



# City of SeaTac

## Special Council Study Session Agenda

March 12, 2015  
4:30 PM

City Hall  
Council Chambers

### CALL TO ORDER:

**PUBLIC COMMENTS (related to the agenda items listed below):** (Speakers must sign up prior to the meeting. Public Comments shall be limited to a total of ten minutes with individual comments limited to three minutes and a representative speaking for a group of four or more persons in attendance shall be limited to ten minutes. However, the Mayor or designee may reduce equally the amount of time each speaker may comment so that the total public comment time does not exceed ten minutes. When recognized by the Mayor or his designee, walk to the podium, state and spell your name, and give your address [optional] for the record.)

### 1. PRESENTATIONS – INFORMATION ONLY:

● **Introduction of new City employees: Administrative Assistant II Cortlee Harris / Code Compliance Program Coordinator Nicolas Stephens / Prosecuting Attorney Alexander Muir (total time: 5 minutes)**

By: Assistant City Manager Gwen Voelpel

2. **Agenda Bill #3677; A Resolution sponsoring the Seattle Southside Regional Tourism Authority for membership in the Washington Employees Benefit Trust Program (total time: 10 minutes / presentation time: 5 minutes)**

By: Economic Development Manager Jeff Robinson

### 3. PRESENTATIONS – COUNCIL DIRECTION:

● **2015/2016 Neighborhood Pedestrian Improvements Project Selection (total time: 20 minutes / presentation time: 15 minutes)**

By: Civil Engineer II Toli Khlevnoy

● **Review of Draft Angle Lake District Station Area Plan (6<sup>th</sup> presentation in an estimated series of 8) (total time: 30 minutes / presentation time: 10 minutes)**

By: Community & Economic Development Director Joseph Scorcio / Planning Manager Steve Pilcher / Senior Planner Kate Kaehny

**EXECUTIVE SESSION: Potential Litigation RCW 42.30.110(1)(i) (20 minutes) / To consider the minimum price at which real estate will be offered for sale or lease RCW 42.30.110(1)(c) (10 minutes)**

### ADJOURN:



# City of SeaTac

## Special Council Meeting Agenda

March 12, 2015  
6:30 PM

City Hall  
Council Chambers

**CALL TO ORDER:**  
**ROLL CALL:**  
**FLAG SALUTE:**

**PUBLIC COMMENTS:** (Speakers must sign up prior to the meeting. Individual comments shall be limited to three minutes. A representative speaking for a group of four or more persons in attendance shall be limited to ten minutes. When recognized by the Mayor or his designee, walk to the podium, state and spell your name, and give your address [optional] for the record.)

### **3. PRESENTATIONS (Continued):**

● **Chinook Middle School Poets** (*total time: 15 minutes*)

By: Chinook Middle School Teacher Colleen Carpenter / Chinook Middle School Students

● **Domestic Abuse Women's Network (DAWN)** (*total time: 5 minutes*)

By: Executive Director Peg Coleman

● **State of Court Presentation** (*total time: 20 minutes / presentation time: 10 minutes*)

By: Judge Elizabeth Bejarano

● **Presentation on Federal Way Link Extension Alignment Options** (*total time: 20 minutes / presentation time: 10 minutes*)

By: Assistant City Manager Gwen Voelpel / Community and Economic Development Director Joe Scorcio / Planning Manager Steve Pilcher / South Corridor Development Manager Cathal Ridge / Government and Community Relations Officer Chelsea Levy

### **4. CONSENT AGENDA:**

● **Approval of claims vouchers** (check no. 110185 – 110282) in the amount of \$530,702.36 for the period ended March 5, 2015.

● **Approval of payroll vouchers** (check nos. 52667 – 52685) in the amount of \$227,753.19 for the period ended February 28, 2015.

● **Approval of payroll electronic fund transfers** (check nos. 83797 - 83932) in the amount of \$324,238.91 for the period ended February 28, 2015.

● **Approval of payroll wire transfer** (Medicare and Federal Withholding Tax) in the amount of \$51,825.85 for the period ended February 28, 2015.

● **Pre-approval or final approval of City Council and City Manager travel related expenses** for the period ended March 5, 2015.

#### **Approval of Council Meeting Minutes:**

● **Council Study Session held January 27, 2015**

● **Regular Council Meeting held January 27, 2015**

● **Council Study Session held February 24, 2015**

● **Regular Council Meeting held February 24, 2015**

**Agenda Items reviewed at the February 24, 2015 Council Study Session and recommended for placement on this Consent Agenda:**

**Agenda Bill #3666; A Motion authorizing the City Manager to execute a contract with Porter Brothers Construction Inc. the low bidder for Fire Station 45 construction**

**PUBLIC COMMENTS (related to Action Items and Unfinished Business):** (Individual comments shall be limited to one minute and group comments shall be limited to two minutes.)

**ACTION ITEM:**

**UNFINISHED BUSINESS:**

**NEW BUSINESS:**

**CITY MANAGER'S COMMENTS:**

**COMMITTEE UPDATES:**

**COUNCIL COMMENTS:**

**EXECUTIVE SESSION:**

**ADJOURN:**

**1. PRESENTATIONS – INFORMATION ONLY:**

**•Introduction of new City employees: Administrative Assistant II Cortlee Harris / Code Compliance Program Coordinator Nicolas Stephens / Prosecuting Attorney Alexander Muir (*total time: 5 minutes*)**

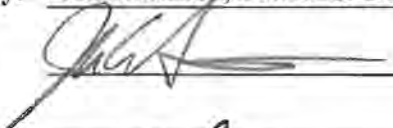
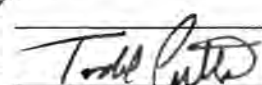
By: Assistant City Manager Gwen Voelpel

**SeaTac City Council**  
**REQUEST FOR COUNCIL ACTION**

Department Prepared by: Community & Economic Development

Agenda Bill #: 3677

TITLE: A Resolution sponsoring the request of the Seattle Southside Regional Tourism Authority to join the Association of Washington Cities Employee Benefit Trust.

<i>February 26, 2015</i>	
<input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
<b>Date Council Action Requested:</b>	RCM: 03-24-15
<b>Ord/Res Exhibits:</b>	
<b>Review Dates:</b>	SCSS 3/12/15
<b>Prepared By:</b>	Jeff Robinson, Economic Development Manager
<b>Director:</b>	
<b>City Attorney:</b>	Mary Mirante Bakkalo
<b>Finance:</b>	BARS #: N/A
<b>City Manager:</b>	 Applicable Fund Name: N/A

**SUMMARY:** The proposed Resolution sponsors the request of the Seattle Southside Regional Tourism Authority (SSRTA) to join the Association of Washington Cities (AWC) Employee Benefit Trust.

**DISCUSSION / ANALYSIS / ISSUES:** The City Council passed Ordinance number 14-1014 on October 14, 2014 chartering the SSRTA. Since the SSRTA is a new entity, it is necessary for the SSRTA to find employee benefits for its employees. The SSRTA would like to join the AWC Employee Benefits Trust for certain insurance benefits such as medical insurance. In order to do so, a member of the AWC Employee Benefit Trust must sponsor the SSRTA because the SSRTA is not a city. Such a Resolution is a requirement of AWC, and does not obligate the City financially or administratively, in any way.

The proposed Resolution sponsors the request of the SSRTA to join the Association of Washington Cities (AWC) Employee Benefit Trust.

**RECOMMENDATION(S):** It is recommended that the Resolution be passed.

**FISCAL IMPACT:** None.

**ALTERNATIVE(S):** Do not pass the Resolution. However, the SSRTA is in need of a member of the AWC Employee Benefit Trust in order to join the benefit trust.

**ATTACHMENTS:** None.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION of the City Council of the City of SeaTac, Washington sponsoring the request of the Seattle Southside Regional Tourism Authority to join the Association of Washington Cities Employee Benefit Trust.

**WHEREAS**, the City chartered the Seattle Southside Regional Tourism Authority (SSRTA) on October 14, 2014; and

**WHEREAS**, the SSRTA would like to participate in the Association of Washington Cities Employee Benefit Trust benefits program as a quasi-municipal entity; and

**WHEREAS**, the Association of Washington Cities Employee Benefit Trust requires that a city member of the Association of Washington Cities Employee Benefit Trust sponsor a non-city entity's request before the non-city entity can participate in the Association of Washington Cities Employee Benefit Trust benefit programs;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON HEREBY RESOLVES as follows:**

1. The City of SeaTac, with this Resolution, sponsors the Seattle Southside Regional Tourism Authority's request for application to join the Association of Washington Cities Employee Benefit Trust as a non-city entity.
2. The City of SeaTac requests that the Seattle Southside Regional Tourism Authority be allowed into the Association of Washington Cities Employee Benefit Trust.

**PASSED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015 and signed in authentication thereof on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF SEATAC**

\_\_\_\_\_  
Mia Gregerson, Mayor

ATTEST:

\_\_\_\_\_  
Kristina Gregg, City Clerk

Approved as to Form:

Mary Mirante Bartolo  
Mary E. Mirante Bartolo, City Attorney

[Seattle Southside Regional Tourism Authority – AWC Benefit Trust]

### **3. PRESENTATIONS – COUNCIL DIRECTION:**

- **2015/2016 Neighborhood Pedestrian Improvements Project Selection** (*total time: 20 minutes / presentation time: 15 minutes*)

By: Civil Engineer II Toli Khlevnoy

- **Review of Draft Angle Lake District Station Area Plan** (*6<sup>th</sup> presentation in an estimated series of 8*) (*total time: 30 minutes / presentation time: 10 minutes*)

By: Community & Economic Development Director Joseph Scorcio / Planning Manager Steve Pilcher / Senior Planner Kate Kaehny

**EXECUTIVE SESSION: Potential Litigation RCW 42.30.110(1)(i)** (*20 minutes*) / **To consider the minimum price at which real estate will be offered for sale or lease RCW 42.30.110(1)(c)** (*10 minutes*)

### **SCM PRESENTATIONS (Continued):**

- **Chinook Middle School Poets** (*total time: 15 minutes*)

By: Chinook Middle School Teacher Colleen Carpenter / Chinook Middle School Students

- **Domestic Abuse Women's Network (DAWN)** (*total time: 5 minutes*)

By: Executive Director Peg Coleman

- **State of Court Presentation** (*total time: 20 minutes / presentation time: 10 minutes*)

By: Judge Elizabeth Bejarano

- **Presentation on Federal Way Link Extension Alignment Options** (*total time: 20 minutes / presentation time: 10 minutes*)

By: Assistant City Manager Gwen Voelpel / South Corridor Development Manager Cathal Ridge / Government and Community Relations Officer Chelsea Levy



**PAYROLL/CLAIMS VOUCHERS WERE SENT  
ELECTRONICALLY TO THE CITY COUNCIL**

**A HARD COPY OF THE VOUCHERS  
CAN BE VIEWED IN THE CITY CLERK'S OFFICE**

**PAYROLL/CLAIMS VOUCHERS ARE ALSO  
AVAILABLE ON OUR CITY WEBSITE**

**[www.ci.seatac.wa.us](http://www.ci.seatac.wa.us)**

**Pre-approval or final approval of City Council and  
City Manager travel related expenses**

**Consent Agenda Date: 3.10.15**

AWC Action Days  
February 18-19, 2015  
Olympia

Name: Todd Cutts	Travel Consent Approval Date: 1.27.15	Travel Expense Consent Approval Date: 2.10.15	Travel Expense Consent Approval Date: 3.10.15
Lodging			221.16*
Meals			31.09
Transportation			56.35
Registration		150.00	
<b>Total</b>	235	150.00	308.60

\*hotel stay added due to meetings with legislators on 2/17 and the session running 2/18 through mid-morning 2/19. The travel policy allows for a hotel stay due to the distance between SeaTac and Olympia. This amount can be absorbed in the City Manager's Office travel budget.

# City of SeaTac

## Council Study Session Minutes Synopsis

January 27, 2015  
4:30 PM

City Hall  
Council Chambers

**CALL TO ORDER:** The SeaTac City Council Study Session (CSS) was called to order by Mayor Mia Gregerson at 4:30 p.m.

**COUNCIL PRESENT:** Mayor Mia Gregerson, Deputy Mayor (DM) Anthony (Tony) Anderson (*participated via phone*), Councilmembers (CMs) Barry Ladenburg, Kathryn Campbell, Terry Anderson, Dave Bush, and Pam Fernald.

**STAFF PRESENT:** City Manager Todd Cutts, City Attorney Mary Mirante Bartolo, City Clerk Kristina Gregg, Assistant City Manager (ACM) Gwen Voelpel, Parks & Recreation (P&R) Director Kit Ledbetter, Facilities Manager Pat Patterson, Community and Economic Development (CED) Director Joe Scorcio, Senior Assistant City Attorney Mark Johnsen, Public Works (PW) Director Tom Gut, Economic Development (ED) Manager Jeff Robinson, and Police Chief Lisa Mulligan.

**PUBLIC COMMENTS (related to the agenda items listed below):** There were no public comments.

### **Agenda Bill #3664; A Motion authorizing the City Manager to enter into an agreement with Dogs of Grandview Supporters (DOGS) to operate an Off-Leash Dog Area at Grandview Park for a term of 10 years**

**Summary:** In January 2001, the cities of Auburn, Burien, Des Moines, Federal Way, Kent, Renton, Tukwila, and SeaTac worked together to locate an off-leash dog area in South King County (SKC). Each city contributed a small amount of funds to upgrade Grandview Park to make it ready for the off-leash dog park. In 2004 SeaTac approved Serve Our Dog Areas (SODA) for a 10 year operating contract for an off-leash dog area at Grandview Park. SODA successfully operated the Grandview Park off-leash area for 10 years and decided not to renew their contract in 2015.

A public meeting was held in November 2014 to seek a new operator for the dog off-leash area and had 60 interested people attend the meeting. Several meetings have been held with DOGS, the new organization that is proposing to take over operation at Grandview Park. DOGS will pay the operating costs and manage the off-leash area.

P&R Director Ledbetter introduced DOGS Representative Elynn Clayton and reviewed the agenda bill summary.

Ms. Clayton stated the City has been great to work with.

Council discussion ensued regarding the agreement. Mr. Ledbetter stated the contract is basically the same. There are termination clauses so both sides have the opportunity to terminate the agreement if needed.

Mr. Ledbetter stated that SODA has agreed to pay most of the costs for the next year in order to allow DOGS to become established.

**Council consensus:** Refer to the 02/10/15 RCM Consent Agenda

### **Agenda Bill #3665; A Motion authorizing the City Manager to enter into an agreement with Sound Transit for Stream Buffer Mitigation for Des Moines Creek required for non-motorized improvements for South 200<sup>th</sup> Street link extension**

**Summary:** Sound Transit, in coordination with the City, is constructing the South 200<sup>th</sup> Street Link Extension light rail transit project, from Sea-Tac International Airport to the Angle Lake Station at South 200<sup>th</sup> Street. Through the Development Agreement (DA), the City negotiated for the project to include associated non-motorized improvements in the station area. Amongst these improvements is a pedestrian/bike trail along the north side of South 200<sup>th</sup> Street, connecting the Angle Lake light rail station to the Des Moines Creek Trail.

This non-motorized improvement will impact 3,438 square feet of the Des Moines Creek stream buffer. Sound Transit is required by SeaTac Municipal Code (SMC) 15.30.360(D) to mitigate this impact. Sound Transit conducted an investigation of potential mitigation sites along Des Moines Creek and identified a site for buffer enhancement in the amount of 3,820 square feet along the Des Moines Creek Trail, south of South 200<sup>th</sup> Street and west of the improved trail surface. Sound Transit estimated that implementation of this proposed mitigation, including construction, five years of monitoring and reporting, and five years of annual maintenance would cost \$101,806.40.

City staff identified a potential stream bank restoration project further south of the project area and Sound Transit's proposal that the staff believe will provide greater benefits to the function of the Des Moines Creek stream buffer. In addition, this preferred project will also prevent potential undercutting of the trail due to erosion, thereby ensuring its integrity. Sound Transit has reviewed the staff proposal and agrees that in lieu of their proposed mitigation project, they will provide the City with the amount of funding that project would have cost (\$101,806.40). The City can then

**Agenda Bill #3665 (Continued):** use these funds to construct its preferred mitigation project, which will meet or exceed the mitigation goals required by City code. We are electing to design, manage and monitor the construction work because it will cost less than through Sound Transit.

The P&R Department plans to contract with a Civil Engineer for under \$10,000 to complete the design work in February and then go out to bid for the preferred stream bank restoration project in May, with the work to be completed in the summer. This will ensure the mitigation occurs either prior to, or concurrent with, the impacts being made to the stream buffer along South 200<sup>th</sup> Street.

P&R Director Ledbetter reviewed the agenda bill summary.

Discussion ensued regarding agreement.

**Council consensus:** Refer to the 02/10/15 RCM Consent Agenda

**Agenda Bill #3667; A Motion authorizing the City Manager to execute a contract with Top to Bottom Janitorial for custodial work at City facilities**

**Summary:** Since 2011, the routine custodial and janitorial work for the Community Centers, the Maintenance Shop, and City Hall has been performed by City employees and outside contractors who performed the quarterly and yearly maintenance items. During the budget process, the Facilities Department recommended that this work be contracted instead of having it performed by City employees in order to achieve additional cost savings. On December 2 the Facilities Department bid the custodial contract work to six reputable cleaning contractors. The specifications outlined work to be performed on a daily, weekly, quarterly, and yearly basis. The following bids were received:

Kim Enterprises, Inc.	\$122,162.00
Top to Bottom Janitorial, Inc.	\$135,202.00
CW Janitorial Service, LLC	\$166,775.37
Environmental Control of South Sound	\$241,592.15

After these bids were received, Facilities Manager Pat Patterson asked the two lowest bidders (Kim Enterprises and Top to Bottom Janitorial) for a more detailed breakdown of the hours allotted to complete the various portions of work. After review of this information it was determined that there was very little difference between the two contractors with regard to the amount of hours needed to perform the daily and weekly services. However, there was a 576 hour difference between the amount of time being proposed to complete the quarterly and yearly items. These items include more thorough cleanings of the facilities, including deep cleaning the restrooms and locker rooms four times per year, complete dusting of all spaces four times per year, carpet cleaning the entire building once a year but four times per year for Police and the heavy traffic areas, cleaning all glass inside and out once per year, and stripping and waxing all hard surface floors once a year.

Based on past performance, it was estimated that this quarterly and yearly work should take approximately 600 hours per year to complete. Kim Enterprises indicated that these items would take 144 hours to complete, while Top to Bottom indicated that it would take 720 hours. The allocation by Kim Enterprises of significantly less time than what, in the professional opinion of the City's Facility Manager, is necessary to complete these deep clean items means that quality would likely suffer. Therefore, it is recommended that a contract be executed with Top to Bottom Janitorial for custodial services, even though their proposed cost is higher. Top to Bottom has held our custodial contract in the past and they are very familiar with the work involved. Additionally, since they have actually performed these services at our facilities in the past, their estimate regarding how much time will need to be spent to properly complete the work is deemed by the City Facilities Manager as being more credible.

The City has received a letter of protest from Kim Enterprises. While staff understands the issues raised in their letter, the concern remains whether the work can be completed satisfactorily in the time allocated. Furthermore, service contracts such as this can and should consider performance and service related issues in addition to price. The staff recommendation is made taking into consideration these additional factors.

Facilities Manager Patterson reviewed the agenda bill summary. The agreement terminates December 31, 2016.

Upon a question about a disgruntled bidder, Mr. Patterson explained the bidding process for this service contract. Staff looked at low price and quality of work, including time spent in the building.

Discussion ensued regarding the contract, including the costs savings.

**Council consensus:** Refer to the 02/10/15 RCM Consent Agenda

**Agenda Bill #3668; A Resolution executing a Second Amendment to a Development Agreement (DA) between the City of SeaTac and International Boulevard (IB) LLC**

**Summary:** IB LLC originally entered into a DA in 2005, with an amendment in 2008 for the property located in the vicinity of South 185<sup>th</sup> Street and IB, which contains MasterPark Lot A. The terms of the DA included the right to develop:

- (i) A mixed-use structure, consisting of at least 7,500 square feet of retail and/or office use. The retail/mixed-use building portions of the Development shall be allowed all uses allowed as permitted and conditional uses in the C-BC classification under SMC 15.35.110 - 160, except: adult entertainment, arcade, auto rental/auto sales/auto repair/auto service, construction/trade, funeral home, general repair, kennel, laundromat, miscellaneous equipment rental facility, tavern, warehouse/storage, wholesale/bulk store; and
- (ii) A parking structure with parking capacity for the number of vehicles equal to the greater of: the number permitted by SMC 15.35.950, Parking Bonus Incentive Program, as it exists on the Application Date, or the number of permitted under applicable codes in effect on the date a complete construction permit is received by the City.

In exchange for the rights conferred to IB, LLC the City received ownership of a portion of the Bow Lake lakebed and shoreline for a pedestrian walkway and also the future dedication of an Access Easement across the International Boulevard property for the construction of a pedestrian footpath from International Boulevard to the Bow Lake walkway and shoreline.

The first Amendment to the DA clarified language regarding the retention by IB, LLC of a portion of the lakefront upon completion of the development project, to help fulfill requirements under SMC 15.10.435, relating to the preservation of lands for open space and park purposes.

Recent past, and current economic conditions have precluded the ability to develop the subject property as envisioned in the DA. For this reason, the City and IB, LLC have negotiated the proposed Second Amendment to the DA which provides an extension to December 31, 2024 to complete the development project in exchange for the following additional public benefits:

- A cash payment of two-hundred ten thousand dollars (\$210,000) to be utilized for a yet to be determined capital improvement project. This amount represents the discounted present value of property taxes the City would receive from the improved property during an eight-year period including permitting, construction and initial County assessment periods.
- A second cash payment in the amount of one-hundred thousand dollars (\$100,000) in 2022 if the DA requirement for the commencement of permitting is extended for two additional years to 2024, and the construction completion date to 2026.
- Agreement to design and construct the development in accordance with SMC Sections 15.35.920 (Parking Structure Character and Massing) and 15.35.530 (Treatment of Blank Walls), neither of which were required by the original DA.
- No provision to require the repayment of any pre-paid property taxes to IB, LLC in the event that the project is constructed prior to the end date(s) of the proposed second amendment.

The City will receive a \$210,000.00 cash payment to be utilized for a yet to be determined capital project. The City will receive an additional \$100,000 in year 8 for use in a yet to be determined capital project if the DA is extended for the additional two years, for a total of a ten year extension.

CED Director Scorcio reviewed the agenda bill summary.

Council discussion ensued regarding the amendment to the DA. Council provided questions they would like responded to at the Regular Council Meeting (RCM).

**Council consensus:** Refer to the 02/10/15 RCM Public Hearing (PH) and Action Item

**Agenda Bill #3672; An Ordinance amending sections 7.40.020 and 7.40.060 of the SeaTac Municipal Code (SMC) related to Garbage Regulations**

**Summary:** Under state law, the City is responsible for collecting, hauling and disposing of solid waste. As articulated in the SeaTac Municipal Code, the purpose of the City's solid waste regulations "is to protect the public health, safety, and general welfare through the establishment of a uniform system of garbage collection, processing, transportation, and disposal throughout the City". To achieve that purpose, the code requires that garbage collection and haul in the City is to be performed by the City's contracted service. In 2013, the City entered into a contract with Recology/Cleanscapes to be the sole provider to collect and haul garbage in the City. Notwithstanding the provisions

**Agenda Bill #3672 (Continued):** of our City Code, a different provider is performing collection and haul service in the City under contract with the Federal Detention Center (FDC). Despite staff efforts to assist with a transition to the City's exclusive contractor, the FDC believes that their federal status trumps our Code.

Staff understands that the FDC's existing contract expires in March, 2015. However, the FDC has advised that they intend to bid another garbage collection/haul contract, despite clear Federal statutory and case law that dictates that they must follow City regulations with regard to garbage collection services, including the requirement to use the City's contractor. During a discussion between the City's and FDC's attorneys, the FDC's counsel opined that the City's garbage regulations may not apply to the FDC due to a definition in our Code. Rather than debate the merits of that opinion, staff believes that it is appropriate to amend the definition in order to clarify that our garbage regulations apply to all properties in the City, including the FDC.

Therefore, the proposed Ordinance amends two specific sections of the SeaTac Municipal Code. First, SMC 7.40.020 is amended, to revise the definition of "person." The proposed definition makes it very clear that a government agency is included in the definition of "person." Second, SMC 7.40.060 is amended to clarify that the City's contractor is the sole collector of garbage in the City. In addition to making this clarification, this amendment also clarifies the contractor's ability to collect recyclables and yard debris to ensure that it conforms to State law.

Staff is in the process of reviewing this Chapter of the Municipal Code. Due to the timing of the FDC's contract status, it is appropriate to address this issue immediately.

PW Director Gut reviewed the agenda bill summary. Senior Assistant City Attorney Johnsen 5:21:31 PM stated that the revised language addresses the issue that the FDC raised.

**Council consensus:** Refer to the 02/10/15 RCM Consent Agenda

**PRESENTATIONS – INFORMATION ONLY:**

**●Quarterly Public Safety Statistics**

SeaTac Police Chief Mulligan presented various crime trend statistics. She also stated that in the last quarter of 2014 the Sheriff's Office hired a new School Resource Officer (SRO), worked on addressing crime in different ways, including littering due to taxicab staging, and made some notable arrests.

Council discussion ensued regarding littering and potential ways to address the issue.

She highlighted 2015 activities: expanding the volunteer members and explorer posts, seeking opportunities to do public safety forums to engage groups in different communities, growing the block watch communities, and working with YMCA to develop a teens and cops program.

Council discussion ensued regarding the statistics presented.

Chief Mulligan also reviewed the January 25 Seahawks sendoff stating that it was a great success due to team work.

**ADJOURNED:** Mayor Gregerson adjourned the CSS at 5:52 p.m.

# City of SeaTac

## Regular Council Meeting Minutes

January 27, 2015  
6:30 PM

City Hall  
Council Chambers

**CALL TO ORDER:** The SeaTac City Council Regular Meeting was called to order by Mayor Mia Gregerson at 6:29 p.m.

**COUNCIL PRESENT:** Mayor Mia Gregerson, Deputy Mayor (DM) Anthony (Tony) Anderson (*participated by phone*), Councilmembers (CMs) Barry Ladenburg, Kathryn Campbell, Terry Anderson, Dave Bush, and Pam Fernald.

**STAFF PRESENT:** City Manager Todd Cutts, City Attorney Mary Mirante Bartolo, City Clerk Kristina Gregg, Assistant City Manager (ACM) Gwen Voelpel, Human Services (HS) Program Manager Colleen Brandt-Schluter, Senior Assistant City Attorney Mark Johnsen, Public Works (PW) Director Tom Gut, and Police Chief Lisa Mulligan.

**FLAG SALUTE:** Mayor Gregerson led the Council, audience, and staff in the Pledge of Allegiance.

### **PUBLIC COMMENTS (related to the agenda items listed below):**

Patti Albertson, Vivian Bowles, Bob Garinger, and Carl Albertson spoke regarding ongoing safety and health hazards in their neighborhood: parking issues, speeding, abandoned house with many cars and garbage.

Joyce Cromwell and Dennis Myers spoke regarding speeding concern on South 175<sup>th</sup> Street. Ms. Cromwell also spoke regarding garbage service.

### **PRESENTATIONS (Continued):**

•**Council consideration and confirmation of the Mayoral appointment of Lawrence Pitre as an alternate to the Human Services Advisory Committee**

MOVED BY FERNALD, SECONDED BY LADENBURG TO APPOINT LAWRENCE PITRE AS AN ALTERNATE TO THE HUMAN SERVICES ADVISORY COMMITTEE.

MOTION CARRIED UNANIMOUSLY.

### **ACTION ITEM:**

**Agenda Bill #3671; A Resolution #15-003 expressing the City Council support for Highline School District (HSD) Proposition No. 1-- Replacement of Expiring Educational Programs and Operation Levy, and Proposition No. 2-- Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools, both to be presented to the electorate on February 10, 2015**

**Summary:** HSD Proposition No. 1 is a levy measure with a stated purpose of supporting educational programs and operation expenses, including instruction, safety, materials and facility maintenance and operations. The ballot title and description for the proposition is as follows:

Highline School District Proposition No. 1--Replacement of Expiring Educational Programs and Operation Levy.

The Board of Directors of Highline School District No. 401 adopted Resolution No. 14-14, concerning a proposition for a replacement levy for education. This proposition would authorize the District to meet the educational needs of students by levying the following excess taxes, in place of an expiring levy, on all taxable property within the District, for support of educational programs and operation expenses, including instruction, safety, materials and facility maintenance and operations:

<u>Collection Year</u>	<u>Approximate Levy Rate / \$1,000 Assessed Value</u>	<u>Levy Amount</u>
2016	\$4.22	\$55,454,000
2017	\$4.43	\$60,788,000
2018	\$4.55	\$64,681,000

all as provided in Resolution No. 14-14. Should this proposition be approved? Yes [ ] No [ ];

HSD Proposition No. 2 is a bond measure with a stated purpose of relieving overcrowding and replacing deteriorating, outdated schools within the District. The proceeds from the bond measure will rebuild Highline High School, construct two new middle schools, construct a new Des Moines Elementary School at the Zenith site, make improvements at the Evergreen and Tyee Campuses, and make District-wide health, safety, security, arts, technology, and other capital improvements. The ballot title and description for the proposition is as follows:

**ACTION ITEM (Continued):**

**Agenda Bill #3671; Resolution #15-003 (Continued):**

Highline School District Proposition No. 2—Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools.

The Board of Directors of Highline School District No. 401 adopted Resolution No. 15-14, concerning a proposition to relieve overcrowding and replace deteriorating, outdated schools. This proposition would authorize the District to: rebuild Highline High School, construct two new middle schools, construct a new Des Moines Elementary School at Zenith, make critical improvements at Evergreen and Tyee Campuses, and make District-wide health, safety, security, arts, technology, and other capital improvements; issue no more than \$376,033,461 of general obligation bonds maturing within 21 years; and levy annual excess property taxes to repay the bonds, all as provided in Resolution No. 15-14. Should this proposition be: Approved [ ] Rejected [ ];

Revised Code of Washington (RCW) 42.17A.555 prohibits the use of city facilities to assist in promotion of or opposition to any ballot proposition. However, RCW 42.17A.555 (1) allows the Council to adopt a Resolution in support of or opposition to a ballot proposition if certain mandatory procedural steps are taken, including providing notice that the Council will discuss taking a collective position regarding the ballot measure, and providing an opportunity for public comment prior to Council action with persons wishing to express and opposing view being afforded an approximate equal opportunity to speak. Therefore, public comments will be solicited for the January 27, 2015 Council Meeting.

Senior Assistant City Attorney Johnsen reviewed the agenda bill summary.

MOVED BY T. ANDERSON, SECONDED BY BUSH TO PASS AGENDA BILL #3671 (RESOLUTION #15-003).\*

**PUBLIC COMMENTS (related to Agenda Bill #3671):** The following people spoke against Agenda Bill #3671: Karen Steele, Laura Castronover, Earl Gipson, and Vicki Lockwood.

Council discussion ensued with Council stating whether they were for or against Agenda Bill #3671.

\*MOTION CARRIED WITH LADENBURG, CAMPBELL, GREGERSON, A. ANDERSON, AND BUSH VOTING YES AND T. ANDERSON AND FERNALD VOTING NO.

**CONSENT AGENDA:**

- **Approval of claims vouchers** (check no. 109705 – 109880) in the amount of \$1,494,398.50 for the period ended January 20, 2015.
- **Approval of payroll vouchers** (check nos. 52602 – 52622) in the amount of \$149,677.77 for the period ended January 15, 2015.
- **Approval of payroll electronic fund transfers** (check nos. 83398 - 83529) in the amount of \$254,525.96 for the period ended January 15, 2015.
- **Approval of payroll wire transfer** (Medicare and Federal Withholding Tax) in the amount of \$52,745.19 for the period ended January 15, 2015.
- **Pre-approval or final approval of City Council and City Manager travel related expenses** for the period ended January 21, 2015.

**Approval of Council Meeting Minutes:**

- **Council Study Session held January 13, 2015**
- **Regular Council Meeting held January 13, 2015**

**Agenda Items reviewed at the January 13, 2015 Council Study Session and recommended for placement on this Consent Agenda:**

**Agenda Bill #3662; An Ordinance #15-1001 declaring public use and necessity for condemnation of property as required for the connecting 28<sup>th</sup>/24<sup>th</sup> Avenue South project and authorizing the payment of funds from the City's 307 Transportation Capital Improvement Program (CIP) Fund**

MOVED BY CAMPBELL, SECONDED BY LADENBURG TO ACCEPT THE CONSENT AGENDA AS PRESENTED.

MOTION CARRIED UNANIMOUSLY.



**PUBLIC COMMENTS (related to Unfinished Business):** There were no public comments.

**UNFINISHED BUSINESS:** There was no Unfinished Business.

**NEW BUSINESS:** There was no New Business.

**CITY MANAGER'S COMMENTS:** City Manager Cutts commented on the following: (1) Military Road update – final paving commenced today; (2) Grant application – KC 4Culture heritage program - \$10,000; and (3) Seahawks sendoff – appreciation to staff for their efforts.

**COMMITTEE UPDATES:** DM A. Anderson briefed on the following: (1) Mayor exchange in Olympia, and (2) Public Safety & Crime Prevention meeting.

CM Bush commented on the City's Code enforcement efforts.

Mayor Gregerson reported on state legislation.

**COUNCIL COMMENTS:** CM Fernald commented on the following: (1) January 30 – 31, Recology CleanScapes retail store opening; (2) IRS fraud call; and (3) Code enforcement.

CM Bush commented on the following: (1) on a mission to clean up the City; and (2) SeaTac Rotary Club of SeaTac and Tukwila merging to become the Rotary Club of Duwamish Southside.

CM Campbell stated that she was asked to help with selecting applicants for an Association of Washington (AWC) Scholarship.

CM Ladenburg commented on the following: (1) Seahawks sendoff – requested a thank you letter be sent from the Council to the Seahawks; (2) recent arrests made by the Police Department; and (3) Joint Airport Committee – talked to them about the parking issue.

DM A. Anderson attended the reception to recognize the three art winners.

Mayor Gregerson thanked the Legal Department and the City Clerk's Office for their hard work.

**ADJOURNED:**

MAYOR GREGERSON ADJOURNED THE MEETING AT 7:54 P.M.

---

Mia Gregerson, Mayor

---

Kristina Gregg, City Clerk

# City of SeaTac

## Council Study Session Minutes Synopsis

February 24, 2015  
4:30 PM

City Hall  
Council Chambers

**CALL TO ORDER:** The SeaTac City Council Study Session (CSS) was called to order by Deputy Mayor (DM) Tony Anderson at 4:30 p.m.

**COUNCIL PRESENT:** Deputy Mayor (DM) Anthony (Tony) Anderson, Councilmembers (CMs) Barry Ladenburg, Kathryn Campbell, Terry Anderson, Dave Bush, and Pam Fernald. Excused absent: Mayor Mia Gregerson.

**STAFF PRESENT:** City Manager Todd Cutts, City Attorney Mary Mirante Bartolo, City Clerk Kristina Gregg, Assistant City Manager (ACM) Gwen Voelpel, Parks & Recreation (P&R) Director Kit Ledbetter, Community and Economic Development (CED) Director Joe Scorcio, Planning Manager Steve Pilcher, Senior Planner Kate Kaehny, Economic Development (ED) Manager Jeff Robinson, and Police Chief Lisa Mulligan.

**RECESSED:** DM A. Anderson recessed the meeting to an Executive Session on acquisition of real estate at 4:30 p.m.

**EXECUTIVE SESSION: Acquisition of real estate RCW 42.30.110(1)(b) (10 minutes)**

Staff in attendance at the executive session: City Manager Cutts, City Attorney Mirante Bartolo, Senior Assistant City Attorney Johnsen, CED Director Scorcio, and ED Manager Robinson.

City Clerk Gregg announced that Council requested an additional 5 minutes at 4:40 p.m.,

**RECONVENED:** DM A. Anderson reconvened the meeting at 4:45 p.m.

**PUBLIC COMMENTS (related to the agenda items listed below):** There were no public comments.

### PRESENTATIONS – COUNCIL DIRECTION:

#### ●Fire Station 45 Financial Plan

City Manager Cutts reviewed the Fire Station #45 Financing Plan:

Total budget for Station 45 in 2015/2016 Biennial Budget	\$4,456,656
Funds anticipated to be used from Hughes Property sale in Capital Improvement Program (CIP)	\$1,182,000
Fire Station Construction Bid, 10% Contingency, Sales Tax	
Construction Budget	\$4,088,555
Contract amount	\$3,347,306
Savings	\$741,249
2014/2015 Sidewalk Project (37 <sup>th</sup> and 40 <sup>th</sup> Avenues South)	
Construction Budget	\$1,500,000
Estimate at 60% design	\$1,180,000
Savings	\$320,000
Proceeds from Masterpark Lot A Development Agreement (DA)	
	\$210,000
<b>Balance after savings/revenue applied to Fire Station</b>	<b>\$89,249</b>

#### **Agenda Bill #3666; A Motion authorizing the City Manager to execute a contract with Porter Brothers Construction Inc. the low bidder for Fire Station 45 construction**

**Summary:** In 2005, the City Council authorized a seismic evaluation of the City fire stations. This evaluation, which was completed by MLA Engineering, provided the opinion that Fire Station 45 is not structurally sound and is in danger of significant damage or collapse in the event of a major earthquake. In addition, the City's Facilities Division has assessed the building and found that many costly repairs are needed that would likely only serve as short term fixes. Furthermore, the size of the building far outstrips the current needs of the fire crew stationed there. In sum, staff continues to recommend replacement of the station.

The project plan is to start the construction in mid March 2015 and complete the project in February 2016. Bids were sent out on January 26 and opened on February 17, 2015.

<u>Company Name</u>	<u>Base Bid</u>	<u>With 10% Contingency and Tax</u>
Porter Brothers Construction Inc.	\$2,779,000	\$3,347,306
Par-Tech Construction Inc.	\$2,929,400	\$3,528,462
Blew's Construction Inc.	\$2,968,000	\$3,574,956

**Agenda Bill #3666 (Continued):**

Corp Inc. Construction	\$3,075,000	\$3,703,838
Alegis Construction	\$3,093,373	\$3,725,968
Western Ventures Construction	\$3,150,000	\$3,794,175

The P&R Department has a total of \$4,456,656 budgeted for the Fire Station 45 project in the 2015/2016 Biennial Budget. In addition to the construction bid and associated costs highlighted above, this amount includes contractual architectural costs that were previously approved by the City Council. It should be noted that the City has saved a significant amount of money (estimated well over \$100,000) by having staff perform project management duties.

The City's 2015-2020 Capital Improvement Program projected use of \$1.182 million in revenues from the anticipated sale of the Hughes Property in order to complete the funding plan for Fire Station construction. That sale is still pending. However, several developments since the adoption of the budget allow for construction of the station without utilization of the proceeds of this sale. This information is highlighted below:

<b>Funds anticipated to be used from Hughes Property sale in CIP</b>	<b>\$1,182,000</b>
2014/2015 Sidewalk Project (37 <sup>th</sup> & 40 <sup>th</sup> Ave. S.)	
Construction Budget	\$1,500,000
Estimate at 60% design	\$1,180,000
Savings	\$320,000
Fire Station Construction Bid, 10% Contingency, Sales Tax	
Construction Budget	\$4,088,555
Contract amount	\$3,347,306
Savings	\$741,249
Proceeds from Masterpark Lot A Development Agreement	\$210,000
<b>Balance after savings/revenue applied to Fire Station</b>	<b>\$89,249</b>

P&R Director Ledbetter introduced TCA Architecture and Planning Principal Eric Schaer and Michelle. He also reviewed the agenda bill summary and concerns that have been brought forward recently regarding staff acting as the general contractor.

City Manager Cutts stated that the training tower would cost an additional \$176,000. Staff is looking for a decision from Council. Staff recommendation is to not build the tower at this time. It can be built at a later date as money allows.

Council discussion ensued regarding Fire Station 45 and the low bidder.

Mr. Cutts recognized the collaboration with Kent RFA to design this building.

Mr. Schaer stated that while the builder doesn't specialize in this type of building, the design firm does and this building is designed well.

**Council consensus:** Refer to the 03/10/15 Consent Agenda

**PRESENTATIONS – COUNCIL DIRECTION:**

**•Review of Draft Angle Lake District Station Area Plan (5<sup>th</sup> presentation in an estimated series of 8)**

Planning Manager Pilcher stated that staff will be looking for direction on a couple of key areas which Senior Planner Kaehny will review.

Ms. Kaehny reviewed the proposed schedule: February 24 - Plan Review 1 (Chapters 1 - 4); March/April: Plan Review 2 & 3 (Chapters 5 - 6); and April/May: Potential Adoption.

Ms. Kaehny reviewed Chapter 1: Introduction; Chapter 2: Existing Conditions; Chapter 3: Economic Opportunity; and Chapter 4: Community Vision, including the guiding principles.

Council discussion ensued regarding the four chapters, the vision, the guiding principles, and outreach.

**PRESENTATIONS – INFORMATION ONLY:**

**●Soundside Alliance Informational Presentation**

ED Manager Robinson introduced City of Tukwila CM and Soundside Alliance Chair Kathy Hougardy. He stated that Soundside is a reinvention of South King County Economic Development Initiative (SKCEDI). Membership includes Burien, Tukwila, SeaTac, Normandy Park, Des Moines, Highline Community College (HCC), and Port of Seattle (POS). SKCEDI was rebranded to Soundside Alliance to give it more of a geographic orientation and establish the plans and strategies going forward. The Soundside Alliance goals are to perpetuate economic vitality and steward the interests of the region, to increase the awareness, engagement, and impact of our ED programs, to consistently communicate the combined benefit we offer to obtain and attract businesses.

Ms. Hougardy stated that visitors don't know when they are leaving one city and entering another. Each City has its own strengths. As solo cities, the attraction isn't as great as a region. She explained the two committees: (1) Leadership (Council) and (2) Operations (staff). She stated that Soundside also works in conjunction as partners with the Highline Small Business Development Center and Start Zone which help small businesses.

Council commented positively on the alliance.

**●Preparation for and the potential impacts from the 2015 U.S. Open Golf Championship at Chambers**

CED Director Scorcio introduced Director of Seattle Southside Visitor Services (SSVS) Katherine Kertzman. Mr. Scorcio stated that while Pierce County is hosting the event, SeaTac will see quite an impact and will be the first and last experience for many visitors.

Ms. Kertzman stated that the US Open Championship is scheduled June 11 – 21 at Chambers Bay.

She reviewed the attendee facts, accommodations, volunteer program, ticket sales, corporate hospitality, parking and transportation, worldwide exposure, website page, and long term benefits.

Council discussion ensued regarding the impacts to the area, specifically transportation related issues.

**●Update on Citywide Align and Improve efforts**

City Manager Cutts provided a memo updating Council on the efforts staff has been doing. A presentation will be scheduled for a future date due to the limited time at this meeting.

**ADJOURNED:** DM A. Anderson adjourned the CSS at 6:21 p.m.

# City of SeaTac

## Regular Council Meeting Minutes

February 24, 2015

6:30 PM

City Hall  
Council Chambers

**CALL TO ORDER:** The SeaTac City Council Regular Meeting was called to order by Mayor Mia Gregerson at 6:44 p.m.

**COUNCIL PRESENT:** Mayor Mia Gregerson, Deputy Mayor (DM) Anthony (Tony) Anderson, Councilmembers (CMs) Barry Ladenburg, Kathryn Campbell, Terry Anderson, Dave Bush, and Pam Fernald.

**STAFF PRESENT:** City Manager Todd Cutts, City Attorney Mary Mirante Bartolo, City Clerk Kristina Gregg, Assistant City Manager (ACM) Gwen Voelpel, Human Services (HS) Program Manager Colleen Brandt-Schluter, Resource Conservation/Neighborhood Programs Coordinator Trudy Olson, Community & Economic Development (CED) Director Joe Scorcio, Economic Development (ED) Manager Jeff Robinson, Senior Planner Mike Scarey, Public Works (PW) Director Tom Gut, Police Chief Lisa Mulligan, and Deputy Chief Brian Wiwel.

**FLAG SALUTE:** Mayor Gregerson led the Council, audience, and staff in the Pledge of Allegiance.

**PUBLIC COMMENTS:** Vicki Lockwood requested the City take care of City business and not state or federal business. She also commented on the consent agenda travel expense approval for the National League of Cities (NLC) Conference costs.

Dan Wallace and Stan Lanier commented on the Extra Car fire lane parking.

Earl Gipson commented on the City's spending; specifically related to travel costs.

### **PRESENTATIONS:**

#### **•City's 25<sup>th</sup> Birthday Proclamation**

Mayor Gregerson read the proclamation.

CMs commented on the City's history during the past 25 years.

#### **•Certificate of Appreciation to Senior Citizen Advisory Committee member Jon Ancell**

Mayor Gregerson stated appreciation of Mr. Ancell. Mr. Ancell was not in attendance. His certificate will be mailed to him.

#### **•CPR Save Recognition**

Deputy Chief Wiwel shared a story about four Seattle Christian School Coaches saving the life of a student. He introduced the coaches (Patrick Donovan, Micheal Watts, Shaun DeYager, and Braque Hildreth) and the student (Cees Berlage) and presented each coach with a 2015 Outstanding Citizen/Community Service Award.

#### **•Neighborhood Grant Program 2014**

Resource Conservation/Neighborhood Programs Coordinator Olson introduced SeaTac United Organization Principal Mike Doughty.

Mr. Doughty presented what the grant helped pay for and the program SeaTac United created, Windmill STEM (Science, Technology, Engineering, and Math). The one program running under the Windmill STEM is the SeaTac United Math Academy (SUMA).

Windmill STEM's mission is to bring afterschool educational programs to SeaTac kids that bolster their love of learning and performance in school.

The neighborhood grant program paid for 13 of the 22 Chomebooks. He detailed the 4/1 grant match:

- Grant Amount: \$3,224
- Match Needed: \$12,896
- Matching Funds: \$6,623 (Morgridge Family Foundation, Dave Lawrence Family, and Alaska Airlines Community Involvement)
- Volunteer: \$11,851 (19 Volunteers: 8 Adult and 11 Youth, 630 total hours, and does not count any soccer related volunteer time)
- Total Match: \$17,474 vs \$12,896 needed

He detailed the content of the SUMA program.

Council discussion ensued regarding the SUMA program.

**PRESENTATIONS (Continued):**

**●Recology CleanScapes Update**

Resource Conservation/Neighborhood Programs Coordinator Olson stated that this presentation is the first annual report as part of the agreement with Recology. Ms. Olson introduced Recology CleanScapes General Manager Dan Bridges, Pacific Northwest Region Government & Community Relations Manager Erika Melroy, Waste Zero Specialist Megan McCain, and Operations Manager Rob Koppang.

Mr. Bridges stated that Recology CleanScapes goal is .2 missed collections per 1000 collections. They are currently there.

Also, from June through December 2014, 2,259 tons have been diverted from the landfill.

Ms. McCain Megan stated that the commitment to diverting waste will save the residents money and be a win for the environment. The overall diversion rate for SeaTac is 21%. Residential diversion improvements can be obtained by encouraging self haulers to utilize Recology CleanScapes curbside bins.

Ms. McCain also reviewed Recology CleanScapes' outreach, partnerships, and investments.

Ms. Melroy highlighted local and regional partnerships, and the Highline Store which is new in 2015.

Council provided positive comments in response to Recology CleanScapes services.

**●Project Report – Specialized Comprehensive Plan (CP) Outreach**

Senior Planner Scarey introduced Global to Local Executive Director Adam Taylor and Forterra Becca Meredith.

Ms. Meredith stated that Forterra is about "Creating Great Communities & Conserving Great Lands." She reviewed a few projects the policy department has recently worked on.

Mr. Taylor highlighted Global to Local and stated the mission is to utilize global health strategies, techniques, methodologies and technologies to improve the health of underserved communities locally within the United States.

Ms. Meredith reviewed the SeaTac Community Liaisons program. The vision of the program is to create a platform for relationships, engage community members, leadership development, and social equity.

This presentation is to review the specifics of the CP Outreach: flow of project – project scoping, trainings, outreach, community event, and celebration & evaluation. Ms. Meredith highlighted successes with the outreach.

Mr. Scarey stated that outreach also occurred during the City's International Festival, at the SeaTac Community Center, and an online survey.

The results of the outreach are: need better access to transit, need more indoor recreation opportunities for kids, concerns about safety, and need for locally owned stores/access to services in City.

The City has responded in the following ways: (1) policy to work with Metro for better connections to primary transit corridor, (2) policies to work with school district and others to provide recreational opportunities for all ages, (3) drafting follow-up questions into 2015 Community Survey, and (4) new land use goal and related policies for access to transportation choices, healthy foods, and neighborhood services.

Ms. Meredith stated that this year the City will be conducting a Citywide Resident Satisfaction Survey using the community liaisons.

**CONSENT AGENDA:**

**●Approval of claims vouchers** (check no. 110038 – 110184) in the amount of \$1,379,157.54 for the period ended February 20, 2015.

**●Approval of payroll vouchers** (check nos. 52647 – 52666) in the amount of \$153,340.72 for the period ended February 15, 2015.

**●Approval of payroll electronic fund transfers** (check nos. 83667 - 83796) in the amount of \$267,912.76 for the period ended February 15, 2015.

**●Approval of payroll wire transfer** (Medicare and Federal Withholding Tax) in the amount of \$57,705.10 for the period ended February 15, 2015.

**●Pre-approval or final approval of City Council and City Manager travel related expenses** for the period ended February 19, 2015.

**CONSENT AGENDA (Continued):**

**Approval of Council Meeting Minutes:**

**•Regular Council Meeting held December 9, 2014**

**Agenda Items reviewed at the February 10, 2015 Council Study Session and recommended for placement on this Consent Agenda:**

**Agenda Bill #3673; A Motion authorizing the City Manager to extend the current Interlocal Agreement with Regional Animal Control Services of King County for Animal Services**

MOVED BY T. ANDERSON, SECONDED BY LADENBURG TO ACCEPT THE CONSENT AGENDA AS PRESENTED.

MOTION CARRIED UNANIMOUSLY.

**PUBLIC COMMENTS (related to Action Items and Unfinished Business):** Earl Gipson encouraged Council to oppose the motion.

**ACTION ITEM:**

**Agenda Bill #3674; A Motion taking a position to support or oppose Senate Bill (SB) 5332 and House Bill (HB) 1934**

**Summary:** During new business at the February 10, 2015 Regular Council Meeting (RCM), CM Ladenburg made a motion to take a position to support or oppose SB 5332 and HB 1934. CM Ladenburg subsequently made an amendment to the original motion to oppose SB 5332 and HB 1934. After discussion by Council, it was determined that more time was needed to consider this item, and it was postponed to the February 24 RCM. Procedurally, the main motion taking a position to support or oppose SB 5332 and HB 1934 and the Amendment to Oppose SB 5332 and HB 1934 is currently before Council for their consideration.

The language of the two proposed bills state: "No charter, ordinance, regulation, rule, or resolution enacted by any city, town, county, or port district and regulating wages, hours of work, employee retention, or leave from employment may permit its requirements be waived, in whole or in part, in collective bargaining." This language conflicts with SeaTac Municipal Code (SMC) 7.45.080, which states in part: "All of the provisions of this chapter, or any part hereof, including the employee work environment reporting requirement set forth herein, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms."

Should either one of these bills pass the Legislature, the effect to the City of SeaTac would mean that the terms of the City's Employment Standards Ordinance could no longer be waived by the terms of a collective bargaining agreement, and thus would apply to both union and non-union employees.

If Council feels strongly about retaining the existing language in the Ordinance, as approved by Initiative of the voters, then the staff recommendation would be to oppose SB 5332 and HB 1934.

MOVED BY LADENBURG, SECONDED BY CAMPBELL TO TAKE A POSITION TO SUPPORT OR OPPOSE SENATE BILL 5332 AND HOUSE BILL 1934.\*

MOVED BY LADENBURG TO AMEND THE MOTION TO OPPOSE.\*\*

City Attorney Mirante Bartolo reviewed the agenda bill summary.

Council discussion ensued regarding this item and whether Council should take a position.

\*\*AMENDMENT CARRIED UNANIMOUSLY.

\*ORIGINAL MOTION, AS AMENDED, CARRIED UNANIMOUSLY.

**UNFINISHED BUSINESS:** There was no Unfinished Business.

**NEW BUSINESS:** There was no New Business.

**CITY MANAGER'S COMMENTS:** City Manager Cutts commented on the following: (1) March 4 – 11:45 a.m., City's 25<sup>th</sup> Birthday cake reception at the senior luncheon, (2) Military Road – opened February 20, (3) Valley Ridge Park wire theft - \$10,000 - \$15,000 damage.

**COMMITTEE UPDATES:** DM A. Anderson reported that the Regional Fire Authority (RFA) received a \$102,313 grant for studying best practices for reducing firefighter's risk of exposure to carcinogens.

CM Campbell stated that as a member of the SR 509 Coalition Committee she spoke to the legislators in Olympia about the completion of SR 509 as part of the existing transportation package.

**COUNCIL COMMENTS:** CM Fernald commented on the following: (1) Military Road is nice; and (2) requested a list of volunteer opportunities be provided to Forterra.

CM Bush stated that at the last Rotary Meeting, the SeaTac's ED Manager Robinson spoke on the South 154<sup>th</sup> Street Station Light Rail and community development and did a great job.

CM T. Anderson commented on an incident that occurred at her home and acknowledged the great police response she received.

CM Campbell stated that the King County (KC) and Seattle Councils have voted to spend additional money to help clean up the Green/Duwamish Watershed.

CM Ladenburg thanked Council for due diligence on the SB.

DM A. Anderson commented on the following: (1) also spoke in Olympia on the transportation budget; (2) City's request of \$1.5 million to help with the development of the South 154<sup>th</sup> Street project; and (3) welcomed the Kiwanis at their annual convention.

Mayor Gregerson stated that staff needs feedback on the CP presentation made at tonight's Council Study Session (CSS): Angle Lake District vision and the guiding principles.

Mayor Gregerson also requested consensus from Council to schedule a Town Hall Meeting. Council concurred.

**ADJOURNED:**

MOVED BY GREGERSON, SECONDED BY A. ANDERSON TO ADJOURN THE REGULAR MEETING OF THE SEATAC CITY COUNCIL AT 8:54 P.M.

MOTION CARRIED UNANIMOUSLY.

---

Mia Gregerson, Mayor

---

Kristina Gregg, City Clerk



# SeaTac City Council

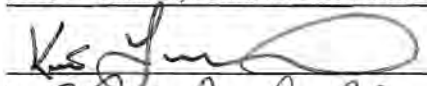
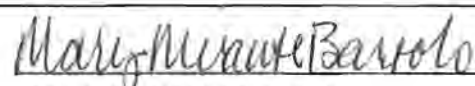
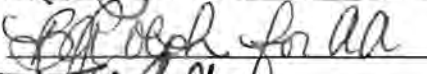
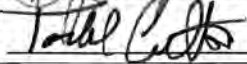
## REQUEST FOR COUNCIL ACTION

Department Prepared by: Parks & Recreation

Agenda Bill #: 3666

**TITLE:** A Motion authorizing the City Manager to execute a contract with Porter Brothers Construction Inc. the low bidder for Fire Station 45 construction.

February 20, 2015

<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
<b>Date Council Action Requested:</b>	SCM 3/12/15
<b>Ord/Res Exhibits:</b>	
<b>Review Dates:</b>	CSS 02/24/2015
<b>Prepared By:</b>	Kit Ledbetter, Parks and Recreation Director
<b>Director:</b>	
<b>City Attorney:</b>	
<b>Finance:</b>	 BARS #: 306.000.12.594.22.62.011
<b>City Manager:</b>	 Applicable Fund Name: Municipal Facilities CIP Fund

JR  
20

**SUMMARY:** This Motion authorizes the City Manager to execute a contract with Porter Brothers Construction Inc. the low bidder for Fire Station 45 construction.

**DISCUSSION / ANALYSIS / ISSUES:** In 2005, the City Council authorized a seismic evaluation of the City fire stations. This evaluation, which was completed by MLA Engineering, provided the opinion that Fire Station 45 is not structurally sound and is in danger of significant damage or collapse in the event of a major earthquake. In addition, the City's Facilities Division has assessed the building and found that many costly repairs are needed that would likely only serve as short term fixes. Furthermore, the size of the building far outstrips the current needs of the fire crew stationed there. In sum, staff continues to recommend replacement of the station.

The project plan is to start the construction in mid March 2015 and complete the project in February 2016. We sent bids out on January 26 and we opened the bids on February 17, 2015.

<u>Company Name</u>	<u>Base Bid</u>	<u>With 10% Contingency and Tax</u>
Porter Brothers Construction Inc.	\$2,779,000	\$3,347,306
Par-Tech Construction Inc.	\$2,929,400	\$3,528,462
Blew's Construction Inc.	\$2,968,000	\$3,574,956
Corp Inc. Construction	\$3,075,000	\$3,703,838
Alegis Construction	\$3,093,373	\$3,725,968
Western Ventures Construction	\$3,150,000	\$3,794,175

**RECOMMENDATION(S):** It is recommended that the City Council move to authorize the City Manager to execute a contract with Porter Brothers Construction Inc. the low bidder.

**FISCAL IMPACT:** The Parks & Recreation Department has a total of \$4,456,656 budgeted for the Fire Station 45 project in the 2015/2016 Biennial Budget. In addition to the construction bid and associated costs highlighted above, this amount includes contractual architectural costs that were previously approved by the City Council. It should be noted that the City has saved a significant amount of money (estimated well over \$100,000) by having staff perform project management duties.

The City's 2015-2020 Capital Improvement Program projected use of \$1.182 million in revenues from the anticipated sale of the Hughes Property in order to complete the funding plan for Fire Station construction.

That sale is still pending. However, several developments since the adoption of the budget allow for construction of the station without utilization of the proceeds of this sale. This information is highlighted below:

<b>Funds anticipated to be used from Hughes Property sale in CIP</b>	<b>\$1,182,000</b>
2014/2015 Sidewalk Project (37 <sup>th</sup> & 40 <sup>th</sup> Ave. S.)	
Construction Budget	\$1,500,000
Estimate at 60% design	\$1,180,000
Savings	\$320,000
Fire Station Construction Bid, 10% Contingency, Sales Tax	
Construction Budget	\$4,088,555
Contract amount	\$3,347,306
Savings	\$741,249
Proceeds from Masterpark Lot A Development Agreement	\$210,000
<b>Balance after savings/revenue applied to Fire Station</b>	<b>\$89,249</b>

**ALTERNATIVE(S):**

1. Do not proceed with the project at this time.
2. Reject all bids and re-bid the project.

**ATTACHMENTS:** Contract

 **AIA<sup>®</sup> Document A101<sup>™</sup> – 2007**

**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2015  
*(In words, indicate day, month and year)*

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

City of SeaTac  
4800 S 188th Street  
SeaTac, WA 98188-8605

and the Contractor:  
*(Name, address and other information)*

TBD

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

City of SeaTac new Fire Station 45 to be located east of the existing Station 45 on S. 200th Street as described in the Contract Documents identified in Article 1 of this agreement.

The Architect:  
*(Name, address and other information)*

TCA Architecture Planning  
6211 Roosevelt Way NE  
Seattle, WA 98115

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the entire Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be as follows: Work shall commence as stated in the Owner's Notice to Proceed. (Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

*(Paragraphs deleted)*

The date of commencement will be fixed in a Notice to Proceed issued by the Owner.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work and complete the work within not later than three hundred and thirty (330) days from the Notice to Proceed, and shall achieve Final Completion 45 days thereafter.

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

*(Paragraphs deleted)*

subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

### Liquidated Damages

Init.

Liquidated damages shall be in the amount of \$1,000.00 per calendar day beyond the allowed contract time that Substantial Completion is not attained.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be \_\_\_\_\_ (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents. Sales tax is not included in the contract sum. Sales tax is to be applied at the time of payment.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

§ 4.3 Unit prices, if any:  
See Specifications Section 01 2200 of the Contract Documents for descriptions of Unit Prices. Sales tax is not included in the unit prices as listed below. Sales tax is to be applied at the time of payment.

Item	Units and Limitations	Price Per Unit
------	-----------------------	----------------

§ 4.4 Allowances included in the Contract Sum, if any:  
See Specifications Section 01 2100 of the Contract Documents for description of Allowances

Item	Price
------	-------

**ARTICLE 5 PAYMENTS**

*(Paragraphs deleted)*

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 INITIAL DECISION MAKER**

*(Paragraphs deleted)*

**§ 6.2 BINDING DISPUTE RESOLUTION**

*(Paragraph deleted)*

Payments due and unpaid under the Contract Documents shall bear interest as specified by Chapter 39.76,

*(Paragraphs deleted)*

RCW.

*(Paragraphs deleted)*

**§ 8.3 The Owner's representative:**

*(Name, address and other information)*

Representative: Kit Ledbetter, Parks and Recreation Director

Address: City of SeaTac

4800 S 188th Street

SeaTac, WA 98188-8605

**§ 8.4 The Contractor's representative:**

*(Name, address and other information)*

Representative:

Int.

Address:

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

None

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor, as revised.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction, as revised.

§ 9.1.3 The other Conditions of the Contract are those contained in the latest version of the Project Manual for City of SeaTac Fire Station 45 and all documents referenced therein together with all Addenda issued prior to the Bid Date.

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications are those contained in the Project Manual as described in section 9.1.3 and below:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Specification Divisions 01 through 33 as included in the Project Manual issued for Bid or as modified by subsequent addenda. Refer to the Table of Contents found in the Project Manual  
(Table deleted)  
issued for bid.

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Drawings as issued for Bid or as modified by subsequent addenda. Refer to the Sheet Index on Drawing T1.1 issued for bid.

(Table deleted)

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

(Paragraphs deleted)

.2 Other documents, if any, listed below: All documents contained in or referenced by the Project Manual and all Addenda.

Init.

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

*(Table deleted)(Paragraphs deleted)(Paragraphs deleted)*

Init.



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

*(Name and location or address)*

City of SeaTac new Fire Station 45 to be located east of the existing Station 45 on S. 200th Street.

### THE OWNER:

*(Name and address)*

City of SeaTac  
4800 S 188th Street  
SeaTac, WA 98188-8605

### THE ARCHITECT:

*(Name and address)*

TCA Architecture Planning  
6211 Roosevelt Way NE  
Seattle, WA 98115

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Int.

AIA Document A201<sup>™</sup> – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1987 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA<sup>®</sup> Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA<sup>®</sup> Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:51:54 on 02/13/2015 under Order No.0228955557\_1 which expires on 11/04/2015, and is not for resale.

User Notes:

(1262702388)



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. In the event of a conflict or discrepancy among or in the Contract Documents, interpretation shall be governed in the following priority, with Addendum to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

1. Agreement (Revised A101-2007) (written amendments having precedence)
2. Any Special Conditions
3. Any Supplementary Conditions
4. These revised General Conditions (A201-2007)
5. Drawings (large-scale having precedence over small-scale, and written or computed dimensions having precedence over scaled dimensions)
6. Specifications
7. Schedules

In the event that work is shown on Drawings but not contained in Specifications, the work as shown shall be provided at no change in the Contract Sum or Contract Time, according to specifications to be issued by the Architect.

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If there is any inconsistency in the Contract Documents, or between the Contract Drawings and Specifications, unless otherwise ordered in writing by the Architect or the Owner, the Contractor shall provide the better quality or the greater quantity of work or material.

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

*(Paragraph deleted)*

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 Reference in the singular to an article, device, or piece of equipment shall include as many of such articles as are indicated in the Contract Documents or as are required to complete the installation.

§ 1.4.3 The Table of Contents and the titles of Articles, Sections and Sub-Sections are included for the purpose of convenience only and shall not limit the specific content thereof.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

init.

AIA Document A201™ – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:51:54 on 02/13/2015 under Order No.022892557\_1 which expires on 11/04/2015, and is not for resale.

User Notes:

(1262702388)

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

*(Paragraph deleted)*

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary environmental approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor should assume that the exact locations of any underground or hidden utilities, plumbing and electrical runs may be somewhat different from the location indicated in the surveys of Contract Documents and shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall call for utility locates prior to any digging and shall notify the Owner of any conflicts 48 hours prior to excavation.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, 10 copies of Drawings and Project Manuals, and 10 copies of any revisions. Additional copies may be obtained from the Owner at the cost of reproduction as are reasonably necessary for execution of the Work.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

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

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue to make reasonable progress toward the correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. The right of the Owner to correct the Work pursuant to this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of others. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by the persons or entities other than the Contractor. The Contractor shall be and operate as an independent Contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work indemnifying the Owner from employee related costs and expenses. The Contractor shall not be authorized to enter into any agreements of undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions, including all general reference points and any interfering existing conditions, related to that portion of the Work, and shall observe any conditions at the site affecting it and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing such activities. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of any design errors or omissions noted by the Contractor during this review or clarifications or instructions the Owner or the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Any investigations of subsurface conditions have been undertaken solely for design purposes. The result of these investigations are bound into the Project Manual for the convenience of the Bidders and the Contractor but are not a part of the Contract Documents. There is no guarantee, express or implied, that the conditions indicated

Init.

are representative or those existing throughout the site or that unforeseen developments may not occur. The Contractor is responsible for any interpretation of the information or extrapolations beyond the location of each individual boring, test pit or other testing location.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, assembly details, and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor shall review any such specific instruction and any construction or installation procedure specified in the Contract Document, shall advise the Architect (a) if the specified instruction or procedure deviates from what the Contractor considers to be good construction practice, (b) if following the instruction of procedure will affect any warranties, or (c) if the Contractor objects to the instruction or procedure, and shall propose alternative instructions or procedures acceptable to the Contractor, for which no increase in the Contract Sum or Time will be made. If the Contract Documents give specific instructions concerning construction means, methods, techniques, assembly details, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and except as stated below shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner.

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

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

§ 3.3.4 The Contractor shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the then current issue of the Drawings and Specifications. The Contractor shall be responsible for examination, inspection and quality surveillance of all Work performed by any Subcontractor of any tier. The Contractor shall determine when it is necessary to perform, and shall perform, tests (in addition to those required by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. The Contractor shall establish and maintain existing lot lines, restrictions and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to initially lay out and be responsible for the accuracy of the Work for all projects other than modernization.

§ 3.3.6 The Contractor's Superintendent shall provide a Daily Report to the Owner for each work day during the Contract Time, whether or not any work is performed, and for each non-work day in which work is performed on the site. The Daily Report shall be completed on a form approved by the Owner and the Architect, and submitted to the Owner and the Architect on the work day following the day covered in the Report.

### § 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, after the Contract has been executed, the Owner may consider a written request for the substitution of material or products in place of those specified in the Contract documents only under exceptional circumstances described in and following the procedures of the Contract Documents. The written request must include the specifications for the material or produce and any proposed change in the Contract Sum or Contract Time. The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Substitution requests may be denied by the Owner without cause. By making requests for Substitutions, The Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the specified;
- .2 represents that the Contractor and manufacturer will provide the same warranty for the substitution that the Contractor and manufacturer would for that specified;
- .3 certifies that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the Contract Sum or contract Time,
4. certifies that it has coordinated with affected Subcontractors and will not impact other parts of the work,
5. certifies that the Contractor will reimburse the Owner for the Architect and his consultants to redesign, research, redraw, and rewrite the Contract Documents to reflect the substitution; and
- .6. will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.
- .7. neither the Owner nor the Architect will be responsible for the performance of the substituted product.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall not be relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance and final payment.

§ 3.5.1 The Contractor shall collect, assign, and deliver to the Owner any specific written warranties given by others.

§ 3.5.2 Warranty language shall be submitted to the Owner and Architect at least thirty (30) days prior to ordering the warranted material or equipment.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The only taxes excluded from the Contract Sum or separately reimbursable are sales taxes.

**§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for all City of SeaTac related fees including the building permit as well as for other permits, fees including subcontractor permits and fees including plan check fees for deferred submittals, application fees and review fees for any and all shop drawings or bidder designed systems, and any inspection fees not covered by the initial building permit fee. Owner shall also pay for reinspection fees, mechanical and electrical permits, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.1.1 The Owner will furnish the Building Permit and Site Engineering Permit;

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **CONCEALED OR UNKNOWN CONDITIONS** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than 7 days after first observance of the conditions. Failure to give prompt notice as provided in this Section shall be deemed a waiver of and Claim related to the Concealed or Unknown Condition. Upon receiving notice of the Concealed or Unknown Condition, The Architect will promptly investigate such conditions. If the Architect determines that the conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, it will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, stating the reasons. No increase to the Contract Sum or the Contract Time will be allowed if the Contractor knew or reasonably should have known of the concealed conditions prior to its execution of the Contract.

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

§ 3.7.6 The Contractor shall coordinate and schedule all Work with permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Contractor shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority within 30 days after issuance of the Notice to Proceed as necessary to obtain and coordinate permits, utility and other such connections. The Contractor shall obtain all permit renewals during the course of the Work. The Contractor will be responsible for providing information and fees to the Department of Labor and Industries.

**§ 3.8 ALLOWANCES**

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 CONTRACTOR'S STAFFING

§ 3.9.1 The Contractor shall employ a competent, experienced project manager, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Project Manager shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of proposed superintendent and Project Manager. The Architect and Owner will review this information and will inform the Contractor within ten (10) days of receipt whether the Architect or Owner (or both) wish to interview the proposed staff. If the Owner or Architect wish to interview the proposed staff, the Architect will inform the Contractor in writing of available times to meet and the parties will arrange a mutually agreeable time and place for the interview. Once the interview of the staff has occurred, the Architect will inform the Contractor within fourteen (14) days of the interview, or within fourteen (14) days of receiving the staff's qualifications if no interview was requested, (1) whether the Owner or the Architect has made reasonable objection to the proposed staff or (2) that the Architect or Owner requires additional time to review. Failure of the Architect or Owner to reply within the 14 day period shall constitute notice of no reasonable objection. The superintendent shall be present not less than eight hours per day, five days a week unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor. The Superintendent shall not be changed without the approval of the Owner, nor shall the staff be employed on any other project not involving the Owner during the course of the Work.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 Within ten (10) days after issuance of the conditional Notice to Proceed, the Contractor shall furnish to the Architect and the Owner:

- I. A chain-of-command organizational chart which includes all supervisory personnel, including the project manager, the project engineer and the superintendent, assistant superintendent and lead foreman, that the Contractor intends to use on the Work. The chart shall specify any limits of authority for each person, including but not limited to her/his ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, contract time, and issues affecting the quality of the Work.
2. Complete resumes, including all past and current projects, for the project manager, project engineer and the superintendent. The Owner intends to review the resumes and verify the references, and it reserves the right to reject personnel reasonably believed to be unsuitable or incompatible for the Project. The Contractor shall replace any rejected personnel with an agreeable replacement at no increase to the contract Sum or Contract Time.
3. A list of telephone numbers for all key personnel of the Contractor and its principal subcontractors for the purposes of contacting personnel after hours in the event of an emergency. The list shall be periodically updated as necessary to ensure the Owner has the most current information.



### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly and within seven (7) days after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's preliminary construction schedule for the Work consistent with the requirements of the Contract Documents. Prior to submitting its first Application for Payment, the Contractor, after consultation with its Subcontractors, shall submit two hard copies and an electronic copy of the Contractor's construction schedule consistent with the requirements of the Contract Documents. The Owner may withhold not less than ten percent of any progress payment until a satisfactory schedule is submitted. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall allocate in the schedule of values a separate line item in the amount of at least one-half percent (.5%) of the Contract Sum for scheduling, which shall cover both the initial schedule and all monthly updates. The Contractor shall request payment for this line items with each Payment Application, based upon the percentage completion of the Project. For any month that the Contractor fails to submit an updated schedule, the Contractor shall not be entitled to any payment for scheduling that month, and the percentage of the scheduling line item represented by that month's percentage of completion of the Work shall be permanently deducted from the Contract Sum by Change Order.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's approval. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and the Owner reasonable time to review submittals in accordance with the Specifications and Contract Documents. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall contemporaneously provide the Owner with a copy of all submittals. The Contractor should expect a response time of at least fourteen (14) days for the Architect's review and at least twenty-one (21) days for review by the Architect's consultants. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect and shall promptly notify the Owner of any substantial deviations from those schedules.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner and update at least weekly one copy of the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and the Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The location of all existing or new underground piping, valves, conduit, cabling and utilities, as located during the course of construction, shall be appropriately marked until the actual surveyed field location dimensions and coordinates are incorporated on the as-built drawings, and mechanical and electrical deviations and changes shall be included. The documents shall include all Architectural, mechanical, Electrical, Structural and Civil as-built drawings, whether changes occur or not. These documents as well as the approved permit set of plans shall be available to the Architect and the Owner at the site and reviewed with them on a monthly basis.

Upon Final Completion of the Work, the Contractor shall transfer all as-built information in a clear and legible manner as described in the Contract Documents and in compliance with all requirements of local government entities: (i) a paper copy of the documents in good condition, (ii) the approved permit set of plans, (iii) one complete, full-size set of reproducible Mylar drawings on which has been neatly drafted all deviations and changes recorded on the job prints, (iv) a CD-ROM containing the as-built documents, Shop Drawings, Specifications, Addenda, maintenance manuals and warranties to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents, and (v) an electronic copy in the format specified in the Contract Documents. Satisfactory maintenance of up-to-date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, note any deviations from the Contract documents, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and frequency and in such sequence and uniform flow rate as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action, which will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall inform the Architect in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents. So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated Work shall be submitted at approximately the same time. The Contractor shall stamp and initial its approval on all Submittal prior to submitting them to the Architect indicating that the Contractor has satisfied its responsibilities under the Contract Documents for review of the Submittal. Unless otherwise directed in writing, the Contractor shall submit one reproducible copy and five black line print copies to the Architect for its use and distribution. The Architect will return the reproducible copy. The Contractor shall keep accurate records of the receipt, review and delivery of all Submittals and shall submit the Owner reports every other week on the status of their review, identifying the location and the causes of any failure to promptly receive such submissions and suggesting responsibility.

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

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

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

§ 3.12.8 The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued

authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval, review or acceptance thereof. Any corrections or modifications to Shop Drawings made by the Architect shall be deemed accepted by the Contractor, without change in Contract Sum or Time, unless the Contractor provides the Architect with written notice at least three (3) working days before commencing any work from such Shop Drawings. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected Submittal without change in Contract Sum or Contract Time.

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

§ 3.12.10 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching and in accordance with 3.14.3, unless otherwise required by the Contract Documents.

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

§ 3.14.3 Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Contractor shall abide by such regulations and shall pay for such work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At the Owner's request at any time and at completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City, its officers, officials, employees, directors, agents (including the Architect and the Architect's officers, agents, and employees) and volunteers, from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection in any way with the Contractor's performance of this Agreement, except for injuries and damages caused by the City's sole negligence.

The City's inspection or acceptance of any of the Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be solely responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. The Contractor shall also be solely and completely responsible for safety and safety conditions on the job site, including the safety of all persons and property during performance of the work. The services of City employees or the engineer's personnel in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing, scaffolding or trenching, or safety measures in, on or near the construction site. The Contractor shall provide safe access for the City and its inspectors to adequately inspect the quality of work and the conformance with project specifications.

The provisions of this section shall survive the expiration or termination of this Agreement.

*(Paragraphs deleted)*

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

*(Paragraphs deleted)*

init

#### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents as the Owner's Agent during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents is not authorized to agree on behalf of the Owner to changes in the Contract Sum or Contract Time, nor to direct the Contractor to take actions that change the Contract Sum or Contract Time.

*(Paragraphs deleted)*

§ 4.2.2. Neither the Architect nor the Owner will have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is complete in compliance with the Contract Documents, nor as evidence that any requirements of the Contract Documents of any kind, including notice, has been met or waived.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Contractor shall also provide the Owner with a direct copy of all written communications to the Architect, including all notices, Claims, and potential changes in the Contract Sum or Contract Time but not including Shop Drawings, Product Data or Samples.

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

§ 4.2.6 The Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable, the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect and the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner or its representatives to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

§ 4.2.9 The Architect will make observations, make recommendations and otherwise assist the Owner to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial

Int.

Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and other documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

*(Paragraphs deleted)*

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

§ 5.1.3 The designation of terms in the article is not meant to change or alter the definitions contained in RCW 60.28. "Lien for Labor, Materials, Taxes on Public Works." RCW 39.12, "Prevailing Wages on Public Works," or other statutory definitions of a subcontractor.

§ 5.1.4 Responsible Contractor: This designation reflects a person or entity who is qualified and can document training, experience, license, and special certification to perform work, supply materials, or provide equipment required and specified by the Contract Documents. As an additional feature of this contract, to be considered a responsible subcontractor, the following entities shall also provide evidence that they can secure payment and performance bonds on their work should the Owner elect to add a bonding requirement by Change Order.

1. HVAC
2. Electrical
3. Plumber
4. Fire Sprinkler
5. Steel Erector
6. Earthwork

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Within seven (7) days after Notice of Intent to award the Contract, the Contractor shall furnish in writing to the Owner and the Architect the names of all persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work (i.e. at least 2% of the Contract Sum) consistent with the listing required along with the Bid. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specification Sheets and state the Work category followed by the name of the Subcontractor and/or fabricator (or "Contractor" where the portion of the Work is by the Contractor's own forces). The list shall be accompanied by evidence of any qualifications required within the technical Sections of the Project Manual and satisfactory to Owner. The list shall be updated promptly as part of the payment process if additional Subcontractors of any tier are engaged. If the Agreement is executed, no progress payment will become due until this information is so furnished. No action or inaction of the Owner or Architect in response to receipt of the names of the proposed Subcontractors of any tier shall constitute approval of any Subcontractor of any tier or of its performance. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection. If the Owner makes a reasonable objection, the Contractor shall replace the Subcontractor with no increase to the Contract Sum or Contract Time. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the Contract Sum and Contract Time.

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

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was qualified, "responsible" and reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsibly in submitting qualified names as required and no increase in the Contract Sum or Contract Time shall be allowed for such change if the Owner had made a reasonable objection. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the Contract Sum and Contract Time. The Contractor's listing or use of any Subcontractor that is not "responsible" shall be sufficient cause for the Owner to declare that the Contractor is not a responsible bidder, unless the Contractor agrees to substitute a responsible Subcontractor at no change to the Contract Sum or Contract Time.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution. An objection that a proposed Subcontractor of any tier is different from any entity listed with the Bid shall be deemed a reasonable objection. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being prosecuted in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor of any tier performing such Work. Such a removal shall not relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

§5.2.5 As used in this Section 5.2, "reasonable objection" shall include without limitation:

1. a proposed Subcontractor of any tier differing from the entity listed with the Bid
2. lack of "responsibility" of the proposed Subcontractor, as defined in RCW 39.04.350,
3. lack of qualification as required by the Specifications, or
4. material failure to perform satisfactory (such as causing a material delay or submitting a claim the Owner considers inappropriate) on one or more projects for the Owner within three (3) years of the bidding date.

§5.2.6 The Contractor shall perform with its own organization and under its immediate supervision a portion of the Work not including general conditions amounting to not less than 10% of the total original Contract Sum, less the cost to the Contractor of any items specified in the Contract Documents as specialty items.

### § 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.1 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any Assigned Subcontractors. No subcontracting of any of the

init.

Work shall relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The owner shall provide to the Contractor copies of any written Owner-Supplier agreements to any early procurement contracts and any agreement between the Owner and any Assigned Subcontractors. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower-tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship.

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

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

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### § 5.5 LIENS

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

§ 5.5.2 The Contractor shall defend, indemnify, and hold harmless the Owner from any liens, including all expense and attorney's fees, except to the extent a lien has been filed because of failure of payment by the Owner.



## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15 except that the Contractor shall have no claim for construction or operations to the extent disclosed in the Bidding Documents or Contract Documents.

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

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

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

### § 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

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

#### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

### ARTICLE 7 CHANGES IN THE WORK

#### § 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor;

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

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

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

#### § 7.2 CHANGE ORDERS

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

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

#### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in

the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties (accompanied by an itemized estimate of probable cost) and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible and within seven (7) days of receipt, the Contractor shall advise the Architect in writing of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, or if cost is to be determined in such case, and also under Section 7.3.3.3, the Contractor shall keep and present, itemized in the categories of Section 7.5 and in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data.

*(Paragraphs deleted)*

In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment, material and subcontract costs. Labor, equipment and materials shall be itemized in the manner described in Section 7.5. When major cost items arise from Subcontractors of any tier, these items shall be similarly itemized. Approval may not be given without such itemization. Failure to provide data within twenty-one (21) days of the Owner's request shall constitute waiver of any Claim for changes in the Contract Sum or Contract Time. The total cost of any change, including a Claim under Article 15 shall be strictly limited to the reasonable value, as determined by the Architect (subject to appeal through the dispute resolution procedure of Article 15), of the items described in Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. The Architect and the Owner may communicate directly with Subcontractors concerning costs of any Work included in a Construction Change Directive. If the Contractor disagrees with the method or the adjustment in the Contract Time, the adjustment or method shall be referred to the Owner for determination, and any adjustment shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be the largest of (i) the reasonable and prevailing value of the deletion or change,

Init.

(ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines, to be reasonably justified.

*(Paragraph deleted)*

§ 7.3.11 Any adjustment in the Contract Time arising from a Change or Claim shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

#### § 7.4 MINOR CHANGES IN THE WORK

The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that such order causes an increase in the Contract Sum or Time, the contractor must properly submit a notice and Claim.

#### § 7.5 PRICING COMPONENTS

§ 7.5.1 The total costs of any changed work or of any Claim for an increase or decrease in the Contract Sum shall be limited to the following components:

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

1. Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Contractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whoever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Contractor for vacations, per diem, travel, bonuses, stock options or discretionary payments to employees are not separately reimbursable. The Contractor shall provide copies of certified payrolls upon the Owner's request.
2. Workers' Insurances: Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
3. Federal Insurances: Direct contributions required by the Federal insurance Compensation Act (FICA); Federal Unemployment Tax (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.1.2 Direct Material Costs: This is an itemization, including material invoices, of the quantity and cost of additional materials necessary to perform the change in the Work. These costs shall be by the unit cost of additional materials necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Architect.

§ 7.5.1.3 Construction equipment usage costs: This is an itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental costs as established by the lower of the prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose California, as modified by the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party as evidenced by the rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If more than one rate in The Rental Rate Blue Book is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the Change of Work are the maximum rates

init.

allowable for the equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. 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 on the Work shall be 50% of the rate established above. The total cost of the 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 that equipment, which rate and use must be approved by the Architect prior to performing the Work.

§ 7.5.1.4 Cost of change in insurance or bond premium: This is defined as:

- .1 Contractor's liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under Section 11.7.1 and subject to audit) of any changes in the contractor's liability insurance arising directly from the changed Work; which shall not exceed 1% of the cost of the Changed Work; and
- .2 Public Works bond: The cost (expressed as a percentage submitted with evidence of bondability under Section 11.5.1 and subject to audit) of the change in the Contractor's premium for the Contractor's statutorily required performance and payment bond arising directly from the changed Work which shall not exceed 1% of the cost of the Changed Work.

Upon request, the Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

§ 7.5.1.5 SUBCONTRACTOR COSTS: These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in the Subparagraph 7.5 and among other things, shall not include consultant costs, attorneys' fees, or claim preparation expenses.

§ 7.5.1.6 FEE: This is an allowance for all combined overhead, profit and other costs, including all office, home office, and site overhead (including project manager, project engineer, project foreman, estimator, superintendent, and their vehicles) taxes, (except sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, quality control/assurance, purchasing and small or hand tools (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, and includes acceleration and impact cost of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim, or any other claim of any kind on the Project. No fee shall be due, however, for direct settlements by the Owner of Subcontractor claims.

It shall be limited in all cases to the following schedule:

- .1 The Contractor shall receive 10% of the cost of any material supplied or work performed by the Contractor's own forces.
- .2 The Contractor shall receive 8% of the amount owed directly to a Subcontractor for materials supplied or work performed by that Subcontractor.
- .3 Each Subcontractor (including lower tier subcontractors involved) shall receive 10% of the cost of any materials supplied or work performed by its own forces.
- .4 Each Subcontractor of any tier shall receive 7% of the amount it owes of materials supplied or Work performed by its suppliers or subcontractors or any lower tier.
- .5 The total summed Fee of the Contractor and all Subcontractors of any tier shall not exceed 25%.
- .6 None of the fee percentage authorized in this Section 7.5.1.6 may be compounded with any other fee percentage or percentages authorized in this section.
- .7 The cost for which this Fee is to be applied shall be determined in accordance with subparagraphs 7.5.1 through 7.5.5.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section 7.5.1.6 are substantially greater than the fees and overhead normally included in determining the Contract Sum bid; that these higher percentages are sufficient amount to compensate the Contractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Contractor for some Changes compensates the Contractor for any Changes for which the Contractor believes the percentage is otherwise insufficient.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

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

§ 8.1.2 Within seven (7) days after issuance of the Owner's notice of intent to award the Contract, the Contractor shall submit evidence of bondability, certificates of insurance, and all other documents required by the Contract Documents. The date of commencement of the Work is the date established by the Owner in its conditional notice to proceed which will not be issued until the Contractor has complied with the terms of the notice of intent to award the Contract. Work on the site may begin when the Contractor complies with the requirements of the notice to proceed.

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

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

### § 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall achieve Final Completion within 45 days after Substantial Completion.

### § 8.2.4 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER

**DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION.** Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents. The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, at least fourteen (14) days before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

init.

1. Mobilization shall be a maximum of 0.5% of the Contract Sum, and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner.
2. The schedule of values shall allocate at least 1% of the Contract Sum to Commissioning, as defined in the Contract Documents.
3. The schedule of values shall also allocate at least 2.5% of the initial Contract Sum as a separate line item for that portion of the Work between Substantial Completion and Final Completion to be entitled "Final Documentation and Punchlist Completion", including without limitation punchlist completion and furnish all deliverables, which will be earned and distributed as follows: half shall be allocated for the completion of the punchlist work; one quarter shall be allocated for completion of approved operations and maintenance data as defined in the Contract Documents; and one quarter shall be allocated for completion of approved record documents, warranties and bond, delivery of extra stock, and all other documentation or items of the Work required for Final Completion and final payment. This percentage is not the statutory retainage described in Section 9.3.4 or any other retainage but rather requires the Contractor to recognize that the Contractor and its Subcontractors will expend significant costs in advancing the Work from Substantial Completion to Final Completion, and that this amount is not earned until Final Completion of the Work is accomplished. At its sole discretion, the Owner may release portions of this amount progressively as items are completed.
4. Itemize separately line item costs for permits, bonds, insurance, layout and supervision, scheduling, and temporary facilities.

### § 9.3 APPLICATIONS FOR PAYMENT

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

§ 9.3.1.1 **DRAFT APPLICATION.** At the last scheduled weekly meeting of each month, the Contractor shall submit to the Architect a report on the current progress of the Work as compared to the Contractor's Construction Schedule, and a draft, itemized application for payment for Work performed during that calendar month on a form supplied or approved by the Owner. This shall not constitute a payment request. The Contractor, the Owner, and the Architect shall meet prior to the last working day of the month regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Architect or the Owner may request the Contractor to provide data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make payment request, nor is any payment due the Contractor, until such data is furnished.

§ 9.3.1.2 **PAYMENT REQUEST.** After the Contractor, the Owner, and the Architect have met and conferred regarding the updated draft application, and the Contractor has furnished all progress information required and all data requested by the Architect under section 9.3.11 above, the Contractor has submitted current meeting minutes, as-built drawings and commissioning logs, the Contractor may submit a payment request by the 10<sup>th</sup> day of the following month in the agreed-upon amount, in the form of a notarized, itemized Application for Payment for Work properly performed during the prior calendar month on a form supplied or approved by the Owner, along with a lien release on a form approved by the Owner from each Subcontractor for whose Work the Owner paid the Contractor for the prior month. The Application shall also state that prevailing wages have been paid in accordance with the prefiled statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. **THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE**, unless otherwise noted on the application. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.3 **DISPUTED AMOUNTS** If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may, also by the 10<sup>th</sup> of the month and after the meeting in Section 9.3.1.1 submit to the Owner and the Architect along with the approved payment request a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due.

Init.



Furthermore, for the submittal to be considered, pursuant to WAC 296-127-320, the Contractor and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records relating to the additional amount due.

**§ 9.3.1.4 VALIDITY OF PAYMENT REQUESTS.** A payment request shall not be valid unless it complies with the requirements of the Contract Documents. If a separate payment request concerning a disputed amount does not comply with the requirements of the Contract, the Owner will provide a written statement to the Contractor.

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

#### **§ 9.3.4 RETAINAGE**

**§ 9.3.4.1** Pursuant to Chapter 60.28, RCW, "Lien for Labor, Materials, Taxed on Public Work", the Owner will reserve 5% retainage from the monies the Contractor earns on estimates during the progress of the Work, to be retained as a trust fund for the protection and payment of the claims of any person arising under the Contract and the State with respect to taxes imposed pursuant to Title 82 RCW, "Excise Taxes", which may be due from the Contractor.

**§ 9.3.4.2** The monies reserved may, at the option of the Contractor be:

- .1 Retained in a fund by the Owner until sixty (60) days following Final Acceptance; or
- .2 Deposited by the Owner in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until sixty (60) days following Final Acceptance, with interest to the Contractor; or
- .3 Placed in escrow with a bank or trust company until 45 days following the Final Acceptance, by the Owner's joint check to the bank or trust company and the Contractor, to be converted into bonds and securities chosen by the Contractor, approved by the Owner, and held in escrow, with interest on the bonds and securities paid to the Contractor as it accrues. The Owner hereby approves all obligations of the United States government or its agencies or corporations it wholly owns, indebtedness of the Federal National Mortgage Association, and time deposits in commercial banks, provided that any such investment must mature within the Contract Time. All other proposed bonds or securities require specific, written Owner approval. Shares of corporations will in no case be approved.
- .4 If the Contractor provides a bond in place of retainage, it shall be in an amount equal to 5% of the Contract Sum plus change orders. The minimum requirements for the bond are that it must be on a form acceptable to the Owner and signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the Owner may be applied.

Init.

§ 9.3.4.3 The Contractor may withhold payment of not more than 5% as a retainage from the monies earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same time interest rate it receives from its reserved funds. If request by the Owner, the Contractor shall specify the amount of retainage and interest due a Subcontractor.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

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

#### § 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

Init.

## § 9.7 FAILURE OF PAYMENT

If the Architect improperly fails to issue a Certificate for Payment, through no fault of the Contractor, within fifteen (15) days after receipt of the Contractor's timely Application for Payment under Section 9.3.1.2, or if the Owner does not pay the Contractor within fifteen (15) days after the date established in the Contract Documents the amount due and owing to the Contractor, then the Contractor may, upon fifteen (15) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof, approved by the Owner and the Architect, is sufficiently complete in accordance with the Contract Documents so that the Owner can fully occupy or utilize the Work, or the designated portion thereof, for its intended use. All Work other than incidental corrective or punch list work and final cleaning shall be completed, including but not limited to the following:

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

The Work is not Substantially Complete unless the Architect reasonably judges that the Work can achieve Final Completion within forty-five (45) days, appropriate cleaning has occurred, all systems and parts are commissioned and usable, including balancing of the HVAC system, utilities are connected and operating normally, all required occupancy permits have been issued, required LEED certifications have been submitted, O & M manuals have been submitted for review, and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

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

by the Contract Documents shall commence on the Date of Substantial Completion, unless otherwise provided, but the Contractor shall retain the responsibility to maintain the systems until Final Acceptance. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

**§ 9.8.1.3 30-DAY PERIOD AFTER DATE OF COMMISSIONING.** Not limiting the indemnification language stated in section 3.18.1, the Contractor acknowledges that a 30-day period after the Date of Commissioning and prior to occupancy is specified during which all HVAC, mechanical, electrical, control and environmental management systems are fully operational under procedures and loads intended to provide unoccupied space with positive performance for pre-occupancy environmental documentation, and the systems are scheduled to operate under a procedure intended to dissipate out-gassing that may occur from interior and other materials.

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

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect and, at its option, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractors shall expeditiously complete the Work or designated portion, again request and inspection, and pay the costs associated with the re-inspections.

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

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Any items not included by the Architect but required or necessary for Final Completion of the Contract shall be supplied and installed by the Contractor as part of the Contract Sum, notwithstanding their not being recorded by the Architect. Upon written acceptance of the Certificate of Substantial Completion by the Owner and the Contractor, and upon the Contractor's Application for Payment the Owner shall make payment as provided in the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. No further payment will be due or owing until the payment following Final Completion.

**§ 9.8.6** The Contractor shall prepare, continue to monitor with the Architect, and cause to be completed, all punchlists with respect to the activity of each Subcontractor and report weekly to the Owner on outstanding punchlist items. Beginning ninety (90) days before scheduled date of Substantial Completion, the Contractor shall prepare reports weekly, identifying items to be completed in order to obtain temporary and permanent certificates of occupancy and make recommendations to the Owner with respect to effectuating the earliest possible completion.

### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may, upon written notice to the Contractor, take possession of, operate, occupy or use any completed or partially completed portion of the Work at any stage and time. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor establish a Date of Substantial or Final Completion, nor establish a date for termination or partial termination of the running of liquidated damages, nor constitute a waiver of any Owner claims. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve Final Completion of the Work within forty-five (45) days of Substantial Completion, the Owner may take possession of, use or operate all or any part of the Work without an increase in the Contract Sum or the Contract Time on account of such possession or use. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

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

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

### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 The Contractor shall cause punch list items to be completed within forty-five (45) days of Substantial Completion or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during the forty-five (45) day period) provided that the Contractor commences to correct the item within the forty-five (45) day period and thereafter diligently and in good faith pursues the corrective action to completion. If, at twenty-two (22) days after the Date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed within forty-five (45) days of the Date of Substantial Completion, the Owner may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. If the Contractor fails to correct the deficiencies within the time period required, the Owner may deduct the actual cost of performing this punch list work, including any design costs, plus 15% to account for the Owner's transaction costs from the Contract Sum.

§ 9.10.1.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection accompanied by the Contractor (if requested by the Architect) and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents. If the Architect determines that some or all of the punch list items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspection to determine compliance with the punch list. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.2 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all Architect, engineer or other design consultant fees incurred by the Owner for services performed more than forty-five (45) days after Substantial Completion of all the Work, whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.3 When the Architect finds that the Work has been concluded, a final occupancy permit has been issued, any commissioning process and validation process have been successfully concluded, and the Contractor has submitted all the items in Section 9.10.2 to the Architect, the Contractor may submit a final Application for payment. The Architect's final Certificate for Payment shall establish the date of Final Completion upon its execution by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract

Init.

Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. (6) pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor or any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor, (7) a letter from the Architect indicating that the Work is complete and recommending Final Acceptance of the Project by the Owner, (8) certification that the materials in the Work are "lead-free" and "asbestos-free", (9) all warranties, guarantees, training, manuals, operation instructions, certificates, space parts, maintenance manuals and stock, specified excess material, as-built drawings and other documents, training or items required by the Contract Documents' or local governmental entities, and (10) a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health districts and utility districts, provided to Owner with a copy of all closed or signed-off permits. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

§ 9.10.2.2 Lien Notices shall be served at:

City of SeaTac  
4800 S 188th Street  
SeaTac, WA 98188-8605

A copy shall be submitted to the Architect.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner may, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, statutory retainage, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

§ 9.10.5.1 **CHANGE ORDERS.** The execution of a Change Orders shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or completed pursuant to the Change Order, except as specifically described

Init.

in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are initialed by the Owner.

§ 9.10.6 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain in the fund, account or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or (b) accept a bond from the Contractor, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.7 The Contractor shall maintain all books, ledgers, records, documents, estimates, correspondence, logs, schedules, electronic data and other evidence relating to or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. The Contractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owners requires, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproductions) by the Owner or its representatives. These requirements shall be applicable to each Subcontractor of any tier and included in the Subcontract and purchase order issued with respect to the Work except fixed-price Subcontracts where the price is \$25,000 or less. The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under RCW 42.17, "Disclosure," will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the Owner.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

init.



§10.2.1.2 Any notice given to the Contractor by the Owner or the Architect of a safety or property protection violation will not (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation (2) impose any obligation upon the Owner or the Architect to inspect or review the Contractor's safety program, or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; and (3) impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other person or entity.

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

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

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

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

§ 10.2.8 At all times until the Completion of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism, and malicious mischief and shall bear the risk of any loss or destruction of, or injury or damage to, all materials, equipment, tools, and other items incorporated or to be incorporated into the Work or designation portion, or consumed or used in the performance of the Work or designated portion, and all work in process and completed Work or designated portion.

#### § 10.2.9 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

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

*(Paragraphs deleted)*

Init.

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

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

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

#### § 10.4 EMERGENCIES

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

#### § 10.5 PUBLIC SAFETY AND CONVENIENCE

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in State of Washington possessing a Best's policyholders rating of A- or better and a financial rating of no less than VII and reasonably acceptable to the Owner, an occurrence-based Commercial General Liability Insurance policy which shall provide bodily injury and property damage liability on the Contractor's operations, including Subcontractors of any tier; owned, non-owned and hired vehicles; on in work sublet to others; and on the indemnity provisions of this Contract. This insurance will name the Owner, the Architect, the Owner's consultants and employees, and any required governmental agencies as additional named insurers for Work performed under this Contract; the Contractor's Policy shall be designated primary for both defense and indemnity, and any Owner's policies excess. Such limits of liability insurance shall not be less than the following:

- 1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- 2 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.
- 3 In addition, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer, in an amount not less than \$5,000,000.
- 4 Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 5

*(Paragraphs deleted)*

The Contractor's insurance coverage shall be primary insurance as respect the District. Any insurance, self-insurance, or insurance pool coverage maintained by the District shall be excess of the Contractor's

insurance and shall not contribute with it.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage shall include coverage for underground, collapse and explosion exposures. Coverages, shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Stop Gap Liability Insurance (Employer's Contingent Liability Insurance) with coverage of at least \$500,000 each occurrence/each accident.

§ 11.1.3.1 All policies and certificates must be signed copies and shall contain a provision that written notice by certified mail must be provided to the Owner 45 days before the policies expire or are cancelled or any coverages afforded under the policies are reduced, limits decreased, or the additional insured removed. The Contractor shall furnish to the Owner copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage or limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect, the Owner's consultants and employees, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 Before commencing Work or exposure to loss can occur, and, in any event, within five days after the Owner has issued its Notice of Award, the Contractor shall furnish the Owner with Certificates of Insurance, in duplicate, as evidence of all insurance required by the Contract Documents. If the Agreement is executed, no Progress Payment will be due until all such Certificates are furnished. All policies and certificates must be signed copies and shall contain a provision that coverages afforded under the policies cannot be materially altered (i.e., the coverages reduced, the limits decreased, or the additional insureds removed), allowed to expire, or cancelled without first giving 30 days prior notice by certified mail to the Owner. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage of blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground collapse and explosion.

§ 11.1.6 The Owner's specification or approval of the insurance in this contract of its amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the contract, indemnification or applicable law provisions. The Contractor may at its expense, purchase larger coverage amounts.

§ 11.1.7 Coverage must be on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage shall remain in force for three years after Final Acceptance.

§ 11.1.8 The Contractor shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned and operated by Subcontractor of all tiers in the amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Also, the Subcontractors shall name the contractor and the Owner as additional insured giving at least thirty (30) days notice of cancellation.

§ 11.1.9 If the Owner is damaged by failure of the Contractor to maintain any of the above insurance or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance. Failure to withhold payment shall not constitute a waiver.

§ 11.1.10 The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

## § 11.2 OWNER'S LIABILITY INSURANCE

*(Paragraph deleted)*

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain until Final Acceptance, in a company or companies lawfully authorized and admitted to do business in the State of Washington, a "Builders Risk" insurance policy to cover the course of construction upon the entire Work at the site to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and physical loss or damage including, but not limited to, flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal and shall provide "all risk" coverage for the interest of the Owner, the Contractor and Subcontractors as named insureds. Loss up to the deductible amount shall be endorsed to allow complete or partial occupancy by the Owner before or after Substantial Completion without the insurer's approval. This insurance shall include as loss payee the Owner, the Contractor and Subcontractors of any tier as named insured, as their respective interests appear. The policy shall be endorsed to allow complete or partial occupancy by the Owner before or after Substantial Completion without the insurer's approval. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

*(Paragraphs deleted)*

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

*(Paragraphs deleted)*

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

## § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner does not waive subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 **ADJUSTMENT.** Upon occurrence of a loss insured under the property insurance, the Owner shall participate in and approve the adjustment and settlement of any loss with the insurer. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 Upon the occurrence of an insured loss, the Owner shall participate in and approve the adjustment and settlement of any loss with the insurers. The owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If no agreement is reached, any damaged Work shall first be repaired or replaced, and payment therefore made from the separate account by Change Order or by payment to a separate Contractor, at Owner's option. Further disbursements from the separate account will then be determined pursuant to the provisions of Subparagraph 4.4.

*(Paragraph deleted)*

§ 11.4 **PERFORMANCE BOND AND PAYMENT BOND**

§ 11.4.1 **Contractor's Bond.** The Contractor shall secure and pay for payment and performance bonds from a surety company with a Best's rating of A:VII and shall be named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The surety shall be acceptable to the Owner, admitted and licensed in the State of Washington, and shall pay for a surety bond in the full amount of the Contract Sum plus sales tax, pursuant to RCW 39.08, "Contractor's Bond". Within two (2) days after the issuance of the Owner's notice of intent to award the Contract, the Contractor shall deliver evidence of its bondability to the Owner. Within five days of entering into the Contract, the Contractor shall deliver two copies of the bond to the Owner and one copy to the Architect. **THE OWNER MAY DECLINE TO ENTER INTO THE CONTRACT IF EVIDENCE OF BONDABILITY IS NOT RECEIVED. THE OWNER MAY WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BOND IS RECEIVED.** Evidence of bondability shall include the percentage to be paid by the Contractor for increases in the Contract Sum. If the agreement is executed, the Contract Time shall be reduced by one day for each day after five days that the surety bond is not received by the Owner.

§ 11.4.2 **SUBCONTRACTOR PERFORMANCE BONDS.** The performance bond from the Mechanical, Electrical and Plumbing subcontractors shall be provided. The bond(s) shall be in an amount equal to the full contract sum of the subcontract between the Subcontractor and the Contractor but shall not include sales tax. The bonds shall be conditioned that the subcontractor shall faithfully perform all the provision of its subcontract and for one year's maintenance for correction of defective work. Bonds will be delivered to the Owner within 10 days of entering into the Contract with the Contractor. Within ten days after issuance of the Notice of Intent to Award, the Mechanical, Electrical, and Plumbing subcontractors listed by the Contractor shall deliver evidence of their bondability to the Owner through the Contractor. The evidence shall include a letter from the bonding company that includes the price of a performance bond to be issued during the 30-day period after the conditional Notice to Proceed. The surety company must have a Best's rating of A:VII and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The surety shall be licensed in the State of Washington. If the Owner is damaged by failure of the Contractor to maintain any of the bonds or insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. **OWNER MAY REQUIRE A CHANGE OF SUBCONTRACTOR AT NO INCREASE TO THE CONTRACT SUM OF THIS EVIDENCE OF BONDABILITY IS NOT RECEIVED. THE OWNER MAY WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BONDS ARE RECEIVED.** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 **POTENTIAL SUBCONTRACTORS.** Within five days after the issuance of the Notice of Award, any Subcontractors listed in the Special Conditions shall deliver evidence of their bondability to the Owner through the Contractor. The evidence shall include a letter from the bonding company that contains the price of a performance bond to be issued during the 30-day period after the Notice to Proceed. The Bonding company must be acceptable to the Owner and admitted and licensed in the State of Washington. The bond(s) shall be in an amount equal to the full

Init.

contract sum of the subcontract between the Subcontractor and the Contractor but shall not include sales tax and shall include one year's maintenance for correction for defective work. If the Owner elects to require a performance bond from one or more of the Subcontractors, it will so notify the Contractor in writing within 14 days of receipt of the evidence of bondability from the respective Subcontractor, in which case the Contract Sum shall be increased by the Change Order in the amount specified in the letter, unless otherwise agreed by the parties. THE OWNER MAY DECLINE TO ENTER INTO THE CONTRACT OR REQUIRE A CHANGE OF SUBCONTRACTOR AT NO ADDITIONAL COST IF THIS EVIDENCE OF BONDABILITY IS NOT TIMELY RECEIVED. THE OWNER MAY WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BONDS ARE RECEIVED

§ 11.5 If the Owner is damaged by the failure of the Contractor to maintain any of the bond or insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all insurance and bonds. Failure to withhold payment shall not constitute a waiver.

#### § 11.6 PROOF OF INSURANCE

§ 11.6.1 Before any presence on the site, commencement of Work or exposure to loss can occur, and, in any event, within seven (7) days after the Owner has issued its notice of intent to award the Contract, the Contractor shall furnish the Owner with (1) two copies of Certificates of Insurance, on AIA form G705 or equivalent, as evidence of all insurance required by the Contract Documents, (2) the actual costs (expressed as a percentage) of the Contractor's liability insurance under Section 11.1, (3) endorsements for additional insureds as listed in Section 11.1, (4) two copies of L&I Statements for State Workers' Compensation coverage, and (5) a copy of any builder's risk policy required in Section 11.4. If the Agreement is executed, no progress payment will be due until all such items are furnished. All policies and certificates must be signed copies and shall contain a provision that written notice by certified mail must be provided to the Owner and Architect thirty (30) days before the policies are reduced, the limits decreased, or the additional insureds removed, and shall include the premium percentage to be paid by the Contractor for increases in the Contract Sum. The Contractor shall furnish to the Owner copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage or limits. Furthermore, such policies or certificates shall verify that the policy contains coverage for blanket contractual liability coverages called for by this Agreement. Upon written request, the Contractor will provide a copy of its policy to the Owner. Losses up to the deductible amount shall be the responsibility of the Contractor. Such insurance should be maintained until the project is accepted by the owner.

§ 11.6.2 The Owner's specification or approval of the insurance in this Contract or of its coverage or amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnifications, or applicable law provisions. The Contractor may, at its expense, purchase large coverage amounts. Notwithstanding anything herein to the contrary, the Contractor shall provide all bonding, insurance, and permit documentation as required by governmental entities for all portions of the Project.

§ 11.6.3 If the Owner is damaged by the failure of the Contractor to maintain any of the insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance. Failure to withhold payment shall not constitute a waiver.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the request of the Architect or the Owner, or to requirements of a governmental authority or as otherwise specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect or governmental authority has not specifically requested to examine prior to its being covered and for which the contract Documents did not require inspection, the Architect or the governmental authority may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by a separate contractor employed by the Owner, and in that event the separate contractor shall be responsible for payment of such costs.

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect, or regulatory agency, or which fails to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 If within one year after the later of the date of Final Acceptance or the Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under the Contract Documents Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, the Contractor shall correct it according to the requirements of the Contract Documents, the Contractor shall correct it according to the requirements of this Subparagraph promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. If the Contractor does not promptly according to the provisions of this Subparagraph initiate work to correct the Work designated in the notice, the Owner may without further notice proceed to correct the Work, the Owner may dispose of materials and equipment as it sees fit, and the Contractor will be liable for all costs. This correction period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

1. If, in the Owner's opinion, the nonconforming Work either prevents the use of a portion of the facility and/or immediate response to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.) the Contractor shall initiate corrective work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete the corrective action within 48 hours.
2. If, in the Owner's opinion the nonconforming Work has the potential of becoming a safety hazard, of affecting internal security, or of limiting the use of the facility (e.g., potential loss of heat in a room, failure of one or more plumbing fixtures, loose carpet seam in corridor, interior door lock not working, etc., ) the Contractor shall initiate corrective work on site within two (2) working days and shall complete corrective action within five (5) working days.
3. If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed, (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.) the Contractor shall initiate corrective work on site within fourteen (14) calendar days and shall complete corrective action within twenty-eight (28) calendar days.

§ 12.2.2.1.2 In addition to the Contractor's obligations under Section 3.5, if within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the internal law of the place where the Project is located, without regard to its choice-of-law provisions except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 If a majority of the ownership or the control of Contractor is acquired by a third party, and such acquisition reasonable imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.1, except that the Owner shall give the Contractor thirty (30) days written notice of termination and the opportunity for the Contractor to cure prior to termination.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by fax, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual receipt by fax or e-mail, or three (3) calendar days after the date of postmark.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The Contractor's sole remedy for claims, disputes, and other matters in question of the Contractor, direct or



indirect, arising out of, or relating to, the Contract Documents or break thereof, except claims which have been waived under the terms of the Contract Documents, however, is the dispute resolution procedure of Article 15.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.4.3 If any of this Contract is held to be void or unenforceable, the remainder of the Contract shall be enforceable without such portion.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections and approvals except that the Contractor will be responsible for any costs of retesting and any extra costs caused by the Contractor. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 If the Owner is responsible under the Contract Documents, law or regulation to pay only for an inspection of any inspector, consultant or Architect, the Owner shall be required to pay only for the first actual inspection. If the Contractor arranges for an inspection and the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or reinspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs. If the Contractor does not pay the charges for which it is responsible within 30 days of billing, the Owner may pay the charges directly and back charge the Contractor on the next progress payment the amount paid plus 10% handling fee.

§ 13.5.8 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failures to inspect or test by the Owner, the Owners representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject

defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality, or the ease of its discovery.

#### **§ 13.6 INTEREST**

Payments due and unpaid under the Contract Documents shall bear interest as specified by RCW 39.76, "Interest on Unpaid Public Contracts." Or if not applicable at the rate of 6% per annum.

#### **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

#### **§ 13.8 STATUTES**

§ 13.8.1 The Contractor shall abide by the provisions of all Washington Statutes. Although a number of statutes are referenced in the Contract Documents, it is not meant to be a complete list and should not be relied upon as such.

#### **§ 13.9 CONTRACTOR REGISTRATION**

§ 13.8.1 Pursuant to Chapter 39.06, RCW, "Registration, Licensing of Contractors," the Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to Chapter 18.27, RCW, "Registration of Contractors."

#### **§ 13.10 LAW AGAINST DISCRIMINATION**

§ 13.10.1 The Contractor, and all tier subcontractors and vendors party to this contract, will comply with all state and federal non-discrimination regulations and guidelines. Accordingly, all parties to this contract will be considered and not discriminated against on the basis of race, color, national origin, gender, or disability. This non-discrimination agreement is in accordance with Title VI of the 1964 Civil Rights Act; Section 504 of the Rehabilitation Act, 1973 as amended; Americans with Disabilities Act, July 26, 1990, P.L. 101-336; Title IX of the Education Amendments of 1972, as amended, and RCW 49.60.

#### **§ 13.11 PROVISIONS FOR AGED AND HANDICAPPED PERSONS**

§ 13.11.1 The Contractor shall comply with pertinent statutory provisions relating to public works or RCW, 70.92, "Provisions in Buildings for Aged and Handicapped Persons," and the Americans with Disabilities Act.

#### **§ 13.12 SAFETY STANDARDS**

§ 13.12.1 The Contractor shall comply with pertinent statutory provisions relating to public works of Chapter 49.17, RCW, "Washington Industrial Safety and Health Act," and Chapter 296-155 WAC, "Safety Standards for Construction Work."

#### **§ 13.13 UNEMPLOYMENT COMPENSATION**

§ 13.13.1 Pursuant to RCW 50.24, "Contributions by Employers," in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Contract or arrange for a bond acceptable to the commissioner.

#### **§ 13.14 DRUG-FREE WORKPLACE**

§ 13.14.1 The Contractor and all Subcontractors of any tier shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs shall immediately be removed from the Work.

#### **§ 13.15.1 ASBESTOS REMOVAL**

§ 13.15.1 To the extent this Project involves asbestos removal, the Contractor shall comply with Chapter 49.26 RCW, "Health and Safety—Asbestos," and any provisions of the Washington Administrative Code promulgated thereunder,

Init.

and the applicable section of the Specifications should be viewed for possible insurance required for the applicable Subcontractor

#### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

##### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 Except as provided by RCW 60.28.080, the Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and direct damages. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

##### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

*(Paragraphs deleted)*

§ 14.2.1 The Owner may upon seven (7) days written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .3 is in material default of or materially breaches any provision of this contract;
- .4 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .5 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors; or
- .6 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor on all or a portion of the Work and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4;

Init.

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work; and
- 4 take or direct any or all of the actions in Section 14.5.1

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 If the Owner terminates a portion of the Work, the Contractor shall continue the performance of the remainder of the Work in accordance with the Contract Documents to the extent not terminated.

§ 14.2.6 If, after the Contractor has been terminated pursuant to this Section 14.2, it is determined that none of the circumstances set forth in Section 14.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Section 14.4.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, at any time upon ten days' written notice to the Contractor, suspend (without prejudice to any right or remedy of the Owner) the whole or portion of the Work for the convenience of the Owner.

§ 14.3.2 If the Owner suspends the Work or any portion thereof for convenience, the Owner shall be liable to the Contractor only for those costs reimbursable to the Contractor in accordance with Subparagraph 14.3.3, plus ten percent of the actual costs recovered under Subparagraph 14.3.3. If the Contractor would have sustained a loss on the entire Contract had it been complete, the ten percent markup will not be included, and an appropriate adjustment will be made to reduce the amount due the Contractor in proportion to the rate of loss.

§ 14.3.3 If the Owner suspends the Work or any portion thereof for convenience, the Owner shall pay the Contractor the amount due under Article 9 of these Revised General Conditions for the performance of the completed portions of the Work suspended. The Owner also will pay the Contractor for other pre-approved costs, consistent with Paragraph 14.3.

§ 14.3.4 The total sum to be paid to the Contractor under this Paragraph 14.3 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made, the price of Work not suspended, and as otherwise permitted by this Contract shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Subparagraph 14.4.1.7.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Unless directed otherwise by the Owner or Architect, upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 stop Work under the Contract on the date and as specified in the Notice of Termination.
- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as maybe necessary for completion of any portion of Work that is not terminated.
- .3 procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated.
- .4 assign to the Owner all of the right, title, and interest of the Contractor under any or all orders and subcontracts, as directed by the Owner, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- .5 with the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the owner.

- .6 transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, material parts, tools, dies, jigs, and other fixtures completed Work, supplies and other materials produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work.
- .7 use its best efforts to sell any property of the types referred to in Subparagraph 14.4.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or process approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor.
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to the Contract in the possession of the Contractor in which the Owner has an interest.
- .9 continue performance only to the extent not terminated.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment consistent with the Contract Documents for Work properly executed, and costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders), along with reasonable profit on the Work not executed, not to exceed the lesser of the Fee in Section 7.5.6 or the percentage of profit in the Contractor's bid. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made, by the larger of (1) the actual value or (2) the scheduled value of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Section 14.5.7.

§ 14.4.3.1 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

- .1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the contract.
- .2 any claim which the Owner may have against the Contractor.
- .3 an amount necessary to protect the Owner against outstanding or potential liens or claims; and
- .4 the agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Subparagraph 14.4.1.7, and not otherwise recovered by or credited to the Owner.

§ 14.4.3.2 If the termination pursuant to Paragraph 14.3 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim by the Contractor for an equitable adjustment under this Subparagraph must be asserted within 60 days from the effective date of the Termination.

§ 14.4.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under Paragraph 14.3.

§ 14.4.5 The damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

§ 14.4.6 The Contractor shall, from the effective date of Termination until the expiration of three (3) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work. The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in

Int.

question between the Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. A notice of a potential or conditional future claim does not constitute a claim; all claims must state facts which specify the basis and amount of the claim and the nature of the issue in dispute.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated in writing and at a minimum, a Contractor's written claim shall include:

1. The date of the Contractor's claim;
2. The nature and circumstances that caused the claim;
3. The provisions in this Agreement that support the claim;
4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption

to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor any log entry, nor an Owner's request for or the Contractor's response to a Change Order proposal, nor a notice of a potential or future Claim shall constitute a Claim.

**FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.**

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, including the dispute resolution process and except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and maintain the Contractor's Construction Schedule and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide written notice prior to proceeding to execute the Work shall be deemed a waiver of all claims related to the Work.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given and a written Claim as specified in the Contract Documents shall be submitted. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If the delay was not caused by the Owner, Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not a change in the Contract Sum.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction, and that the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the Contract Sum will be adjusted for normal inclement weather. The Contractor shall be entitled to a change in the Contract Time only if the Contractor can substantiate to the reasonable satisfaction of the Owner and Architect that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. If the total new

Init.

accumulated number of calendar days lost due to inclement weather from commencement of the Work until Final Completion exceeds the total new accumulated number to be expected for the same period from the aforesaid data, and the Owner grants the Contractor a time extension, the Contract Time will be extended by corresponding number of calendar days indicated on the critical path of the Contractors approved Construction Schedule.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Owner will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

init.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation but, in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 LITIGATION

The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures in this agreement. The Contractor shall have the burden to demonstrate in any litigation that it has complied with all requirements of this agreement. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion approved in writing by the Owner or (b) sixty (60) days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of a mediation shall toll these deadlines until the later of the mediator providing written notice to the parties of impasse or thirty (30) days after the date of the last mediation session. Neither the Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner (but may recover attorneys' fees from the bond or statutory retainer fund itself to the extent allowable under law).

*(Paragraphs deleted)*

### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate a mediation conducted under this Agreement with any other mediation to which it is a party provided that (1) the mediation agreement governing the other mediation permits consolidation, (2) the mediations to be consolidated substantially involve common questions of law or fact, and (3) the mediations employ materially similar procedural rules and methods for selecting, mediator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in mediation, provided that the party sought to be joined consents in writing to such joinder. Consent to mediation involving an additional person or entity shall not constitute consent to mediation of any claim, dispute or other matter in question not described in the written consent.

*(Paragraph deleted)*

init.