis of Design Documents.
 - b. All material changes from the Owner's Project Criteria and Design-Builder's Proposal and the costs associated with such changes.
 - F. Design-Builder shall meet with the Owner to review the proposed GMP. If the Owner has any comments relative to the proposed GMP or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design-Builder, who shall make appropriate adjustments to the proposed GMP, its basis, or both. The parties will work collaboratively to make adjustments in the Basis of Design Documents, Project Schedule, or GMP to meet the Owner's objectives.
- 2.06 SUBCONTRACTOR PROCUREMENT PROCEDURE
- A. By the date set forth in Section 2.01A herein, Design-Builder shall submit for approval the Subcontractor Procurement Procedure as required in Section 2.8 of the General Conditions.
- 2.07 PROJECT SAFETY AND JOB SITE HAZARD ANALYSIS
- A. By the date set forth in Section 2.01A herein, Design-Builder shall submit a Project Safety and Job Site Hazard Analysis for the activities associated with Phase 1.
 - B. With GMP Proposal, Design-Builder shall submit a Project Safety Plan with Job Site Hazard Analyses addressing all phases of the project after Phase 1.
 - C. No field investigation or construction activities will be authorized without acceptance of safety plans as required for the Work.
- 2.08 Design-Builder PERMITTING STRATEGY PLAN:
- A. With the GMP Proposal, Design-Builder shall provide a Permitting Strategy Plan detailing the process for obtaining the building and site development permits for various phases of the project. During Phase 1, Design-Builder must meet with the applicable building officials and develop processes and timelines for plan check approvals.
 - B. Design-Builder shall coordinate with all authorities with jurisdiction over the Project for the approval of environmental mitigation measures.
- 2.09 TERO COMPLIANCE AND SMALL BUSINESS PARTICPATION/OUTREACH PLAN
- A. With the GMP Proposal, Design-Builder shall analyze the capabilities of TERO certified firms as well as small, regional, and local firms and the projected manpower availability to determine and report on the percentage of the Work that such firms could reasonably be expected to perform during the Design, Preconstruction and Construction Phases of the Project.
 - B. Based on this analysis, Design-Builder shall prepare an Outreach Plan, subject to the review and approval of the Owner.
 - C. As a minimum, the Outreach Plan shall include:
 1. A complete definition of the efforts to be taken on the part of Design-Builder to tailor design, preconstruction services and Construction

Packages so as to be capable of being performed by TERO certified, small, local and/or regional consultants, designers, and/or subcontractors.

2. A description of the formal outreach process to be used to communicate the requirements of the Work with TERO certified, small, local and/or regional consultants, designers and/or subcontractors.
 3. The approach to procure consultants and subcontractors (e.g., open bid, prequalification, best-value, etc.) to maximize participation by TERO certified, small, regional, and local firms.
 4. The approach to comply with Chapter 10-1 of the Colville Tribal Law and Order Code.
- D. Design Builder shall also submit the Compliance Plan required under Chapter 10-1 of the Colville Tribal Law and Order Code.

2.10 QA/QC PLANS

- A. Prepare a Quality Management Plan (QMP) in accordance with the Contract requirements and submit it with the GMP Proposal.
- B. Design Quality Management Plan.
 1. Design Quality Management Plan (DQMP): shall be developed in accordance with the requirements outlined in the Contract.
 2. Design Quality Audits: Design Quality Assurance Manager shall audit all design packages for compliance with the requirements outlined in the DQMP.
 3. Independent Technical Reviews: The Design Quality Assurance Manager will appoint appropriate technical staff to conduct Independent Technical Reviews of each design package. These reviews will occur concurrently with the Inter- Disciplinary Reviews and Constructability Reviews.
- C. Construction Quality Management Plan.
 1. Construction Quality Management Plan (CQMP): shall be developed in accordance with the requirements outlined in the Contract.

2.11 CONTRACT CLOSEOUT PLAN

- A. With the GMP Proposal, Design-Builder shall provide a Project Closeout Plan that integrates all aspects of project closeout proactively over the life of the project. The Closeout Plan will be a living document that will grow and expand as the design and construction progress. The Project Closeout Plan should include, but not be limited to mechanisms and procedures for:
 1. Closeout provisions included in subcontract procurement documents
 2. Phased completions and early subcontract closeouts
 3. Commissioning
 4. Warranties
 5. Training
 6. O&M Documentation
 7. Record Documents

8. Cost Reconciliations
9. Permit and Regulatory Requirements

2.12 DIFFERING SITE CONDITIONS REPORT

- A. With the GMP Proposal, Design-Builder shall provide a report of all Differing Site Conditions as defined in Section 4.2 of the General Conditions of the Contract that are discovered during Phase 1.

Design-BuilderB. The Differing Site Conditions Report shall include the following information for each of the identified Differing Site Conditions identified in the Report.

1. The location of the Differing Site Condition;
2. A description of the Differing Site Condition that explains why it qualifies as a Differing Site Condition pursuant to Section 4.2 of the General Conditions;
3. The date the Differing Site Condition was discovered;
4. The impact of the Differing Site Condition on the Owner's Project Criteria, the Basis of Design Documents, and/or any Commercial Term, as applicable

2.13 DEFERRED SCOPE AND LONG LEAD ITEMS

- A. A list of potential Deferred Scope, including proposed cost, on the Schedule of Values / Contingency log.
- B. A list of long lead items and early procurement items with needed design decision dates and required procurement dates, in order to maintain construction schedule.

Phase 2 Scope of Services

PART 3 PHASE 2

Unless the parties agree otherwise in writing, this Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 2.

3.01 PHASE 2 SCOPE

- A. Design-Builder shall complete the design and construction services as set forth in the GMP Amendment.
- B. Design-Builder shall provide the deliverables set forth in this Attachment during the course of Phase 2. Deliverables shall be provided in a format acceptable to the Owner. Design-Builder must utilize the following programs, as applicable:
 - 1. Building Information Modeling pursuant to the Owner's standards.

3.02 COMPLETION OF DESIGN

- A. Design-Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.
- B. The Owner will review and comment on the Construction Documents and other Design Materials in a timely fashion.
- C. Design-Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design-Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.

3.03 SCHEDULE OF VALUES AND COST MODEL

- A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design-Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner. This includes regular contingency management meetings and a contingency management log.
- B. Unless modified by the parties in writing, on the schedule set forth in Section 2.01.B., Design-Builder will continue to update estimates and forecasts in the format required above and provide data to the Owner to reflect real time information. Design-Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis.
- C. The Schedule of Values and Cost Model must be consistent with the GMP Amendment and the format required above, unless the parties have agreed on a Change to the terms set forth in the GMP Amendment pursuant to Article 10 of the General Conditions.

3.04 PROJECT SCHEDULE

- A. The forecasting and development of the project schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design-Builder's ability to deliver this Project in a timely fashion. The Owner will rely on

the Design-Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.

- B. Design-Builder shall provide the Owner with frequent updates to the project schedule on a bi-weekly basis in the format required above for a scheduled completion within the GMP established in the GMP Amendment.

3.05 CONSTRUCTION SERVICES

- A. Design-Builder shall provide Construction Services and complete the construction of the Project pursuant to the Contract Documents.

3.06 COMMISSIONING, TESTING AND CLOSEOUT

- A. Design-Builder shall provide, testing, and closeout of the Project pursuant to the Contract Documents. Owner and Design-Builder will discuss prior to setting the GMP if commissioning will be provided by a 3rd party contracted to the Owner or provided by the Design-Builder.

PHASE 2 DELIVERABLES

3.07 DELIVERABLES

- A. Design-Builder shall provide the following Milestone Design Deliverable pursuant to the Project Schedule:
 - 1. 100% Construction Documents for review and approval by the Owner.
 - 2. Design-Builder shall not proceed with the project after submission of the 100% Construction Documents until it receives the Owner's written approval.
- B. Design-Builder shall provide such other deliverables as set forth in the Contract Documents to successfully complete the Project.

PART 4 APPLICABLE TO ALL PHASES

4.01 INTEGRATED DELIVERY

- A. Owner and Design-Builder commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- B. The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:
 - 1. Create a culture of open and honest communication throughout the course of the Project;
 - 2. Resolve disputes at the lowest possible level;
 - 3. Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;
 - 4. Utilize lean construction methods efficiently and effectively;

5. Utilize Building Information Modeling efficiently and effectively;
6. Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and
7. Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

4.02 DEFINITIONS

- A. *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, Hourly Rate, Contract Time, Target Budget, Target Schedule, or Initial Project Scope.
- B. *Contingencies* are the amounts available for Design-Builder's use and are defined in Section 6.4.4 of the Agreement. The Cost of the Work Contingency is defined in Section 6.4.4.a. The Design-Builder's Contingency is defined in Section 6.4.4.b.
- C. *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Initial and Final Basis of Design Documents, as applicable.
- D. *GMP Amendment* means an amendment to the Agreement entered into the parties at the conclusion of Phase 1 that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.
- E. *Initial Project Scope* is the scope of the project that the parties collaboratively establish at the conclusion of the Validation Period that represents the parties' best determination of an achievable project scope.
- F. *Original GMP* is the GMP set forth in the GMP Amendment.
- G. *Project Schedule* is the schedule provided by the Design-Builder and approved by the Owner pursuant to Section 2.1.3 of the General Conditions and Exhibit C.
- H. *Reliable Design Decision* is a decision, development, or election that refines the Owner's Project Criteria or Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Design Decision cannot change the Owner's Project Criteria or Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.
- I. *Self-performed construction Work* means construction Work that would normally be performed by a subcontractor and does not include any costs associated with design, construction management, or Work that would be included in or described as part of the Lump Sum General Conditions Costs set forth in Section 4.5 of the Agreement.
- J. *Target Budget* is the estimate for the Contract Price that is collaboratively established by the parties after the conclusion of the Validation Period that represents the parties' best determination of an achievable Contract Price.
- K. *Target Schedule* is the estimated Project Schedule collaboratively established by the parties at the conclusion of the Validation Period that represents the parties' best determination of an achievable Project Schedule.
- L. *TERO* is the Colville Tribes Tribal Employment Rights Ordinance requiring Indian

preference as set forth in Chapters 10-1 and 10-3 of the Colville Tribal Law and Order Code .

- M. *Trend* is an issue identified in the Trend Log.
- N. *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.
- O. *Validation Period* is the time period established in Section 6.6.1.4 of the Agreement to accomplish the tasks set forth in Exhibit C, Section 1.03.
- P. *Work Group* is a team of individuals with representatives from both the Owner and Design-Build Team that are responsible for developing Design Submissions, updated estimates, and updated schedules for the applicable Design Materials Package.

4.03 SUBCONTRACTS

- A. Design-Builder shall submit a Subcontracting Procurement Procedure as required in Exhibit C, subject to the approval of the Owner. After approval by the Owner, Design-Builder may only modify the Subcontracting Plan upon obtaining written approval from the Owner. Design-Builder may not award any Subcontract on the basis of a lump sum price without obtaining prior written permission from the Owner, such permission shall not be unreasonably withheld.
- B. All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with a Subcontractor Procurement Procedure established during Phase 1. Design-Builder shall identify the scope of subcontracted Work (“Subcontract Package”) and shall identify qualified Subcontractors for each Subcontract Package. Unless approved in writing by the Owner, the Subcontractor Procurement Procedure shall comply with the following:
 - 1. All subcontracted work associated with performance of Construction Packages shall be award by the Design-Builder to Subcontractors in accordance with a best value selection process established between the parties. Unless otherwise agreed in writing by the parties, the best value selection process shall contain mutually acceptable evaluation criteria for the proposal and selection process that is clear and consistent and includes both qualifications and price.
 - 2. The Design Builder may only modify the Subcontractor Procurement Procedure after obtaining written approval from the Owner. Any such modification shall be at the sole risk and responsibility of the Design-Builder and without any modification to any applicable Commercial Terms.
 - 3. The Design Builder’s selection of Subcontractors shall comply with the following requirements, unless modified by the Subcontractor Procurement Procedure approved in writing by the Owner:
 - a. The Design Builder shall identify the scope of the Work to be subcontracted and shall identify at least three pre-qualified Subcontractors for such scope for written approval by the Owner.
 - b. After approval of the pre-qualified Subcontractors by the Owner, the Design Builder shall select from the three pre-approved Subcontractors for the identified scope of the Work, unless it obtains prior written approval from the Owner to select a different Subcontractor.

- c. If the Design Builder cannot reasonably identify three pre-qualified Subcontractors, it shall inform the Owner in writing as to the reason for the inability to identify the Subcontractors and shall not proceed with the selection of a Subcontractor without the prior written approval of the Owner.
 - d. The Design Builder shall select Subcontractors on the basis of the best value to the Project. If in the Design Builder's determination, the Subcontractor who proposes the best value did not propose the lowest cost, the Design Builder shall i) provide a written justification for the selection of the Subcontractor, and ii) obtain the Owner's written approval prior to Design-Builder entering into the Subcontract.
- C. Design Builder must obtain prior, written approval from the Owner for the Design-Builder or the lead Constructor (if the lead Constructor is not also the Design-Builder) to self-perform construction Work.
 - 1. For each scope of Work for which Design-Builder proposes self-performance, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:
 - a. A detailed description of the scope of Work; and
 - b. A detailed explanation of the effect of the self-performed construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project.
 - 2. Design-Builder will provide the Owner with an estimate of the costs for all self-performed construction Work on an open book basis. In calculating the costs for self-performed construction Work, the following shall apply.
 - a. The costs for self-performed construction Work shall not include costs that are also included in the General Conditions Amount.
 - b. Notwithstanding the above, Design-Builder may include in the costs for self-performed construction Work additional general conditions costs that are directly associated with the self-performed construction Work that Design-Builder would not have incurred but for the self-performed construction Work.
- D. Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- E. Design-Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design-Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion if a suspension or termination of Design-Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design-Builder and may not be withdrawn prior to Final Completion.